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AUSTRALIAN INSURANCE LAW ASSOCIATION

AUSTRALIAN CHAPTER OF THE INTERNATIONAL INSURANCE LAW ASSOCIATION

INAUGURAL MEETING, SYDNEY

TUESDAY 8 NOVEMBER 1983

LAUNCH OF AUSTRALIAN INSURANCE LAW ASSOCIATION

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

MODEST INTRODUCTION

As I stand here, with the charter to launch this Association and with the prospect of having a second, substantive speech to give, I feel most unworthy. This time next week I will be in the august presence of the Honourable Gough Whitlam AC, QC, former Prime Minister and now leader of our Delegation to UNESCO. I must join that D el egation in the frosty early winter in Paris. I mention Mr Whitlam because he and Dame Edna Everage are the only 'launchers first class' that I know of. Mr Whitlam launched a book for the redoubtable Phillip Adams. Within days of the launch, the book sold out, the government changed and Mr Whitlam was assigned to his present high office. I expect no such rewards for this speech of mine.

I wondered why the organisers had chosen me. Why not Dame Edna, who always feigns to read launching speeches from a sleeve cuff, as if cheating in an examination. The last thing I launched was a book on sex education — something that would be monumentally irrelevant to the audience I see before me. I must therefore be careful not to give the same speech. Giving the same speech is always a danger for the Speaker of the Year. I was so named by Rostrum last week before a distinctly bemused collection of Sydney citizens and pigeons in the Amphitheatre in Martin Place. I'll warrant that not many of you have performed in an amphitheatre. Doubtless, on occasion, you have felt like the Christians being fed to the lions. Perhaps that is how you look on the work of the Law Reform Commission. I shall hope to dissuade you; but in the next session.

And then the penny dropped. The invitation came from Michael Gill who, in earlier times showed the impeccable good sense to brief me constantly in insurance matters. My credentials were a sound knowledge of insurance law and an experience on both sides of the insurance fence fighting for them and against them. In my practice as a solicitor I acted over five years for some of the finest insurers operating in our country. Prudential, Eagle Star, South Australia, Manufacturers' Mutual, Century and others, all brought me into the special world of insurance law and into contact with the fine, honourable and highly intelligent people to be found there. At the Bar, Michael Gill kept my knowledge of insurance law shining and bright by a seemingly endless series of the finest points of obscure policies and even more obscure judicial decisions. How many times I advised that this or that claim could be rejected only to be told that the insurer thanked me for the advice but felt honour-bound to pay in the circumstances of the case. There is law and there is honourable conduct. The two generally coincide. Happily, in the insurance industry in Australia, I often found evidence of the dominance of perceptions of honour and fair dealings.

Little did I imagine in those far-off days that the hand of fate would place me in a position that I could contribute, with colleagues from the legal profession and from all branches of the insurance industry, in the clarification, simplification and modernisation of Australia's insurance laws.

The work of the Australian Law Reform Commission, as I will outline in my substantive and non-ceremonial speech, brought me into the closest possible contact with insurers throughout Australia, their industry associations, the Insurance Institute and many of the fine legal practitioners whose daily task is that of advising the industry. As I shall mention, we have the advantage of a remarkable team of consultants, drawn from all parts of the country and all aspects of insurance concern. Amongst our consultants were judges, lawyers and at least three of the key people responsible for organising this new Association — Sid McDonald, Stephen France and Frank Hoffmann. It is possible, though I will not claim it, that the action of the Law Reform Commission in bringing together such talents people, requiring their concerted attention over three years to the problems and opportunities of insurance law reform, demonstrated the need for a special body such as this Association.

