THE REFORM OF INSURANCE LAW: CAVEAT EMPTOR SURVIVES

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When used in combination, sections 52 and 82 of the Trade Practices Act 1974 (Cth) have the potential to provide most effective remedies for deceived consumers. Section 52 is the most general section in the consumer protection part of the Act, Part V. To establish liability, it is only necessary to show that a corporation[1] has, in trade or commerce, engaged in conduct that was misleading or deceptive or likely to mislead or to deceive. The test is objective, not subjective. There is no need to show an intention to mislead or deceive.[2] Section 51A (added to the Act in 1986) helps consumers even more, as representations as to the future are now more easily brought under section 52. In addition, the new section 84(2) provides that conduct engaged in by directors, servants or agents of corporations within the scope of their actual or apparent authority is deemed to be the conduct of the corporation.[3]

Once a contravention of section 52 is established, consumers can rely on section 82 to obtain damages from the corporation. To do so, they must show that they have suffered loss or damage by conduct of the defendant which was done in contravention of section 52. Upon showing this, they may recover the amount of the loss or damage. Together, sections 52 and 82 apparently provide a simple alternative to the cumbersome common law

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1 Or some individuals who fall under Commonwealth jurisdiction: s.6.

2 *Hornsby Building Information Centre Pty Ltd* v. *Sydney Building Information Centre Ltd* (1978) 140 CLR 216, 228, 234; *Annand & Thompson Pty Ltd* v. *Trade Practices Commission* (1979) 25 ALR 91, 113; *McWilliam's Wines Pty Ltd* v. *McDonald's System of Australia Pty Ltd* (1980) 33 ALR 394, 399; *Parkdale Custom Furniture Pty Ltd* v. *Puxu Pty Ltd* (1982) 56 ALJR 715, 717.

3 This provision is narrower than that before the Trade Practices Revision Act 1986. The old s.84 made no mention of actual or apparent authority.

remedies of breach of contract, misrepresentation, deceit and negligent misstatement. On the face of it, much of the present common law curriculum at law schools can be left aside as mere legal history.

Unfortunately, the remedy is not as simple as it seems. A combination of conservative judicial interpretations of both sections 52 and 82, a requirement of the Act (section 86) that section 82 actions be brought in the Federal Court, and the colonisation of section 52 by competing businesses acting in their own interests, has left all but the wealthiest and bravest consumers without a remedy.

I. THE INTERPRETATION OF SECTION 52

In *C.R.W. Pty Ltd* v. *Sneddon,*[4] Sheldon and Sheppard JJ. stated that

> advertisers [in newspapers] must be assumed to know that the readers will include both the shrewd and the ingenuous, the educated and uneducated and the experienced and inexperienced in commercial transactions ... An advertisement may be misleading even though it fails to deceive the more wary readers.[5]

That is, the test of what is misleading is not what would mislead a reasonable person, or what a sophisticated judge would be misled by, but what ordinary persons, with all their variety, would find misleading. This test has been cited with approval by the courts which interpret section 52 of the Trade Practices Act.[6] Consumer protection is based on the assumption that not every consumer is able to look after his or her own interests in the market place. This test, then, is a cornerstone of the Trade Practices Act's attempts to equalise the relationship between consumers and traders.

This key test has come into doubt, however, in three cases brought by traders against their competitors.[7] In the first case, *Hornsby Building Information Centre Pty Ltd* v. *Sydney Building Information Centre Ltd,*[8] the Sydney Building Information Centre sued the Hornsby Building Information Centre when it opened a business with a similar name, claiming that to do so was misleading and deceptive. Apart from Murphy J., the High Court held that there had been no breach of the Act, primarily because the cause of any confusion in the minds of consumers lay with the action of the Sydney Centre in using such a general title as "Building Information Centre". Those words were held to be like the words "Art Gallery", so that anyone opening a business with that name could not complain if a competitor used the same words as part of its title.

Similarly, in *McWilliam's Wines Pty Ltd* v. *McDonald's System of Australia Pty Ltd,*[9] when McWilliam's Wines used the words "Big Mac" to describe

4 (1972) 72 (NSW) 17.
5 *Id.*, 28.
6 *Parish* v. *World Series Cricket Pty Ltd* (1977) 16 ALR 172, 179; *Annand & Thompson Pty Ltd,* note 2 *supra,* 102.
7 Nothing in ss 52, 80 (injunctions) or 82 prevents trade competitors suing one another for alleged breaches of the Act.
8 Note 2 *supra.*
9 Note 2 *supra.*

their wine flask, McDonald's was unable to establish that there had been a breach of section 52. Northrop J. reached that conclusion because he felt that the words "Big Mac" were generic as were the words "Building Information Centre". Fisher J. felt that the confusion was caused by McDonald's, through their leading the public to believe that they had ownership of these words. Smithers J. gave the most disturbing reason for finding for McWilliams, namely, that the confusion was due to a variety of suppositions made by the public. Evidence of witnesses that they were confused by the conduct of McWilliams was insufficient to establish the case against them. That is, the objective test of misleading conduct, was here used against consumers, rather than for them. In accordance with the judgment of Smithers J. then, consumers are not protected unless they exhibit a quite sophisticated understanding of intellectual property law.

The High Court strengthened these decisions in *Parkdale Custom Furniture Pty Ltd* v. *Puxu Pty Ltd.*[10] The plaintiff was a furniture manufacturer which complained when another manufacturer copied its furniture designs, even though it used labels to distinguish the copies from the originals. The Court held for the copier, despite the conduct of one retailer in removing the label before placing the furniture on display. The judgment of Mason J. was based on a stated belief in a broad interpretation of section 52, but he felt that the label was sufficient to dispel any chance of consumers being misled as consumers were likely to take great care when purchasing expensive goods such as furniture. Gibbs C.J. gave the most disturbing judgment in this case. He argued that though the objective test of section 52 might appear to be draconian from a business point of view, that may be justifiable when the interests of consumers are in issue. However, he pointed out, that the section could be used by powerful corporations to restrain their weaker competitors, and thus he concluded that it should *not* be beneficially construed. He went on to state that although a class of consumers may include the experienced as well as the inexperienced, and the gullible as well as the astute, the test on misleading conduct is whether it would mislead a reasonable member of the class in question; "[t]he heavy burdens which the section creates cannot have been intended to be imposed for the benefit of persons who fail to take reasonable care of their own interests".[11] Reasonable persons buying furniture would look for labels, so the defendant was not liable.

