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LIFE LINE NEWCASTLE

20TH ANNUAL DINNER

CITY HALL, KING STREET, NEWCASTLE

HELPING THE NEW POOR

June 1983

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FRIDAY 16 JUNE 1983 CITY HALL, KING STREET, NEWCASTLE

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The Hon. Mr. Justice M. D. Kirby, C.M.G.  
Chairman of the Australian Law Reform Commission

IN TRIBUTE TO LIFE LINE

I am delighted to join with you in celebrating the 20th anniversary of the service of Life Line, including to the community of Newcastle. In your annual report for 1981-82 you record the challenge to Life Line, arising from the financial conditions that confront people in all sections of the community and helping organisations such as yours:

Demand for our services is increasing at a time when the charity dollar is stretched to the limit. The fact that we have been able to maintain and develop our work with people in need is a tribute to the generosity of the community which supports us in so many ways.

In addition to the magnificent work of telephone counselling, you have organised an activity centre for men and women facing family and emotional problems. The annual crisis call rate has increased from 1800, at the commencement of the service, to 9561 last year. This figure is itself up 19% on the previous year.

It is a wonderful thing that a hundred years after Alexander Graham Bell invented the telephone, it is being put to such good use in helping lonely, depressed and frightened people out there in the community. People not associated with Life Line can get some inkling of the variety and intractability of human problems, by listening (as we all occasionally do) to talkback radio. But whereas the radio programs are usually entertainment, the work of Life Line is anything but. The enduring economic problems through which our country, and this region, are passing put pressure on the charity, patience and wisdom of the Life Line counsellors. I only wish that the legal system had adapted as quickly to the use of the telephone as Life Line has. For

many people it is a direct, cheap and to some extent anonymous means of seeking assistance in their problems. You may be interested to know that, in Australia, use of the telephone is now actually beginning for court disputes. The Administrative Appeals Tribunal, which deals with social security appeals and other like matters is now regularly conducting telephone conferences and even telephone hearings. This is the only way by which, with reasonable economy, a dispute resolution system could be developed which was not prohibitively expensive for the amounts at stake. In a sense, Life Line has actually led the way. I have no doubt that we will see a rapid increase in the use of telephone to resolve courtroom problems, just as Life Line, throughout the nation, has been using the telephone to bring help, advice and comfort to all manner of people.

#### LAW REFORM PROPOSALS

I am not a complete stranger to the work of Life Line. As I shall tell you, the Law Reform Commission has for some years now been examining the laws on debt recovery. In fact, the project was actually given to us as long ago as 1976 by Attorney-General Ellicott. We have produced one report on the subject and this has been followed by some legislation. Unfortunately, during the interval that the Law Reform Commission has been examining the problem, the problem itself has become so much worse. The downturn in the economy, the rise in unemployment, particularly youth unemployment, the uncertainty about the future, the structural change resulting from technological developments that affect many avenues of employment: all of these make debt recovery laws, unhappily, much more important today than they have been since the Great Depression.

In the Law Reform Commission's 1977 report Insolvency: The Regular Payment of Debts (ALRC 6), the Commission put forward a proposal to reform Australia's laws governing the treatment of people who suddenly find that they cannot pay their debts.

- \* First, we proposed the establishment of a regular payment of debts scheme, so that people in debt could secure a short moratorium, credit counselling, the arrangement of their debts and a scheme, with the consent of the majority of creditors, for debt repayment.
- \* Secondly, integral to our plan and essential for its success, was the availability of expert debt counsellors. Their advice would be essential both in securing the operation of the scheme and in complying with its procedures. The Commission proposed the establishment of a training scheme for people wishing to become debt counsellors.

