- The Commissions' report argued that it is exceedingly difficult for a person injured by something goods have done, who is not a party to any contract for the supply of those goods, to identify a defendant who may have been negligent. Under the ACM proposals, however, the plaintiff would have to identify some person involved in the manufacture and supply of goods on the basis that that person had broken a duty of care.

- ACM acknowledges that the Commission's proposals would minimise litigation costs. One way in which this would be achieved would be by reducing the number of parties. Most of the respondents to the ACM survey said that they wanted a 'two-tier' system, as recommended by the Commissions, but that they did not want a 'primary' or 'representative' defendant.

- ACM proposes that it should be a 'complete' defence

> . . . where the state of scientific or technical knowledge reasonably available in the particular industry at the time the goods were manufactured or supplied were not such that the person could have been aware of, or discovered, that the goods were likely to cause loss or damage.

  The Commission's report noted that a defence in those terms would discourage both product innovation and development, and research into improved product safety, as no business could afford to depart from accepted industry practice.

alternative dispute resolution. One significant point raised by ACM which is not discussed in Commissions' reports is that of Alternative Dispute Resolution. This matter is curently the subject of a reference to the NSWLRC. It relates to the procedure for recovering compensation, rather than the right to compensation. Non-curial methods may, in some cases, be appropriate for determining an entitlement to or the amount of compensation. By prohibiting the enforcement of arbitration clauses in certain consumer transactions, at least two States have acknowledged that economic inequality may disadvantage the weaker party even more in informal or non-curial dispute-settlement than it does in court proceedings. □

regulating the insurance industry

The 1980 ALRC report *Insurance Agents and Brokers* (ALRC 16) was implemented by the federal government. It contained recommendations for an Australia-wide code for insurance agents and brokers.

Five years have passed since the Insurance (Agents and Brokers) Act 1984 was introduced and the *Australian Fianancial Revew* (AFR) recently reviewed progress to date. Commenting in an article in the *AFR* on 17 October 1989, Mr John Unkles, Executive Director of the National Insurance Brokers Association said:

> The first federal legislation controlling the conduct of insurance brokers in Australia has been a success. . . the effort has been worthwhile.

The AFR article continued:

> The exercise has achieved its objectives at less cost to the independents of brokers and freedom of choice for consumers than many early participants in the debate fear.
>
> The number of insurance broker failures has dropped substantially and the public still has access to a wide range of broker services at national and local level.

In formulating its recommendations the Commission had before it three main principles:

- the need to protect the consumer from unforeseen losses, innocently suffered
- the need to ensure that consumer can make an informed choice when purchasing insurance
- the need to avoid unnecessary regulation and lessening of competition among insurers.

The ALRC report was produced against a background of broker collapses in Australia:

- Between 1970 to 1979 at least 44 broking firms became insolvent.
- Of these, 27 insolvencies were ascertained to have involved estimated losses of premiums paid to brokers of $7.28 million.
- In 1979 one insolvency alone involved estimated losses of $2 million.
- To mid 1980 reports indicate at least five more insurance broker insolvencies.
- Debts of $1 million were involved of two of the collapses. One broker is reported to have left Australia owing 23 insurers large premium incomes.
- In Western Australia, collapses of five broking houses involved debts of up to $3 million.

The Commission recommended in its report that important changes be made to the current law and industry arrangements:

- In respect of insurance matters an insurer should be responsible in law for the conduct of its agents.
- Because it lacks control over their conduct, an insurer should not generally be responsible for the acts and ommissions of brokers with whom it deals.
- A limited system of occupational control of brokers should be implemented by legislation.
- A broker should be required to disclose to his or her client and to the insurer amounts paid or payable by the other to the broker.

The *Australian Financial Review* reports:

> Relationships between the supervisory area of federal Government, the Insurance and Superannuation Commission and the Insurance Broking profession remain cordial and co-operative.
>
> Contact with underwriters probably has never been closer.
>
> - the number of persons and companies trading as insurance brokers has fallen from more than 7000 to about 800 reflecting the impact of registration compliance standards and their costs imposed by the legislation.

The ALRC report: *Insurance Contracts* (ALRC 20) was also implemented by government. It resulted in the Insurance Contracts Act 1984. It introduced, among other things, standard cover for certain classes of insurance. □

abortion — the judiciary and the legislature

An Australian pro-abortion campaigner, Ms Jo Wainer said recently:

> Since I've come back from America this year, I have rethought the whole argument. Abortion is going to be a litmus issue for the 1990s. If the American Supreme Court