These decisions fail to understand the consumer protection philosophy of the Act. Gibbs C.J. in particular seemed intent upon the destruction of the *C.R.W.* v. *Sneddon* test, with its assumptions that consumers are to be protected from their more powerful adversaries in the market place. He made the laissez faire assumption, despite clear indications by Parliament to the contrary, that consumers should be left to look after their own interests.

10 Note 2 *supra.*
11 *Id.*, 718.

In many of these trade competitor cases the judges have been concerned about the possibility of the trader who set up the original title or design, and who failed to register it under intellectual property laws, obtaining an unjustified monopoly over the design or title. That was especially worrying when the judges reflected on the fact that Part IV of the Trade Practices Act is designed to diminish monopolies, or at least to diminish their effects upon the market place. While it has been stated judicially that section 52 should stand on its own and not be read down by reference to Part IV,[12] a number of judges have been concerned not to let those who first used designs or words obtain a monopoly through the use of section 52,[13] and have thus interpreted the Act narrowly.

Mason J. expressed a broader attitude in *Parkdale* v. *Puxu*.[14] He argued that the legislative intention in the Trade Practices Act was to aid consumers through vigorous competition, supported by consumer protection provisions ensuring that the market was free of misleading conduct. This view, which would meet with the approval of the Chicago School of economists,[15] assumes that both consumers and traders benefit by the removal of dishonesty from the market. Thus, he argued, consumers benefit most by competition between traders in a market which is free of misleading conduct and monopoly practices.

The argument against the artificial creation of monopolies via section 52 has some merit. As Gibbs C.J. argued in *Parkdale* v. *Puxu*,[16] if one manufacturer creates a market through a new design, it is in the interests of consumers that competitors be able to produce cheaper or more efficient versions of the same product. A good example is IBM's design for personal computers. There are dozens of competing brands which are built to the de facto IBM standard, and it would certainly not be in the interests of consumers if IBM were able to drive all of its competitors out of the market by claiming that the other designs were "misleading".[17] What is required, as Gibbs C.J. stated, is that the copies be clearly labelled. The Act is then satisfied without the original designer obtaining a monopoly.

Our complaint about these cases is not so much about their outcome, but about what they have done to the law should consumers ever manage to penetrate the legal and financial jungle which surrounds an action under sections 52 and 82, and actually sue. In order to avoid unjustified monopolies, the courts have created a standard of misleading conduct which

12 *Parkdale* v. *Puxu*, *id.*, 720 *per* Mason J.

13 See Fisher J. in *McWilliam's* v. *McDonald's* note 2 *supra*, 414; and Stephen J. in *Hornsby B.I.C.* note 2 *supra*, 228-230.

14 Note 2 *supra*, 720.

15 See A.J.Duggan, *The Economics of Consumer Protection: a Critique of the Chicago School Case Against Intervention* (1982) Adelaide Law Review Association, Adelaide.

16 Note 2 *supra*, 718.

17 On computer hardware and software and copyright law, see *Computer Edge Pty Ltd* v. *Apple Computer Inc.* (1986) 60 ALJR 313; and S. Stern, "Computer Software Protection After the 1984 Copyright Statutory Amendments" (1986) 60 *ALJ* 333.

is way beyond the original ordinary person test. Any consumer who does sue for "loss or damage" in future may be met with the "reasonable man who looks after his own interests" test of Gibbs C.J. It may be impossible for a precedent based system of law to have one standard for trader plaintiffs, and another for consumer plaintiffs. Under a precedent system the law's shape is governed very largely by those who initiate litigation. Consequently, the large number of trader versus trader decisions has had a major effect upon the Trade Practices Act, and its form today is quite different from what it may have been if consumers had been the primary plaintiffs. In this indirect fashion the courts have interpreted the Act to meet the needs of business. Consumer protection has become a virtual side-effect of business litigation, and its basic principles have been forgotten.

Even with the dominance of trader versus trader cases, however, the law need not have taken this direction. Murphy J., who introduced the original Trade Practices Bill into Parliament, demonstrated that it is possible to retain the original broad test of misleading conduct without driving copies of designs off the market. In *Hornsby B.I.C.*[18] he found that there had been a breach of section 52 which should have been resolved by a specific injunction which made clear that there was no connection between the two centres. Similarly, in *Parkdale* v. *Puxu*[19] he used the ordinary person test to hold that the label on the furniture was insufficient to protect consumers from being misled. Again, the appropriate remedy would have been to require much clearer labelling. By this technique, the Act could be kept to its original standard and consumers given the opportunity to buy the widest possible range of goods and services. Importantly, by adopting this approach it would not be necessary to dismiss the evidence of consumers that they were misled, nor would it be necessary to make extraordinary findings of facts such as that "Building Information Centre" and "Big Mac" are merely descriptive words. Further, it would not be necessary to blame consumers for their own alleged inadequacies and misconceptions when they are in fact misled.[20]

Why then would the courts have taken this line? Is it the form of the dispute resolution (accommodation) structures utilised to resolve trader-consumer conflicts, judicial conservatism, or a preference for the interests of corporations over consumers? How easily an instrumental theory of law would fit these cases! Consumers falsely believe that they are protected by consumer protection laws, yet legal interpretation, with its mystification and pseudo-neutral legal language, ensures that when the hard decisions are made they favour the powerful. Such an argument certainly has an emotional appeal, but we think that while it does have some merit, it does not offer a satisfactory explanation when put so crudely.

