

The Bill, if enacted, would replace the concept of 'merchantable quality' in the Sale of Goods Act and similar legislation with that of 'satisfactory quality', defined along the lines suggested by the Law Commissions of England and Scotland in 1987 (LC160, SLC104, *Sale and Supply of Goods*). To be 'satisfactory', goods must be fit for all of the purposes for which goods of the kind in question are commonly supplied. In addition, matters of appearance and finish, freedom from minor defects, safety and desirability would be considered in determining whether or not goods are 'of satisfactory quality'. In addition, the Consumer Guarantees Bill would require the supplier of major domestic appliances and motor vehicles to state whether or not a 'consumer guarantee' is given with the goods. A 'consumer guarantee' is a set of obligations defined by the Act. When given, the person giving the guarantee is obliged to repair or replace the goods in specified circumstances. Failure to comply with a consumer guarantee will attract a criminal penalty. The Bill would also amend the Sale of Goods legislation to provide more effective remedies to consumers, whether or not a consumer guarantee was in effect. Some of the reforms proposed in the Bill are similar to those achieved by Part V of the Trade Practices Act 1974 (Cth) but some go far beyond current law in Australia. At this stage it is not known when the Bill is likely to be debated, nor what the attitude of the Thatcher government will be.

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## consumer awareness of legal rights

How many pretenses men that sell goods weave! What poor articles, with what a good face do they palm off on their customers!

Henry Ward Beecher, *Proverbs from Plymouth Pulpit* (1887)

The Trade Practices Commission has reported to the Minister of Consumer Affairs and the Standing Committee of Consumer Affairs Ministers (SCOCAM) that Australians have an appallingly low appreciation of the rights given to them by the law, especially the Trade Practices Act 1974 (Cth), Pt V Div 2 and 2A. (*Consumer awareness of, and reliance on, divisions 2 and 2A, part V, of the Trade Practices Act: a report by the Trade Practices Act at the direction of the Minister of Consumer Affairs.*) The report is part of a study currently being conducted by SCOCAM into post-sale consumer protection in Australia. It follows the Survey of Consumer Opinion published in 1987. The survey was conducted in 1985–86 by the Trade Practices Commission which administered a telephone questionnaire to a random sample of 300 residents of Sydney, Canberra and Dubbo. The telephone questionnaire asked respondents what they would do if a refrigerator which cost \$1000 failed to work, in breach of an express warranty, when repairs would cost \$200, and the period of the express warranty had expired.

*action 'not worth it'.* Forty-two per cent of respondents said that it was not worth taking any action. Eighty-nine per cent did not know, even after prompting, that the law gave them rights in this situation. Almost all of those who were aware of their rights said that they would take further action.

*minimal use of legal rights.* Trade Practices Commission investigators searched through close to 30,000 files in courts at all levels. In 940 of these files, the Trade Practices Act, Pt V Div 2 or 2A could, in the investigators' view, have been used, but it was pleaded in only two cases. Division 2 makes suppliers of goods and services liable to compensate consumers if the goods and services do not comply with basic general standards of quality. Division 2A makes the manufacturer of goods also liable in similar circumstances. Where the goods were manufactured outside Australia, the importer of the goods is liable. In the Small Claims Tribunals, where there are no formal pleadings and the con-

duct of hearings — especially knowledge of the law — depends very much on the referees, reports suggested that Pt V, Div 2 and 2A are used more widely. The Trade Practices Commission suggests that governments need to consider giving to the Trade Practices Commission and State or Territory consumer affairs agencies the power to bring representative actions on behalf of consumers. It also suggests expanding and publicising the role of the Small Claims Tribunals. (In NSW the relevant tribunal is called the Consumer Claims Tribunal.)

*some traders are aware.* The Trade Practices Commission offers the opinion that consumers' lack of awareness of rights is matched by that of traders. Where disputes are resolved quickly without resort to the courts, it is usually because traders are aware of their liabilities and react promptly.

The Trade Practices Commission recommends that more resources should be made available for educating consumers and traders. It places particular emphasis on education in schools as having the greatest potential for widespread impact on consumers.

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## OECD looks at electronic funds transfer

No man will take counsel, but every man will take money: therefore money is better than counsel.

Jonathan Swift, *Thoughts on various subjects*,  
1706

The OECD Committee on Consumer Policy has published a report, *Electronic Funds Transfer: Plastic Cards and the Consumer*, based on responses to a survey of practices in member countries, including Australia. It is a response to changes in banking practice, especially the introduction of new, electronic technology. Those changes have not finished. Some points made by the report include

- retail banking is increasingly important and is used by a larger section of the population than ever before
- new technology is reducing the need for face-to-face contact between bank and customer
- EFTPOS (electronic funds transfer at point of sale) systems and remote banking will become more common, and to some extent will replace traditional payment systems
- some countries (the United States and the Scandinavian countries) have introduced legislation to regulate some of the new developments.

However, this has produced a number of problems for consumers.

- in the absence of statutory regulation, use of plastic cards and the new technology is governed by contracts, which do not always represent a fair balance of interests
- consumers often lack access to information about the operation of the system or of their rights
- consumers are not always informed fairly about the costs involved in the new systems.

*recommendations for action.* The OECD Committee finds that the introduction of electronic fund transfer systems benefits the banking industry and the economy as a whole. It is in the interests of both providers and users to resolve problems linked to the introduction and operation of these systems equitably. Consumers should be able to expect that EFT systems are developed mindful of their reasonable interests, contain balanced liability and privacy features, are operated efficiently and under competitive conditions, and are supported by appropriate information and education measures. The Committee recommends that member countries should consider taking action in the following areas relating to liability: