COMPUTER NETWORKS

SPECIAL ISSUE ON

"COMPUTER NETWORKS AND DATA PROTECTION LAW"

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The Hon. Mr. Justice M.D. Kirby (Sydney)

Chairman

Australian Law Reform Commission

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THE IMPACT OF TECHNOLOGY ON LAW

Laws provide one of the means by which we live together in relative peace and harmony. They are a force for stability and predictability. Whether contained in the language of a statute or regulation or found in a judge's decision, it is of the nature of law that it will be in a final form. Ultimately it is committed to a discoverable state. Societies do not stand still. On the contrary, society advances today at a dazzling pace. One English Law Lord recently encapsulated the changes of his lifetime thus:

> "Just think, from horse to jet; from steam to nuclear fission; from rifle to hydrogen bomb; from magic lantern to T.V.; from workhouse to welfare State; from a proud and mighty Empire to a junior member of the European Economic Community; from thrift to higher-purchase; from the dress allowance to the lady High Court judge; from original sin to the Id; from the unmentionable topic to State support for family planning; from the "love that dares not speak its name" to "Gay Lib" ... and from "Little Women" to "Lolita"".[1]

The rapid changes in social values have been surpassed only by the exponential developments of science and technology. Amidst all this change, a tension is created between a rule which states principles at a given time and social relationships which go on happening, complicated by the input of new ideas, new social themes and new science and technology. To some extent, of course, rule makers, whether in legislatures or the courts, seek to accommodate future developments. But they can only do so so far as these are known or can be perceived. Rules of law, possibly inadequate in the first place, become irrelevant and even obstructive as a result of change. Putting it broadly, the law seeks to preserve. Inevitably it is a conservative force. Generally, it speaks to one generation in terms of the values, knowledge and science of earlier generations. Its rules tend to favour an older culture and to support those in possession. Paul Tillich once described law as "the attempt to impose what belonged to a special time on all times". It rests upon the search for certainty. Of its nature, it addresses its audience at one time in terms of values which are stated for all times. Uncomfortably for the law, times change.

In all countries, but particularly in Common Law countries, judges have traditionally done much by analogous reasoning, to adapt the law to scientific and technological changes. It has been said that the genius of the Common Law lay in the capacity of its judges to promote orderly change within limits of predictability and stability imposed by the hierarchy of courts and respect for legal precedent.[2] Since the 19th century, the Common Law made by the judges, has been in undisguised retreat. Parliamentary democracies look increasingly to the legislature to update the law. This explains the great flood of legislation which emenates from legislatures of all Western democracies, even to the extent of promoting calls for an end to the flood. Australia, with a population of 14 million and 8 legislatures produces annually more than a thousand Acts, to say nothing of the subordinate regulations, ordinances and by-laws and judge made law.

The perceived need for laws on "data protection" or "the protection of privacy" as we have come, somewhat unfortunately, to call it in English speaking countries is but one example of the impact of science and technology on existing legal systems. General education, mass literacy, the modern economic order and the growing role of government all produce demands for access to information of a quite unprecedented kind. By the developments of science and technology, these demands can, increasingly, be furthered. Surveillance and other bugging devices are in a minor league. Telecommunications and the mass media distribute information at a speed and cost that would not have been thought possible even a decade ago. The developments of recent memory are those which are most significant for the collection and distribution of information.

Data protection is a species. The genus is the effect which developments of science and technology have upon the legal order: revealing lacunae or deficiences, showing up irrelevant and outmoded rules or demonstrating, sometimes, bizarre and unexpected effects of long established legal rules upon fact situations the result of new technological developments.

A great deal of attention has been given in Australia and elsewhere to revising and modernising the law to cope with the challenge of change. For example, a recent report traced the likely impact on the legal system of changes in the law consequential upon resort to new energy sources, particularly solar energy.[3] The law of defamation requires reconsideration, both as to its substance and as to appropriate remedies, in circumstances where assaults upon honour and reputation are no longer local but are spread by radio, television, satellite, telefacsimile and so on across the nation and beyond.[4] The advances in immunology that have made possible transplantation of human organs and tissues shows up the law's inadequacies. Death, which common sense and the Common Law defined in terms of the circulation of the blood and the activity of the heart must be re-defined in terms of brain function, once modern ventilators become available to maintain artificially blood circulation.[5] These and the developments

of genetic engineering and human experimentation pose major ethical and technical challenges for the legal system.[6]

The review of the law as a consequence of scientific and technological advances does not require only adjustment to accommodate change. It also requires the utilisation of new discoveries in the law governing the administration of justice. The invention of equipment for the rapid detection of alcohol and other drugs is a major (and almost universal means) of substituting uncontestable scientific information for untrustworthy or contentious lay observation.[7] To the same effect is the proposed introduction of photography and videotaping of identification parades, to reduce the well documented dangers of identification evidence.[8] Likewise, the introduction of sound recording of police interviews is a procedure likely to reduce disputes about alleged admissions and confessions to police, made by criminal suspects.[9] The use of the telephone to permit judicial superintendence of urgent police action, e.g. by the issue of telephone warrants for arrest or search is now an actuality in Australian law.[10] There are countless examples, in every Western country of the law accommodating itself to scientific developments. There is no more prevading development, with more widespread implications for the legal system, than the advance in information technology. Although data protection was necessary before the computer, it is the development of automated data processing that has accelerated urgently the need for new laws.

THE NEW TECHNOLOGY: COMPUTERS & TELECOMMUNICATIONS

It is not necessary to rehearse the debate about whether laws for data protection, once designed, should apply to all information systems (manual and automatic) or only to automated and dependent systems. It is the advent of the new information sciences that is the occasion for major revision of the laws in many countries, to provide protection for the integrity and security of personal data. The features of the automated technology which provide new and different problems for the law

maker have been identified many times. It is convenient to catelogue them once again. They include the explosive scale of information storage capacity which becomes possible; the rapid and ever increasing speed of retrieval of automated data; the rapidly diminishing cost of collecting and retrieving information, proportionate to this scale and speed; the capability of automated systems to transfer, combine and multiply information to uses quite different from those originally intended when the information was obtained from the data subject; the susceptibility of the resource to centralisation of control in the name of efficiency and economy; and the unintelligibility of much of the data in raw form, so that a relatively small group of persons, in a new and untested profession occupy a special position of command over a technology which defies lay understanding.

To the developments of computing science after 1955, must now be added enormous changes in communications technology. The combination of the two has led to the pioneering of new uses of computer systems which in turn depend heavily upon data communications.