18 Note 2 *supra*, 233-235.

19 Note 2 *supra*, 724.

20 Similar criticisms of these cases have been made by other writers. See A.L. Limbury, "Protecting your Business Reputation — Trade Practices" (1983) 57 *ALJ* 664, 672-673; and G.Q. Taperell, R.B. Vermeesch and D.J. Harland, *Trade Practices and Consumer Protection* (3rd ed. 1983) paras 1440, 1442.

In a sense the *C.R.W.* v. *Sneddon* [21] test recognised that effective consumer protection laws could only be achieved by acknowledging the reality that consumer protection is contingent upon the understanding of consumers and that that understanding is socially constructed. It is constructed indirectly by education and social conditioning, and, perhaps more importantly, it is constructed directly by media representation (advertisements) and by the overt representations made by traders and entrepreneurs about their products and services. Consequently, the *Sneddon* test posed a direct threat to capital and had to be negated.

Accordingly, the ideological bias of the judiciary *is* a relevant consideration when we seek an answer to the question posed. However, we must be careful not to understand this explanation in any reductionist sense. While some members of the judiciary, will, from time to time, render decisions which can only be understood in reductionist class terms, the overwhelming majority of decisions are not of this nature. Rather, judicial decisions are largely controlled by the ideology of the common law with its insistence upon individualism and "competition" between "equals". Such an ideology mediates conflict within a capitalist system and conflicts directly with the basic assumption of the *Sneddon* test — and the consumer protection Part of the Trade Practices Act as originally enacted — that the trader-consumer relationship must be understood in its social context. But even this provides only a partial explanation, for we must also consider the importance of judicial reasoning and the accomodation structures.

The process of judicial reasoning is clearly of crucial importance in understanding how our courts have moved away from the *Sneddon* test in favour of an objective test which is grounded in the ideology of capitalism, assuming, as it does, that all consumers enjoy the same level of sophistication and understanding (knowledge) as traders and entrepreneurs and can consequently bargain with them on equal terms. Here it is important to remember that judicial adjudication as we know it is based upon the ideals of neutrality and objectivity in order to provide legitimation and stability. Consequently, judicial reasoning enjoys a degree of autonomy which finds expression in the idea, or doctrine, of precedent. Thus, once the structural impediments to consumers litigating claims became apparent, as they did almost immediately, a body of case law developed which concentrated upon the rights of traders and entrepreneurs vis-a-vis other traders and entrepreneurs. Consequently, the *Sneddon* test was perceived by the judiciary as inappropriate and, additionally, it was set apart ideologically from the mainstream. Thus a body of case law (precedent) developed which was not only based upon the ideals of freedom of contract and individualism — and thus directly supporting capitalism — but which enjoyed its own autonomy and hence legitimacy.

21 Note 4 *supra.*

It is interesting to note then that parliament, in adopting the particular accomodation structures which it did in Part V of the Trade Practices Act directly contributed to the sterilisation of the legislation.

II. ACCESS TO THE REMEDY

The Federal Court, which at present has exclusive jurisdiction over section 52 and 82 cases is, as we have already indicated, a remote and expensive tribunal in which consumers are most unlikely to initiate litigation unless their loss or damage is quite severe. Even the new section 87(IB), which gives the Trade Practices Commission power to sue on behalf of affected consumers, is unlikely to resolve the access problem. The Commission can sue only when it is taking a section 79 (criminal remedy) or section 80 action on its own behalf, bringing the action on behalf of consumers as an added benefit. The Commission has always been reluctant to spend its very limited budget on litigation, and is unlikely to start seeking injunctive and criminal relief as a pretext for obtaining compensation orders for individual consumers.

The very difficult obstacles to access to the Federal Court are shown quite simply by the statistics of the use of the Court. In 1980-1981, sixty four cases under Part V of the Trade Practices Act were reported by CCH's Consumer Sales and Credit Law Reporter. Of them, only three were initiated by consumers, all concerning defective motor vehicles, while the balance were evenly divided between cases brought by traders, and those initiated by Federal officials. Since then, the figures show an even stronger dominance of Part V litigation by trader interests. Of the thirty eight section 80 cases reported by the same reporter for the period between 1982 and 1986, all were brought by traders against their competitors.[22] It appears to be this flood of cases which has led to the restrictive interpretation of section 52. We flatly reject the argument that the Act may still be working well because consumers may be relying on section 52 for their remedies, by settling actions before the litigation commences. A threat which cannot be easily carried out is likely to have little effect.

There are two possible solutions to the problems of difficulty of access to the Federal Court: either the Federal jurisdiction must be handed over to the relatively inexpensive State and Territory courts and tribunals; or the terms of the Trade Practices Act must be copied in State and Territory legislation, so that it can be enforced in their courts and tribunals. Fortunately, the legislatures are following both courses of action. The Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth) and the Jurisdiction of Courts (Cross-Vesting) Act 1987 (N.S.W.) allow the transfer of some Trade Practices Act matters to State courts. Also, Victoria and New South Wales

22 See B. Kercher and M. Noone, *Remedies* (1983) 194; and M. Tilbury, M. Noone and B. Kercher, *Remedies: Cases and Commentary* (in press) Ch. 7.

have enacted Fair Trading Acts (1985 and 1987 respectively), which mirror the provisions of the Trade Practices Act. In future then, the restrictive decisions of the High Court and the Federal Court on the interpretation of section 52 will be cited before Australian State courts which are considering both Federal and State laws. However, these jurisdictional changes will have a major impact on consumer access only if jurisdiction is vested in the lowest levels of the State courts and tribunals.

III. FEDERAL INSURANCE LEGISLATION

Accordingly, then, the accommodation structure, the relative autonomy of legal reasoning and the ideology of the judiciary have acted dialectically to negate the reforms initiated by Parliament. Only by understanding the process in this dialectical way is it possible to appreciate the development of consumer protection laws in Australia. Such an explanation is also useful in understanding the recent Commonwealth legislation relating to insurance contracts.

