AUSTRALIAN INSTITUTE OF CREDIT MANAGEMENT

NEW SOUTH WALES DIVISION

STATE CONFERENCE, 4 APRIL 1981

TERRIGAL, NEW SOUTH WALES

LAW REFORM, CREDIT LAWS AND CONTEMPORARY SOCIETY

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

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INTRODUCTION: THE AUSTRALIAN LAW REFORM COMMISSION

I am delighted with this further opportunity to meet members of the New South Wales Division of the Australian Institute of Credit Management. This opportunity continues the dialogue which has existed between the Australian Law Reform Commission and your Institute for almost the entire life of the Commission. One of the first tasks given to the Commission (by Attorney-General Ellicott) was the task of re-examination of the laws governing consumer indebtedness in Australia. Under the direction of my colleague, Professor David St.L. Kelly, the Commission produced its report, Insolvency: The Regular Payment of Debts (ALRC 6). Subsequently, in further pursuit of the reference, the Commission produced its discussion paper No. 6 on Debt Recovery and Insolvency. That discussion paper proposed important changes in the laws by which we recover debts in Australia.

In the course of developing its proposals, the Commission has had great assistance from your Institute and from the credit and finance industries. One of the consultants, appointed with the approval of the Attorney-General, in the Insolvency report, was Mr. John Llewellyn, Executive Director of the Australian Finance Conference. The Institute has taken a keen part in the debate about the future direction of Australia's debt recovery laws. It organised seminars throughout Australia to permit members of the Institute and others to express views on the law reform proposals advanced by the Commission.

I have been invited on this occasion to speak of law reform in contemporary Australian society. I propose to do that. But first I will say something about the Law Reform Commission itself, so that those of you who are not familiar can understand something of our organisation and methods. I will then chart what I feel are the chief forces for change at work in Australian society requiring reforming of the law, so that you will see the reform of debt recovery laws in the context of the great social and legal movements that necessitate the urgent review and overhaul of our whole legal system. Finally, I propose to say something about the progress that is being made in the Commission's work towards reform of debt recovery laws and procedures.

First, let me tell you something about the Law Reform Commission itself. The Commission was established in 1975 with the support of all political parties in the Federal Parliament. Throughout its short life, it has had a strong current of support from Members of Parliament of all political persuasions. This is not surprising. The pressures for change facing Parliament today and the complexity and sensitivity of the matters requiring change are such that our political leaders need as much help as they can get in the improvement and modernisation of the legal system.

The Commission is stationed in Sydney. There are 11 Commissioners, of whom four (including myself) are full time. The Commissioners have been drawn from all branches of the legal profession: the judiciary, barristers, solicitors and law teachers. One Commissioner, Professor Gordon Hawkins, is not himself a lawyer, though frankness requires me to tell you that he has spent many years teaching criminology as a social science in the Sydney Law School. The Commission has a small research staff of eight researchers. At any given time it has about eight major projects of national law reform concern. You will therefore see that it is a small investment in the improvement of the legal system. The pace of law reform is dictated, in part, by the resources which society is prepared to devote to the improvement of that science which affects us all: the laws of the land.

The Commission does not initiate its own programme. References are given to it by the Federal Attorney-General. Until a reference is given, the Commission may not proceed to substantive work. Successive Attorneys-General, of differing political viewpoints, have given the Commission a series of highly relevant projects, which affect not only the future design of the laws in Australian society but also the future design of society itself. In this sense, it is, I believe, preferable that the projects of the Commission should be determined by elected political representatives. They are more likely than non-elected lawyers to know the priorities and urgencies of legal reform.

The Commission works in federal areas of the law, but it works closely with State colleagues. As well, because of the plenary responsibilities of the Commonwealth in the Australian Capital Territory, a number of the projects of the Commission in that Territory are of specific relevance to the States. By its Act, the Commission is instructed to work towards uniformity of laws in the proposals it makes. Although uniformity is not an end in itself or desirable in every area of the law, there is little doubt that in areas of business law and commercial law, there is much to be said for greater uniformity of law than we have so far been able to achieve.