> "The history of telecommunications is one of continuing progress. In the last 50 years, data transmission capacity of major telecommunications systems has increased three orders of magnitude: from 3,000 characters per second in the early 1920s by multiplexing 12 voice channels on a single wire pair to 8 million words characters per second in today's coaxial cable and microwave systems carrying 32,000 voice channels simultaneously ... The number of communication satellite circuits has grown impressively. For example, the first INTELSAT communication satellite in 1965 provided 240 circuits at a cost of $22,000 per circuit per month with a satellite live time of 1.5 years; 10 years later INTELSAT IV provides 6,000 circuits at $600 per circuit. Moreover satellite life time is expected to exceed 7 years and the INTELSAT V is expected to provide 10,000 circuits for 10 years at $30 per circuit.[11]

The consequence of the combined achievements of the computing and communications technologies is that data collection and transmission is becoming massive in its quantity and apparently limitless in its capability. Its speed increases as its cost diminishes. Unrestrained by law, it will know no national borders. The first experiences of commercial, national and international data networks (Telenet, Tymenet, Mark III and Sybernet in the United States, Datapack in Canada etc.) were discerned in the mid 1970s. Now the experiments of those years are busy realities. Large international companies operate their own data networks for internal use. The banking network SWIFT started operations at the end of 1977. It now has more than 500 European and American banks participating. International service operations, including SWIFT, SITA (the airlines communication system in which more than 200 airlines participate) and others represent a fast developing international movement for the transfer of data. Satellites will increasingly provide access and link-up facilities. In terms of technology at least they may be independent of the various public telecommunications carriers.

Changes of such a magnitude are daunting to the layman including most lawyers and law makers. The increased national and international interdependence of previously autonomous institutions and services and the constant shrinkage of time and distance constraints upon information will require conceptual changes to economic, social and political processes. The "time cushion" between social and technological changes and their impact and consequences has begun markedly to decrease.[12]

> "The introduction of devices such as the pocket calculator and citizen band radio have had immediate effects on the social environment ... There is no longer time to anticipate the impact of information technology applications before they become part of our everyday lives"[13]

Rapid developments of the order described tend to assume, in the minds of some, a quality of inevitability that becomes

translated into moral propriety. When the unthinkable becomes inevitable, it has a tendency to be seen as desirable. Lately, Western societies have begun to question the assumption that scientific progress and technological advancement are universally good things. We have begun to do rudimentary social costing. The real cost of the disposable can, of the motor car, of the destruction of historic buildings and so on cannot be measured in simple terms. Scientific and technological change may promote greater efficiency but may not for that reason be acceptable to society, when measured against the values that are destroyed. That is why many, confronting the implications of change, say that the law must have an increasing role in reasserting against the scientist and technologist, standards which society counts as important.[14] The argument is not confined to bizarre scientific experiments in the field of genetic engineering. It arises also in the context of information science. It falls to be answered when we ask the question: what kind of society do we want to live in? The Canadian Task Force on Privacy and Computers, writing in 1972, put it this way:

> "The enormous technological capabilities of computerised information systems can ... raise certain threats to important human values ... like privacy ... which are integral to our very conception of what it is to be human.[15]

The rash of data protection legislation in many countries evidences significant differences in the approach taken. In some, the central government only is submitted to regulation.[16] In some the public and private sectors are dealt with in the one law;[17] in others under separate laws.[18] In some countries only automated systems are to be regulated.[19] In others automated and linked manual files are to be regulated.[20] In still others no distinction is made between automated and manual files.[21] Different enforcement machinery is provided. But the common feature is a concern that at a time when information technology expands enormously the accessibility of data about the individual, his importance as such, in our form of society, should not be overlooked.

This is not the place to define "data protection" or its broader English substitute "privacy". To call it a "right" tends to beg the question of whether anyone ought to have the power to deny access to information or places called "private". Definition becomes confused with justification. But whether "privacy" or "data protection" is a human "claim"[22] or a "condition" of the individual person[23] or an "interest"[24] whatever its origin in human nature or learned behaviour, it is a fact that most people in our form of society want to control (or at least know of) the facts by which others perceive them i.e. the facts about oneself which "give one away".[25]

> "Many people resent data banks because they dislike the idea that some official can, by feeding appropriate instructions to a machine, possess himself of a composite picture which, even though accurate in factual detail, still permits him to interpret it in a way that the data subject finds humiliating and which he is powerless to influence".[26]

RESPONDING TO THE CHALLENGE

It is not surprising that societies react in varying ways to the velocity of change. Charles Reich in the Greening of America described the response of many of the young generation to the pace of change. Many simply "opt out" or "drop out". They seek an easier, slower, simpler life style; one radically different from the work ethic that until now has been fairly universally accepted in our type of society. A more typical but similar response is that of indifference about ignorance and the willingness to allow developments to take us where they will. Because this is more universal, it is a species of "opting out" that is of much greater potential consequence.

Another response is to attack the products of technology and science with the aim of destroying them. The concentration of data bases within collective computer systems present vulnerable targets: vulnerable not only to internal abuse but also to external attack. In Montreal, computers have actually

been destroyed by people who object to the implications both for individuals and for society as a whole.[27] In Italy quite recently the computerised motor registry records were destroyed. I am sure that we will see more of this Luddite response. Ignorance breeds fear and suspicion. It is the ultimate weapon against failure of scientific communication.

There are some who resist technological and scientific developments either for reasons of principle or because it is more comfortable and familiar to do things in the time honoured way. Blinkered by apathy and bridled by ignorance, society and its law makers all too often fail to see the problems and opportunities of science. In the business of data protection the law of most countries has been, until now, generally inadequate. Primitive records required few laws for their protection. Impediments of inefficiency, cost and time were frequently the best guardians of personal data. The removal of these impediments and the developments described above lead to perceived needs for reform and modernisation of the law. It is no coincidence that within a decade so many societies with otherwise different legal traditions have concerned themselves with initiating laws to provide for data protection.[28] Confronting identical technology, like lacunae in pre-existing laws and a common concern about the human values at stake, it is not remarkable that the legal reforms enacted and proposed evidence several well identified recurring themes that transcend national jurisdiction.[29]

THE LAW REFORM MOVEMENT

Law reform is not new. Although we are told that the laws of the Medes and Persians could not, once established, be changed, it was not so in Locris in ancient Greece. There, however, the would-be reformer was required to argue his proposal with a rope about his neck. If the council voted against him, he was choked to death on the spot.[30] Immutable, unchanging legal systems were "swept into the ash can of history, broken by the impact of man's movement upon their brittle inflexibility.[31]