This legislation, which comprises the Insurance Contracts Act 1984 and the Insurance (Agents and Brokers) Act 1984,[23] has yet to be considered in detail by the High Court or by the Federal Court, although the recent High Court decision of *Gates* v. *City Mutual Life Assurance Society Ltd*[24] does offer some significant insights as to how those Courts will approach the legislation. The legislation, which is very largely the result of the Australian Law Reform Commission's examination of insurance law and practice,[25] was predicated at least in part, upon the assumption that the consumer protection provisions of the Trade Practices Act would be available to supplement the consumer protection provisions of the new legislation. Hence the importance of the decision in *Gates'* case; there a consumer sought to rely upon the Trade Practices Act to recoup a loss sustained as a result of entering into an insurance contract. However, he failed to recover the expected benefit under the policy. The High Court accepted the proposition that the defendant insurer was responsible for certain statements made to the consumer which induced him to contract with the insurer, a position which equates directly with section 11 of the Insurance (Agents and Brokers) Act, which section now deems insurers responsible for the statements of their agents. However, section 11 does not itself create any liability. Consequently for consumers to obtain compensation for loss sustained because of reliance upon such statements, they must plead breach of a collateral contract, or seek damages

23 Insurance Contracts Act 1984, No. 80: assented to 25 June 1984 and entered into force on 1 January 1986. Insurance (Agents and Brokers) Act 1984, No. 75: assented to 25 June 1984; the majority of the provisions of the Act entered into force on the day of its assent; Part III came into operation on 1 January 1986; ss 10, 38, 39 came into operation on 1 July 1986; and ss 12 and 37 come into force on a day to be proclaimed. See also: Insurance Act 1973, No. 76 and Life Insurance Act 1945, No. 28.

24 (1986) 60 ALJR 239.

25 Insurance Agents and Brokers, Report no. 16, 1980. Insurance Contracts Act 1982 No. 20.

for fraud or negligent misstatement, or they must rely upon sections 52 and 82 of the Trade Practices Act.

This was the position prior to the enactment of the new insurance legislation, and remains the position after that legislation became operative. Accordingly, as the consumer in *Gates'* case failed to obtain substantial compensation the decision is of immense importance for insureds. The importance of the decision is further highlighted by the fact that section 11 of the Insurance (Agents and Brokers) Act deems the insurer liable for "any loss or damage suffered by an insured or intending insured as a result of the conduct of the [insurer's] agent or employee". As section 82 of the Trade Practices Act also relies upon the phrase "loss or damage", it is clear that the interpretation of section 52 adopted by the High Court in *Gates'* case is a crucial signpost for insureds, indicating, as it unfortunately does, the limited usefulness of the new legislaion. If the provisions of section 11 are ineffectual then, insurers are free to adopt any form of advertising methods no matter how misleading or deceptive. However, before turning to *Gates* itself and this recent legislation, it will be useful to offer some comments on the interpretation of section 82 of the Trade Practices Act.

IV. THE INTERPRETATION OF SECTION 82

Brookhouse v. *NSW Mutual Real Estate Fund Ltd*[26] shows that sections 52 and 82 of the Trade Practices Act can be used in the way Parliament intended. The plaintiff was a twenty two year old man who was inexperienced in business matters. He was misled into joining an allegedly low interest home loan scheme. He successfully claimed that the defendant company had been in breach of section 52, it being bound by the actions of its representatives and agents through the provisions of the then section 84. Under section 82, Brookhouse was awarded damages on the tortious compensation principle. That is, he was returned to the financial position he had been in prior to the misleading statement being made, rather than being placed in the position he would have been in had the contract been performed. His damages included a refund of the money he had paid to the defendant, as well as the recovery of the payments he had made to a bank for money lent to buy rights from the defendant. He was not, however, awarded damages for the loss of opportunity to earn money with the sums he had paid the bank, as he had not led evidence of those losses.

A more typical case, because it involved one trader suing another, was *Brown* v. *Jam Factory Pty Ltd.*[27] The result was similar to that in *Brookhouse.* The plaintiffs were misled by the agents of the proprietor of a shopping centre about important aspects of the centre and as a result of that misrepresentation

26 (1978) 2 ATPR 40-064.
27 (1981) 35 ALR 79.

they entered into a lease. The business failed and they successfully sought damages under sections 52 and 82. In assessing damages, Fox J.[28] stated that "[a]s an action based on s 52 is more appropriately classified as one of tort, it is possible that the measure of damages will always, fundamentally, be based on principles affecting torts." Thus he relied on *Esso Petroleum Co. Ltd* v. *Mardon* [29] to restore the plaintiffs to their pre-contract position, deducting what they salvaged from the venture from what they had put into it. However, they recovered none of the profits (expectation damages) they had expected to make.[30]

In neither of these cases was the failure to obtain expectation losses significant. Both sets of plaintiffs would have been pleased to start again in their financial activities, and indeed most consumer claims are of this kind, as contracts affecting consumers rarely include significant expectation components. If a sales person misleads a consumer about the benefit to be obtained from a contract to repair a television set, for example, a refund of the money paid plus positive recovery for any damage done to the television would usually be sufficient compensation. The consumer would then have sufficient money to have it repaired elsewhere. Thus, the fact that the courts rely upon the tort standard when assessing section 82 damages is usually unimportant. Those contracts with heavy expectation elements are usually business contracts, such as future agreements.