- \* Thirdly, we proposed important changes to bankruptcy laws including the automatic discharge from bankruptcy of non-business bankrupts six months from the commencement of bankruptcy. In fact, this proposal was followed by the previous Government to the extent that the period for automatic discharge was reduced from five years to three years.
- \* Fourthly, we suggested the need for a radical overhaul of the procedures by which creditors pursue the recovery of debts. A study of debt recovery procedures throughout Australia has been a major task before the Law Reform Commission over the past four years. The Commission is now moving towards the final report on reformed and improved debt recovery process.
- \* Fifthly, we stressed the need for a wide-ranging review of the Bankruptcy Act and an investigation of consumer credit interest rates in Australia. In the last mentioned connection, we urged that the investigation should give specific attention to the existence of different interest rates from different sources in the consumer credit market and the extent to which those on lower incomes might be excluded in whole or part from the credit market and might have to pay higher charges for credit than more affluent citizens. Nothing has yet been done on these recommendations, though a project on bankruptcy reform is under active consideration.

In the course of our work on insolvency and debt recovery, we received a great deal of information from Life Line, particularly in Brisbane and Sydney. Indeed, we took inspiration from the work of Life Line, particularly in Brisbane. The scheme which was put forward for a Federal law on insolvency is, in fact, in part based upon the successful operations of the Consumer Credit Counselling Service of Life Line Brisbane. In part, too, the Law Reform Commission's proposal is based on the wage-earner plan system which operates in the United States. I propose to tell you something about both of these systems which are behind the Law Reform Commission's proposals.

#### LIFELINE AND CREDIT COUNSELLING

Life Line throughout Australia has been active in providing assistance for people who get into debt problems. In Brisbane, for example, the Consumer Credit Counselling Service of Life Line has been assisting debtors for many years. This assistance has gone beyond the provision of advice. It also includes the active operation of pro rating arrangements, by which debtors have been able to pay their creditors by a series of instalments. The annual reports of the Brisbane Consumer Credit Counselling Service reveal that during the period January 1975 to June 1982 inclusive, the Counselling Service of Life Line distributed just over \$1.8 million to creditors. At any one time, the Service

handles the receipt and distribution of funds on behalf of some 100 to 110 clients. The success rate of the Service is 70%. Success is defined strictly by reference to perseverance with payment under the scheme until the debts are paid in full. I am attaching to this speech details of the income of the Brisbane service as Life Line and the payments made by it to creditors. A study of the figures shows that Life Line, Brisbane is distributing approximately one-third of a million dollars to creditors each year. The significance of these payments to various classes of creditors can be seen from the figures. The biggest recipients are finance companies (nearly \$500,000 during the period of seven and a half years). Housing organisations come next with more than \$300,000. Banks have received more than \$100,000. The donations given to the Consumer Credit Counselling Service of Life Line Brisbane by commercial creditors from 1975 to 1978 (the period for which information is available) represented an average of only 1% of the amounts that these people received from the Service. The average of donations actually made by banks and finance companies during that period was roughly \$61.00.

In Sydney, the service offered by Life Line to people with debt problems operates under the name Credit Line. It is run by Mrs. Betty Weule and Mr. Dennis Borham, who will be known to many of you. Credit Line operates on a somewhat different basis from Life Line, Brisbane. It handles only the actual payments of debts in something less than 50 cases. In the bulk of cases, once the instalment arrangements have been made by Credit Line, it is left to the client to ensure that payments are made. Credit Line simply asks the creditors to contact the counselling service if payments are not received. I understand that Credit Line has had a 90% success rate with the instalment payment schemes. The result of success is assessed in terms of payment of debts in full. Life Line offers financial counselling facilities not only in major cities like Sydney, Brisbane and Newcastle - but also in Gosford, Ipswich and Toowoomba.

