FINANCIAL COUNSELLORS ASSOCIATION

THIRD NATIONAL CONFERENCE 1984

MONDAY 19 MARCH 1984, MT EVELYN, VICTORIA

DEBT REFORM - REALITY OR MIRAGE?

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Hon Justice MD Kirby CMG
Chairman of the Australian Law Reform Commission

DEATH VALLEY

The time immediately after lunch is what we people on the speaking circuit call 'death valley'. It is a time when post-prandial fatigue sets in. Even in the bracing air of the Dandenongs, the audience is likely to drop off unless the speaker is scintillating and the topic is exciting.

I am disqualified from the first requirement by judicial office. As you are aware, judges may be almost anything; but they must never be verbally exciting. And as for the topic of debt recovery, it cannot be said that reform in our country is proceeding at a helter-skelter pace.

Just the same, things are happening and largely because of the unremitting efforts of two distinguished Australian lawyers who I am pleased to call colleagues. I refer to Professor David St L Kelly and Mr William Tearle. Professor Kelly was one of the foundation full-time Commissioners of the Australian Law Reform Commission. He came to us in 1976 from a quiet life in what I believe is called the Athens of the South — I refer to Adelaide and its Law School. He immediately threw himself into prodigious activity leading to conclusion a number of major reports, including the first national review of insurance contract law in Australia and the law governing insurance intermediaries. Legislation based on these reports is now before Federal Parliament. When enacted, the legislation will be a major reforming measure and an important monument to David Kelly's work in law reform.

Of more relevance to financial counsellors was another project he tackled on the reform of the law governing consumer debtors. In this effort he was assisted by Bill Tearle. Professor Kelly was uniquely well qualified to address this long-neglected area of the law. In the poverty inquiry he had been first alerted to the injustices, inadequacies and inefficiencies of debt recovery process in Australia. He translated his knowledge in that inquiry to his work as a law reform Commissioner. The result was an important report, ALRC 6, Insolvency : The Regular Payment of Debts. That report is the starting point of the talk this afternoon. Other participants in the report included Mr John Cain, also a foundation Commissioner of the Australian Law Reform Commission and now Premier of Victoria. Directing the research was Mr George Brouwer, now Head of the Premier's Department in Victoria. As you are doubtless aware, Professor Kelly has now been appointed as Secretary to the Law Department of Victoria. Little by little, the Australian Law Reform Commission is fulfilling its ambition. Today Victoria. Tomorrow the world.

The purpose of my address is to:

- outline some of the major proposals put forward in our report;
- indicate the way in which credit counselling can be effective and useful both for creditors and debtors;
- outline some of the specific ways in which credit counsellors can take an active part in assisting their clients;
- indicate the progress or lack of progress on the Commission's report;
- outline some of the highlights in debt recovery law that have occurred in the past year;
- describe for you the current work of the Law Reform Commission in stage 2 of its project, namely reform of debt recovery laws;
- inform you of the important new inquiry which Federal Attorney-General Evans has asked the Commission to undertake in respect of insolvency law generally and business insolvency;
- finally, I will offer a few prognostications for the future.

THE 1977 REPORT

The reference on the subject of debt recovery law was actually given to the Commission in 1976 by Attorney-General Ellicott. The report was, as I have said, produced in 1977. Unfortunately, during the interval between the delivery of the report and the present time, the problem has not gone away. On the contrary, it has become 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 proposals 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 lastmentioned 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.

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 also 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.

CREDIT COUNSELLING AT WORK

The Law Reform Commission was not ignorant about the important work already done by credit counsellors throughout Australia. In particular, we were fully alive to the important work done by various branches of Life Line. 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 1983 inclusive, the Counselling Service of Life Line distributed just over $2.1 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 perserverence with payment under the scheme until the debts are paid in full. A study of the figures shows that Life Line, Brisbane is distributing approximately one-third of a million dollars to creditors each year. The biggest recipients are finance companies (nearly $570 000 during the period of eight and a half years). Housing organisations come next with more than $390 000. Banks have received $150 000. 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, of which Life Line is but one, have been providing debt counselling and pro-rating facilities for non-business debtors over many years. There is no legal authority for the arrangements that are made by these organisations. Indeed, s 213 of the Federal Bankruptcy Act 1966 renders void any arrangement involving an extension or 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 has been the establishment of this national conference. I warmly welcome the vigorous activity of the conference and look forward to even closer association between the conference and the Law Reform Commission's work on debts reform, in the years to come.