Because of the variety and controversy of the projects assigned to it by successive Ministers, the Commission has, from the outset, sought out public and expert views concerning the state of the current law, the defects in it and the directions for change. To secure expert opinions, the Commission in every project appoints a balanced team of consultants, whose task is to arm the Commissioners with a full appreciation of the competing points of view. To secure public comment, criticism and suggestions, the Commission has embarked in every one of its tasks upon a most painstaking process of public consultation. Public hearings are held in all parts of Australia. Industry seminars, such as those organised by the Institute, are held to promote debate amongst those most intimately concerned in the administration of current laws. The news media are encouraged to inform the community of the work of the Commission. Talk-back radio, television and articles in the print media ensure a lively debate and a great deal of feedback to the Commission, as no dull legal text could ever do. Nowadays, we are also using surveys, questionnaires and public opinion polls: not to dictate by transient public opinion the directions for law reform but to ensure that we, who serve Parliament, can be aware of the tendencies of public opinion. In the ultimate, most of the proposals made by the Law Reform Commission must be submitted to the legislative arm of government.

The Commission is not an academic talk-shop. A number of proposals have already passed into law, both at a Federal and State level. Within the last fortnight, a major Bill based on the Commission's first and ninth reports, was passed through the Federal Parliament in Canberra. Although progress on the Insolvency report has been slow, I understand that the report is under active consideration, as are all of the reports of the Commission which have not actually passed into law. In a country which does not have a good record in the follow-up and implementation of official reports, the Australian Law Reform Commission is doing better than average. I say all this so that you will understand that we are not in the academic business. By procedures of public and expert consultation and by painstaking research and inquiry, we are in the business of helping Parliament to improve areas of the law specifically assigned for our inquiry by the Commonwealth Attorney-General. In the short life of the Commission, we have enjoyed the participation of some of the most distinguished lawyers of the country.

Our Governor-General, Sir Zelman Cowen, was at one stage a part-time Commissioner. The newest member of the High Court of Australia, Sir Gerard Brennan, was also a part-time member. Mobilising some of the best legal talent in the country to work in harmony with people with relevant expertise is, I suggest to you, the way that more of our laws should be developed. Law reform that is to last will require nothing less.

FOUR FORCES FOR CHANGE

The work of the Commission is conducted against a backdrop of a society going through a period of rapid change. The chief forces for change in our society are at least four. I would suggest that the four main themes which reflect the pressure and need for law reform in contemporary Australia are:

- the growing importance of the role of government in the lives of all of us;
- the growing importance of big business and the decisions made in large corporations, affecting our lives;
- the changing moral values and social attitudes which are, in part, the product of an education system which is 'free, secular and compulsory'; and
- above all, the force of science and technology, the most dynamic factor in the equation and the one which most obviously imposes the necessities of transition on us.

The Growth and Importance of Government. Take, first, big government. The common law of England, which is the basis of the Australian legal system, stretches for at least 800 years. But during the first 750 years, the role of government was distinctly circumscribed. Naturally enough, the legal remedies that were developed for the citizen reflected this limited conception of the functions of government. It is only really in this century, and indeed in recent decades, that the public sector has come to assume such a significant role in the daily life of virtually every one. Perceiving this development the Lord Chief Justice of England, Lord Hewart, in 1930 sounded a warning in his book 'The New Despotism'. He alerted lawyers and law makers to the dangers for the individual (and for the rule of law) of large numbers of bureaucrats, working without effective judicial supervision and within very wide discretions conferred in ample terms by legislation, frequently designed by themselves.

It is only in the last decade that, in Australia, Lord Hewart's warning has been answered. One of the happiest developments of law reform in our country has occurred at a Federal level and under successive governments of different political persuasion. It has produced what has been called 'the new administrative law'. An Ombudsman has been established. An Administrative Appeals Tribunal has been set up, headed by judges, to review, on the merits, certain Commonwealth administrative decisions. An Administrative Review Council has been established to develop new administrative remedies in a systematic way. An important measure has been passed through Parliament and was proclaimed to commence on 1 October 1980. It confers on people in Australia a legal right to have reasons given to them for discretionary decisions made by Commonwealth public servants affecting them. In the place of bland uncommunicative decisions, the individual will be entitled to a reasoned response. So far as I am aware, only in the Federal Republic of Germany and in Israel is there similar legislation.

