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AUSTRALIAN INSURANCE LAW ASSOCIATION

AUSTRALIAN CHAPTER OF THE INTERNATIONAL INSURANCE LAW ASSOCIATION

INAUGURAL MEETING, SYDNEY

TUESDAY 8 NOVEMBER 1983

THE INSURANCE CONTRACT AFTER ALRC REPORT NO 20

November 1983

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The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

GOLDEN DAYS

I speak of insurance contracts after report No 20 in golden days for law reform in Federal Australia.

The announcement by the Treasurer and the Federal Attorney-General of the intention of the government to introduce legislation based on the Australian Law Reform Commission's two insurance reports must be put in context. It is the fulfilment of an electoral commitment by the present Federal Government to act more quickly and decisively to consider and bring into operation reforms proposed by the Australian Law Reform Commission. These initiatives are, as you can imagine, welcomed by the Commission. For eight years it has been a dedicated, productive and diligent body. What is more, as I will show, it has adopted techniques that are virtually unprecedented in this country. In each and every project it has tackled, it has brought together the very top talent that our country can offer. In the exercise on insurance intermediaries and insurance contracts, the project was led by a man with one of the finest intellects I have ever encounted : Professor David Kelly. David Kelly has taught me a great deal about the law. The tendency of a training in the common law is to look at the bits and pieces. There is, you will recall, the old joke about our law. The law, it is said, sharpens the mind by narrowing its focus. Well, David Kelly is a person whose mind is sharp but whose focus is far from myopic. He sees the grand mosaic. He never loses sight of principles and concepts. He is alert to our legal history. But he is sensitive to changing circumstances. For all these qualities, he is no legal automaton.

(:he contrary, everyone in this audience who had anything to do with him will aver that he is a most charming and hospitable colleague. He was absolutely the right man to lead the first major review of insurance law that we have ever undertaken in Australia. In his hands the law governing this vital and strategic national industry was entirely safe.

He did not operate alone. On the Division of the Commission working towards insurance reform were lawyers of the highest talent. His professorial colleague, Alec Castles. Three Queen's Counsel no less — leaders of the Bar. Mr Brian Shaw QC, the Chairman of the Victorian Bar; Mr Murray Wilcox QC of Sydney and Mr Bruce Debelle QC of the Adelaide Bar. In addition, the Commission had the participation of Mr John Ewens, a man with unrivalled knowledge of Federal legislation for the simple reason that over nearly 30 years he drafted most of it as First Parliamentary Counsel of the Commonwealth.

As if this was not enough for an incisive and reflective examination of the case books, the text books and the practice of this industry, Professor Kelly gathered around the Commissioners a star-studded cast of consultants from every branch of the insurance industry and from relevant groups outside. I reproach myself that no photograph was ever taken of the many meetings at which we laboured over the reports in their various drafts and over the draft legislation. I doubt if there has ever been collected in a single room in Australia such a concentration of the top talent of insurance knowledge. I tremble to think of the special premium the Law Reform Commission should have paid — but did not — against the exigencies of national loss that would have suffered had a bolt from Heaven struck us all down in the midst of our labours. Heaven was kind. Perhaps even more to the point, Heaven's local representatives have been kind. The reports are, it seems, now to be implemented.

I feel I ought to stress the debt which the Law Reform Commission owes to all of the consultants. It would be invidious to mention any in particular. But I do not see why one should not be invidious from time to time. Accordingly I will give special mention to the peripatetic and irrepressible Frank Hoffman, now a leading light in the establishment of this Association. He was, shall we say, one of the most vocal, voluble and argumentative of our consultants. I also pay a tribute to John Dawson, now Executive Director of NIBA. His remorseless pursuit of Professor Kelly, tracking him down in public hearings and seminars from Perth to Darwin and from Hobart to Brisbane, reminded me of President Reagan in some of his earlier better movies. He has a rare ability to stand back from problems and to see the insurance interests always through the perspective of the public interest. He provided magnificent assistance to the Commission and I pay tribute to him.