However, some consumer contracts do have important expectation elements. The unhappiness caused by a breach of a travel contract in *Jarvis* v. *Swans Tours* [31] can be characterised as expectation losses. There, the plaintiff was promised "a great time", which the defendant's breach ensured that he did not have. If these damages were classified as expectation damages, they would have been recoverable only in contract actions and thus not under section 82. However, it is possible to see these as indemnity losses, the breach causing positive unhappiness to the defendant rather than the loss of an expected benefit. On that basis, they will be recoverable in tort, and thus under section 82. At least one dictum suggests that these damages are recoverable under section 82.[32]

Two other kinds of consumer contracts have less ambiguous expectation losses. The first kind is contracts to purchase a house. If a consumer is misled by statements about significant aspects of a house and its surroundings, a mere refund of the deposit may not be sufficient recompense. If the market price for houses is rising and the deposit tied up in the first contract is a

28 *Id*, 88.
29 [1976] QB 801.
30 Causation played an important part in this decision. The damages were reduced by 20%, that being the percentage of the losses estimated by Fox J. to have been caused by factors other than the misleading conduct. Most of these losses were attributed to the defendants' lack of capital and their inexperience (see 90-91).
31 [1973] 1 All ER 71.
32 *Steiner* v. *Magic Carpet Tours* (1984) 6 ATPR 40-490, 45,642.

significant percentage of the purchaser's assets so that he or she cannot buy another house until the deposit is returned, then the recovery of the deposit even with interest, after a year or more of litigation will be insufficient to compensate for the price rises in the meantime. In contract, the purchaser in this position would receive the difference between the contract price and the market price, assessed at the date of the hearing if there had been no failure to mitigate in the meantime.[33] Tort recovery would merely put him or her in the contract position, unless further positive losses could be shown.

V. INSURANCE CONTRACTS

Insurance contracts show the difference between the contract and tort measures of recovery even more starkly. In insurance contracts, like gambling contracts, the purchaser pays a small premium in return for a contingent expectation interest. The restoration of a policy holder (or gambler) to the pre-contract position is little compensation after the house has burnt down or a horse has won the Melbourne Cup. Thus the most critical issue in assessing section 82 damages would arise if a consumer were misled into buying an insurance policy by false statements as to its coverage, and if the contingency which the consumer had been misled into falsely believing was covered by the policy, then occurred. This is precisely what happened to the plaintiff, Mr Gates, in the *Gates* case and it is precisely this practice at which the Insurance Contracts Act and the Insurance (Agents and Brokers) Act were, amongst other matters, directed.

The Insurance Contract Act and the Insurance (Agents and Brokers) Act have now entered into force. They are the direct result of the Australian Law Reform Commission's Report on insurance law.[34] That Report identified a number of deficiencies with the legal rules which previously regulated insurance contracts and proposed a large number of reforms. In particular, the Report identified a number of problems which arose out of the marketing practices of insurers.

Policies of insurance which are directed to consumers as opposed to business insurances are marketed over the counter as a result of a direct approach by a consumer, or they are sold door to door by sales people trained in the art of door to door selling. While figures are not available, experience indicates that the majority of consumer policies are marketed by direct solicitation door to door and that the sales staff of insurers, whether they are counter attendants or door to door canvassers are not trained in the nuances of insurance law, nor are they expert in interpreting the terms of their

33 See Kercher and Noone, note 22 *supra*, 113-117.
34 See note 19 *supra*.

company's policies.[35] Indeed, under the old law, consumers would not see a copy of the policy (contract) they were purchasing until after the acceptance of their offer to contract by the insurer. Consequently, it was not unusual for consumers, especially when dealing with a door to door canvasser, to become confused as to the terms applicable to the policies they were purchasing and even to be confused as to the (legal) interpretation of such terms. The recent controversy over the question of flood and storm cover for the residents of Sydney's western suburbs is a case in point and it is exactly this type of controversy which the Insurance Act and the Insurance (Agents and Brokers) Act seek to prevent occurring in the future. Unfortunately, as a result of the form of legislation and the structures used to resolve disputes between insurers and insured it is unlikely that this goal will be achieved to any significant extent. Certainly, if the decision in *Gates*' case stands, then insureds will find the legislation a pair of hollow reeds indeed.

VI. THE OPERATION OF THE INSURANCE LEGISLATION

Insureds may be misled as to the extent of cover they purchase in two main ways. They may be confused because of innocent misrepresentations either by the insurance sales person or by the insurer's literature, or because of intentional misrepresentations by one of these parties. In the latter case the intent may amount to actual fraud as in *A.M.P. Society* v. *Denham*,[36] or it may be something less than that, although more than a completely innocent mistake. The legislation seeks to deal with both situations. Firstly, it requires that in relation to certain types or categories of cover, insurers wishing to offer such cover are required to use standard form policies and to bring expressly to their proponent's attention any derogation from the standard terms.[37] Unfortunately, no mechanism is provided in the legislation to ensure

35 The majority of business insurances are arranged through brokers, while consumer insurances, with the exception of life and accident policies, many of which are marketed by direct mail methods, are the result of contracts initiated by agents of insurers canvassing door to door. While some of the larger insurers have, as a result of the new legislation, initiated more rigorous training programmes, many agents (canvassers) are simply trained in the art of selling and many insureds continue to discover after a loss that the representations made to them at the time of contract as to the extent of cover under their policies were inaccurate. Many examples of this can be found: the 1986 floods in the metropolitan area of Sydney disclosed an astounding discrepancy between the expectations of insureds and the view of their insurers as to the coverage provided under their homeowners policies, and it is of no small significance that some of the policies in question were called 'plain English' policies. Another example is provided by the report on the ABC's programme "The Investigators" of 10 September 1986. That programme reported on an instance, but not an isolated one according to the Aboriginal Legal Service, where agents of an insurer persuaded workers at an Aboriginal hostel to take out insurances by stating that the insurances were required as a term of their employment contracts. This statement was patently false, but the insurer concerned has expressed the view that the agent's representations "fulfill[ed] our requirements".

36 (1979-1981) ANZ Ins Cas 60-009.

37 Insurance Contracts Act 1984, Pt V, Div. 1 — see especially s.37.

that prospective insureds know about these rules or even of the existence of such "standard policies".