Freedom of information legislation was introduced into Federal Parliament this week. Though there has been criticism concerning the areas of exemption from the right of access, critics should not lose sight of the fundamental change which the legislation envisages. In place of the basic rule of secrecy of bureaucratic procedures, will be a basic rule of openness and the right of access. Refusals of access will generally be the subject of independent review in the Administrative Appeals Tribunal. Privacy legislation, to be proposed by the Law Reform Commission, and a basic code of fair administrative procedures will complete this 'new administrative law'. Although these developments have so far been limited to the Commonwealth's sphere, moves are afoot for similar changes in the States. The role of government and its employees has increased and is likely to continue to increase. The law has begun the long haul of responding to this phenomenon: providing individuals with accessible, low key effective remedies of review and reconsideration by external and independent machinery. The skill and dedication of the public officer is submitted to the civilising test of 'fairness' on the part of generalists, upholding the rights of the individual.

Growth and Change in Business. The second force for change in the law is the changing face of business. The mass production of goods and services gathered momentum from the automobile industry and is now an important feature of our society. Yet many of our laws reflect the business methods of earlier times and fail to reflect the realities of the mass consumer market of today. The common law of contract assumed an equal bargaining position between the vendor on the one hand and the purchaser on the other. It is precisely to meet the reality, which is different, that we now find most jurisdictions in Australia and elsewhere have enacted consumer protection legislation to ensure that basic conditions are met in fairness to the consumer.

Several of the tasks before the Australian Law Reform Commission illustrate the way in which it is necessary to bring laws developed in earlier times into harmony with the commercial realities of today. The project on consumer indebtedness itself has led to the Insolvency report which suggests a new approach to the problems of the small but honest consumer debtor. Our debt recovery laws, as you would all know, predate the enormous expansion of consumer credit which followed the Second World War. They are imbued with a philosophy that debt is never innocent and should be dealt with in isolation and not in aggregate. The Commission's report faced up to the reality of the modern extension of credit and the reliance, nowadays, which creditors quite properly make on the credit reference system as the principal means to protect them against unreliable debtors. The report also addressed the need to take individual steps not necessarily as a sign of deliberate moral culpability but frequently as an instance of the incompetence of a particular debtor in coping with the vastly expanded credit availability in today's community. It was for that reason that the report proposed procedures for credit counselling, the aggregation of debts and systems for regular repayment of debts instead of the current procedures of court actions and bankruptcy.

Likewise, the Commission's project on insurance seeks to adjust the law to an age of mass consumer insurance. The law governing the relations between insurer and insured was basically developed in the 18th Century, long before mass produced insurance polices were sold by radio and television to people of varying understanding and little inclination to read the policy terms. The imposition upon consumer insurance of the obligation worked out in an earlier time for different kinds of transactions is scarcely appropriate. Yet unless there is reform of the law, that is what will continue to be the case.

The Australian Law Reform Commission has also been asked to report on class actions: a legal procedure which has been developed in the United States. Class actions permit consumers and others to aggregate their claims into one big action, making litigation between the consumer and big business a more equal proposition than may be the case in an isolated individual claim. These are just a few instances of the way in which proposals are being made to adjust the legal system to the commercial realities of today and to modern procedures for the administration of justice.