Course, the consultants are not to be blamed for the final recommendations. These remain the responsibility of the Commissioners. But clearly, such powerful, articulate and opinionated representatives of the insurance industry in all its branches were bound to have a profound influence on the Commissioners. Also profound was the influence of the public hearings and public seminars which took place in all parts of Australia. The Australian Insurance Institute and State and Territorial insurance institutes helped the Commission by arranging seminars which were held in every capital city after the public hearings. At these seminars, hundreds of members of the insurance industry discussed the Commission's tentative proposals and offered constructive and detailed criticism and comment. In the future, I have no doubt that this will be an important contribution of the new Association as the ongoing work of insurance law reform proceeds. I am also sure that you will agree with me that this is the way fundamental law reform should be done in a democratic and informed community. The old way of secret meetings with a few titled representatives of the powerful, held behind closed doors in Canberra, is now replaced. We may not have produced perfect reports with proposals acceptable to everybody. But I believe the reports are as close to perfection as diligent and painstaking effort could bring them. I am also convinced that the wholehearted participation of so many hundreds of people in the insurance industry and legal profession, high and low, added immeasurable to the quality of the final outcome.

Professor Kelly has received his reward by being appointed Secretary of Law for the State of Victoria. He is the first Professor to be so appointed since Professor Sir Kenneth Bailey was appointed Secretary of the Federal Law Department by Dr Evatt. It is a rare distinction and a mark of his recognition as a practical man of the highest intelligence : a happy mix of fine intellect, good organisation and practical common sense. Mr Shaw has been elected Chairman of the Victorian Bar. Mr Wilcox has been appointed to conduct an inquiry into poker machines in Victoria. Mr Debelle has been appointed Queen's Counsel. You and I must await our rewards in the next life.

I said that these were 'golden days' for law reform. Within the past few weeks, the Federal Government has announced its intention to implement a number of important proposals of the Law Reform Commission:

- Lands Acquisition. In September 1983 Mr John Brown, Minister for Administrative Services, announced the intention of the government to proceed with legislation based on the Commission's report on Lands Acquisition and Compensation in which Mr Wilcox led us. That report had awaited attention since 1980. Legislation will be introduced during this session of Federal Parliament.

. Child Welfare. The Minister for Territories and Local Government, Mr Uren, has indicated the government's intention to press ahead with the Law Reform Commission's 1981 report on Child Welfare Law Reform. The report was sent to the ACT House of Assembly which, late in October, reported in favour of its implementation with only minor variation.

. Defamation. The major report, also led by Mr Wilcox, recommending uniform defamation laws, has been before the Federal and State Attorneys-General since it was written in 1979. Senator Evans has cut the Gordian knot. He has proposed a draft Bill. Naturally, the issue is one full of controversy. Within a week a major meeting of defamation lawyers will address these reforms. But the prospect of securing a single defamation law for the whole of Australia now seems likely. The need for such a uniform law is clear, when one reflects upon national radio, television and nationally distributed print media seeking to comply with eight separate defamation systems.

. Sentencing. Senator Evans has also indicated his intention to move on a major recommendation of the Law Reform Commission on Sentencing reform. I refer to the proposal to establish a Federal Sentencing Council to endeavour to bring greater consistency into the punishment of offenders convicted in different parts of Australia. Disparity of sentences is a great source of concern in the Australian community and, indeed, in the judiciary. Now, it seems, a little science will be brought into the painful and unrewarding task of sentencing.

. Criminal Investigation. The Attorney-General has also indicated his intention to act on the 1975 report on Criminal Investigation. This will not surprise the cognoscenti. That report was written by Senator Evans when he was a Commissioner of the Australian Law Reform Commission. Pride of authorship should ensure that this major piece of legislation, dealing as it does with sound recording of confessions to police and great clarification and definition of the rights of police and suspects, will pass into Federal law.