Voluntary organisations such as Life Line have been providing debt counselling and pro rating facilities for non-business debtors over many years. There is no legal authority for the relevant arrangements that are made on behalf of Life Line and the debtor with the creditors. Indeed, section 213 of the Federal Bankruptcy Act 1966 renders void any arrangement involving an extension of composition of debts, which is not in accordance with the Bankruptcy Act. Despite these legal impediments and drawbacks, considerable success is being achieved in making relevant arrangements and in ensuring that debtors can make agreed payments. The number of organisations providing debt counselling services has grown rapidly even since the Law Reform Commission's

report was tabled in 1977. One indication of the development, which has merely kept pace with the extent of the financial downturn, has been the establishment of the National Conference of Financial Counsellors. This Conference is made up of individuals and organisations which provide finance counselling to members of the public. The inaugural meeting of the Conference was held in Sydney in May 1982. A second such Conference was held in April 1983. The service provided by some of the member individuals and organisations includes pro rating of debts with co-operative creditors.

Financial counsellors have been particularly active in recent years, especially in vitally important activities which I commend to interested counsellors in Life Line Newcastle:

- \* They have been assisting enquiries such as those conducted by the Law Reform Commission and other bodies and making a positive input into legal change. This is tremendously important, if we are to develop a legal system that is more sensitive to the predicament of the poor and inarticulate. Such people, because of their problems, are often unwilling or unable to make an effective input into the law reform process. This is where counsellors come in. They can attend public hearings, seminars or write with their experiences to assist in the improvement of the law. A good example of what can be done is the excellent submission prepared by Ms. Gillian Moon on behalf of the Redfern Legal Centre concerning the New South Wales consumer credit legislation.
- \* Counsellors can also disseminate information on consumer credit. For example, the Redfern Legal Centre has published a small brochure outlining interest rates payable on loan transactions with various organisations in New South Wales. It is all very well talking about the market operating fairly for the community. But unless people read the fine print of the Australian Financial Review, they are often quite ignorant of what the market offers. Simple practical aids to consumers can often be a useful means to help poorer people to take advantage of market 'freedom'.
- \* Counsellors are also securing legal advice for and advocacy on behalf of debtors so that they do not have to simply accept a debt but, where they dispute it or dispute its amount, they can put their case before the umpire. Many people are frightened of doing so, because of the fear of courts, the fear of losing their job by going to court, an inability to express themselves in court and a feeling of hopelessness in the machinery of the law. This is where counsellors can help people to get to justice and reduce the feeling of cynicism and resignation about legal process.

- \* Finally, counsellors can help in the receipt and distribution of money on behalf of debtors. This is the function that is performed by some but not all, financial counselling organisations. Life Line, Brisbane is a striking example of what can be done. Obviously, careful auditing and security procedures must be followed. In due course proper training and licencing of financial counsellors will be necessary. But Life Line shows what can be done.

#### DEBT RECOVERY REFORM DURING RECESSION

As I have said, in its 1977 report the Law Reform Commission recommended a major overhaul of Australia's debt recovery process. This overhaul has been continuing under the leadership of Professor David St.L. Kelly, the Commissioner in charge of this project. Nobody can be better qualified to lead the exercise. Professor Kelly first interested himself in debt recovery process in his work for the Poverty Commission in the 1970's. With the assistance of Mr. W.J. Tearle, a dedicated senior researcher with the Law Reform Commission, Professor Kelly who was reappointed to the Law Reform Commission this week, is moving towards a report on debt recovery procedures. We hope to complete the report by the end of 1983.

Obviously, the prolonged economic downturn and the structural changes I have mentioned create special problems for debt recovery reform during a recession. There must be a recognition that, far from being mere matters of legal procedure, debt recovery practices and procedures involve basic questions of social justice for a significant, and increasingly large, section of the Australian community. For the great bulk of consumer debtors, the main trouble they face is not a legal problem but simply the lack of money. In many cases the lack of money comes about as a result of an unexpected, undesired and undeserved unemployment. In some cases it comes about as a result of illness or disability conspiring with the diminished job opportunities of a declining economy. I do not present all debtors as lily white. Some are fraudulent and they should be dealt with by law. Others are grossly neglectful and indifferent to their obligations. But in these hard times, many are simply the victims of social ill-fortune. We must isolate these people. With the assistance of bodies such as Life Line, we must help them to hold their heads high and to have the self-satisfaction and self-esteem that comes from repaying their debts, at least to the best extent they can.

