

## electronic funds transfer

The lucky poor, of course, are always thin.

David Malouf, *Health Farm*

On 18 April, Dr Robert Hayes and Mr Ian Cunliffe of the Australian Law Reform Commission called for urgent action to address the social and legal problems associated with the rapid introduction of electronic funds transfers and new banking developments. They said that adoption of EFT and installation of automatic teller machines and other developments in the area were moving apace:

In our apparent enthusiasm to deregulate the Australian financial system, and to embrace 'gee whizz technology' it is important not to forget legitimate issues of community fairness — such as the proper preservation of the confidentiality and privacy of the relationship between banker and customer, and adequate rules for consumer protection.

**social problems.** They argued that thought needed to be given to the social problems that arise from the new technology, and to:

- 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;
- safeguarding 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, for example, limiting its sale or supply to associated travel companies, insurance companies or credit cards, and to direct marketing bodies;
- requiring destruction of information containing personal identifiers when its primary function is achieved;
- defining the extent to which law enforcement authorities can, without court orders, 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.

**george orwell revisited.** Dr Hayes and Mr Cunliffe said that information from EFT could be of great interest to a wide variety of people including:

- marketers of various goods and services;
- the police;
- Department of Social Security;
- security authorities; and
- taxation officials;

'Do we want these groups, and others, to be able to dissect and analyse our movements, and our purchasing habits, and even to be able to electronically sort through the contents of our grocery bags?' Professor Hayes and Mr Cunliffe asked. They said that in Australia the criminal law and the law of evidence as well as consumer protection laws were made before development of EFT was contemplated. Some abuses of EFT systems fall outside the criminal law. Even if that law were adequate it would be difficult for the prosecution to prove because the laws of evidence have not caught with the computer age. They referred to the ALRC's forthcoming Interim Report on Evidence which will be tabled in the Parliament in the Budget Sitings.

**new developments.** During the last few months there have been a number of notable developments in adoption of the new technology:

- The Commonwealth Bank launched the first Australian office and home banking service, operating through Telecom's public videotext service.
- EFT/point of sale systems are getting up and running. Arrangements between a number of the banks and pet-

rol stations and supermarkets etc are already operating.

- Joining all of these together, the ANZ Banking Group and the National Australia Bank and the State Banking Groups in New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania have announced that they are linking up their EFT/point of sale systems.
- The Department of Social Security is moving to introduce an EFT system of payment of pension and benefits.

*the possibility of fraud.* Banks meanwhile maintain that there is no cause for alarm and that the new systems present no new or greater concern than the old paper based system of cheques and so on. They assert that there are no more problems for privacy, fraud nor any greater lack of consumer protection. However the Australian Consumers' Association and other bodies have received large numbers of complaints. These include:

- The withdrawal of money from automatic teller machine by a person other than the cardholder, without the PIN number. In some cases these fraudulent withdrawals have exceeded both the amount of money in the account and the daily maximum withdrawal. Under the terms and conditions specified by the banks and other financial institutions the banks look to the customer to carry the loss.
- Difficulties of customers in establishing that they have not received money shown as withdrawn from their account where an automatic teller machine has a malfunction, for example, in the middle of the transaction.
- Concern about security of Bankcard transactions made by telephone or mail.
- Billing errors and difficulty in putting them right.
- Privacy issues including as to the type and detail of personal information re-

quired to be given on application for EFT cards.

- Unsolicited promotions following acquisition of a credit card.
- The widespread accessibility of information within the EFT system.
- The one-sided nature of the terms and conditions imposed on cardholders.

There is even more concern about potential problems which might not as yet have shown up especially as the area seems a legal-noman's-land, with legal regulation and protection lumbering along in the wake of technological development.

### **national identity card**

The stubborn world of things  
greeted with its stolid derision  
our frail, unique, identities.

Evan Lloyd Jones, *Leaving Again*

Proposals for a national identity card were debated in May by the Labor Caucus and included in the Government's preferred option in its white paper on tax reform, released on 4 June. The proposals are for photographic identity cards which are designed to reduce tax evasion, social security fraud and other ills of modern Australia. The proposals were criticised by former ALRC Chairman, Justice Michael Kirby. Justice Kirby, who is now the President of the New South Wales Court of Appeal, said it was vital that the community should keep control over the direction of science and technology. Justice Kirby was delivering a Centenary address for the Science Faculty of the Sydney University. He said that computerised identity cards were an example of the 'tension between new technology and old legal principles'. He said that such proposals tested our traditional civil liberties, and especially changed the relationship between the State and the individual. Justice Kirby said that he was not concerned that opinion polls disclosed strong support for the idea of ID cards. He said that sometimes 'out of ignorance' people could be 'too ready to throw away ancient freedoms or hard won liberties and reforms'. Amongst