Changing Social and Moral Perceptions. The third force for change is more difficult to describe. As I have said, it is probably itself bound up in higher levels of education, longer school retention and improved methods of the distribution of information by radio, television and the printed word. I refer to the changing moral and social attitudes which are such a feature of our time. There are many forces at work. In the space of a few decades we have moved from official acceptance of 'White Australia' to official (and increasing community) support for a more multi-cultural society. From forbidding the use of languages other than English in broadcasts we have moved to a multi-cultural television network. The last decade saw the rise of the women's movement, of anti-discrimination boards, of efforts to eradicate suggested 'sexual oppression' and courses at school in understanding of sexuality. There has been talk of the rights of the child. This year is the Year of Disabled Persons. I predict that the growing numbers of the aging in our society will lead to new emphasis upon the rights of the old. Successive governments have carried forward policies to reverse decades of neglect and worse in relation to our Aboriginals. These are just a few of the recent social changes.

For some citizens, especially those of the older generation, it must all seem as if the world has been turned on its head. Not two decades ago, it was the received cultural wisdom that Australia was a man's country of decidedly British values. Others could like it or lump it. Everyone had to comply with the accepted norm and be assimilated and integrated into it. Now the despised and disadvantaged groups of the recent past are listened to earnestly with growing community appreciation: ethnic groups, women, homosexuals, paraplegics and the disabled, the mentally ill and retarded, Aboriginals, the old. Football and cricket still draw record crowds. But so now do our theatres, our films and the arts generally. Puritan morality has given way to open advertisement of massage parlours. Nude beaches flourish in at least some of the warmer States.

These changes cannot come about without affecting the law and its institutions. People, including people in high places, begin to ask why there are so few women in the judiciary of Australia? Why various laws still discriminate against migrant newcomers? Why the criminal law contines to enforce, in the so called 'victimless crimes', attitudes to morality which are not now held by the great majority of citizens. In no other Commonwealth Act has the changing community morality been more vividly reflected than in the Family Law Act 1975. That Act substantially replaced the notion of fault as the basis for the dissolution of marriage, replacing it by a new test: the irretrievable breakdown of the marriage.

In a time of transition, it is uncomfortable for those who cling to the values and certainties of the past. There are many sincere citizens who bemoan the radical changes, some of which I have touched on. No recent piece of Federal legislation has been so beset by heartfelt controversy than the Family Law Act itself. Yet if community attitudes and standards are changing, the endeavour through the law, to enforce the attitudes and standards of an earlier time is bound, in the end, to fail, unless it has substantial support or at least acquiescence in the community. Laws of earlier times applying on a social base that has shifted tend not to uphold past morality but simply to bring contempt for the law and its institutions. They breed cynicism and even corruption which undermines the rule of law itself. The moral of this tale is that, whilst the law must necessarily tread cautiously, its rules and their enforcement should never be too far distant from current perceptions of right and wrong. When those perceptions are changing rapidly, as they are just now, it is a difficult time for law makers and those who advise them. In a time of transition, it is also a difficult time both for those who support reform of the law and those would cling to old ways. The attitudes of each must be understood and respected.

Dynamic Science and Technology. The fourth force for change in the law is equally at work in education. I refer to the dynamic of science and technology. The birth last year in Melbourne of Candice Read and the birth earlier this month of the child Victoria: two children of this community fertilised in vitro herald remarkable developments in biology which will pose dilemmas for society and the law. Cloning, which has been developed in plants and more recently in prize bulls is now, we are told, a possibility for human beings. In the United States the use of a host or surrogate mother to bear the child of another has occurred. Human tissue transplantation is occurring regularly in all parts of Australia, as scientists overcome the body's natural immune rejection of organs and tissues from other persons.

The developments of computerisation, particularly as linked to telecommunications, present many problems for society, including its educators. By a remarkable combination of photo reduction techniques, dazzling amounts of information can now be included in the circuit of a tiny microchip. The computerised society may reduce the needs of employment, increase the vulnerability of society, magnify our reliance on overseas data banks and endanger the privacy of individuals.