In the Common Law tradition, modern law reform grew out of the rivalry in England between Francis Bacon and Chief Justice Coke in the 17th century. Coke fought for the common law developed by judges, independent of the King. Bacon criticised this procedure as uncertain and dependent upon chance litigation of important issues. He advocated a comprehensive and conceptual revision and re-statement of the law.[32] He proposed the appointment of a number of commissioners to develop and modernise the whole of the law in an orderly way. The growth of the representative legislature and the pressures for change have ensured, this century, the triumph of Bacon's idea. There is now no Western country where law reform is not substantially with the legislature rather than with the judges sitting judicially.[33]

The very word "reform" is a word of approbation, at least in the English tongue. In history it has been used to describe the movements which restored peace, renewed the religious order and renovated the system of parliamentary representation. Almost universally, it is used to describe an advance, an improvement. Reform is not just change. It is change for the better.[34] Change we may oppose: particularly change for the sake of change. But "reform" is by definition desirable, because we all desire improvement. What is an improvement in particular circumstances, may be a matter of controversy. Whether particular proposals are worthy of the name "reform" may be a matter of dispute. But "reform" as such attracts almost universal admiration and support. The only doubters are those who see the injustices of the law and problems of society as so daunting that they demand nothing less than a revolutionary solution, starting afresh on a new page.

Reform implies some degree of preservation or conservation of the subject matter of the reform exercise. What is changed at the end of the day is re-formed. It may well be changed, with a view to improvement. But the product is designed to fit within the whole body of laws which is thereby reformed. Though it be in the nature of law to endure and not to change,

and though the law is the "gate-keeper of the status quo"[35] in society changing times and circumstances require that lawyers and law makers should not mindlessly oppose change.[36]

Against the background of the enormous changes sketched above, three considerations make reform of the law attractive, almost by definition. The first is that the process implies the conservation of what is good in the existing order and the moulding of that which is proposed as a "reform" so that it will fit comfortably into the present state of things. The role of the law and of legal rules as providing a measure of certainty and predictability in life should not be overlooked. The fear that anarchy is loosed upon the world is mollified.

The second reason why "reform" is an attractive notion can be discovered in the element, inherent in it, that there should be some movement forward. Dissatisfaction with lawyers and the legal system is endemic. Tolerance to change, particularly if it is not too frequent and too disconcerting is general. Public acceptance of the need for movement and change is widespread in most Western countries, certainly in Australia.[37] The realisation that technologically "times are changing" and that the law must endeavour to catch up is fairly universal.

The third source of support comes in the standards by which the activity of "reform" is to be measured. To reform, implies improvement. Whatever the standard used, the basic endeavour of law reform in practical terms can be simply stated. It involves the three elements that have been identified. First, the proposed "reform" must fit, without anarchy, into the system that is the subject of reform. Secondly, it will involve, generally at least, action, movement, advance. Thirdly, the "reform" will seek to improve things.

MODERN INSTITUTIONAL LAW REFORM

In most English speaking countries the last few decades have seen the clear thinking acceptance of the declining role of the judges as law makers. There are notable acceptions in all countries. In the United States, the presence of the Bill of Rights and a different judicial tradition has encouraged greater inventiveness from the Bench. But the general recognition that the Common Law was loosing its genius for adaptability has led to the development of institutions to assist the Executive and legislature in reforming the law. The process began in 1934 in England when Lord Sankey established a Law Revision Committee. In the same year a Law Revision Commission was created in New York State as a permanent body with the task of examining the laws of that State. From these modest beginnings a "growth industry" has developed.[38] There are now few jurisdictions of the Commonwealth of Nations and few States in federal countries of the Commonwealth which do not have permanent law reform bodies. In Australia, there are 11 such bodies, permanently established, most of them by statute, generally with full time commissioners and research staff working upon the development of the law. This is not simply a scholarly or academic business. At the end of 1977, 12 1/2 years after the birth of the English Law Commission, 52 of its reports have been implemented, some of them in part but many in whole. Radical reforms have been achieved in the law relating to marriage and the family and important reforms in the criminal, contract, tort and property laws.[39] These English achievements are paralleled in other countries, including Australia. In federations, it is not possible to take, as Bacon would have it, the whole body of the law and to reform it in a systematic and encyclopaedic way. For example, constitutional limitations may be sorely relevant when it comes to data protection and laws on privacy.

The most important technique adopted by the English Law Commission from its inception in 1965 (and generally followed by other law reform bodies) is the procedure of research and widespread consultation, before proposals for reform are made. The English Commission innovated the "working paper",

in which the tentative proposals for reform are thoroughly explored for specialist and public debate, before the final report is prepared. The success of this technique, a real contribution to openness in government, is noted with proper pride by Lord Scarman, first Chairman of the English Commission-

> "The working paper is ... the foundation upon which the Law Commission constructs its proposals. It represents a major advance in legislative method. It is perhaps the greatest contribution to the public life of a nation made by the Commission. Successive governments have borrowed the method; and now publish "green papers" foreshadowing legislation they have in mind. Social legislation is almost always now preceded by such discussion papers, which do not commit the government that issues them. The government has learned the trick from the Law Commission - to the great advantage of legislative process as a whole. The Law Commission's innovation has opened up over a wide field the hitherto secret business of preparing legislation for the consideration of Parliament".[40]

In Australia, we have taken the business of consultation a step further. In addition to the detailed and scholarly working paper, the Australia Law Reform Commission now publishes a discussion paper: summarising in simple, lay language the defects in the current law, the various options for reform, the tentative proposals and the reasons that support them. This paper is widely distributed to all interested groups and to he public generally. In a large country, with scattered communities, separated by great distances, the electronic media are being used to debate the proposals for reform. It is not unusual for Commissioners to take part in radio "talk back", television and newspaper debates. As well as private consultations with expert consultants (most of them serving without fee) the use of the most modern sampling techniques and public opinion polls is being developed to test community and group perceptions of the defects in current laws and opinions on proposals for reform. One innovation, modelled in part upon the procedures of Royal Commissions in Britain and Congressional inquiries in the United States, is the holding of

informal public sittings in major centres in all parts of the country. Experts, lobby groups and ordinary citizens are coming forward in increasing numbers to express their views on the defects of the law and to comment on the Commission's tentative suggestions for improvement.