. Insurance. And finally, there are the announcements concerning the implementation of the insurance reports. The report on Insurance Intermediaries is to be followed by immediate legislation this parliamentary session, enacting the substance of the Law Reform Commission's proposals. The report on Insurance Contracts will be followed by the introduction of legislation. The Bill, when introduced, will lie on the table of the Senate to enable public comments to be made on its detailed terms and conditions. However, the resolve of the government to proceed with major reforms in this area cannot now be doubted.

I ve taken your time to say something about the methodology of the Australian Law Reform Commission and the implementation of its reports for a special reason. The establishment of this new Association is timely because it is clear that law reform is no longer a Cinderella of the Australian legal scene. The institutions of law reform, Federal and State, must be taken seriously. Clearly, we are establishing ourselves as part or the regular machinery of lawmaking. But we are doing so in a special and novel way. The particular feature of law reform bodies is their insistence upon expert and public consultation before they report. It is this that distinguishes them from the Departments of State and other agencies. This methodology is your opportunity. It will not be very satisfactory if opportunities are offered but not accepted : if chances are provided to influence the development of the law but not truly availed of. Only if lawyers, insurers and other organised groups in the community respond to this new method of law making, will we be able, as a country, to maximise participatory law reform. Inevitably, participation in paths such as insurance law reform tend to fall on the shoulders of a few repeat performers : knowledgeable, energetic, selfless or ambitious people who will go that extra mile. I do not deceive myself that this will change with the advent of your new Association. But the Association does provide a focus for the debates of the future. No-one, certainly no-one in the Law Reform Commission, believes that the 20th report and the passage of legislation based on it, will be the last word concerning insurance law reform. On the contrary, numerous matters are left over in the report for future attention. Doubtless omissions and even defects may be found in the legislation as it is tested and retested in the courts. Law reform is not a once-and-for-all process. It is an ongoing effort of adjustment. This Association will have an opportunity to add its comments for the consideration of the Treasurer and the Federal Attorney-General before the final form of the insurance contracts legislation is settled by Federal enactment. But thereafter it will have a task to monitor the legislation. It will have a task to monitor the decisions of the courts, particularly if I can say so, the constantly incisive judgments of Justice Andrew Rogers, who will be addressing this meeting this afternoon. His sensitivity to fair commercial practice and justice in insurance contracts and insurance dealings provide a splendid barometer for the insurance industry, not only in this State but throughout Australia. So there will be plenty to do and the new Association will be a catalyst for action.

INSURANCE CONTRACTS

I now turn to outline some of the principal recommendations made in the report on insurance contracts. The report proposes that outdated English, Federal and State legislation and judge-made law be replaced by a single Federal Act. Among major reforms recommended in the report are:

* introduction of 'standard cover' in a number of areas of consumer insurance to ensure that any derogations from a legislative standard are clearly brught to the attention of people taking out those types of insurance;
* introduction of a legal right to the supply of a policy of insurance and provision that, where no policy is supplied, unusual limitations in cover shall not be binding on the insured;
* modification of the law requiring a person taking out an insurance policy to disclose certain matters to the insurance company;
* modification of the rules which allow an insurer to avoid a contract for innocent misrepresentation;
* provisions dealing with the remedies available to an insurer in the event that the insured breaches the contract, including limitations on an insurer's right to avoid a policy for minor breaches;
* control of cancellation of insurance by limiting the circumstances in which an insurer may cancel the contract, requiring reasons to be given in the event of cancellation and by permitting a reasonable time for substitute insurance to be secured;
* limitation on the rights of insurance companies to recover money paid out, by proceeding against the family or employees of an insured;
* introduction of a right to interest on unpaid insurance moneys from the date on which the money ought reasonably to have been paid;
* provisions rendering ineffective arbitration clauses in insurance contracts;
* recommendation for the establishment of a national policyholders' guarantee scheme to protect people taking out insurance contracts against insolvency of insurance companies;
* provision for the Human Rights Commission to receive complaints concerning discrimination in insurance on the grounds of sex, marital status or physical and mental handicap.