These and other developments raise questions which the law of the future will have to answer on behalf of society. Should human cloning be permitted and if so under what conditions? Is it acceptable to contemplate genetic manipulation, consciously disturbing the random procedures that have occurred since the beginning of time? In the case of artificial insemination by a donor other than a husband, what rules should govern the discovery of the identity of the donor, if this is ever to be permitted? What rules should govern the passing of property and how can we prevent accidental incest in a world of unidentified donors? Should we permit the storage of sensitive personal data about Australians in overseas data banks and if so under what conditions? What requirement should be imposed for the supply of data in one computer to another? Is the systematic matching of computer tapes a permissible check against fraud or a new form of general search warrant which should be submitted to judicial pre-conditions? Under what circumstances are we prepared to tolerate telephone tapping to combat crime? Is junk mail a passing nuisance or unacceptable invasion of privacy?

Almost every task given by successive Attorneys-General to the Australian Law Reform Commission raises an issue about the impact of science and technology on the law. In our project on criminal investigation, we had to look to ways in which police procedures could have grafted onto them the advantages and disciplines of new scientific advances. In our report on human tissue transplanation, we had to work out the rules that should govern the taking or organs from one person for the benefit of another.We also had to answer the question of how death is to be defined in modern terms. Should positive donation be required or can we legally impute a general community willingness to donate organs after death? Our project on defamation law required us to face the realities of defamation today: no longer an insult hurled over the back fence but now a hurt that may be carried to the four corners of the country. Our reference on privacy requires us to examine the ways in which we can preserve respect for individual privacy whilst taking advantage of the computerisation of society. Even our most recent project on reform of the law of evidence requires us to re-examine some of the accepted rules of evidence against modern psychological and other studies which suggest that many of the accepted tenets of the law do not stand up to empirical scrutiny.

LAW REFORM AND CREDIT MANAGEMENT

We hear a good deal these days about the costs to business and commerce of requirements imposed by statute, such as the Trade Practices Act or various consumer protection measures. Indeed, calls have recently been made for 'economic impact statements' to be attached to all further proposals for legislative action which could add to the costs of the private sector. Despite beliefs in some circles to the contrary, the Australian Law Reform Commission does not simply pull its conclusions from the air without any regard at all to their impact on all sectors of society. An organisation such as the Australian Law Reform Commission is one of the means by which contemporary Australian society can examine its own operation, and, in doing so, possibly re-examine some of the conventional wisdoms which we have inherited.

The Law Reform Commission's Insolvency report proposed a simplified procedure by which debtors could pay their debts, aggregated, over a period of up to three years. In the report, the Commission drew on the experience of the United States of America, the world's greatest credit economy, where such schemes (wage earner schemes) have operated very successfully for over 40 years. As I have said, the report is still under active consideration. The discussion paper on debt recovery was designed to propose a model debt recovery statute that would be in tune with the needs and attitudes of today. Although our consideration of the numerous submissions, criticisms and opinions based on that discussion paper have not been completed, I can say that our further research highlights the inefficiencies of the present system, and its cost, not only to creditor and debtor alike, but to the public as well. Creditors complain at the delays in recovering their money. Whilst it is no new thing to criticize the law's delays, there are indeed several inadequacies in the present system from the creditor's point of view: he must apply for a separate enforcement order when one proves to be ineffective; the system of wage attachment lacks coherency; creditors experience delays in service and execution of court processes. Creditors can expect little return from bankruptcy; our report shows that creditors receive a minimal return from the estate of consumer bankrupts. The present system involves loss to the debtor as well, especially in those States where he may be subject to a period of imprisonment. In other States where wage attachment is possible, not only is the debtor left with a totally inadequate amount on which to survive, but he faces a real risk of dismissal as well.

As part of its current research, the Commission has undertaken a detailed study of the operation of the debt recovery system in the courts of N.S.W. Information for the study was gathered by means of a survey designed for the purpose by the Australian Bureau of Statistics and in which we received the co-operation of the N.S.W. Department of the Attorney-General and of Justice, and the New South Wales Law Reform Commission. We are also working closely with colleagues in the Law Reform Commissions of Western Australia and Tasmania and with relevant departments in Victoria and the Northern Territory.