In the matter of privacy legislation for data protection, there is little doubt that public consultation of this kind is imperative. Commonsense tells us that perceptions of what is "private" and what is deserving of protection, vary over time. They certainly vary from one country to another. Take the following Table[41] which draws on two surveys conducted on the perceptions of what is private. The first column shows the results of the survey commissioned by the Younger Committee in the United Kingdom. The second was conducted by the United States Bureau of Standards. Each survey sought to establish what the public thinks is private. Although direct comparison between the two surveys is not possible, there were sufficient common features to make the Table instructive. Perhaps more significant is the fact that each community attached a relatively high importance to the privacy of salary. This perception contrasts with the position in other countries, such as Japan, where tax returns are, far from being sacrosanct, generally available by law for public scrutiny.

TABLE

Public Perceptions of What is Private

	U.K.	U.S.A
Common Features		
Salary	78%	42%
Medical	50%	18%
Political acitivity	40%	47%
Education	18%	19%
Employment	10%	22%
In one survey only		
Sex life details	87%	
Address	32%	
Religion	24%	
Tax		20%
Credit rating		20%
Police record		15%

PIECEMEAL LAWS AND DATA PROTECTION

Each country faces the problem of securing adequate protection for personal data from a different starting point. Within the common law world, countries of the Commonwealth of Nations, did not develop legal remedies for the protection of "privacy" even to the limited extent that the courts did in the United States. An action for breach of confidence did exist under the common law and is susceptible to further development with consequential protection to personal data. Professional ethics, the laws of evidence relating to privilege, the laws of trespass and defamation were all relevant to protect personal information. But they lacked an adequate conceptual base. No general right to privacy has been developed by the common law of England or Australia. In 1937 the issue of a general right of privacy was considered in the High Court of Australia. The Chief Justice of Australia concluded thus-

> "The claim ... has also been supported by an argument that the law recognises a right of privacy which has been infringed by the defendant. However desirable some limitation upon invasions of privacy might be, no authority was cited which shows that any general right of privacy exists.[42]

The protest by a dissenting judge that the advent of simultaneous broadcasting and television made the absence of earlier English precedents irrelevant to the point, was to no avail.[43] The judicial arm of government declined to define and enforce a right to personality and to define the limits of freedom from observation and intrusion. If such a right was to be created, it would have to be developed elsewhere than in the courts.

As a result of the absence of adequate common law principles, a body of detailed and specific legislative rules developed, designed to protect particular classes of information, because the information was regarded as sensitive, personal, confidential or private. In Australia, at a federal level, the legislation included the Census and Statistics Act 1905 which required officers of the Bureau to sign an

undertaking of fidelity and secrecy. Several statutes prohibit the dislcosure of information coming to government officers in the course of their duties.[44] Administrative procedures, such as the total destruction of census forms, and the tradition of secrecy in government service, backed up by criminal and employment sanctions, provided, with the sheer inefficiency and bulk of manual files, a degree of data protection in the public sector.

These scattered statutes, administrative procedures and bureaucratic traditions were perceived as scant protection when information systems began to develop in the mid 1960s. The rapid developments of computerisation in the 1970s, in both the public and private sectors, came upon a legal system with a limited armoury with which to ensure the propriety of information systems.

Australia was not unique in finding itself without developed, conceptual rules of law and machinery to uphold personal identity, including in data collections. The fact that most Western countries are busily enacting data protection legislation demonstrates the universality of the lacunae. Australia had two special disadvantages. First, no common law or constitutional principle of privacy and personal integrity had developed, even to the extent that it had in the United States. This disadvantage, we share with Britain, New Zealand and other Commonwealth countries of the common law tradition. Secondly, being a federation, there are constitutional limitations in the way of a conceptually satisfactory and comprehensive approach to data protection. This subject is simply not one which was committed by the Constitution to the federal (Commonwealth) Parliament. It therefore remains within the power only of the Parliaments of the six States. Although there is provision for amendment of the Australian Constitution by referendum process, the history of such efforts is a sobering one. Frank amendment of the Constitution to give central government power over information systems would, almost certainly, be politically impossible.

This is not to say that the States of Australia have ignored the needs for legislation to protect personal data. A number of piecemeal statutes have been enacted to provide protections in respect of credit reporting[45] and information obtained by listening devices.[46] Two Bills designed to create a statutory right to privacy, in general terms failed to be enacted when they struck opposition in their respective Parliaments.[47]

In only one State has a comprehensive approach been taken, namely New South Wales. As a result of a report by Professor W.L. Morison, a Privacy Committee has been established with four functions: to report and develop a general policy on privacy and to examine specific issues; to receive, investigate and mediate on complaints; to educate the public and to make recommendations for law reform. The Committee is empowered to require any person to give it information and to produce documents. It can mediate and recommend solutions. It is not confined to automated information system or indeed to informational privacy. It is not limited to the public sector. Its informal procedures and general accessibility, together with a skillful use of the media, has ensured it greater success than would have seemed likely given its limited statutory powers. It has no power to enforce its recommendations, to award money damages or enjoin particular conduct. Critics assert that it may be tempted to trim its sails to achieve the "possible" rather than the "desirable", because of its limited sanctions. Defenders assert that the absence of powers of enforcement and the combined force of reason and media publicity ensure that a fair result is usually procured. The Privacy Committee has produced an exposure draft of guidelines for the operation of personal data systems.[48] These guidelines follow familiar principles and are collected under three headings-

* Public justification for the system.
* Operation of the system.
* Mechanisms of access to the system

INSTITUTIONAL LAW REFORM AND DATA PROTECTION

In Australia, a decision has been made to place the development of data protection legislation firmly in the context of institutional law reform. In the federal sphere, a major reference was given to the Australian Law Reform Commission in April 1976, requiring that Commission to inquire into and report upon the extent to which undue intrusions into privacy arise or are capable of arising under the laws of the Commonwealth or those Territories in respect of which the Commonwealth has plenary constitutional power.[49] The terms of reference draw attention in particular to the collection, recording or storage of information in the federal public sector. In the context of the Territories attention is drawn to the risks to privacy in a number of specified data systems, including the credit reference system, medical, employment, banking and like records and various confidential relationships. In addition to "informational privacy" attention is drawn to various forms of intrusion, e.g. listening, optical, photographic and other like devices, entry onto property by persons such as debt collectors, canvassers and salesman and the press, radio and television.