In enforcing a debt, the question arises as to whether creditors should have access to the debtor's property when the decision to grant credit in the first place was based not on assets but on an expectation of future income. A very important question that has arisen in the course of the Law Reform Commission's enquiry is whether the public should subsidise the debt recovery procedures used by institutional credit grantors. Of course, the community must provide courts, judges, magistrates, shorthand reporters and so on. This is part of the basic fabric of society. But hard times have made lawmakers and law reformers concentrate on the costs of justice. Certainly, in the Law Reform Commission's work on debt recovery we are closely examining the cost/benefit equation. How can we design a system of debt recovery which is cost effective and which does not simply compound society's problem by burdening the debtor and society with costly and inefficient legal procedures?

Another matter that has to be considered is the means of providing comprehensive credit information on individuals to potential credit grantors. This is an important new protection for creditors. To some extent it has replaced some of the old sanctions, including bankruptcy. By the same token, whilst credit information clearly has its place, safeguards must be introduced to ensure the privacy of the individuals concerned and the accuracy, up-to-dateness, completeness and fairness of the information that is contained in the credit reference system about them. People should not be hounded forever by a period of credit problems. They should be able to live it down and the law should facilitate this.

The task facing the Law Reform Commission is to devise ways of enabling such money as can fairly be paid by debtors to their creditors to be paid, with the minimum cost to the public, the parties themselves and to innocent third parties, such as employers who may become involved through garnishment procedures and the like.

Although the Law Reform Commission's report was tabled in 1977, no decision has yet been made on its implementation. Unfortunately for this report, it came up for consideration in the Department of Business and Consumer Affairs before four successive Ministers. Just as decisions were to be made, each Minister moved to other responsibilities. When a further decision was to be made, the Department was abolished. Responsibility for these matters is now with the Attorney-General's Department in Canberra. The present Federal Attorney-General, Senator Gareth Evans, was a foundation Commissioner of the Australian Law Reform Commission. He has indicated his intention to proceed promptly with the implementation of the Commission's reports. It is my hope that we will shortly see action. Clearly, the urgency of action has increased rather than diminished.

Meantime, work is proceeding within the Law Reform Commission on the reform of debt recovery procedures. The final report on this second phase of the project will be designed to complement the earlier recommendations and to strike a just balance between the rights of honest debtors and the entitlements of their several creditors.

#### OVERSEAS DEVELOPMENTS

Just as Australia's economic downturn has concentrated our mind on legislative reforms of debt recovery procedures, the same has occurred in the United States and Britain. Recent information from the United States stresses the value of the 'wage-earner' plans administered under the United States Bankruptcy Act. As I have said, these wage-earner plans which have been operating for over forty years in the biggest credit economy of them all, provided the basic legislative scheme for the Law Reform Commission's proposal. In the financial year 1976, creditors were paid the massive total of \$64,872,226 under wage-earner plans. This sum represented 83.14% of the total amount received. It should be remembered that trustees and staff are paid salaries for administering the plans. The proposals put forward by the Law Reform Commission in its report on this subject would almost certainly be more cost efficient than the wage-earner plans in the United States because of the Commission's emphasis on the use of voluntary debt counsellors rather than exclusively on salaried officers. The Commission's proposals envisage that such voluntary counsellors should be entitled to charge 10% from creditors for the operation of their scheme. (ALRC 6, para 105).