Secondly, the legislation requires that insurers must inform proponents of certain obligations imposed by law upon them, the principal obligation being to disclose material facts.[38]

Thirdly, the legislation requires all brokers to be registered and all agents (canvassers) to enter into written agreements of agency with insurers.[39] While both provisions provide useful protection for insureds in certain circumstances, they can have only limited impact upon ordinary, as opposed to business, consumers. The requirement that brokers be registered is of greater significance than the requirement that agents and insurers must formally record their agency agreements, yet brokers rarely arrange consumer type insurances. Rather, as we have indicated,[40] most consumer insurances are arranged through a canvasser who has been trained in marketing techniques but who will have received little or no training in the legal technicalities of insurance law. Yet insurance is a product quite unlike the vacuum cleaners which the Jollys of this world market. The legal rules which regulate insurance contracts impact directly upon each policy, yet that impact is not felt until a claim is lodged in respect of a loss, at which time it is far too late to re-negotiate the arrangement if the policy does not provide the cover expected by the insured.

The Insurance (Agents and Brokers) Act recognises this problem and provides in section 11 that insurers are responsible for the actions of their agents. This section reads as follows:

> (1) An insurer is responsible, as between the insurer and insured or intending insured, for the conduct of his agent or employee, being conduct —
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> (a) upon which a person in the circumstances of the insured or intending insured could reasonably be expected to rely; and
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> (b) upon which the insured or intending insured in fact relied in good faith,
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> in relation to any matter relating to insurance and is so responsible notwithstanding the agent or employee did not act within the scope of his authority or employment, as the case may be.
>
> (2) The responsibility of an insurer under sub-section (1) extends so as to make the insurer liable to an insured or intending insured in respect of any loss or damage suffered by the insured or intending insured as a result of the conduct of the agent or employee.
>
> (3) Neither sub-section (1) nor (2) affects any liability of an agent or employee of an insurer to an insured or intending insured.
>
> (4) An agreement, insofar as it purports to alter or restrict the operation of sub-section (1) or (2), is void.
>
> (5) An insurer shall not make, or offer to make, an agreement that is, or would be, void by reason of the operation of sub-section (4).

38 *E.g.* Insurance Contracts Act 1984, s.22, Pt IV, Div. 2, ss 35, 44, 53.
39 Insurance (Agents and Brokers) Act, 1984, ss 10, 19.
40 Note 35 *supra.*

Penalty:
(a) In the case of a natural person — $1 000 or imprisonment for six months, or both; or
(b) in the case of a corporation — $5 000.

However, there are a number of difficulties with the section and it is hard to see how it will lead to responsible marketing of consumer policies. Firstly, although the Act imposes responsibility on insurers for the actions of their employees and their agents and thus may overrule those decisions which held that canvassers who filled in proposal forms for insureds and incorrectly recorded information given to them by the proponent were the agent of the proponent,[41] it does not require insurers to engage canvassers who understand the legal nuances of insurance and it does not require insurers to inform their staff as to the legal meaning of the policies they are marketing. That is the position aimed at in relation to brokers who must now be registered, but the legislation clearly preserves the status quo within which agents (canvassers) and counter staff are not necessarily experts in insurance law, nor even 'expert' in relation to their own companies' products.

Secondly, the legislation does not provide any special mechanisms by which consumers may test their rights under policies, or purported policies of insurance. Consumers are still confronted with significant expense if they contemplate contesting an insurance claim, whereas the insurer can afford to wait, fairly secure in the knowledge that most consumers will be forced by the economic vagaries either to discontinue their action or to settle it upon terms largely determined by the insurer. Despite this issue being raised and submissions to the Australian Law Reform Commission, the Commission did not consider the matter to be of great significance and not surprisingly, the legislation does not address it either.

Consequently, the only recourse[42] for a consumer who claims to have been misled by an insurer's agent as to the effect of an insurance contract is to rely upon section 11(2). The decision of the High Court in *Gates*' case, however, effectively closes off this route, unless the consumer can establish that the representation caused consequential loss. Not only will the majority of consumers find it difficult to establish such a loss due to the expense involved and their inability to lead evidence on the issues, but the actual decision in

41 *Cf. Biggar* v. *Rock Life* [1902] 1 KB 515; *Western Australia Insurance Co. Ltd* v. *Dayton* (1924) 35 CLR 355; *Newsholme* v. *Road Transport* [1929] 2 KB 356; *Deaves* v. *C.M.L. Fire and General Insurance Co. Ltd* (1979) 53 ALJR 382; *A.M.P. Society* v. *Denham,* note 36 *supra.*

42 Alternatively, a consumer could seek recovery by alleging breach of a collateral contract, or fraudulent or negligent misstatement. However, in *Gates'* case the High Court made it very clear that statements explaining the extent of cover of a policy and made with the purpose of inducing a proponent to contract are merely "descriptive or explanatory" (240 *per* Gibbs C.J.; see 242 *per* Mason, Wilson and Dawson JJ.) and are not intended by the parties to be contractual (promissory). Nor can such statements support a collateral contract as they would be in conflict with the express terms of the policy: *ibid.* Accordingly, it is difficult to see how such statements could even support a claim upon a collateral contract. Similarly, there would appear to be very few situations in which a consumer would be able to establish a fraudulent or negligent misstatement, and if *Gates* is correct, the latter course of action cannot be sustained as the consumer will not have sustained substantial damage.

Gates narrows the ground to such an extent as to render it of little significance even setting aside the evidentiary and cost problems.