In three of the States, the issue of data protection is also before a local law reform institution. In Victoria, the question is under examination by the Statute Law Revision Committee, a parliamentary law reform agency, comprising members of both Houses and all major parties in the Victorian Parliament. In Western Australia, the Attorney-General for that State has given to the local Law Reform Commission a reference in terms almost identical to that given to the federal Commission. In Queensland, the Law Reform Commission has been asked to monitor the federal developments. The two remaining States (Tasmania and South Australia) have taken a somewhat different course. In Tasmania, a parliamentary committee, to which the 1974 Privacy Bill was referred has general responsibility for privacy protection legislation. In South Australia, a Working Party has been established within the State Premier's Department. As well, the New South Wales Privacy Committee, with its general role to make

recommendations for law reforms, remains in close touch with the developments. All of the commissions, committees and other bodies are in close communication with each other. Each of the bodies involved in the development of Australia's laws for data protection realises that disparate and unharmonious legislation would carry the threat of impeding the free flow of information where that is proper and the effectiveness of data protection, where that is needed.

Australia is a member of the Organisation for Economic Co-operation and Development. Through participation in the Expert Group on Transborder Data Barriers and the Protection of Privacy, it is helping to define the general principles that will govern the protection of privacy in relation to transborder flows of personal data. Australia has also sent observers to the meetings of the Council of Europe Committe of Experts on Data Protection. Among the aims of these two international organisations is the identification of the basic principles that should be adopted in domestic legislation for data protection. Some member countries already have such legislation. Others, including Australia, do not. The special utility of international discussion of the basic concepts, in countries which are in the midst of designing their local laws, cannot be overestimated. Achieving basic agreement on the fundamental rules will itself be a contribution to harmonisation of domestic laws and, consequentially to the general free flow of information between and within nations. It seems unlikely that recurring principles of legislation in the data protection laws of Europe and North America will not have lessons for countries on the brink of such legislation, including Britain, Japan and Australia. One of the suggested advantages of institutional law reform is the identification of underlying values and the clear statement of the principles upon which legislation should be based. The work in the O.E.C.D. and the Council of Europe (as well as earlier in the Nordic Council, the European Parliament and Commission) inevitably involves a degree of give and take inherent in any international discussion, particularly one with political and economic implications such as this. But beyond that in the

identification of the "basic principles", it seems to me these international bodies have contributed directly and in a significant and practical way to law reform in some at least of their member countries.

The work in the O.E.C.D. and in the Council of Europe has provided a focus for the national debate in Australia on Federal and State data protection legislation. Two national conferences have been held, specifically to debate the informational privacy principles contained in the O.E.C.D. Expert Group's guidelines. The third such conference is to be held in May 1979 in Canberra. The various State bodies involved in the design of privacy protection legislation participate with their colleagues from the Australian Law Reform Commission. Consistent with the consultative methodology of law reform, representatives of government, business, the computing industry, academics and consumer bodies take part. With the assistance of the next seminar and progress in Paris and Strasbourg, the Australian Law Reform Commission hopes by mid year to publish its consultative paper with proposals for legislation on data protection and informational privacy in the federal sphere in Australia. In advance of this, a discussion paper will shortly be distributed on the data protection aspects of the forthcoming Australian census.[50]

DESIGNING LAWS THAT REALLY WORK

It is a common misapprehension of law makers that legislation will be substantially self-executing. Declare this or that to be the law, print the Act and the will of the law maker will be obeyed. If this ever was the case, it is unsafe to assume that it remains true today. The great outpouring of laws that reflect the growing demand upon government make it impossible to know (and sometimes difficult even to find) the whole law. Furthermore, the technical complexity of some conduct to which the law is applied, makes it hard for law makers to so design laws that they will effectively procure the legislative will. If a victim is struck down in the street and property taken from him, the acts to which the law must be

addressed are clearly identifiable, as are the parties involved and the persons responsible. Manipulation and misuse of automated data may be much more damaging. But the victim may be quite unaware of the wrong. The person responsible may be extremely difficult to detect. The acts involved, to which the law must be addressed, may be very hard to identify and harder still to define.

Just as countries approach the task of designing data protection laws against different starting points in the pre-existing piecemeal protection of personal data, so it is natural that they should design remedies and sanctions that accord with pre-existing constitutional and institutional arrangements.

The enforcement mechanisms for data protection vary in significant respects. No contrast is so marked as that between the United States and other countries. The former has opted for a mix of administrative rules and procedures enforced, ultimately, in the ordinary courts. The Privacy Act of 1974 (U.S.) provides for certain civil remedies and criminal penalties.[51] Where a federal agency refuses proper access to an individual's records or to amend a record, fails to maintain a record in accordance with the Act or to otherwise comply with the section, the remedy provided is that the individual may bring a civil action against the agency and the district courts of the United States shall have jurisdiction in the matters under the provisions of the sub-section. The court is empowered to order the agency to amend the record, to award costs and, where the agency has acted intentionally or wilfully to award actual damages sustained by the individual, in no case less than the sum of $1,000.[52] In addition to the civil remedies, the United States Act provides criminal penalties for disclosure of individually identifiable information that is protected, wilfully maintaining a system of records without meeting the notice requirement or knowingly and wilfully securing information under false pretences.[53]

Contrast this approach with that adopted in Canada. There, the office of Privacy Commissioner has been created, as one of the members of a new Human Rights Commission.[54] The Commissioner is empowered to receive, investigate and report upon complaints relating to personal information concerning individuals recorded in a federal information bank. The Commissioner has wide powers of investigation. The sanctions available are basically ombudsman sanctions, viz report to the appropriate Minister and to Parliament. The Commissioner has, in relation to carrying out an investigation, the powers of a Human Rights Tribunal.[55] The latter's powers include the award of compensation to a victim of discriminatory practice not exceeding $5,000. No criminal sanctions are provided.

In New Zealand, two laws have been enacted that are relevant. The Wanganui Computer Centre Act 1976 establishes a computer system for the storage, processing and retrieval of information, including criminal records, police records, fire arms registration, missing and wanted persons and motor vehicle details. The Act provides for a Privacy Commissioner whose functions are to investigate complaints and to supervise access to certain parts of the computer system. Any person with reason to believe that the information recorded about him is wrong or misleading, is empowered to lodge a complaint which has to be investigated by the Commissioner.[56] Where the Commissioner determines that the complaint is justified he is empowered to direct deletion or alteration of the information. The Department concerned is required "forthwith" to comply with his directions.[57] In addition to these remedies, a right to recovery of damages is conferred upon any person who suffers loss or damage as a consequence of incorrect or unauthorised information about him having been made available to any person or authorised information having been made available to an unauthorised person. The damages include money compensation for pecuniary loss, loss of benefits and "embarrassment, loss of dignity and injury to the feelings". The last mentioned is limited to an award of $500.[58]

In addition to the administrative and civil remedies certain criminal offences are provided including for knowingly falsifying records, knowingly and wrongly providing access and knowingly providing false information. These offences are subject on conviction to punishment by imprisonment.

