

set out proposed uses for the ID card: for specific financial transactions (like opening a bank account); gaining employment; on claiming a government pension or income support payment; and on claiming Medicare benefits. According to the *Herald*, the IDC report said the legislation should restrict the circumstances under which people could demand the card to this narrow range and that sanctions should be included. 'It was considered essential from the privacy viewpoint to prohibit both demand for, and use of, the number to establish private data bases (for example, credit rating files)', the report is quoted as saying.

automatic banking

He thought he saw a Banker's Clerk
Descending from the bus:
He looked again and found it was
A Hippopotamus.
'If this should stay to dine' he said,
'There won't be much for us'.

Lewis Carroll, *Sylvie and Bruno*

The last edition of *Reform* reported a call by Dr Robert Hayes and Mr Ian Cunliffe of the Australian Law Reform Commission for urgent attention to address the social and legal problems associated with the rapid introduction of electronic funds transfers and new banking developments. [1985 *Reform* 97]

The Australian Consumers' Association in its September edition has called for legislation to protect users of automatic telling machines against fraud, theft and error. It has done this after receiving more than one hundred complaints from people who have lost money, in some cases up to \$1500 from the machines. A spokesperson for the Association, Ms Philippa Smith, said in the Sydney Morning Herald:

Users of the machines are far more vulnerable than they are aware to having funds stolen. And with the huge rise in the use of these machines, users require minimum safeguards set down in legislation.

She argued that there should be safeguards similar to those required in the United States

legislation, in force since 1978, to protect against theft, fraud and machine errors. In its Journal the Association carries an article on the problem with a cover description 'Consumers losing credit revolution'. It says that in various ways 'the cards are stacking up dangerously against the customer'. According to the Australian Consumers' Association:

- Consumers are now liable for all loss arising from wrongful use of the card before they are able to notify the bank of its loss.
- Although Westpac claims the maximum loss its cardholders may incur is \$50, it may be more if — as in one case notified to the ACA — the consumer had trouble contacting the bank and the bank denied it was told.
- Cardholders are also fully liable, under a condition imposed by financial institutions, for any loss if they keep the personal identification number (PIN) with the card, and both are stolen and used to steal funds.
- The ACA says that cases are emerging where cards have been stolen and the thief has been able to gain access to the funds without the secret PIN. 'Financial institutions are denying this can occur.'
- Consumers have reported thieves taking both card and PIN number, even though they were kept separately, but have been unable to convince banks they were kept apart.
- Cardholders are also liable under another condition for any loss caused by a system failure.

Westpac's chief manager, electronic banking, Mr Jim Thorne, said the bank received minimal complaints about funds stolen from automatic tellers and 'we have virtually no outstanding disputes'. He said that if a card was lost or stolen, the maximum liability was \$50. 'I believe there are adequate safeguards in our system'. (Sydney Morning Herald 26 September 1985).

In its article the Australian Consumers' Association calls for:

- Urgent national legislation to ensure that codes of practice are uniform and followed to the letter.
- Urgent review of customer liability for financial loss arising from equipment and systems failures.
- A set procedure for the investigation of customer complaints for financial institutions following the model set out under the US Government's Electronic Funds Transfer (EFT) Act.
- Disclosure of terms and conditions at the time a consumer applies for a card.
- Set rules for financial institutions and retail outlets protecting the confidentiality of personal information including card numbers, signatures and details of transactions.
- Existing codes of practice of the financial institutions to be reviewed by the Trade Practices Commission in conjunction with a joint working party comprising governments, consumers, and financial institutions.
- Agreed standards of information to establish credit-worthiness.

According to the article the following estimates were gained from the pilot survey of sixteen American banks:

- In 1983 there were 2.7 billion transactions through ATMs.
- Of a sample of 2707 ATM-related consumer complaints 45% were found to be potentially fraudulent involving, for example, unauthorised use of lost or stolen cards, overdrafts and 'bad' deposits.
- Nationwide ATM bank loss from fraud during 1983 is estimated in the range between \$70 and \$100 million.
- Anticipated losses from wire transfer fraud were estimated to increase approximately 70% over the next 5 years. (Consuming Interest, No 25 September 1985 12-13).