Although the final results of the survey have not yet been received, some of the preliminary information confirms the Commission's view as to the wastefulness of the present system. You will be aware, for instance, that many creditors seek to enforce their judgments by levying execution against the goods of the judgment debtor. When doing so, they rarely know whether the debtor in fact has any property which can be taken in execution to satisfy the writ. If the bailiff has not been able to locate goods which he may seize, he submits a formal return nulla bona. Those preliminary results received to date from the section of the survey that has been analysed show that writs of execution were unsuccessful in 59% of cases. In the bulk of these cases the bailiff submitted a return of nulla bona.

This information concerning writs of execution is consistent with returns made in the A.C.T. and elsewhere. Up to 50% of the warrants of execution issued in the A.C.T. are returned nulla bona. A study performed in Perth in 1979 showed that in approximately half the cases surveyed, writs of execution were totally unsuccessful. A similar pattern exists in the Northern Territory.

The fruitless use of warrants of execution involves loss to the public. A bailiff must make one or more visits to the premises of the debtor to attempt to execute the warrant. Although the creditor does pay a small fee when the warrant is lodged, the Commission has been informed that, in one State at least, the amount lodged does not even cover the cost of the paperwork that must be performed, let alone the costs of attending the debtor's premises.

Although the Commission is not yet in a position to give full particulars of these costs, it does seem that, right from the time when a creditor first issues a summons against a debtor, the public subsidises the attempts made to recover the debt. The task of this Commission was to devise a method which is more effective, faster, and less expensive than that which we have inherited. We advanced our solutions in our 1977 report. Our further work tends to confirm our earlier recommendations.

When you are considering, in your own minds, the appropriateness or otherwise of the tentative proposals put forward by the Commission in its discussion paper, Debt Recovery and Insolvency, we invite you to look realistically at the way debts are recovered at the moment. Under the existing system, the choice of enforcement measures is left to the creditor. Every incentive is provided to a creditor to be the first to take enforcement action, but the system contains no incentive at all for the creditor to choose that method of enforcing his debt which involves the least total loss to the creditors generally, to the debtor, and to the public. As a result, the first creditor to take action may well receive some payment, thereby lessening the overall ability of the debtor to meet his financial obligations to all of his creditors. The existing system concentrates on individual debts, rather than individual debtors, and the needs of their dependants and their several creditors. By way of contrast, the Commission's proposed Regular Payment of Debts Program is specifically designed to look at the entire debt position of the debtor. The Commission, aware that legal action to recover debts itself consumes money in unproductive costs, has recommended a system which avoids those costs, and which deals fairly with the competing claims of creditor and debtor alike. To complete the picture, you should bear in mind that the existing system of debt recovery, with all its costs and inefficiencies, is subsidised from the public purse.

You may take it that the Australian Law Reform Commission is keenly aware of the need to avoid unnecessary costs to the community when making its proposals. In the area of our debt proposals, however, I am confident that our proposals will in fact lead to considerable savings in both the public and the private sector. There will be a reduction in the extent of legal action and the consequent demands on court time. The costs of private debt collection will also be reduced. Obviously there is nothing in our proposals which can increase the funds available to a consumer debtor from which he can pay his debts. What the Commission has proposed is a system which will distribute among the creditors those funds that can fairly be taken, with a minimum of loss and unnecessary and wasteful costs.

As I mentioned previously, in formulating the proposals in our report, Insolvency: The Regular Payment of Debts, the Commission took particular notice of the experience in the United States, where such schemes have been in operation for some 40 years. We know that the schemes operate very efficiently with in excess of 80% of the total receipts being paid to the creditors. In other words, despite the fact that in the United States trustees and staff are paid salaries for the operation of these schemes, over 80% of the monies paid by consumer debtors is made available to creditors. The proposals

of the Australian Law Reform Commission will be even more cost efficient, through the use of voluntary debt counsellors rather than salaried officers. The Commission's proposals envisage a charge of 10% to creditors for the operation of these schemes.

No detailed statistics on the rate of completion of the schemes are available from the U.S.A. However, the Brookings Study stated that, even in those cases where the debtor defaulted in compliance and the scheme failed, the creditors recovered substantially more than they did in straight bankruptcy cases. But there are special reasons why one would expect a considerably higher failure rate in the United States than in Australia.