In addition to these special provisions, the New Zealand Parliament, like the Canadian, has created a Human Rights Commission and conferred on it certain functions in relation to privacy.[59] Except in relation to the computer centre, the Human Rights Commission is empowered to inquire generally into practices and procedures, governmental or non-governmental by which privacy of the individual is or might be unduly infringed. The sanctions provided are limited to making reports to the Prime Minister about the need for legislative, administrative or other action, making suggestions to the persons affected and making public statements. The Human Rights Commission is not empowered to investigate a complaint by any person that his privacy has been infringed but "the fact that a person has made such a complaint about a particular matter shall not limit or affect the power of the Commission to carry out the kind of inquiry permitted".[60]

The limited role and functions of the New South Wales Privacy Committee have already been described. It may receive and investigate complaints. It has no power to enforce or even initiate the criminal or civil law. It relies on procedures of mediation and conciliation, as well as general education, guidance and advice to supplement private advice. It has called in aid the public media.

The machinery, described in four Common Law countries with the possible exception of the Wanganui Computer Centre Act, is in marked contrast to the machinery that has been adopted in European legisltion for ensuring adequate data protection. The Swedish Data Bank Statute of 1973 is typical. It establishes a Data Inspection Board with general powers of oversight of automatic data processing of personal information. A register of personal information may not be started or continued without

permission from the Board.[61] A general system of registration is thereby established. The sanctions available to the Board flow, in part, from this. They include criminal sanctions for unregistered keeping of personal data, providing unauthorised access, alteration or destruction and "data trespass". They also include a civil right to compensatory damages "for damage caused ... through incorrect information ... in the personal register". In assessing such damages, the suffering caused and non-pecuniary considerations are to be taken into account.[62]

In addition to criminal and civil sanctions, administrative remedies are provided. They include forfeiture of the records and the power to modify or cancel the registration permitting the maintenance of the personal data system. During the first few years of operation of the Data Inspection Board mediation and advice were used, rather than the legal sanctions. The need to afford computer users time to become aware of their new obligations and the fact that many organisations use service bureaux have made this an appropriate approach. Recently, however, one record-keeper was convicted of keeping a personal file without a licence. A fine of $4,000 Sw.Cr. was imposed. In addition, two police officers have been convicted at the end of 1978. One was sentenced for revealing information about the personal circumstances of an individual, learned by him from a police record. He was punished under a provision of the Criminal Code. The other police officer was convicted of data trespass.[63] Both officers were sentenced to pay fines. So far, there have been no awards of damages.

The experience of the operation of other European data prosecution laws is still too short to assess. To date there have been no prosecutions under the West German Federal Data Protection Act 1977 neither for criminal offences (s.41) nor for breaches of regulation (s.42). The same is true of the operation of the laws of the Länder. In short, so far, other means have been used to implement the legislative will.

DIFFERENTIAL SANCTIONS AND REMEDIES

In addition to considerations of a constitutional, institutional and historical kind, it is clearly vital that the design of laws for data protection should keep in mind the objects that are being sought. One of the dangers of law making which law reform identifies is that patterns of legal regulation tend to follow familiar precedents rather than to be fashioned, differentially, to obtain identified goals.[64] What follows is true of all areas of law making. It gains importance and urgency as a result of the flood of new laws and the complexity of the behaviour which laws on data protection, for example, seek to address. The ephemeral nature of the intrusion, the complexity of the technical equipment, rapid developments in technology, and disinclination to air publicly the grievance complained of, are just some of the impediments to effective law design in this area.

The problem of those who propose new laws on data protection is that their objects are several and some of them may be mutually inconsistent or incompatible. In the field of data protection laws, the aim of the legislature will be to achieve at least four important social goals-

(1) To lay down broad standards which will be largely self-executing;
(2) To secure, where necessary, changes in behaviour to comply with those standards;
(3) In the event of disputes, to provide means for resolving the disputes; and
(4) In the event of a breach of the law, to provide redress.

These objects may sometimes conflict. For example, a desire to modify behaviour, by the imposition of personal financial burdens may be outweighed by the desire to provide effective redress to the victim, as a consequence of which compulsory insurance and the diminution of personal financial liability may be accepted. Similarly, the imposition of a pecuniary fine

may be a perfectly satisfactory way of supporting a general statement of community standards. But it may not be a very effective instrument to secure behaviour modification. The latter will depend, at least, upon perceptions of the certainty of action and the severity of it, when it comes. In considering the effectiveness of new laws to discipline conduct "on the ground" knowledge of the existence and general requirements of the law is the sine qua non of its effectiveness. But even when it is known, considerations such as the degree of probability of legal liability, of being caught, of the law's being enforced and of its being enforced with success all play their part in determining how effective the new rule will be upon the conduct sought to be regulated by it.

In deciding which form of dispute settlement mechanism will be chosen, it should not be assumed that one form is as good as the next. Mediation and conciliation, for example, can be quite effective in some circumstances and ineffective in others. Where parties have a continuing relationship and therefore have to continue to live together, conciliation without more, is frequently enough as is demonstrated in the area of labour law. Where, however, parties are in an unequal bargaining position, a facility of conciliation may lead, on occasion, to dispute settlement which is unjust to the weaker party.

Compensation awards may be important for dispute settlement and the redress of grievances. But an individual claim for compensation may not have much effect in terms of behaviour modification, where the advantages secured by the law breaker far outweigh the amount of compensation payable, even in the event of a successfully prosecuted claim. It is a realisation of this that has led to the development of class actions in the United States. It has also led to provisions for treble damages, minimum damages and punitive damages, one example of which, in the Privacy Act, has already been cited. A realisation of the general inadequacy of the common law's orthodox remedy of money damages has led to greater use, in

recent years, of other remedies. These include specific injunctive orders directed at particular conduct and declarations of legal right, defining the respective rights and duties of the parties.