The fundamental need for reform can be simply stated. The basic law of insurance was laid down 200 years ago before the advent of the consumer insurance market of today. Rules were designed to apply to a very different market of parties in a much more equal bargaining position. The need for a review of the law against the realities of today's insurance methods was generally acknowledged. The need, in a vital national industry, for a single Australia-wide law was also generally agreed. It is unreasonable to persist with the confusing mixture of Imperial, State and Federal laws and judicial decisions. The achievement of a single and fairly brief national statute, laying down fair insurance practices, should help the insurance industry to uphold high standards in dealings with its customers.

The major single reform proposed by the Commission's report was undoubtedly the recommendation for the introduction of 'standard cover' in a number of specified areas of consumer insurance. The areas of insurance in which 'standard cover' provisions have been recommended by the Commission include:

* motor vehicle insurance;
* houseowners' and householders' insurance;
* personal accident insurance;
* consumer credit insurance;
* travel insurance.

The report points out that under a system of 'standard cover' every person taking out an insurance policy in the areas specified would, unless given a clear warning to the contrary, be guaranteed coverage against normal expectable risks. The report draws attention to what it describes as 'the wide diversity of terms of insurance contracts offered by different insurers and the unusual terms which sometimes appear in them'. It points out the hardship that insureds may suffer because of their understandable ignorance of these terms. It recommends that these difficulties be alleviated by the introduction of standard insurance cover. The insurer would still be free to market policies which offer less or more than the standard cover. But if it chose to offer less than the standard cover it would be bound to secure the specific approval of the insured to the variation from the standard, otherwise the valuation would be ineffective.

This is simply a recognition of the fact that, whatever the law says, it is impossible in practice to ensure that ordinary citizens purchasing consumer insurance read every detail of their policy. Very few indeed will ever do so. Most simply know that they have a class of insurance and are not aware of the precise terms and exclusions. It may be reasonable to expect businessmen and others with good advice at hand to read their policies. But in domestic insurance, the law should recognise the realities. The law itself should seek to establish the minimum cover which a person will secure, unless he specifically agrees to vary it. In working out what that cover should be, the Commission has had the benefit of intensive discussions with the Insurance Council of Australia and other insurance groups.

The Law Reform Commission's report points out that present Australian law on insurance contracts frequently imposes unreasonable burdens on people taking out insurance. It may provide inadequate protection for such people, even where they act in good faith and suffer a loss. Instances quoted in the report include:

* Disclosing matters to insurer. A person taking out insurance is obliged to disclose to his insurer any fact which a 'prudent insurer' would regard as relevant to the assessment of the risk, even if the person insured has no business knowledge and not the slightest idea of what such a prudent insurer would think relevant. The Commission has proposed that this rule should be replaced by a test which has regard to what the insured knew or what a reasonable person in the insured's circumstances would have known was relevant to assessing the risk.

* Innocent irrelevant breaches. At present where the person taking out insurance is in breach of his contract, an insurance company is often entitled to refuse to pay a claim, possibly placing a large and unexpected loss on the insured, even if the breach caused absolutely no loss to the insurance company at all. The report recommends limitation on the extent to which insurers can rely on innocent mis-statements, particularly where these are not relevant to the loss suffered.

* Forced recovery from friends. An insurer can under the present law of subrogation usually require an insured person to sue even a member of his family or an employee to collect, for the benefit of the insurance company to secure reimbursement of insurance monies paid by it. The report proposes that this right should be abolished so that an insurer is not entitled to recover against an uninsured person who, because of personal or other family relationships should not reasonably be expected to pay. The similar right to recover against employees, though not frequently exercised in Australia, is also proposed to be abolished.

* Insurers becoming insolvent. An insured person may, under present law, suffer a disastrous loss because the insurance company becomes insolvent and is unable to meet a claim. In life insurance there are already protections against this. The Law Reform Commission report recommends that in the field of general insurance a guarantee scheme should be established providing for the payment of up to 75% of claims, limited to set amounts suggested to be $250,000 for each property claim and $1 million for a liability claim.

