ally similar to the NSWPC. Introducing the legislation, the then Attorney-General, Mr Doumany, said in August 1983 that the proposed committee would consist of seven members with power to conduct research, collect and collate information on matters referred to it by the Minister and report with recommendations to the Minister, including on complaints about alleged violations of privacy. Reports to the Minister would not be published without the prior approval of the Minister. No attempt is made to provide a definition of privacy, nor is there an enforceable right of access to personal records provided in the Bill.

- In Western Australia the WALRC is now reported busily at work on its report on privacy in that State. The ALRC has been having extensive discussions with the WALRC during its inquiry and a major report on WA laws on the subject can be expected early in 1984.

- Coinciding with the publication of the ALRC report come numerous news items expressing concern about aspects of the impact of new information technology on individual privacy. In the *Age* (12 November 1983), Helen Penridge wrote of the danger of computers in the library permitting scrutiny of reading habits of library users. In the same journal (22 October 1983) a news item reported that Mr Alan Asher, on behalf of the Australian Consumers' Association, expressed concern that plans to introduce a national public access videotex service in Australia could permit analysis of individual consumer habits which could mean unchecked invasions into privacy.

1984 has arrived. Was Orwell right?

data law '84

In 1972 Australia graduated 100 PhDs in Physics. By 1982 the figure was 35. I don't think we can stand too much of this kind of progress.

B O Jones MP, Minister for Science and Technology, National Technology Conference, September 1983.

sleepers waking. The present Federal Minister for Science and Technology, Barry Jones, is, as every Australian knows, an ex quiz champion. But he is also a ministerial stirrer determined to shake Australia into a 'shock of recognition' of the impact of science and technology on society. In late September 1983, after the copy for the last issue of *Reform* went to press, Mr Jones convened a national technology conference, dubbed by journalists 'the Technology Summit'. 140 delegates gathered at the Canberra Rex Hotel to hear the Prime Minister, Mr R J Hawke, offer a strong commitment to new technology. Whilst condemning Australia's technological development record as 'pathetic', Mr Hawke pointed to Australia's 'poor record' in product development and commercialisation. He maintained that years of protection against imports had 'dulled the enterpreneurial spirit' and reduced competitive pressures in manufacturing industry:

> The record is pathetic. The gap between research and product development must be closed. The slow rate of technology transfer into new products and processes must be accelerated. We must learn, not only how to develop the product but also to focus on what is required to market it. Australia's research institutions are too isolated, intellectually and physically, from industry; academia has given insufficient attention to possible economic implications of its research; and industry has not conducted enough of its own in-house research and development.

At the close of the conference, Mr Jones took a theme from his recent best-selling book '*Sleepers Wake*!' (OUP):

> Candour compels me to say that the 'shock of recognition' has not been as successful. The sleepers may be waking. But they are still very drowsy. In the OECD tables, Australia ranks 23rd of 24 nations in the value of technology-intensive imports over exports, with an imbalance of 9.5:1. This figure alone suggests the need for ringing a few alarm bells

> or the cackling of geese – but the conference appears to have taken it very calmly.

Coinciding with the technology conference came announcements of 100% taxation concessions to enterprises devoted to 'high technology' in Australia. The new policies attracted favourable comment in the media. Typical was the *Australian* (17-18 September 1983):

> It should be the first of many steps to link government encouragement with private endeavour so that this country will be able to take full advantage of the age of digital culture whose day has now come.

trans border law. The interntional developments of information technology, particularly computers linked by telecommunications across the world, has presented many novel issues for attention by lawyers and law makers in countries including Australia. In December 1983 in London, the Organisation for Economic Co-operation and Development (OECD) convened the Second Symposium on Trans Border Data Flows. Keynote speakers included the British Minister for Science and Technology, Mr Kenneth Baker MP, and the ALRC Chairman, Justice Kirby. Mr Baker outlined important developments in Britain. He urged a return to the spirit of adventure of earlier centuries. Justice Kirby outlined the numerous problems now posed for domestic law makers by advances of trans border data flows (TBDF):

- the need for new laws on computer crime to cover incidents involving simultaneous manipulation of data in numerous jurisdictions;
- the need for new laws on vulnerability of society in the event of terrorism, industrial action or breakdown of computers;
- the advance of laws on privacy and freedom of information (see previous item);
- the development of copyright and contract law to take into account computer transactions;
- the need for international computer insurance and laws to match;
- the need for new rules on conflicts of laws to determine the legal regime to apply to transactions having instantaneous connection with multiple jurisdictions through interacting computers;
- the provision of new laws for the admission of evidence in courts on a reciprocal basis where the evidence is produced by computer or even generated by computer.

Justice Kirby said that three factors warranted attention to these issues on an international level:

- the great complexity of the problems posed;
- the interaction of technology making purely domestic laws ineffective or inefficient; and
- the demonstrated value of international initiatives, such as those of the OECD guidelines on privacy which were adopted by the ALRC in the development of its proposals for privacy protection.

