

Computer Crime in Review

Introduction

A Review Committee of Commonwealth Criminal Law was established by the Attorney General in February 1987. The Committee produced its Report in December 1988. The main recommendation was that Commonwealth criminal law should only be amended to include specific crimes relating to "forgery" by the use of a computer, unlawful access to computers and data, and damage to data in a computer where the computer or data has a particular nexus with the Commonwealth. The Committee recommended that no specific legislation be introduced to deal with unauthorised use of a computer and computer crimes generally involving privately owned computers.

The Report recommends that the only change to any definitional section of the Commonwealth Crimes Act 1914 ("Crimes Act") should be to include a reference to a "computer or computer system". It recommends against an attempt to precisely define the terms "computer" or "computer systems". The reasons given for this approach are firstly that an attempt to give artificial definition to such a term or terms would tend to create rather than reduce ambiguity and secondly, that past attempts by legislatures to define the terms have been notably unsuccessful.

The Report generally supports the approaches

taken by the Tasmanian Law Reform Commission and the Victorian Parliament.

It adopts the view that penalties for computer related crime must be commensurate with the overall economic damage which is caused by the particular wrongful conduct. The penalties provided in the draft legislation appended to the report reflect this.

Finally, being a Commonwealth Review Committee, the report may be criticized as too narrow. It was only directly concerned with crimes relating to Commonwealth computers, access to data in Commonwealth owned or operated computers, damage to "Commonwealth" data and unauthorised access to private computers using Commonwealth communication facilities. In summary the Report makes the following recommendations.

Unauthorised Access to Data in a Commonwealth Owned Computer

Existing Commonwealth criminal legislation is directed at the regulation of information disclosure by Commonwealth officers and not access by members of the public or unauthorised access by those who have a limited authority (s70 and 79 Crimes Act). Further, the Committee is of the view that the "forgery" offences (s67) are inappropriate as they are concerned with making "false instruments" and do not sit well with the

unauthorised act of keying numbers or words into a computer. Lastly, the "theft" offences (s71) are noted as being unlikely to succeed because of the present generally accepted principal that "information" cannot be owned and thus cannot be stolen. The Report concludes that Commonwealth legislation to prohibit unauthorised access to data stored in commonwealth computers is necessary.

Strangely, the Report says that because of the limited effect and incidence of electronic "eavesdropping" on Commonwealth computers, it does not recommend enactment of legislation directed at the prohibition of this activity.

Damaging Data

The Report appears to implicitly support the view that the destruction, erasure or insertion of data in a computer by an unauthorised person does not fall within the offence created by Section 29 of the Crimes Act which deals with destruction of or damage to Commonwealth property.

The Report recommends legislation should be enacted specifically prohibiting the intentional and unauthorised destruction, erasing, insertion or altering of data in a Commonwealth computer. The Report also recommends a specific offence for the intentional "interruption of or interference with" a Commonwealth computer in

operation even in cases where there is no "damage". A temporary interruption of some Commonwealth computers could have serious consequences and hence, the legislature should address this situation.

Computer Related Fraud

The primary dilemma facing the Committee was the concept of deception. There is a suggestion that a person must be deceived and that it is not possible to deceive a machine.

The Report cites the Queensland Court of Criminal Appeal's decision in *R. v. Baxter* (1988) 1Qd.R.537 where it was held that Section 29B of the Crimes Act provided an appropriate offence in the case of computer fraud. This Section creates the offence of imposing on the Commonwealth by an "untrue representation".

The Report concludes that no amendment of the Commonwealth law to deal specifically with fraud in relation to computers is required however the existing inadequate penalties for this offence are commented upon.

Forgery

The Report states that after having regard to the Acts Interpretation Act it was not clear that data in a computer was either a record or a document. The Report suggests an amendment to the definition of "record" to include any information recorded by means of a computer. It also suggests

an amendment to paragraph 67E of the Crimes Act to reverse the order of the terms "record" and "document" as the present order possibly suggests that a record is a form of document.

The Report also suggests an amendment to the Crimes Act to deal with forged documents presented to, or data inserted in a computer. The amendment recommended says that a person shall be taken to have forged a document where the intent has been to cause a computer to respond to a counterfeit document as if it were genuine.

Unauthorised use of a Commonwealth Computer

In conclusion the Committee did not feel that further provisions to deal with unauthorised use were necessary. The Committee felt that most unauthorised use of Commonwealth property is undertaken by Commonwealth employees and can be dealt with by internal disciplinary action.

Similar Activities in Relation to Privately Owned or Operated Computers

The Report notes that if access were effected by the use of a Commonwealth communications facility such as Telecom then theoretically that activity would be within the reach of Commonwealth legislative power. The difficult question is whether it is appropriate for the Commonwealth to legislate in respect of unauthorised access, etc, to a privately

owned computer when the "Commonwealth" connection would generally only constitute a minor portion of the whole offence.

The Report considers that rather than piece-meal legislation by the States there would be a far greater saving of time and cost if the one Commonwealth law were available.

It recommends legislation to prohibit unauthorised access by means of Telecom or other Commonwealth communication facility to data in privately owned or operated computers.

The Report reaches similar conclusions in relation to damage to a privately owned or operated computer. However, in relation to any form of computer fraud not involving the Commonwealth which is effected by means of a Commonwealth communication facility, the Committee feels that most cases could be adequately dealt with under the existing criminal laws of the State.

Conclusion

The Attorney-General's Department is "currently considering" the Committee's recommendations with a view to presenting the suggested amending legislation into the first sitting of parliament in 1989. It is to be hoped that New South Wales will not be slow in addressing these issues.

Robert Johnston