THE WORK OF COUNSELLORS

In recent years, financial counsellors have been providing very important services to the community:

- Assisting law reform. They have been assisting inquiries 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.
- Disseminating information. 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'.

- Legal advice. 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.
- Money distribution. 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. Obviously careful auditing and security procedures must be followed. In due course proper training and licensing of financial counsellors will be necessary. But a number of financial counsellors have shown what can be done, admittedly with some dangers having regard to the present language of the Bankruptcy Act.

DEBTS DURING RECESSION

Obviously, the prolonged economic downturn that has occurred in the Australian economy since 1977 when the Law Reform Commission reported, has created special problems for debt recovery reform. 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 neglectful and indifferent to their obligations. But in these hard times, many are simply the victims of social ill-fortune. We must identify these people. With the assistance of financial counsellors, 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. Another 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.

Meantime, work is proceeding within the Law Reform Commission on the reform of debt recovery procedures. This is the second stage of the Law Reform Commission's project. And it is still current. A discussion paper on debt recovery law reform was released in 1978. It outlined the Commission's tentative views on the subject. Although work on the second stage of the reference was suspended for a considerable time, it is now actively revived, since Professor David Kelly was reappointed as a member of the Commission in 1983. I am sure that during the course of this conference, Professor Kelly and Mr Tearle will wish to discuss with you the results of the empirical research in which they have been engaged concerning the present operation of Australia's debt recovery laws. That research has involved the use of computer analysis of debt recovery process in order to see how the present laws work and in order to test various hypotheses for their improvement. The final report on this second stage of the Commission's work will aim at complementing the recommendations in our sixth report. It will seek to strike a just balance between the rights of honest debtors and the entitlements of their several creditors. 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.

THE THIRD PHASE : INSOLVENCY

Now, the Law Reform Commission is about to enter a third phase of its work on debt law. Federal Attorney-General Evans has given the Commission a major new reference on the law and practice of insolvency. It is not limited to non-business debtors, as the first two stages have basically been restricted to small or consumer debtors. It is concerned with the insolvency of companies as well as the insolvency of natural persons. In fact, it amounts to the first major review of bankruptcy law in Australia since the report of the Clyne Committee in 1965. It will be the first thorough review of insolvency aspects of company law. In conducting its review, the Law Reform Commission is required to consult closely with the new Companies and Securities Law Review Committee.

When he announced the inquiry, Attorney-General Evans stressed the importance of the fact that bankruptcy law and company law would be considered simultaneously:

> The bankruptcy and winding up laws have a common ancestry which continues to be reflected in the way many company law provisions adopt or are modelled on the bankruptcy provisions. It is often the same individuals who operate as bankruptcy trustees and company liquidators. It is, therefore, desirable that procedures be as similar as possible.

Specifically, the Attorney-General invited practitioners in the field to make submissions on the deficiencies and inequities in current laws. He said that he had already received a number of such submissions himself. In view of hard economic circumstances, there seems little doubt that this is a timely examination of an area of the law sometimes neglected for headier stuff.

This reference will require the Commission to re-examine the philosophy and provisions of the Bankruptcy Act 1966. Both the philosophy and the terms of the statute can be traced directly to the English laws of the 19th and early 20th centuries. In it sixth report, the Commission had urged such a general review of bankruptcy and insolvency law specifically because of recent major studies undertaken in the United States, Canada and the United Kingdom. A number of the considerations which led the Commission to make its recommendations in its sixth report were equally applicable to business bankrupts but had to be limited, in terms, to small or consumer debtors because of the limitations of the terms of reference. The Commission suggested that a major inquiry into bankruptcy and insolvency laws would cover:

- business and non-business debtors;
- exemptions, especially perhaps the bankrupt's interest in the matrimonial home;
- a simplified administration of estates of deceased insolvents; and
- a declaration of insolvency for non-business debtors.

The terms of reference for the latest inquiry into the general law of insolvency require the Australian Law Reform Commission to have regard to the important recent report of the Cork Committee in England.