In choosing the proper mix of private remedies and public penalties, law makers will be helped by identifying precisely what it is that they are seeking to achieve. At present all too frequently, the water is muddied by obscurity concerning the legislative goals. For example, in judging the value of private remedies as against penal sanctions, the considerations will include the extent to which costs will be an impediment to effective enforcement of the law. Legal aid is a scarce resource and not likely, in most countries, to be readily available for an individual claim of data abuse. In the United States the availability of supportive cost rules and the general acceptance of contingency fees for lawyers is not paralleled in most other countries. The laws governing locus standi and rules restraining the organisation of group litigation are more rigorously enforced in some countries than others. Furthermore, so far as the private remedy is that of compensation, there are some wrongs that are more readily assessable in money terms. Compensation for indignity and invasion of privacy is difficult to assess. For this reason, and in the endeavour to effect behaviour modification, the provision of minimum damages, a requirement to account for unjust enrichment, treble damages and class actions have developed to add strength to the actionable private remedy for compensation.

So far as public remedies are concerned, whether penal or regulatory, the fears expressed are many. Action for the enforcement of effective data protection may be distorted either by dependence upon individual complaints or by pre-occupation with administrative burdens involved in clearance and registration. "Client capture" is a frequent complaint of American critics of regulatory agencies. They assert that, in time, the regulators establish a modus vivendi with those with whom they are regulating. According to this

view private initiative and independent court supervision are required to ensure vigilance and a proper degree of enthusiasm. The capacity of administrative agencies to achieve behaviour modification may depend upon the age of the agency, the simplicity of the law it is enforcing, the stability of personnel and technology which it is regulating, the resources available to it and the narrowness or breadth of its focus. The need to arm regulatory agencies with a wide range of sanctions and to avoid too great a dependence upon license deprivation sanctions, which will rarely be used, is stressed by many observers of institutional behaviour.

Law reforms, by emphasising the importance of clarifying fundamental values and immediate goals helps law makers to design laws which structure the available enforcement techniques in a way that is likely to be most effective.

CONCLUSIONS

Science and technology have lately thrown up many problems for the legal order. None is more acute or likely to be more permeating than the developments in information and communications technology. The law is generally expected to be stable and predictable. Rapidly changing times, including changes in social values and the impact of science, require constant modification and review of the modern legal system.

Among the urgencies for change which automated data processing has brought in its train is the need to protect personal data and to preserve individual privacy. Just as the law in times gone by protected the individual from being spied upon through his keyhole, so, in changed circumstances, it is necessary to provide protection against those who wrongfully perceive us through information maintained about us.

All modern legal systems confront much the same problem at about the same time. None can adequately deal with data protection by the development of already existing legal principles. The common law in England, Australia and other Commonwealth countries is particularly deficient in this regard.

The development of institutional law reform is a response to the tremendous changes through which our societies are now moving. Bodies have been established to assist law makers in the design of new laws but to do so in a conceptual way and after painstaking consultation with the experts and the lay community. In Australia, the development of new laws for data protection has been seen as peculiarly suitable for law reform both at a federal and State level. Domestic endeavours to modernise and rationalise the law in this regard have been aided by efforts for international law reform. The Council of Europe, the European Communities and the Organisation for Economic Co-operation and Development have contributed to the development of compatible and harmonious domestic legislation, by their work during the past decade.

Each country will reform its law to adjust to the needs of automatic data processing influenced by historical and cultural considerations. Constraints upon reform include the constitutional limitations that exist, particularly in federations, the institutional framework into which reforms must be fitted, if undue proliferation of agencies is to be avoided and the universal concern about costs at a time when every effort is devoted to reining in the growth of government.

A review of legislation already enacted shows that although there is remarkable similarity in the basic principles of data protection, there is also great diversity in the sanctions and remedies provided to enforce the legislative will. It has been suggested in part that this diversity arises from the different economic conditions and legal traditions that make it feasible to look to private litigation in the courts in the United States, where this would not be effective in other countries.

Whereas European laws have tended to favour the establishment of regulatory agencies with supervisory and sometimes licensing and registration powers, the United States looks to the civil and criminal courts. Canada has opted for an ombudsman-type mediator. One of the Australian States has elected for an accessible conciliator, with powers of education, persuasion and publicity alone.

One of the advantages of institutional law reform has been a new concentration of the development of remedies that work. The design of legislation that has little to do with actuality and has no real effect upon anti-social conduct is the antithesis of that improvement of the legal system that is worthy of the name reform. For this reason, a number of objects of any data protection law have been identified. The differential effectiveness of various sanctions and remedies and the comparative advantages and disadvantages of the machinery to secure data protection need to be thoroughly considered before proposals for laws are made. The proper mixture of privately initiated remedies and publicly enforced sanctions needs to be decided. The extent to which that law should be concerned with behaviour modification, dispute settlement, social denunciation and the provision of redress of grievances has to be determined.

The design of new, accessible and effective legal machinery to protect personal data is a task worthy of law reform. It has been said many times. For "data protection" read "individual liberty". The growing interdependence of the world's information systems will bring in its train political, employment, technological and fiscal controversies. But transcending all of these will be the concern that, amidst all the changes which information and communications technology bring we should still uphold the importance of the individual human being.

FOOTNOTES

* Chairman of the Australian Law Reform Commission, 1975- ; Chairman of the O.E.C.D. Expert Group on Transborder Data Barriers and the Protection of Privacy, 1978- . The author wishes to acknowledge the assistance of Mr. J. Freese, Director General, Swedish Data Inspection Board and Dr. H. Avernhammer, Ministerial Adviser, Federal German Department of the Interior, for information on the operation of the Swedish and German laws.

1. Lord Edmund-Davies, Ferment in the Law. Presidential address to the Holsworth Club, 1977, 1.
2. A. Diamond, "The Work of the Law Commission" (1976) Journal of the Association of Teachers of Law Vol. 10, No. 1, at 11.
3. South Australian Law Reform Committee, Solar Energy and the Law in South Australia, 1978.
4. Australian Law Reform Commission, Unfair Publication: Defamation and Privacy, (ALRC 11), 1979. To be tabled in the Australian Parliament May 1979.
5. Australian Law Reform Commission, Human Tissue Transplants 1977 (ALRC 7). Implemented Transplantation and Anatomy Ordinance 1978 (Australian Capital Territory).
6. Cf. Lord Justice Ormrod, "A Lawyer Looks at Medical Ethics" (1978) 46 Medico Legal Journal 18.
7. Australian Law Reform Commission, Alcohol Drugs and Driving, 1976 (ALRC 4).
8. Australian Law Reform Commission, Criminal Investigation, 1975 (ALRC 2), 53. Proposed for implementation in Criminal Investigation Bill 1977 (Aust.), cl.40(6) (Identification parade to be photographed, if practicable in colour, unless a video tape recording is taken).
9. ALRC 2, 71-2. See also Criminal Investigation Bill, 1977, cl.34 (Recordings by means of sound recording apparatus).
10. Police Administration Act 1978 (Northern Territory of Australia) s.96 (search warrants by telephone); s.101 (arrest warrants by telephone); s.120(4)(c) (bail appeals by telephone).