In the United States, persons who wish to become bankrupt are able to obtain a 'straight' discharge i.e. they will be discharged within six to nine months, as soon as the administration of their estate has been completed. Persons who have entered upon a scheme in the U.S.A. who find that the discipline is too difficult, may well choose instead to become bankrupt and to obtain swift discharge of their debts. By contrast, an Australian bankrupt will normally remain undischarged for a minimum of three years, during which time he may be required to make contributions from his income to the payment of his debts.

If a person subject to a Regular Payment of Debts Scheme (as proposed by the Commission) chose to become bankrupt, he would be subject to the supervision involved in Australian bankruptcy. An objection can be lodged to the person's discharge from bankruptcy on the grounds set out in the Bankruptcy Act, s.149. These include the possibility that the bankrupt could make a significant contribution to his estate over a five year period from the date of bankruptcy. In Australia, there would be a significant legal incentive to complete a scheme; in the United States, there is none.

Furthermore, persons who enter into wage earner schemes in the United States do not have the advantage of the debt counselling facilities proposed by the Commission. Where debt counselling exists, it makes a very considerable difference. During the Congressional Hearings on reform of the U.S. Bankruptcy laws in 1975, Judge Conrad Cyr gave persuasive evidence on behalf of the U.S. National Conference of Bankruptcy Judges. According to Judge Cyr, the failure rate of wage earner schemes in Bangor, Maine, was reduced from 60% to less than 10% through the use of effective debt counselling. Such debt counselling is an integral part of the Commission's proposals. It is rarely available in the United States. In 1979, the United States extended these schemes to include small businesses as well, an indication of the confidence felt in that country about the value of these arrangements.

CONCLUSIONS

The general point of my address is that the social conditions upon which the law operates are changing rapidly. Political and general economic considerations will determine the appropriate reach of the law in providing the minimum ground rules by which society is to be governed, including in its business affairs. But at least this much can be said: that it will not be appropriate or just to ignore the needs created by the growth of government itself, new ways of doing business, new moral and social attitudes and above all the necessities brought about by advances in science and technology. If we ignore these pressures, significant gaps will occur in the law. That will be bad for the law. More important, it will be bad for society.

I have endeavoured to show that reform of debt recovery laws is simply a species of a wider movement for reform. You are not being singled out for special treatment. But yours is one of the most important sectors of the Australian economy and one which affects virtually every Australian in his or her everyday life. With such an enormous expansion of consumer credit, it is scarcely surprising that the laws by which you operate should need review and reconsideration. Not a single one of you would carry on your business with the rules and methods of the 19th century moneylender. Yet the laws of debt recovery are still very much remnants of earlier times when consumer credit did not exist, when credit cards were not dreamed of, when there was no credit reference system and no-one had heard of the computer, let alone computerised, instant, international credit ratings. It is important that just as you have modernised your way of doing things, so the law should re-examine its way of doing things and provide a system of debt recovery appropriate to the society of today.

I realise that it is difficult to adjust to change, especially when things have remained the same for so long. But I do hope that you, who have seen such dramatic changes in consumer credit and the place of credit in Australian society, will respond in an open-minded way to proposals being worked out for the improvement of our laws on debt.

I record once again the appreciation of the Commission for the help we have had from members of the Institute. I hope that help will continue and will be rewarded, in due course, by the passage of new laws which are sensitive to the special problems of vastly expanded consumer credit and our new ways of doing things.

Whether it is in the public sector or the private sector, whether it is in respect of changing moral and social values or in response to the dynamic of science and technology, there is a great danger in the law distancing itself from the world as it is, simply because it has stood still, whilst the world and reality have moved on. The business of the Law Reform Commission, in the reform of debt laws as in all of its tasks, is to help our lawmakers cope with the great challenge of our time: the challenge of rapid change. It behoves all citizens of good will who wish to ensure that our institutions of lawmaking survive, to participate actively in the process of the orderly reform of the law. Failure to do so spells dangers for the Rule of Law itself.