

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.

* * *

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:

- Liability for malfunctioning of the system, and for fraud within financial institutions and retail establishments, should not be on the consumer
- card issuers should make available to consumers adequate facilities for immediate reporting of loss, theft or other forms of unauthorised use of cards
- any responsibility of cardholders to prevent unauthorised use should be clearly defined and cardholders should be made aware of the consequence of their own negligence
- reasonable ceilings for a cardholder's liability in cases of unauthorised use should be established; no liability should be attached to the user of EFT systems after the card issuer has been duly notified of loss or theft of cards
- consumer complaints in cases of mistakes, malfunctioning or unauthorised use should be handled promptly and objective and efficient procedures for dispute settlement should be available.

The Committee also recommended that member countries, which have not yet done so, should consider the possibility of action concerning marketing and consumer information, such as

- developing, in co-operation with industry, commerce and consumer representatives, guidelines for the marketing and mailing of bank cards; if unsolicited cards are sent to consumers, care should be taken that they cannot be activated without a specific request by the consumer, in case of minors with the consent of their parents
- ensuring that pre-contractual information, eg on contract terms, conditions for use of bank cards, costs incurred and costs for using any credit facilities offered are clearly made available to consumers

- ensuring that important changes in contract terms are communicated to consumers to give them the opportunity to reconsider their arrangement
- ensuring that consumers receive regular statements allowing them to check their EFT transactions
- ensuring that the introduction and development of EFTS is accompanied by adequate consumer education and information on liability, cost and pricing issues.

The Committee recommended that member countries ensure that EFTS services are offered under competitive conditions and should not allow any collusive practices by service providers in relation to interest rates and charges. They also should ensure that all consumers have access to payment systems under reasonable and non-discriminatory conditions, and that, taken as a whole, the payment system offers a reasonable choice of payment methods for consumers, whether EFTS or paper-based.

Other points made by the OECD Committee include:

- possible impact of EFTS on consumer indebtedness could be further explored, and future developments with EFTS monitored for this purpose
- service providers should maintain the confidentiality of data stored through EFTS and take the necessary measures to prevent improper and unauthorised disclosure; retailers should not collect transaction data without the consumer's informed consent
- member countries should closely follow developments in the EFT sector at the international level, in order to ensure international extension and interoperability of EFT schemes on the basis of common rules and safeguards for consumers.

Australian banks have resisted the idea of Government regulation of EFT activities in Australia, but have recently advertised the

position of Banking Ombudsman, to operate outside a statutory framework and assist in the resolution of disputes between bankers and their customers.

* * *

the egg and i

An atom tossed in a chaos made
Of yeasting worlds which bubble and
foam.
Whence have I come?
What would be my home?
I hear no answer. I am afraid!

Amy Lowell, *The Last Quarter of the Moon*, 1914

The National Bioethics Consultative Committee (NBCC), which was established to provide guidance to policy makers on ethical and moral problems (see [1989] *Reform* 209) has released a report concerning record keeping and access to information about offspring born as a result of gamete (ova and sperm) donation. The report is now being considered by government.

An important problem tackled by the NBCC in the report is who should have access to information about the identity of the biological parents, the social parents and the children conceived as a result of gamete donation.

use of donor gametes. There are several procedures in which donor gametes derived from third parties are used to achieve conception in couples who are either infertile or carry a genetic disability or a disease which may be transmitted to offspring. In donor insemination (DI) the semen is derived from a man other than the woman's partner and deposited by syringe in the woman. In vitro fertilization (IVF) typically uses gametes derived from the infertile couple. (However, there are a number of situations in which donor gametes would be used.) Fertilization of the ovum takes place in the laboratory and the resulting embryo is transferred to the woman's uterus.

The report argues that there are major differences between adoption and the use of donor gametes which make it necessary to develop new procedures relating to record keeping and access to information.

the reference. In May 1988 the Council of Social Welfare Ministers (CSWM), with the endorsement of a majority of State and territory health ministers, referred the following reproductive technology issues to the NBCC for consideration and report:

- record keeping and access to information
- birth certificates and birth records
- counselling
- access to reproductive technology programs
- surrogacy.

In referring these issues the CSWM endorsed the following guidelines:

- (a) in relation to offspring:
 - Offspring conceived of reproductive technology have a right to learn of their biological origins.
 - Offspring conceived of reproductive technology have a right to non-identifying information on biological parents.
 - Birth records should ensure that the biological parentage of all offspring is accurately in central State and Territory government registers.
 - Birth records should be capable of access by that offspring at the age of majority so that he or she has an opportunity to seek further non-identifying information of his or her biological origins.
- (b) In relation to donors:

Gamete donors be provided with a statement acknowledging the right of offspring to obtain knowledge of