Justice Kirby said that the OECD, as a body representing the countries with the greatest stake in informatics, should take the lead. However, he cautioned against the 'somewhat secretive' bureaucratic tradition of the OECD and called for a more open discussion of the social implications of technology which were, he said, of great concern to people in the Member countries.

land use data. Speaking earlier at a Law and Technology seminar held in Brisbane, the ALRC Chairman warned against the incompatible computerisation of land use data as Federal, State and Local Government authorities move towards computerisation of land information in Australia. Following this address, top public servants responsible for lands policy in Australia resolved to authorise investigations of various steps that could be

taken to ensure compatability of land use computers.

This initiative comes only just in time. As reported in the *Age* (29 November 1983) the New South Wales Registrar-General's office has launched the first stage of an ambitious program to computerise its entire land title records. The aim is to have all land in New South Wales incorporated in an automated Torrens Title land register. In the first stage, computer title records are being created for all lots in new Plans lodged for registration. Stage 2, involving the computerisation of Strata Titles, will be automated progressively. According to NSW Director of Land Titles, Mr Ray Hodgkinson, in five years' time the new system will allow conveyancing solicitors to have direct access to land title information through in-office terminals. He said that ultimately the procedure would reduce the cost of conveyancing. Some commentators have suggested it may remove the justification for solicitors' involvement, at least in routine cases. Mr Hodgkinson told the *Sydney Morning Herald* (22 November 1983) that the project would take, in all, ten years.

across tasman. Meanwhile, across the Tasman in New Zealand, the debate about privacy, official powers and computers is also hotting up:

- The Opposition Labour Party has welcomed the introduction of rules to tighten the powers of entry and search of Customs officials. But Deputy Opposition Leader, Dr Geoffrey Palmer MP, questioned when the whole matter of privacy would be tackled in New Zealand.

- At the end of September 1983 the former Director of the NZ Security Intelligence Service, Mr Paul Molineaux, was appointed Privacy Commissioner for the Wanganui Computer Centre. This Centre keeps criminal and other sensitive records on New Zealanders in computerised form. The new Commissioner succeeds Sir James Wicks as public privacy guardian. Commenting on his change of function, Mr Molineaux said : 'It's rather nice really to be in a complementary but different role'. Spy master turned public guardian.

- Also in September 1983 at the NZ Computer Society's Eighth National Conference, delegates dwelt on the social impact and side effects of the new technology. The NZ Minister of Science and Technology, Dr Shearer, told the delegates that NZ society had to face up to its social responsibilities and take a mature attitude towards the spread of the new technology. Professor Anthony Wasserman, an expert on computer security and privacy at Berkeley, California, told the conference that most computer systems were not really protected against malicious users. With shades of modern science fiction movies, Professor Wasserman recounted how home computers could be programed to dial numbers at random until the right connection was established in order to invade the targeted system.

- Meanwhile, delivering a judgment of the Court of Appeal of New Zealand, Justice Cooke, dismissing an appeal by John McGinty against a drug conviction, dealt with the limits of phone taps. He stressed that interception of private communications was 'a step never to be lightly authorised'. The Court of Appeal emphasised that 'a clear and strong case has to be made for the grant of a warrant to intercept'. This point and additional statutory safeguards are also stressed in the ALRC report on Privacy (see previous item).

identity crisis. Identity cards have never been a feature of Australia. In company with most countries tracing their laws to Britain,

authorities are kept at a distance unless a reasonable cause is established to intervene in the citizen's life. But in the age of credit cards and electronic fund transfers, tracing the individual's movements is becoming much easier. To guard against manipulation and misuse of computerised data, overseas countries with security problems or having a tradition of identity cards are now introducing new checks:

- The ALRC report on Privacy, looking to the future, details the prospective use of computer-recognised thumb prints as a means of providing indisputable credit verification. An item in the Melbourne *Herald* (6 September 1983) suggests that the unfailing thumb print ID could provide much better security for credit advances, passport control and opening the front door. But commentators worry about the legal response and the extent to which the law will be able to control the use by public and private authorities of the 'movement trail' created by frequent presentation of the thumb, ostensibly as a security device.

- Also in the Melbourne *Herald* (4 October 1983) comes the news of a new identity card for West Germany able to be read by computers linked to the Federal criminal office. Declared *Die Zeit*, 'Behind the new identity cards comes Big Brother'. One of the small political parties in FRG, the Liberal Democrats, have filed a petition to the Federal Constitutional Court claiming that the passes would violate the German Constitution. If the court rules against the identity card plans, it will be the second defeat there for Chancellor Helmut Kohl. In April 1983 the court stopped the government's controversial Census plan, which also provoked fears of misuse of personal data. In Europe, where the memories of the Gestapo are fresh, this issue is a lively one.

wombats & apples. As an illustration of the variety of data law issues now beginning to present themselves to the Australian courts came the decision of Justice Beaumont in the Federal Court of Australia at the beginning of December 1983. Michael Suss, Managing Director of a Melbourne company and local distributor of a Taiwanese-made Wombat brand of personal computer, won an 'historic victory' before Justice Beaumont. According to Stephen Hutcheon, computer writer for the *Sydney Morning Herald* (12 December 1983) the decision:

> delivered a crushing blow to Apple's worldwide plans to rid the world of 'fake Apple' computers and in doing so becomes, in the eye of Apple, public enemy No 1.

Apple Computer had sued for damages and sought injunctions under the Trade Practices Act and the Copyright Act to restrain Mr Suss and his companies from selling Wombat personal computers. Apple, the billion-dollar US computer company with a heavy concentration in home computers, had claimed that the Taiwanese manufacturers of the Wombat had knowingly used equipment features and programs copied from the Apple computers. Justice Beaumont ruled that despite the similarity in appearance, the two types of computers were clearly distinguishable from one another by the different brand names. He also ruled that the computer programs (software) were only used to control the sequence of operations carried out by a computer. He rejected Apple's assertion that programs were 'literary works' within the meaning of the Copyright Act. In short, the language of that Act, which long preceded the advent of the new information technology, was simply not apt to provide protection. Justice Beaumont's holding reached a different conclusion to the US Court of Appeals in the decision in *Apple Computer Inc v Franklin Computer Corporation*, handed down in August 1983. In that case the US court held that 'literary works', the language also used in the United States Copyright Act, were not

confined to novels. It made no difference, held the US judges, whether the programs were 'burnt into the microchips, inseparable from the computer's circuitry'. Mr Suss declared that his victory was 'the first breach of the American and Japanese technological monopoly'. The *Australian Financial Review* (16 December 1983) reported that Apple had lodged an appeal to the Full Court of the Federal Court from Justice Beaumont's decision. According to the same report, the decision has 'rocked the computer industry'. It is also claimed that the Federal Attorney-General, Senator Evans, in consultation with Science and Technology Minister Jones, is considering whether any action should be taken. In late December Senator Evans announced that the government would introduce amending legislation, if need be retrospective, to provide protection for computer softwear.

Needless to say, the editorialists went to town. According to the *Australian Financial Review* (9 December 1983) the Apple decision of Justice Beaumont 'strikes at the core of software controls'. Various commentators for the computing industry urged that computer programs should be covered by copyright. The Melbourne *Herald* (13 December 1983) took the competing points:

> The lack of legal protection will deter overseas firms from exchanging hi-tech know-how with their Australian counterparts, and it might give us an unwelcome reputation as producers of imitations. If there are counter arguments suggesting greater development through an 'open go' they should be put and the legal problems sorted out. Our laws must catch up with world technology.

The *Sydney Morning Herald* (14 December 1983) suggested a law reform compromise:

> Computer technology falls into a grey area between literary works and inventions. Both the copyright and patent laws have been stretched to cover it ... This country's copyright legislation, the Australian Copyright Council points out, is notorious for not anticipating the predictable. Computer software and its protection showed all the signs of becoming an issue in 1969 when the Act came into force. But the law still has no explicit provision to cover computer software ... If the Attorney-General decides to strengthen the Act to protect the computer companies he should also consider reducing the life of protection given to the industry to something like 16 years provided by the Patents Act [rather than the 50 years of protection given to the copyright owner].

Let the last word be had by the *Australian* (9 December 1983) which declared, inelegantly but vividly, that the Apple decision had 'opened a can of literary worms'. Perhaps the new Copyright Law Committee under Justice Ian Sheppard, also a Judge of the Federal Court of Australia, will produce an Australian solution in tune with domestic needs and harmonious with the efforts of the World Intellectual Property Organisation (WIPO), UNESCO and other bodies to adapt laws made in earlier times to the needs of transient media and rapid technological change.

lawyers, action.

Humility is a quality not always inborn in those who dedicate themselves to advocacy.

Melford Stevenson J, cited T E F Hughes, The Art of Advocacy, 1983.

reports accepted. The NSW Premier, Mr Neville Wran QC, has announced the intended implementation of important aspects of the New South Wales Law Reform Commission's reports on reform of the legal profession of that State. In an address on 12 November 1983 to the Annual Assembly meeting of the Young Lawyers' Section of the Law Society of New South Wales, Mr Wran indicated that his government had 'accepted in principle' the concept of community participation in the governing bodies of the NSW Law Society and the Bar Association. He also announced that a Public Council on Legal Services would be established. One function of the Council would be to overview the operation of the complaints and discipline systems introduced in relation to NSW lawyers. The creation of such a Council, consisting principally of public members, was one of the NSWLRC's most important recommendations.