VII. THE DECISION IN GATES

In *Gates* v. *C.M.L. Insurance Society Ltd,*[43] the High Court did to section 82 what it did to section 52 in *Parkdale* v. *Puxu.*[44] It reduced an imaginative consumer protection measure to the status of a statutory tort which was barely distinguishable from its common law equivalents. Geoffrey Gates was a builder who was convinced by Rainbird, an agent of the defendant, to add disability cover to certain superannuation and life policies. Rainbird falsely stated that the disability cover would compensate Gates in the event of an injury which prevented him from carrying on his normal occupation. In fact, the policy covered him only if he was prevented from carrying on an occupation of any kind, and then only if the insurer accepted that he was so disabled. Subsequently, Gates was injured sufficiently badly to prevent him from carrying on his work as a builder-carpenter, but not so badly as to prevent him from doing lighter work. C.M.L. refused to pay out on its policy and Gates claimed against it on the basis of a collateral warranty, and for section 82 damages on a breach of sections 52 and 53.[45] Ellicott J. found for Gates on the collateral contract ground and awarded him $66 003 damages. However, he found that when measured on tortious principles, Gates could show no damage under section 82 as the policy was worth as much as he paid for it.[46] He had bought a disability policy and obtained just that. At best, he could only have recovered the cost of the premiums under section 82.[47] On appeal the Full Court of the Federal Court agreed that no damages were recoverable under section 82, despite the very clear breach of section 52, but it also overturned the contract decision. It found that there was no actionable promise in these circumstances.[48]

Gates then took the matter to the High Court which agreed with the Full Court on both the assessment of damages and the collateral contract points, leaving Gates with no compensation. By the time he reached the High Court, Gates was not legally represented, but the attitude of the Court suggests that that would have made no difference to the result.

Once again, the narrowest judgment was delivered by Gibbs C.J. His decision not to award substantial damages under section 82 was based on three arguments. The first was that section 52 actions are analogous to those in tort, and that section 82 damages are thus analogous to those in tort. He

43 Note 24 *supra.*
44 Note 2 *supra.*
45 S.53 places more specific prohibitions on misleading and deceptive representations. Unlike s.52, the contravention of s.53 gives rise to criminal penalties under s.79.
46 In the case of each policy an extra premium of $2.09 was paid by Gates.
47 Note 24 *supra,* 241 *per* Gibbs C.J.
48 *Gates* v. *Assurance Society Ltd* (1983) 5 ATPR 40-335.

asserted that section 52 conduct does not include breach of contract and that no question can thus arise as to damages for the loss of a bargain. This is much less an argument than a simple assertion. Section 52 is analogous to tort solely because the courts have decided it is, and the contract is irrelevant solely because the courts have decided that way. The second argument by the Chief Justice was that damages under section 82 are based on tort because the previous cases have decided that. Again, the argument has no substance, and it simply holds that the analogy is with tort because the courts have decided it that way. No substanial policy argument has been made for the analogy and no consideration has been given to its effects upon the Act as a whole. The third argument was that Gates should receive no consequential damages in tort because he had not managed to establish that he had suffered any consequential losses. Gibbs C.J. referred to *Parker* v. *Co-operative Insurance Society*[49] to show that it is possible for the tort basis to cover what is in effect expectation damages in insurance cases. That can occur when the plaintiff shows that he or she could and would have bought the coverage he or she sought elsewhere but for the misstatement. This is a crucial point and we will consider it separately below when discussing the second judgment in the case.

Mason, Wilson and Dawson JJ. delivered the other judgment in *Gates*. After stating that the Act does not prescribe any particular way to measure damages, they then restricted themselves to a choice between tort and contract. They considered whether the tort measure could include expectation damages in cases of deceit, as occurs in the United States, but concluded that that had not been done in Australia or the United Kingdom and so would not be done here. Furthermore, they held, there was no evidence of fraud in this case. In Australia, they held, it is possible to obtain prospective loss of profits in tort, but only if proof of that is established by the plaintiff. If Gates had established that he would have bought a policy of the type he thought he was buying but for the statement of Rainbird, he would have recovered the equivalent of the full sum due in the event of total disablement. However, the Court held that there was no evidence of that here. Rather, they found that he would not have bought any kind of disability accident insurance if Rainbird had not made his statements. Furthermore, what Gates thought he was buying was not, on the evidence, offered by any other insurance company. Thus, even if he had established that he would have tried to buy another policy, he could not have established that he would have been able to do so. Accordingly, Gates could not establish any consequential loss, and as the additional cover provided by the policy addition was of some value he could, at best, seek a recovery of the $4.18 premiums paid for both policies. Having decided that Gates would get next to nothing in tort, the Justices then decided that that was the appropriate measure of damages under section 82. Without binding themselves to say

49 [1945] IAC Rep (1938 – 1949), 52.

that the tortious measure is always appropriate under the section they found that,

> there is much to be said for the view that the measure of damages in tort is appropriate in most, if not all, Pt V cases, especially those involving misleading or deceptive conduct and the making of false statements. Such conduct is similar both in character and effect to tortious conduct, particularly fraudulent misrepresentation and negligent misstatement.[50]

The authors of this judgment recognised that a person in a position such as Gates might elicit sufficient sympathy to favour expectation damages, but they steeled themselves against that by feeling bound by authority to decide to the contrary.

These are profoundly conservative judgments, politically, socially and legally. Insurance agents all round the country must have breathed a sigh of relief to have been told that the most important consumer protection provision in any Australian statute does nothing to compensate policy holders who are told the most blatant falsehoods at the time they take out their policy. Gates was in a double bind in this case. He had to show both that he would have bought another policy had Rainbird not made his misstatement, and that he could have bought another one. The first was difficult, it being the hypothetical question which politicians are so adept at avoiding. He would have had to prove that he approached the salesman seeking to buy a policy, rather than the reverse. This would be difficult in this kind of product, as insurance agents very often initiate sales rather than wait for customers to come to them. In fact, it does seem that Gates would not have sought to buy this kind of policy but for Rainbird's initiative. The second requirement was again apparently impossible, as on the evidence no other company offered the kind of policy which Rainbird described. That is, section 52 does nothing to compensate consumers who are told that the policy covers what it is impossible for consumers to buy. Statements that a policy includes free trips to Disneyland with every claim, for example, describe no existing insurance policies, and so give rise to no compensation once the premiums are paid under a falsehood. Significantly, the more extreme the agent's representation of the contents of the policy, the more the consumer is unlikely to recover. Insurance consumers thus cannot rely upon consumer protection law to assist them and the High Court has again returned Australia's consumers into the arms of caveat emptor.

