

policy on data protection and said he felt that the Privacy Committee had struck a more sensible balance in its recommendations than the rather extreme views of the Council. He recommended introducing FOI-style rights of access to reports by people to reports about themselves in the private sector, and a strengthening of these rights in the public sector.

Jim Nolan, the Executive Member of the Privacy Committee, said that standards for data security, integrity, and retention periods on such databases should be established. The apparent acceptance of information from suspect sources was worrying (such as anonymous calls to recent 'Operation Noah') It was also worrying that police

wanted to be able to use information collected for other purposes such as the records of the Electricity Commission. When the Privacy Committee examined the files of the Special Branch in 1978, they found many examples of innocent or coincidental connections causing records to be kept on people - such as Salvation Army officers using the same car park as one of the suspects.

Mr Nolan echoed the call for a Privacy Commissioner to intervene on behalf of those who believed themselves wronged by such systems, especially when the new 'artificial intelligence' databases enable one database to track down information in others .

## Trade Practices Act

# COMPUTER CONTRACTS: Four parts of the Act relevant

The July lunchtime meeting of the New South Wales Society for Computers and the Law was addressed by Mr. Phillip Argy, partner in a large Sydney law firm and an expert in the intricacies of the Trade Practices Act 1974 as it affects computer contracts. Mr. Argy explained that many detailed sections of the act, as well as its "catch all" provisions, had a bearing on the processes of choosing a computer, negotiating the terms of the sale, and finalising the contract - as well as on levels of after-sales backup, accessory supplies etc.

There were four main parts of the Act which affected computer contracts, Mr. Argy said. These were Part 4 (dealing with restrictive trade practices which 'substantially lessen competition', and three divisions of Part 5 (which covers consumer protection). Division 1 covered unfair practices, Division 2 conditions and warranties in consumer transactions, and Division 2A actions against manufacturers and importers.

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Part 5 began with section 52, the "catch-all" provision. This forbade "misleading or deceptive" conduct, whether intentional OR unintended. For this reason there were no criminal penalties entailed, only civil remedies via the injunction process - in cases based on the follow-

ing sections, it was necessary to prove criminal intent.

Section 53 then listed specific types of misrepresentation, such as: "standard, quality, grade"; "particular history or previous use' (an increasingly important clause as the market for second-hand software grows); "new" (was an unused but twice-superseded computer "new"?); "accessories" and "uses" (laser printers could NOT print overhead transparencies, as suppliers had claimed); and so on.

The most powerful of these clauses dealt with performance characteristics. Some purchasers of daisy wheel printers had been surprised to find that their 55-characters-per-second printers would only achieve this speed in 25-pitch, printing all full stops! In deciding whether misrepresentation was intended, the test was: what would a reasonable person think was met?

Division 2 of Part 5 turned from remedies for breaches of the Trade Practices Act itself to breaches of contract - this section therefore dealt with conditions and warranties in the relationship between the supplier and purchaser. One of the tests which applied here was whether the goods were "or a kind ordinarily acquired for personal, domestic or household use", which created problems when, for example, a personal computer was being used in a small business. If the goods in question had been bought through a finance company, section 73 allowed the same right of action as if the purchaser had bought the goods direct.

Division 2A, dealing with actions against manufacturers and importers, had similar provisions to Division 2 in that it required goods to be of "merchantable quality". However, defects which occurred before supply (such as damage in transit) were not covered.

When a salesman promised parts will be available for the next ten years, but the parts become unobtainable before then, and the purchaser had to spend extra to get the parts especially made, he could take action under s74 (d), if the manufacturer gave an express warranty or undertaking in relation to quality and the product failed to live up to it; but this section still awaited a test case, so it had mainly "bluff value".

Damage provisions were covered in later sections. Section 82 laid down that action under Parts 4 or 5 must be commenced within three years, not the normal six. Section 87 empowered the court to make orders: for example, that money be refunded, damage remedied, or that parts be supplied at the manufacturer's expense. There is no time limit on these orders, which effectively allow the court to rewrite the contract.

## Law Society President

### Herron in flight: Hacker heads Law Society

Mr. Fred Herron, 1985 President of the Law Society of New South Wales, listed positive, on-the-spot, rapid backup from system suppliers as the paramount consideration in the choice of a computer system suitable for legal practice, in a recent address. Speaking to the first 1985 meeting of the New South Wales Society for Computers and the Law, Mr. Herron said that backup was "the be-all and end-all" of any computer operation. He added that a second important point which lawyers should consider was that a system in a legal practice must be able to expand as business expands. Finally, lawyers should beware of imagining that acquiring a computer would mean an end to all their problems in practice management.

Fred Herron's interest in computers grew out of an early fascination with electronics, when he began working on ways to introduce computers into his Lismore practice. From his own experiences, he wrote a manual for lawyers wishing to go into word processing, which proved very popular (and is still available for sale today).

After joining the Law Society Council in 1979, he became a member of a services committee looking at computerisation. He is now seeing the fruits of his efforts, with the installation of a Wang OIS 60 word processing system throughout the Law Society having commenced on Friday 6th

Mr. Herron, who supported the implementation of CLIRS, said that he firmly believed in computerisation as the way in which lawyers would be able to modernize their practices, keep fee increases to a minimum and compete effectively. Pointing to the conveyancing support system now available in the U.K., Mr. Herron said that as areas of legal practice became progressively less "protected", computers would become essential. He quoted the areas of conveyancing, litigation support and internal legal research as three of those most likely to benefit.

Another factor was increased competition between firms - as examples, he cited the recent abandonment of a mandatory scale of legal fees in Victoria, and current moves to loosen restrictions on lawyers advertis-



ing. As a result of this, most big practices were already on the way to computing self-sufficiency and had employed technical experts to assist in this. The focus of legal computerisation was now on the two- and three-person practice. Due to rapid increases in the memory capacity of microcomputers, these were now able to provide small firms with services previously only available to large ones. The major stumbling block remained resistance to the idea of computerisation in some areas of the legal fraternity. What was needed, said Mr. Herron, was to persuade lawyers to get "hands on keys" experience.

Fred Herron's other interests include flying (he reported trying not to be "the boldest pilot, just the oldest pilot") and amateur radio. The Commodore 3000 series system at his Lismore station was now interfaced with his transmitting equipment. This enabled him to decipher morse code automatically to text on screen, control the vertical and horizontal movement of antennas to lock into amateur satellites, and access radio teletype facilities around the world.

Introduced by Society for Computers and Law President Graham Greenleaf, as a lawyer with a computer in his office, one in his home and one in his briefcase, Fred Herron went on, while disclaiming to be offering "a high-tech talk from a superb orator", to leave his audience in no doubt that computers had a vital and growing role to play in the future of the law.