Professor Jane Levine, an Associate Professor of Law at the University of New South Wales, promulgated a similar message at the Fifth Conference of ANZAAS in August. She said that financial institutions were attempting to shift the risks and costs of new technology onto consumers, including for fraud or abuse of the new electronic funds transfer technology. According to Professor Levine under existing law a banker who pays out under a forged or fraudulently altered cheque is liable for the ensuing loss unless the customer is aware of the fraud and does not bring it to the banker's attention, or carelessly draws the cheque. EFT contract clauses make customers totally liable for losses. In a similar way:

most EFT contracts make the customer responsible for reviewing statements of account and required them to bring discrepancies to the bank's attention — otherwise the customer is liable. This is not so with paper transactions,

she said. Professor Levine said that at present the banker/customer relationship did not depend on express contractual terms. The two had certain rights and obligations within implied terms of contract or arising under tort law. Generally, bankers had shouldered a much higher proportion of the burden than they are under the EFT systems. For example, bankers have a duty of secrecy to protect the financial privacy of their clients and the risk of fraud, particularly with altered or forged cheques, fell largely on bankers.

Bankers are responsible for transaction failures which might arise because of problems in the clearing of paper payments or as a result of wrongful dishonouring of a cheque or failure to comply with counter-demanded instructions,

she said. However, with electronic payments the situation appeared to be quite different.

When one looks at these contracts one finds they represent a marked departure from rights and obligations that have previously existed. (The Australian, 30 August 1985)

Early in September the Standing Committee of Consumer Affairs Ministers who were meeting in Brisbane expressed concern at the lack of co-ordination and progress in the development of appropriate safeguards for protecting the interests of consumers in relation to electronic funds transfer systems. They ordered the urgent preparation of a code of practice to overcome the one-sided nature of the consumer liability under present arrangements. The Ministers asked for the code to be negotiated with financial institutions and finalized for their approval early in 1986. Some Ministers indicated that they would have to consider the legislation unless acceptable progress is achieved.

employment issues

In sum, the truth is that we luxuriate in the comfortable assertion that women enjoy equality. We have salved our consciences by eliminating the more obvious discriminations like unequal rates of pay for work of equal value. But, in fact, we have not eliminated the inheritance of the millennia that women are lesser beings, an inheritance which still manifests itself in a whole range of prejudice and other forms of discrimination.

Robert James Lee Hawke,
The Resolution of Conflict, 1979

the right of part-time work. The English Employment Appeals Tribunal has recently decided that the refusal of a Government Department to grant a mother part-time work after her maternity leave from full-time employment contravenes the English Sex Discrimination Act 1975. (*Home Office v Homes* [1985] 1 WLR 71)

The English Act, like its Australian counterparts, outlaws indirect discrimination. An employer will be guilty of indirect discrimination when he or she imposes a condition or requirement which a disproportionate number of the complainant's sex are unable to comply with. The imposition of these conditions or requirements must be unreasonable in all the circumstances.

The Tribunal decided that the requirement to work full-time was a requirement that unfairly prejudiced women. It was assumed that

child care placed a greater burden on women than it did on men. It had also been decided that the Home Office was reasonably able to provide part-time work. The Tribunal did, however, emphasise that future cases would turn on their own facts.

It remains to be seen whether Australian working mothers will use the sex discrimination legislation to buttress demands for part-time work. In the meantime, the *Canberra Times* has predicted (31 August 1985) that there will be an avalanche of applications when the Commonwealth Public Service releases 3000 part-time jobs later this year. The scheme to introduce permanent part-time work was first announced in December 1983, but has been held up by disputes over overtime rates and difficulties over the transfer of superannuation entitlement. The overtime rates issue was resolved on 28 August 1985 when Mr Justice Ludeke of the Arbitration Commission determined that overtime should be available for permanent part-time workers on a twelve month trial basis.

part-time workers have part-time rights? Speaking at the ANZAAS Festival of Science held in Melbourne in August, at a Forum on Equal Pay, Deena Shiff an Australian Law Reform Commission law reform officer commented on the disadvantages of part-time work.

Seventy-eight percent of the part-time labour force are women. Even where part-time hourly rates of pay match those of full-time workers, part-time workers are frequently denied employment benefits such as occupational superannuation and long service leave ...

Another recent English decision illustrates the diminished job security that may come with part-time work. Mrs Kidd was amongst 19 part-time workers who were dismissed when redundancies had to be made at her factory. Relying on *Homes v The Home Office*, she lodged a complaint under the Sex Discrimination Act that the selection of part-timers for redundancy discriminated against women. The Employment Appeals Tribunal