In making its recommendations on insurance contracts law the Commission was guided by a number of principles:

* the need for modernisation and uniformity in Australian insurance law;
* the assurance of fair competition between insurance companies;
* the promotion of informed choice by people taking out insurance;

* the continued requirement that insurance contracts should be made 'in the utmost good faith' on behalf of both the insurance company and the person taking out the policy;
* the need to remove, so far as possible, unfair burdens on an insured person which are 'vastly disproportionate to the loss the insured's action caused to the insurer';
* the need to avoid catastrophic losses as where an insurance company itself fails.

SECURITY AND SOLVENCY

The last mentioned principle — of the need for security against the collapse of an insurance company itself — is, unhappily, topical. The current issue of the Bulletin contains a detailed examination of recent broker collapses noting that yet another insurance broker, Collington Weber & Carroll, has defaulted with a deficiency of more than half a million dollars and 'with hardly a word of publicity'. The savage cartoon:

> Well, I could sell you another policy which covers the possibility of my being a crook'

will bring no smile to the honourable and decent members of the insurance profession, including insurance brokers. For the good name of insurance, we must seek to tackle these problems. The report on Insurance Intermediaries proposed a regime of broker regulation, insurance and scrutiny. This was the only report of the Law Reform Commission rejected by the Fraser Administration. It is now to be implemented by Federal legislation.

But turn away from insurance brokers and address the problem of insurers themselves. The collapse of the Bishopsgate Insurance Australia Limited Group with the disappearance of nearly $19 million shows, I believe, the urgent need to establish a Policyholders' Guarantee Fund in Australia. Such funds have been established by law in Britain and the United States. The establishment of the similar scheme in Australia was recommended in the Law Reform Commission's report on Insurance Contracts. Unfortunately, the Bishopsgate case is only the latest in a 'sorry history' of failed insurance companies in Australia. In the past decade, 20 insurance companies have failed, resulting in losses to policyholders, employees, investors and reinsurers. In the report on Insurance Contracts, a number of proposals were made for security of cover to protect policyholders. The proposals included:

- increasing the powers of the Insurance Commissioner to require an insurer to reduce its level of investments in particular classes of investments which put at serious risk the insurer's ability to meet actual and potential claims;
- increasing the powers of the Life Insurance Commissioner and the Insurance Commissioner to order an insurer not to appoint or replace any director or manager found guilty of an offence against insurance legislation or in respect of dishonest conduct;
- establishing a policyholders' guarantee scheme in the field of general insurance.

Similar guarantee schemes were adopted in Britain in 1975 under the Policyholders' Protection Act 1975. Schemes are also in operation under State law in all of the States of the United States, providing guaranteed recovery by policyholders making prompt claims. The proposals made by the Australian Law Reform Commission would, if they had been in force, have protected the policyholders who had insurance with Bishopsgate. Unless there are legal rights to claim against reinsurers (which is rare) many people previously covered by Bishopsgate will not be adequately covered in respect of claims.

The Law Reform Commission's proposals were simple. They amount to an adaptation of successful British and United States laws on this topic. In Australia, the only area of need relates to general insurance. There have been no similar collapses of life insurance companies in nearly three decades. But there have been a significant number of collapses of general insurers. The need is clearly established and nowhere more clearly than in the recent collapse of Bishopsgate. The Insurance Council of Australia saw no need for a protection fund. Some commentators thought we should wait for voluntary establishment of such a fund by the insurance industry. Others thought it was not such a bad thing for consumers to suffer when they chose insurers who turned bad. But the facts are plain. There has been a sorry history of collapse of general insurers in Australia. The industry has not established its own voluntary scheme. Most consumers have no ready means of assessing the reliability of insurers. They assume this is done by the Insurance Commissioners. It is ironic that people daily engaged in the business of insurance should resist the idea of applying the insurance principles to try itself. That is what a Policyholders' Guarantee Fund does. It provides a pooling of the risk amongst all insurers. It is a simple case of insurers insuring insurers. It is good for the reputation and good name of the insurance industry. More importantly, it is good for innocent policyholders who are otherwise left stranded with claims against a liquidator and devastating losses where they thought they were adequately covered.