11. The report of the Privacy Protection Study Commission (U.S.A.), Personal Privacy in an Information Society, App. 5 Technology and Privacy, 1977, 80; Cf. P. Sieghart, Privacy and Computers, 1976, 41.
12. Domestic Council Committee on the Right of Privacy (U.S.A.), National Information Policy, 1976, 5-6.
13. Ibid.
14. N. Griswald, "The Right to be Let Alone", 55 North Western University Law Review 216, 226 (1960).
15. Privacy and Computers Task Force (Canada), Privacy and Computers, 1972, 10. Emphasis added.
16. Canada and the United States. Note however that in both countries provincial or State enactments have been passed. In the United States there is a limited constitutional and a varying common law "right to privacy" enforceable in the courts.
17. Austria, Belgium (Bill), France, the Federal Republic of Germany, Luxembourg (Bill), the Netherlands (recommended), Norway, Spain (Bill), Sweden and the United Kingdom (recommended).
18. Denmark Public Authorities' Registers Act, 1978; Private Registers etc. Act, 1978.
19. Belgium (Bill), Luxembourg (Bill).
20. Denmark, France, Sweden and the United Kingdom (recommended).
21. Austria, Canada, the Federal Republic of Germany, the Netherlands (recommended), Norway, Spain (Bill), and the United States.
22. A.F. Westin, Privacy and Freedom, 1970, 7.
23. L. Lusky, "Invasion of Privacy: A Clarification of Concepts" 72 Columbia Law Review 693, 709 (1972).
24. Ibid.
25. S. I. Benn, "The Protection and Limitation of Privacy" (1978) 52, Australian Law Journal 601, 608.
26. Ibid.
27. J.S. Grafstein, "Law and Technology - Emerging New Legal Environment", paper 16, Canadian Bar Association Programme on Computers and the Law: Emerging Issues, 21 October 1972, mimeo, 9. The reference is to the destruction of computers at the Sir George Williams Institution in Montreal, Canada.

28. In December 1978, 9 countries of the O.E.C.D. (23 members) had enacted national data protection laws; 5 had legislation before their legislatures and most of the others had reports completed or pending. Several had laws or proposals for laws at a State or Provincial level.
29. F.W. Hondius, "The Work of the Council of Europe in the Area of Data Protection", mimeo, 6 ("The contents of European data protection laws can be summarised under three main headings: publicity, propriety and control".)
30. R.J. Bonner and G. Smith, "The Administration of Justice from Homer to Aristotle", 1930, Vol. 1, 75.
31. Lord Scarman, Law Reform - The New Pattern, 1967, 9.
32. Lord Scarman "Law Reform - The British Experience" the Jawaharlal Nehru Memorial Lectures, mimeo, I, 7-8.
33. Id., 19.
34. L.M. Friedman, "Law Reform in Historical Perspective" 13 St. Louis Law Journal, 351 (1968-69).
35. J. B. Beetz, "Reflections on Continuity and Change in Law Reform" (1972) 22 University of Toronto Law Journal 129-138.
36. Lord Devlin, "Judges and Law Makers" (1976) 39 Modern Law Review 1.
37. J. M. Fraser (Prime Minister of Australia), Speech to the Australian Legal Convention (1977) 51 Australian Law Journal 343.
38. B. Shtein, "Law Reform - A Booming Industry" (1970) 2 Australian Current Law Review, 18. For a review of the history of law reform in Britain see Lord Scarman's Nehru Lectures I, 6-19; Australian Law Reform Commission, Annual Report 1975 (ALRC 3), 5-24.
39. Lord Scarman, Nehru Lectures, II, 1-2.
40. Ibid., II,4-5.
41. D. Firnberg, Computers and Privacy, Cantor Lectures 1977, I, 3.
42. Latham C.J. in Victoria Park Racing and Recreation Grounds Co. Ltd. v. Taylor (1937) 58 Commonwealth Law Reports 479, 496.
43. Id., Evatt J. at 517, 519.
44. See for example Income Tax Assessment Act 1936 (Aust.) s.16; Health Insurance Act 1973, s.130.

45. Invasion of Privacy Act 1971 (Queensland); Fair Credit Reports Act, 1974 (South Australia). See also Information Storages Bill, 1971 (Victoria).
46. Listening Devices Act 1969 (Victoria); Listening Devices Act 1969 (New South Wales); Invasion of Privacy Act 1971 (Queensland); Listening Devices Act, 1972 (South Australia); Listening Devices Act 1978 (Western Australia).
47. Privacy Bill 1974 (South Australia); Privacy Bill 1974 (Tasmania).
48. Privacy Committee (New South Wales), Exposure Draft, Guidelines for the Operation of Personal Data Systems, 1977.
49. For the full terms of reference see Australian Law Reform Commission, Annual Report 1978 (ALRC 10) 47-8.
50. Australian Law Reform Commission, Discussion Paper No. 8 Privacy and the Census, 1979.
51. S.3(g)(1) The Privacy Act of 1974 (U.S.A.).
52. Ibid., s.3(g)(4)(A).
53. Ibid., s.3(i)(1).
54. Canadian Human Rights Act 1977 s.57.
55. Ibid., s.58(5).
56. Wanganui Computer Centre Act 1976 (N.Z.) ss.15,16.
57. Ibid., s.16.
58. Ibid., s.28(2).
59. Human Rights Commission Act 1977 (N.Z.) s.67.
60. Ibid., s.67(3).
61. The Data Bank Statute (1973: 289) (Sweden), s.2.
62. Ibid., s.23.
63. Ibid., s.21.
64. This discussion draws on an unpublished monograph by J.J. Spigelman, "Sanctions, Remedies and Law Reform", 1977 (Australian Law Reform Commission). In addition to its concern about the differential effectiveness of various sanctions and remedies, the Commission is engaged in a project to study the effectiveness of the operation of one of the laws introduced as a result of its recommendations. See Australian Law Reform Commission Annual Report, 1978 (ALRC 10), xv.