THE CORK REPORT

The report of the Cork Committee was published in June 1982. It followed five years of study and because of the similarity of insolvency laws and procedures in Britain and Australia, much of what Sir Kenneth Cork and his colleagues had to say is of direct relevance to us in Australia.

The Cork Report contained numerous recommendations aimed at

- simplifying insolvency procedures;
- improving the standards of administration of insolvent estates; and
- increasing the funds available to the unsecured creditors of insolvent debtors.

Among the major recommendations of the Cork Committee are a number dealing with matters examined in the ALRC 1977 report:

- it proposed that bankruptcy should be reserved, basically, for cases of misconduct;
- discharge from bankruptcy would normally follow automatically five years from the date of the order;
- new procedures would be introduced for most people who presently go bankrupt under which their non-exempt assets would be liquidated for the benefit of their creditors;
- in the absence of court orders for deferment, a debtor would be discharged automatically 12 months after the date of an order for the liquidation of assets;
- an ancillary order for payment of surplus income might be made extending to a maximum of three years, notwithstanding prior discharge;

. a system allowing for the making of a Debts Arrangement Order, outside bankruptcy, should be established. Such an order might be made in the case of debtors whose unsecured liabilities were less than ten thousand pounds and who had no major assets. It could be made on the application of either a debtor or creditor and provide for the realisation of specified assets and the payment by instalments of the whole or part of the remaining debts from future income.

English action. The similarity between the proposals for a Debts Arrangement Order and the ALRC proposal for a 'regular payment of debts scheme' is no coincidence. It can be traced to the influence on both inquiring bodies of the 'wage earner plans' which have been operating in the United States for 40 years. In the financial year 1981, creditors were paid the massive total of $131 751 943 under wage-earner plans. This sum represented 80% 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.

One of the specific matters of controversy in the Cork Report was the recommendation that 'the outmoded concept of the act of bankruptcy' should be abolished. Instead, the Cork Committee recommended the introduction of a procedure for creditors to institute insolvency proceedings against any kind of debtor, individual or corporate. The report noted that bankruptcy and winding-up are being resorted to as an effective means of enforcing money judgments. The report pointed out that proceedings are often brought on a one-to-one basis between a specific creditor and the debtor and not necessarily for the benefit of all creditors. It urged that every encouragement should be given by the law to facilitate the payment of the debt. Following the abolition of the concept of an 'act of bankruptcy', the Cork Committee proposed that no creditor could rely on the debtor's failure to satisfy some other creditor. Nor would there be provisions for relation back — the means by which former property is sometimes secured for distribution to creditors. Cork proposed that the sole ground of an insolvency application should be that the debtor was unable to pay his debts.

In October 1983 the then British Secretary of State for Trade and Industry, Mr Cecil Parkinson, announced that a White Paper on insolvency law reform would be published with a view to reforming legislation in the 1984-85 parliamentary session. That White Paper has now been released. It is reported to contain proposals for action against delinquent and irresponsible debtors, through the extension of disqualification powers and

attachment of personal liability. Under the proposals, a director who continues to trade when he knew (or should have known) that there was no chance of meeting the company's debts commits a new civil misdemeanour of 'wrongful trading'. Upon conviction, a director may be found personally liable for some of the company's debts, and may be banned from managing a company for up to 15 years. The proposals contain an incentive for company directors to choose voluntary rather than compulsory liquidation. Upon compulsory winding up, all directors are to be banned from managing a company for three years.

Up-to-date information on the state of the art in debts law reform and insolvency review in England is available to the ALRC because of a recent visit to Britain by Mr William Tearle. Mr Tearle, ALRC Senior Law Reform Officer, delivered a paper on the Australian proposals concerning the law of consumer indebtedness to a conference recently held at the University of Newcastle Upon Tyne, sponsored by the UK Social Science Research Council. The conference brought together scholars working in the area of debt and debt enforcement. Of particular interest to participants was the empirical work done by the ALRC in stage 2 of its debt recovery project. After the Newcastle conference, Mr Tearle visited the English and Scottish Law Commissions and presented a seminar on law reform developments in Australia at the Centre for Socio-Legal Studies in Oxford University.