The scheme proposed by the Australian Law Reform Commission suggested that in the event of the collapse of a general insurer, claims could be made against the Policyholders' Guarantee Fund. The scheme recommended by the Commission incorporated the following features:

- protection would be provided for up to 75% of claims;
- protection would not be provided in respect of the return of premiums;
- protection would be limited to a set amount ($200 000 per property claim and $1 million per liability claim);
- a levy on all licensed insurers to cover claim against the fund should be based in proportion to the percentage of the previous year's premium income.

The features of the scheme were designed to impose minimal burdens on insurers, whilst ensuring protection for policyholders who were least likely to be able to suffer losses and who were least likely to be able to make informed judgments on the comparative reliability of competing insurers.

The Law Reform Commission was conscious of the need to prevent undue regulation of the insurance industry. It specifically rejected suggestions for:

- detailed investment controls by the Insurance Commissioners over investment decisions of insurance companies; and
- detailed administration controls over directors of insurance companies.

Both of these provisions apply in Britain. However, the Commission was not convinced that they would be cost-effective in Australia. The need to ensure that law reform is efficient and cost-effective is a matter of great concern to the Australian Law Reform Commission. But the need to ensure equity and the protection of people in an unequal bargaining position is also an important concern.

The Commissioners did not draft legislation on the subject of a guarantee fund. It is not mentioned in the joint announcement of the Treasurer and the Attorney-General. However, I hope that consideration will be given to the recommendation for such a fund both today at this meeting and in the halls of power in Canberra. The issue is an important one. Unhappily, it is not a problem that could be said to be irrelevant for the Australian general insurance industry.

S T ON FRAUD?

Before I conclude, I want to turn briefly to a recent comment published in the ICA Bulletin headed 'ALRC Fuelling Dishonesty?' The subject of fraud, misrepresentation and non disclosure will be dealt with this afternoon by Justice Rogers and his commentators. I will not trespass on their domain. But I do want to meet the suggestion, head-on, that the Australian Law Reform Commission, in its report and proposals, was 'soft on fraud and crime'. That is an unjustified view which will be encouraged by readers of the ICA Bulletin. I do not propose to deal with minor inaccuracies in the article or the use of examples in it that give a misleading impression. Instead, I want to limit these concluding remarks to the major misrepresentations - for misrepresentation is the subject of our story.

First, I hope you will excuse me if I say that the heading in the ICA Bulletin 'ALRC Fuelling Dishonesty?' can only be described as inflammatory, particularly as the article proceeded to link the Australian Law Reform Commission's recommendations on insurance with a likely increase in arson. The headline itself, though expressed with a question mark, implies a deliberate contribution by the Australian Law Reform Commission to fraud in Australia. This is a serious and unworthy suggestion.

Let me quote the main offending paragraphs:

* The ALRC ... proposes changes to insurance contracts which would be in a policy owner's favour to the extent that the validity of the policy would be upheld whether or not there be obvious cases of misrepresentation or non-disclosure.

* What the ALRC is saying in effect is that it doesn't matter if insurance customers provide untruths or withhold essential information when applying for an insurance policy. The attitude seems to be that while fraud is not on, being a 'little bit' fraudulent is.

Now let me explain what the Law Reform Commission said. First, it distinguished clearly between innocence and fraudulence, nondisclosure and misrepresentation. Only in respect of innocent non-disclosure and misrepresentation did it suggest that the validity of the policy should be upheld. The article totally ignores this fundamental point. But that is not the only defect in the ICA Bulletin comment. Even in cases of innocent non-disclosure and misrepresentation, the Commission recognised that an insurer should be entitled to reject a claim to the full extent of any prejudice it had suffered as a result of the non-disclosure or misrepresentation.

