

THE 21ST AUSTRALIAN LEGAL CONVENTION

HOBART, TASMANIA

TUESDAY, 7 JULY 1981

COMPUTERS & THE LAW : NATURAL ALLIES OR LIKELY FOES?

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

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THE IMPACT ON LAND CONVEYANCING

I suppose the main point of interest to this conference in my paper is the prediction that the growing computerisation of Australian society could have implications for the 'viability' of the independent legal profession as presently organised. Although computers will assist lawyers to provide cheaper services by providing terminals linked to up to date legal data, I believe they could have serious effects on the lawyerly work done in relation to the systems of registered land conveyancing in Australia. These effects may be specially significant because surveys have showed that about half of the fee income of lawyers in Australia is derived from land title conveyancing. If much of this work, particularly domestic land transfers, were susceptible in whole or part to automation and computerised procedures and to administrative arrangements the justification for the lawyers' monopoly of paid services in this area would seem to be significantly diminished.

The predicted impact of computers on the remunerative work of land title conveyancing is nothing new. But when in 1980 I suggested that a national land use data base would come, the idea was described as a 'misty-eyed dream' by a Past President of the Law Society of New South Wales. I am afraid I am quite unrepentant. In fact the move towards computerisation of land titles in Australia has already begun. In Victoria in November 1980, the Attorney-General (Mr. Storey) announced the introduction of a computer system to facilitate the processing and searching of dealings in land at the Titles Office. In South Australia the first stage of a new computerised land information system was launched in December 1980. For a small charge, members of the public with an interest in land can make an inquiry and examine documents of an unlimited variety of government recording systems, without the need of a trained intermediary. More than 30 terminals are already in operation in Adelaide and its suburbs. The prospect of a national computerised land and title data base must be squarely faced. Clearly, in the foreseeable future, the computer will not entirely replace the need for the participation of lawyers in land transfers. Large, complicated, old system

and commercial dealings will continue to require skilled legal advice. Problems and disputes will arise which will require legal resolution. The fact remains that a great deal of land conveyancing will shortly be susceptible to automation. Realisation of this likelihood will prompt the legal profession and its representatives to seek out appropriate, modern and adequately remunerated work, worthy of the profession and available to replace the remunerative land conveyancing, when much of it falls victim to automated procedures. I have always thought that too great a concentration of legal activity in routine land conveyancing was probably unhealthy. This is a statement of concern for the survival of a resourceful, well distributed private legal profession, when a major source of remunerative work may be eroded by computers. There is still time for Australia's lawyers to prepare for the effects of this change. It is those who are aware of the importance of the legal profession for the defence of the individual who will call attention to the writing on the wall.

#### HELP TO LAWYERS

Before you all get too depressed, can I list just some of the help which computers will provide to lawyers of the future:

- . Word processors are already 'a commonplace in Australian legal offices'.
- . The use by the judiciary and barristers of word processors will spread to reproduce documents with recurring 'core' details such as some addresses to the jury, pleading and advices on evidence.
- . The computerisation of Acts of Parliament and of court decisions will accelerate.
- . The use of computers to analyse inconsistencies in legislation has already begun. This had already occurred, for example, by the Australian Law Reform Commission in its inquiry into federal legislation on criminal punishments.
- . The provision of terminals in remote centres will come for the speedy retrieval of legal information, including by citizens.
- . Computer analysis of court judgments will be possible to discern 'reliable principles' upon which later judgments may be based.

#### IMPACT OF COMPUTERS ON THE LAW

My paper outlines a number of other changes in the substantive law which will result from the advent of computers:

- \* Criminal Law. There would be a need to redefine some crimes to catch up with the computer. United States cases have held that stealing from a computer's memory may not be regarded as 'theft' because no article or goods are stolen.
- \* Intellectual Property. Significant changes of copyright and patent law will be needed because of the 'transient medium' in which original computer programmes are stored.
- \* Evidence Law. The Australian Law Reform Commission is already working on the changes needed in the law of evidence in federal courts to permit the admission of computer-generated data but at the same time to allow people affected by such evidence to challenge and test computerised information.
- \* Vulnerability. Many countries were now increasingly concerned about the greater vulnerability of computerised society to terrorism and crime. The recent Swedish Government report had urged legislation to deal with the risks of damage to society that can result from interruption to computer services by 'terrorism, industrial action or simple accidents'. There is little doubt that this increased vulnerability gives rise to calls for new laws containing increased coercive powers for the protection of society against the risk of widespread damage. The special balance struck between law enforcement and individual liberty in Australia will undoubtedly come under challenge as a result of the perceived risks that will arise from the impact of computers on employment and the vulnerability of society.

#### PRIVACY PROTECTION

The Australian Law Reform Commission is working on the completion of a major report on the protection of privacy in Australia. Certain features of computerised personal information systems have been recognised in Europe and North America as potentially threatening to privacy. My paper points out that this is not just a concern of a few Australian enthusiasts. It is a common issue in all of the Western countries of the OECD community. New laws will be needed in Australia to ensure that the individual maintains some control over his 'data profile'. It is now generally recognised that the new technology itself has special features which pose dangers to individual privacy and therefore warrant legal responses to protect the individual. The concern about the diminution of individual privacy is the result of a perceived ability of computer and linked technology to reduce the control which the individual has over the way others are perceiving him on the basis of personal information about him. From a

primitive interest to defend the individual's person, through the interest to protect the territory and property immediately surrounding him, the concern of the law to defend individual privacy today is addressed to the "information penumbra" concerning the subject, on the basis of which he may be perceived by others and, relying upon which decisions may be made vitally affecting him.

Following the public hearings of the Law Reform Commission, few submissions were received doubting the need for legislation of some kind. But the problem is not an exclusively technological one. Privacy protection is not a simple matter of locks, keys, encryption and other safeguards on computers. Ultimately it is not a mere question of efficiency. Respect for individual integrity is a recurring feature of laws which trace their origin to the common law of England. The problems of privacy today are new and overwhelmingly technological. But the values which the law should seek to protect in the face of the new problems are not new. Efficiency and even commercial reasons for adopting modern privacy and data protection laws are no substitute for a clear-sighted recognition of the important individual liberties which are at stake. These include the claim of the individual normally to have control over (or at least knowledge of) the way others are perceiving him and making decisions about him, on the basis of his computer-generated data profile. Without new laws — after the models of Western Europe and North America, his privacy, in this sense, will be steadily eroded as computerisation of society advances.

#### NOT A TALE OF WOE

Before I stop, I do want to emphasise that computerisation of Australia is not an 'unrelieved tale of woe' for the legal profession. Word processors and legal data bases will surely relieve busy lawyers of the future of many 'tedious routine tasks'. But it is precisely in this potential that there lies a danger for us. It is one which must be of special concern because of the heavy concentration of the activities of the legal profession of Australia in land title conveyancing. The steps towards computerisation of this activity have already begun. Their continuance will, I am quite sure, have important implications for the future areas of activity of the Australian legal profession. A confident, prosperous and courageous private legal profession well distributed throughout the country is essential for the defence of the individual. This will be even more so in the technological, impersonal, centripetal society of the future. Computers pose many pressing, current challenges to the law and its practitioners. For the sake of the individual, it is to be hoped that we in the law are equal to them.