MULTIDISCIPLINISM

One of the best features of the operations of the Australian Law Reform Commission, as it has developed, has been its emphasis upon multidisciplinary participation. All of the Commissioners, save one, has been a lawyer. Appointment of Commissioners is in the gift of the government of the day. But the appointment of consultants is very largely under the control of the Commission itself. In this way, we have been able to bring together work on the improvement of the Australian legal system, people of varying background and expertise that goes far beyond the narrow confines of the law. On privacy, we have had the help of computer experts; on human tissue transplants, we have had the unstinting assistance of surgeons, theologians and philosophers; on the recognition of Aboriginal customary laws, our help has ranged from full-blood tribal Aborigines to highly disciplined anthropologists. In our work on defamation reform, we drew on all sections of the media industry. The list of the consultants who have participated in the work of the Australian Law Reform Commission reads like a Who's Who of the intelligentsia of this country : not necessarily people with honorifics and public fame. But good citizens, at the height of their powers, devoting some of their time to the improvement of our society through the reform of its laws.

It is for this reason that I am devoted to the principle of multidisciplinary activities. The interaction of people of different backgrounds is a wonderful thing to behold as every consultant to the Law Reform Commission will attest. There is a special chemistry in the interaction of minds of high intelligence whom fate has committed to intersecting but differing paths. That is why this Insurance Law Association promises much. It will throw together people who rarely meet each other except in a litigious or adversarial artificiality. It will give the experienced and knowledgeable a forum in which to shine. It will give the bright with new ideas an opportunity to show off their wares. It will provide the chance for problems to be ventilated and hopefully solved. In the future, a clearly organised voice will be found for the mutual interests of lawyers, insurers and others properly concerned in the directions of insurance law and insurance law reform.

THREE NOTES OF WARNING

I would add three notes of warning drawn from my own experience. None will be news to this gathering. The first is that we should be cautious about efforts to sink strongly held differences. One judge I know, who presided over an executive body, told me with pride that he never allowed dissents; that they weakened reports and recommendations and that they should be circumvented at all costs. I disagree profoundly with that view.

The Law Reform Commission's reports bear witness to numerous points of disagreement. For example, in the report on insurance contracts, I voiced my implacable reservations about the principle of average. But I did not carry the day and I respect the right of others to have a differing view. I even concede the faint possibility that they may be right. I hope, and expect, that in this Association there will be many voices. And that there will be no endeavour to suppress new ideas, so that they flourish or fall on their merits, whether they be deemed extremely radical or extremely conservative. It is useful to have an Association that can speak to government and to the community with a single voice on insurance law. But it is still more important that the legitimate right to differ and the fierce protection of that right should always be respected in a free society.

My second point is an extension of what I have said about multidisciplinary activities. Inevitably, the Association will tend to be made up of insurers, brokers, loss adjusters and their personnel and lawyers — generally those who appear for insurers. If this body is to become a vigorous institution for all points of view, it is vital that it should recruit the people and their representatives locked in contest with insurers and their lawyers. Otherwise, the dull uniformity of a single perspective will be the fate of the Association. I realise that it is easier to expose this problem than to solve it. But I also remember enough of my experience in practice to know how the camps are divided and many members never come together. Let this Association invite the critics of insurance and of insurance law to join and fully participate. Let it seek out a spokesman for the union and others who will perceive another point of view. Just as in the judiciary there is room for a healthy mix, at the top, of reformists and traditionalists, so in this Association it is vital that those two perspectives should be brought together for the dynamic interaction that will turn the Association from a special interest lobby group into an intellectual society whose opinions are worth having.

My third point is that if this organisation is so bold as to use the word Australian and call itself the Australian Insurance Law Association, it is vitally important to ensure that it does not become a captive of the Sydney insurance industry. It must bend its efforts to secure the co-operation of insurers, lawyers and others from the four corners of this continent.

CONCLUSIONS

I will not regale you with my observations about developments overseas, about the developing area of product liability and the work of the International Insurance Law Association in conjunction with the EEC working party on that subject. I will not even advance the merits of the Law Reform Commission's work and the usefulness to the Commission that I see in this Association. These are matters that can be left to the working session.

Speakers of the Year tend to go on. At this point at least, my function is mainly decorative and ceremonial : something judges of the British tradition are entirely used to. I have done everything that is expected in a launching speech. I have mentioned sex. I have ventured humour. I have added a touch of serious content. And I have run out of time.

Without more ado, I therefore have much pleasure in launching this Association. May it flourish as an honourable society worthy of the best that the law and insurance stand for.