THE YEAR IN RETROSPECT

Now, I realise that not all wisdom is concentrated in the Australian Law Reform Commission. Nor do all developments relevant to debt recovery law reform emanate from our office. There are a number of developments of keen interest to financial counsellors that have occurred in the past year. Doubtless other speakers will report in detail. But the following developments should be specifically noted:

- Tasmania. Past conferences of the Financial Counsellors Association have concentrated on activities on the mainland. Indeed, for the 1982 conference, the organisers were not able to locate any financial counsellors in Tasmania. 1983 saw the establishment of 'Debt Help', a budget and financial counselling service in that State. It is funded jointly by the Tasmanian Department for Community Welfare and the Anglican Church.
- Consumer Advocacy Centre. In August 1983 the CAC was opened in East Melbourne. It is an umbrella organisation for groups concerned to further the interests of low income consumers by advocating:
  - consumer rights and protections and the powers to enforce them;
  - expansion of the provision of goods and services; and

- development of resources, links and information exchange with local, State and Federal bodies.

Housed in the Centre are:

- Consumer Credit Legal Service;
- Financial Counsellors Association;
- Consumer Buying Advisory Service.

- National Legislative Task Force. This was formed from among the financial counsellors after the 1983 Adelaide conference. It is preparing a national package of laws on consumer matters, including debt recovery and insolvency. Obviously the work of this Task Force will be of the greatest importance for the ongoing work of the Law Reform Commission in stages 2 and 3 of its insolvency project.
- Formation of National Association. On the agenda for the 1984 conference is the question of the foundation and constitution of a national body to represent financial counsellors. We in the Law Reform Commission will be watching this development with the keenest of interest.
- Victoria : imprisonment of debtors. On 21 February 1984 Attorney-General Kennan of Victoria announced amendments to the Imprisonment of Fraudulent Debtors Act. These amendments will remove the threat of imprisonment from those who have no money with which to pay their debts. This procedure, so often criticised as a misuse of criminal process in aid of civil debt recovery, will be replaced with instalment orders, as provided for in other States.
- Western Australia : criminal orders. Finally, some of you will have heard the recent news item under which a magistrate in Western Australia refused to make orders in a criminal case for the repayment of sums said to have been illegally removed from large corporations. The magistrate in question expressed the view that if these corporations wished to pursue the sums in question, they should do so in the civil courts and not use criminal process for the purpose of debt recovery.

OTHER CREDIT LAW DEVELOPMENTS

Quite apart from these developments of special concern to financial counsellors, there have been numerous other important developments in the law governing credit and finance in recent months:

- Uniform credit laws? At the end of 1983 the New South Wales Government announced legislation aimed at facilitating the introduction of uniform credit laws in Australia. Mr Landa announced details of the legislation, which was to come into force in February 1984. Amongst features of the new laws are the provision for licensing anyone offering consumer credit; control of interest rates on extended

credit less than $14 000; rationalisation of credit agreements and the replacement of hire purchase and moneylending statutes; and changes in the position of legal ownership of goods bought under credit sale. The 'tough' new credit laws were welcomed by the Sunday Telegraph (18 December 1983) which stated wrily that they heralded 'good news for consumers. Many people will say not before time — after all they were promised eight years ago!' An editorial in the Sydney Morning Herald (19 December 1983) traced the tortuous path of moves towards uniform credit law reform in Australia since the Molomby Report was made to the Victorian Government in the 1960s. The Herald pointed to the earlier efforts of former Consumer Affairs Minister Syd Einfeld who had secured the passage of the Consumer Credit Act 1981 with a view to giving 'the process of reform a kick along'. It is perhaps a reflection of the complexity of the law and of the powerful lobby interests that the final legislation has yet to be passed. Australia still, however, waits for truly uniform credit laws, uniform law reform not being one of the nation's long suits.