In June 1982, the Cork Committee in England published its review of the law of insolvency in England and Wales. Prepared after five years of study, this report also contains numerous recommendations aimed at simplifying insolvency procedures in Britain. The report also seeks to improve the standard of the administration of insolvent estates and to increase the funds available to unsecured creditors of insolvent debtors. Among the major recommendations of the Cork Committee are a number which deal with matters examined in the Australian Law Reform Commission's report. First, bankruptcy would normally be reserved for cases of insolvency where misconduct existed or was suspected. Secondly, discharge would normally eventuate five years from the date of the original order. Most people who now go bankrupt are subject to a different procedure under which their non-exempt assets would be liquidated for the benefit of their creditors. In the absence of a court order for deferment, the debtor would be discharged automatically twelve months from the date of the order. An ancillary order for payment

of surplus income might extend to a maximum of three years, notwithstanding prior discharge. The Cork Committee also called for the establishment of a system allowing for the making of a Debts Arrangement Order. Such an order might be made in the case of debtors whose unsecured liabilities were less than £10,000 and who had no major assets. Such an order could be made on the application either of the debtor or the creditor. It would provide for the realisation of specified assets and for the payment by instalments of the whole or part of remaining debts from future income. Whilst the procedures for obtaining the order bear many similarities to those recommended by the Australian Law Reform Commission, there are a number of differences. Just the same the themes of the approach in the English report are very similar to those in the Australian report:

- \* Each has obviously been greatly affected by the enormous success of the wage-earner plans in the United States.
- \* Each recognises the stigma that still attaches to bankruptcy and the general desirability of keeping honest debtors out of the bankruptcy system, wherever possible.
- \* Each recognises the need for new initiatives because of the economic downturn and the growing problem of honest people going into debt.
- \* Each provides for a moratorium and a system to aggregate debts so that arrangements can be made to pay them off pro rata rather than leaving each creditor to look after himself as best he can.

But the Australian scheme put forward by the Law Reform Commission places more emphasis on prevention and cure. It stresses the essential importance of credit counselling. So often the legal process simply touches the symptoms and fails to treat the disease. The scheme put forward by the Australian Law Reform Commission puts credit counselling as a central feature of the modern system of debt recovery. There are some people who will never be able to handle the modern credit economy. We can do little for them. Creditors must discover who they are and protect themselves through the credit reference system and otherwise. There are many people who have no trouble at all with the credit system, at least whilst they remain healthy and in employment. But in between these two groups there is a small percentage who need a little bit of guidance, a little bit of time, a little bit of understanding and a little bit of advice. And that is where Life Line with its magnificent network of counsellors can come in.

I hope that in due course the scheme proposed by the Australian Law Reform Commission will come into operation. If it does, it will assign a vital place to the network of community helpers, including those in Life Line. In a time when honest people can get into debt, without fault, what is basically needed is a

breathing space and expert advice. Most creditors will co-operate and I believe that the scheme put forward by the Law Reform Commission is as much in the interest of creditors generally as in the interests of debtors.

I close by commending the work of Life Line. It is no exaggeration to say that the Law Reform Commission's work on debt recovery has been inspired and encouraged by the work of Life Line. I know that your services go far beyond the problems of debt. The whole variety of human tragedies and catastrophes and insupportable problems require your patient and thoughtful attention. But the special feature of our time is economic dislocation, structural and technological change and prolonged unemployment. In the midst of great wealth, there are increasing numbers who live in poverty. A just legal system will be sensitive to their predicament. It will arm the helpers with legal means by which they can reach out and offer real, practical help.

I congratulate Life Line: 20 years young.

Table 1  
Life Line Brisbane  
Consumer Credit Counselling Service

Year	Income of the Service (\$)	Amount Distributed to Creditors (\$)
1975	11 930	150 283
1976	10 149	135 332
1977	10 840	170 647
1978	12 445	238 774
1979	not available	313 474
Jan—June 1980	not available	147 151
1980—1981	not available	319 282
1981--1982	not available	333 810
Total		1 808 753

Table 2

Life Line BrisbaneConsumer Credit Counselling ServicePayments to Creditors: January 1975 to June 1982

Type of Creditor	Amount received (\$)
Banks	126 217
Local Government	79 502
Electricity and Gas Suppliers	96 558
Finance Companies	493 322
Insurers	36 062
Queensland Housing Commission and Defence Service Homes	321 832
Building Societies	191 211
Retail Traders	215 931
Sundry	248 118
Total	1 808 753