

485

AUSTRALIAN COMPUTER SOCIETY

QUEENSLAND BRANCH

THURSDAY 16 FEBRUARY 1984

PRIVACY AND E.F.T.

February 1984

AUSTRALIAN COMPUTER SOCIETY

QUEENSLAND BRANCH

THURSDAY 16 FEBRUARY 1984

PRIVACY AND E.F.T.

The Hon Justice M D Kirby CMG  
Chairman of the Australian Law Reform Commission

A PROBLEM OF PRIVACY

Some of you may have seen in yesterday's Australian Financial Review (15 February 1984, pp.1, 8) a discussion of moves by the Reserve Bank of Australia to address some of the issues of electronic fund transfers in Australia. It is about EFT that I want to speak today.

The rapid introduction of electronic fund transfers by banks and building societies in Australia has produced important social and legal questions which are not being adequately addressed. In our apparent enthusiasm to deregulate the Australian financial system, it is important not to forget legitimate issues of community fairness — such as the proper preservation of banker/client privacy and adequate rules for consumer protection.

The recent efforts of the Reserve Bank of Australia to encourage co-operation amongst banks, building societies and others in the introduction of electronic fund transfers (EFT) to Australia are to be welcomed. However, as so often with computers, the welcome efficiency has brought difficult social and legal questions. The Reserve Bank, the Treasury and others concerned in EFT questions should not ignore these.

The law of banker/customer privacy developed in a world of paper cheques. Now, electronic messages, rather than paper, shift funds virtually instantaneously. The advantages of efficiency are obvious. According to reports published yesterday, the concern of banks and building societies is to enhance that efficiency. It would be my hope that equal thought will be given to the social problems that are raised by the new technology:

- . giving customers a full legal right to challenge financial statements;
- . placing the onus on financial institutions to justify financial statements, rather than, as at present, normally imposing the onus to disprove the statement on the customer;
- . safeguard financial privacy and security of the electronic system and limiting access to the data in it;
- . controlling the use to which financial institutions can put electronic financial and personal data eg limiting its sale or supply to associated travel companies, insurance companies or credit cards;
- . defining the extent to which law enforcement authorities can, without court order, have access to instantaneous records of financial dealings by which movements of citizens can be traced;
- . revising old statutes governing cheques which laws are still largely drawn in terms of paper procedures, now increasingly replaced by electronic messages.

#### CASHLESS SOCIETY

The rapid introduction of electronic fund transfers in Australia, together with the continuing penetration of credit cards and bank cards, present the law with a number of difficult choices.

The day is not far off, indeed in some places it has already arrived, where the purchase of goods at the retail point of sale is automatically debited to the customer's bank account. Moreover, adjustments are automatically made to stock, warehouse and repurchasing records. Cash provides a medium for anonymity and privacy. As Australia moves to the cashless society, centralised records will exist not only of buyer preferences and habits but also of buyer travel and movement. Should law enforcement officers have access to the records of bookshops to discover all persons purchasing books or magazines on themes perceived by someone to be antisocial? Should police, faced with difficult problems of investigation, be able to scrutinise, with the aid of computers, the buying pattern of citizens in a particular district? Should they be entitled to scrutinise the movements of citizens by reference to the 'credit trail' collected by the records of electronic fund transfers? If limitations are to be imposed, in the name of privacy, what should those limitations be and who will formulate them? Unless we start formulating them soon, EFT will continue to develop. The protections for our citizens will simply not keep pace.

### PRIVACY PROPOSALS

Social and legal problems presented by the linkage of computers and communications technology are illustrated in microcosm by the problems of electronic fund transfers. In the United States interference with the traditional privacy of financial dealings by EFT transactions had become a sizeable problem. As a result, a National Commission was established in 1974 which held more than 60 meetings and reported to the President of the United States in 1977. In consequence of that Commission's report, the US Congress enacted the Electronic Fund Transfer Act 1978. Amongst other things, this Act provides minimum non-variable rights as between the consumer and his financial institution. In particular, the legislation limits consumer liability for unauthorised electronic fund transfers. The aim is to increase the control which consumers had over financial transactions as they change from paper to electronic form.

The Australian Law Reform Commission drew these developments to attention last December in major report on privacy protection. We called to notice the problems for confidentiality raised by EFT. The report urged the appointment of a Federal Privacy Commissioner and the adoption by Federal Parliament of relevant privacy guidelines. At the very least, these steps would provide a focus for the Australian debate about some of the social implications of EFT. But much more is needed. Before too long, I suspect that comprehensive Federal legislation will be required to deal with such issues as consumer rights, privacy and data security and modification of old laws on cheques which have not caught up with the electronic revolution. Perhaps the forthcoming Martin Report on the Australian banking system will tackle some of these questions. Perhaps the forthcoming Cheques Bill will tackle an update of statutory language, relevant to EFT. In our apparent enthusiasm for deregulation of financial institutions, we should not forget the issues of fairness to individual citizens. Without protective regulation, theirs may be a puny voice raised against the combined might of the financial institutions and the apparatus of the modern state, all enhanced by the electronic miracles of information technology.