Commission felt that it would be quite inequitable in the case of innocent conduct by the insured to deprive him of a bona fide claim and, instead, to give an undeserved windfall to an utterly unreasonable insurer. Again the article in the ICA Bulletin simply ignores the point of the Commission's remarks. It is true that the Commission also recommended a change in the test of materiality. The Commission proposed that the test should no longer impose an obligation on an insured to disclose to his insurer any fact which a 'prudent insurer' would regard as relevant to the assessment of the risk. This test ignores the fact that, in the circumstances of modern insurance, a person insured may have no business knowledge and not the slightest idea of what a prudent insurer would think to be relevant. As I indicated earlier the Law Reform Commission proposed that the rule should be replaced by a test which has regard to what the insured knew or what a 'reasonable person in the insured's circumstances' would have known was relevant to assessing the risk. I believe that there are many in the community, including a great number of responsible people in the insurance industry, who would concur wholeheartedly in the need to abandon the present law on materiality and to express the test in terms of the Law Reform Commission's recommendations.

I now turn to the second aspect of this matter : fraudulent conduct by the insured. The article in the ICA Bulletin said that, under our recommendations, the validity of the policy would be upheld. What is the truth of the matter? The truth of the matter is that we said quite the contrary. We said that the policy would be void. For reasons set out in the report, we suggested that, in some cases, a court might adjust the rights of the parties, despite the avoidance of the contract, where it would be unjust and inequitable not to do so. The court would be specifically required to take into account the need to deter fraudulent conduct. Looking at things practically, very few applications for relief would ever be made. Fewer still would ever be successful. Yet what the ICA Bulletin alleges is that the ALRC said that 'it doesn't matter if insurance customers provide untruths or withhold essential information'. This is palpable nonsense and just a plain mis-statement of what the Law Reform Commission has said. There may be some insurers who believe that the smallest dishonesty warrants in every case punishment by catastrophic losses that can follow the deprivation of insurance. Yet I believe that such an approach involves the use of a heavy-handed weapon where the law's reaction should be somewhat more sensitive, though always discouraging fraud. Under the Law Reform Commission's proposals:

* the policy is void;
* the insured must apply to the court;

* the court is specifically reminded of the public policy of deterring fraudulent conduct;
* the onus is on the insured;
* but the court is directed to address the justice and equity of the circumstances.

I know enough about many of the honourable insurers of Australia to know that this is already an approach frequently taken by insurers themselves. But it is not universal. And the issue is whether the law should reflect realities and equities or persist with a heavy-handed approach in every case, no matter what the circumstances, because of the spectre of fraud.

I hope, for everybody's sake, that others who comment on the Law Reform Commission's reports, whether in writing or orally at this seminar today, will be careful in their reading of the reports and more circumspect in their comments. Only then can governments be expected to give fair consideration to competing views and to make informed decisions on the basis of the public good. The article in the ICA Bulletin was a case of innocent misrepresentation of the Commission's proposals. By all means let us, as a community, condemn fraud and dishonesty. Let us study its incidence and design laws to respond to it. But it is unacceptable to assert, without any basis, that the Law Reform Commission is soft on fraud. Slipshod commentary such as appeared in the last issue of the ICA Bulletin does nothing for the good name of the insurance industry or for the promotion of rational debate about improvement of our society and its laws.

I have now traversed the subjects that were assigned to me. There is no substitute, in the discussion of this important and complex area of the law, to examination of the precise recommendations of the Law Reform Commission. Accordingly, there is no substitute to the purchase of the Commission's report. In the light of the government's intended action, it is now highly relevant, indeed vital, that the insurance industry and the legal profession should obtain those reports and familiarise themselves with the recommendations put forward.

A national industry so important as the insurance industry deserves national legislation. The Constitution envisaged it. Now, at last, we are, it seems, to have it. The existence of the basic rules in a single Federal statute will itself be a major contribution to efficiency and equity in insurance operations in Australia. Efficiency and equity were the guiding stars of the Law Reform Commission. They should be the motto of this new association.