- New cheque laws. Another much delayed reform made some progress in February 1984. On 23 February 1984 Attorney-General Evans circulated a draft Bill designed to codify the law on cheques in Australia. The object of the legislation is to update the uncertain application of laws on bills of exchange. It is also to implement some of the as-yet unattended recommendations of the Manning Committee which delivered its report 16 years ago. Among the principal clarifications or changes proposed by the draft law is the provision that cheques will not be invalid because undated, post-dated, ante-dated or bearing the date of a Sunday. Simplification of crossings will be provided and provision made for the presentation of cheques by collecting banks to the paying bank by transmission of particulars by computer, telex or telephone rather than physical movement of the cheques. It has been suggested that this reform alone will save Australia's four biggest banks in the order of $350 million a year (Age, 24 February 1984, 5). If this is true, it shows the wastefulness of delay in some areas of law reform and the urgency of providing swifter attention to reform reports.
- Martin report. On top of Senator Evans' announcement was the tabling of the Martin Report on the Australian Financial System by the Federal Treasurer, Mr Paul Keating. According to the National Times (24 February 1984) the report sets the scene for 'a banking revolution' in Australia. The thrust of the report is the suggestion of deregulation of banking, specifically the suggestion of the removal of interest rate ceilings and limitations on short-term deposits by Australian banks. These limitations have led to the strong growth of merchant banking in Australia. Removal of the restrictions would, it is suggested, remove much of the impetus for non-bank financial institutions. Amongst other things

acknowledged in the Martin Report is the ownership by banks of the cheque clearing system and the suggestion of access to that system by non-bank financial institutions under the supervision of the Reserve Bank. Building society and credit union spokesmen have voiced anxiety about the proposals. Writing a financial editorial in the Sydney Morning Herald (2 March 1984) John Short predicted that many of the key proposals in the Martin Report would be strongly opposed by people in the present Federal Government.

Electronic fund transfers. The introduction of electronic funds transfers (EFT) in Australia is now well advanced. According to reports in the Australian Financial Review (15 February 1984) the Reserve Bank of Australia is seeking to promote the efficiency of EFT in the Australian financial system. However, EFT has clear legal and social implications. In the United States a Presidential Commission into EFT proposed numerous changes to United States Federal law which were subsequently adopted to preserve the privacy of credit customers and the protection of their civil liberties. With the introduction of EFT and cashless forms of credit, computerised records of transactions could disclose not only the physical movements of the customer but also buying patterns and preferences. Specific legislation, as in the United States, will be required in Australia. In the meantime, attention should be paid to the Law Reform Commission's proposals for general protections for privacy contained in its 1983 report on Privacy — also a project led in its early phase by the redoubtable Professor Kelly.

HELP FOR THE NEEDY

This brings me to the end of my review. I have outlined for you the work of the Law Reform Commission relevant to the future role of financial counsellors. I have told you of the practical work which financial counsellors are already doing in Australia and the additional tasks which they are now assuming in defence of the small but honest debtors who are often the innocent victims of our times of economic recession. I have explained to you the three phases of the Law Reform Commission's work on insolvency law reform. Federal Government decisions are awaited on the first phase. Work is actively engaged on the second. The new, general reference on insolvency is about to begin.

I have described how important developments are occurring both overseas and in Australia. We must be alert to these developments, for this is a busy time for legal and financial changes affecting financial counsellors.

So far as your role in all this is concerned, I have suggested ways in which you can be of help. That help can be offered both at the micro level (assisting and counselling particular debtors) and at the macro level (assisting bodies such as the Law Reform Commission to develop new laws that will be more appropriate to their predicament). In the Law Reform Commission, we need your help not only in the debt recovery reference but in other references which are relevant to people in debt, such as the recently completed inquiry into insurance and the current inquiries into class actions and the reform of the law governing the distribution of matrimonial property on divorce.

As Professor Kelly said in the exhortation with which he closed his address to your 1983 conference, yours is a great responsibility. The interests of judgment debtors in Australia, he declared, had been poorly represented until relatively recently:

> They are not typically an articulate, well-educated group. Even if they were, the nature of their problems and of their perception of those problems is such as to inhibit free discussion. Financial counsellors are clearly the best, if not the only, hope of continuing active and responsible representation for judgment debtors.

I applaud the work you are doing. I look forward to your further help. I especially applaud the efforts you are devoting to offering a national voice on this subject. Increasingly, with the utilisation of the insolvency powers, it is likely that national laws and procedures will be developed. The Attorney-General, the Law Reform Commission and the Parliament will need your advice and assistance in that process of development. There will be few other voices that will be raised for the group described by Professor Kelly. There will be strong and powerful voices raised in other interests. I encourage you in your work. It is a work of kindliness, compassion and good old commonsense in a world where these qualities are sorely needed.