The legal conservatism demonstrated in the case is shown by consideration of the ways in which the High Court could have found for Gates without distorting the statute's words. Both judgments simply chose to find an analogy with tort (principle), based on previous decisions (authority) which were themselves based on the same flimsy principle. As Mason, Wilson and Dawson JJ. stated, the Act gives no guidance as to how damages are to be assessed. The highest Court in the country could have chosen to give its own interpretation of "loss or damage", so as to cover expectation loss of the type

50 Note 24 *supra*, 244.

sustained by Gates. Gates no doubt felt that he had suffered a "loss" by being unable to recover for precisely what he had been led to believe was included in the policy. He thought that he would have been covered in the event of an injury and he was not. This is a loss, whether or not he could establish that he would and could have obtained the same coverage elsewhere. He bought the policy on this basis, whatever the rules of contract and collateral contract law say, and moreover, section 82 is drawn sufficiently broadly for this to be characterised as a "loss". Secondly, the High Court could have chosen to follow the contract model of damages for people in the position of Gates and allowed Gates to recover the full sums he expected to be paid. Thirdly, even within the tort model of needing to establish consequential loss, the High Court could simply have reversed the onus of proof for establishing that loss. That may not have helped Gates, as the insurance company may have established that what he sought was unavailable, but it would help others who are misled to a less extreme degree. These judgments do not show any recognition that the statute is a measure for consumers, to assist the vulnerable.

The Court was able to give only compensatory damages in *Gates,* as the terms of section 82 exclude exemplary damages by referring only to recovery for "loss or damage". Despite that, the Court could have recognised that this is a statute dealing with matters of public policy and could have used that to give a generous interpretation of the Act's compensation principles. Instead, it hid behind authority and principle, the great masks for judicial policy preferences, to give the narrowest possible interpretation of section 82.

It is also worthy of note that in dismissing the collateral contract claim — a claim which if successful would have entitled Gates to recovery for his expectation loss — despite the non-availability of such cover, the High Court accepted that the statements of Rainbird were "descriptive or explanatory of one of the terms ..." of the proposed contract and not promissory so that neither party intended that they should form a term of a contract between the insurer and Gates. Further, the High Court accepted that such a term would have been inconsistent with the term of the policy and was thus also unenforceable on this ground.[51]

If this view is correct — and we must accept that it is — then the issue of the party's intention becomes irrelevant, the only question being whether the representation made by the insurer's agent contradicts the policy subsequently issued. If it does — and it will always do so in cases like *Gates*, which are the very cases section 11 is directed towards — then the representation can never form a collateral contract and can only sound in damages if made fraudulently, or alternatively under section 52, the consumer can establish a consequential loss.

In order to establish that an agent has made a representation fraudulently, a consumer would have to establish that the agent made the representation

51 See discussion at note 41 *supra.*

knowing that it was false and intending to deceive the consumer. Where the agent is interpreting a clause in a policy this will be extremely difficult to establish. However, where a wholly different term is represented as being in the policy, as in *Gates'* case, it should be fairly easy to establish fraud. *Gates'* case, however, demonstrates that even in this case, the consumer has to go further, but it is far from clear as to what evidence can be led which will in fact establish fraud. One would have thought that section 52 was enacted to meet this precise difficulty by establishing what is in effect statutory fraud. However, that is not how the High Court is applying the provisions. Thus the consumer must establish a consequential loss in order to recover his or her expectation losses, which means that only where this type of loss can be established will insured consumers be protected against misleading representations made by insurance agents who make such representations in order to effect sales and hence to earn their commission.

An alternative remedy for such consumers may be found in the tort of negligent misstatement, at least where the agent represents the policy as possessing a term which in fact it does not. Unfortunately this alternative remedy was not argued in *Gates* and in any case the effectiveness of this route again depends upon the ability of the consumer to establish consequential loss. Does section 11 assist the consumer here? Certainly the Australian Law Reform Commission thought that it would, but as the Insurance (Agents and Brokers) Act does not provide a remedy for breach of sub-sections 11(1) or (2), we must turn to the common law, or in particular, to the Trade Practices Act and sections 52 and 82.

Section 11(1) makes it clear that the insurer is now responsible for the "conduct" of its agents (canvassers and employees) in respect of "loss or damage" suffered by insureds or prospective insureds as a result of that "conduct". Clearly the term "conduct" will cover the action of an agent who misrepresents the effect of an insurance policy which the insured subsequently purchases, but can the insured establish "loss or damage" as a result of that misrepresentation?

Clearly, where the misrepresentation is so extreme that it is effectively impossible for the insured to establish that at the time of contracting another insurer offered a policy such as that represented by the agent, the insured will at best be able to establish a loss representing, as Gates did, the difference between the value of the policy actually purchased, and the premiums actually paid. Consequently damages will only be recovered if the insured can establish (upon the balance of probability before a judge) that he or she would have purchased the policy in favour of the one actually purchased if the true state of affairs had been disclosed prior to effecting the contract. Where the agent has initiated the transaction — as occurs in the majority of consumer insurance sales — this will be extremely difficult. Also, even if the insured is able to meet the two requirements, another difficulty will immediately arise.

Even assuming that the insured can establish that a policy like the one represented is available, is that sufficient if the premium chargeable for that

'second' policy is very high, or does this simply go to the question as to whether the insured would have in fact purchased the 'second' policy? And in such a case, could the defendant insurer seek to establish that had the insured sought to purchase the second policy, the second insurer may have refused to contract because, for example, of the insured's claim history? The fact that an insurer may seek to lead such evidence will be a significant break upon insureds wishing to contest claims such as these even where there are a number of companies marketing policies of the type the agent in question has represented his or her company as offering.

VIII. THE DESTRUCTION OF A REMEDY

Through the vesting of jurisdiction in State courts[52] we may be about to witness the unprecedented opening up of consumer law to litigation by consumers. The Trade Practices Act was brilliantly conceived in its combination of specific and general prohibitions and of public and private enforcement. The Trade Practices Commission, however, has never had sufficient resources to fulfil its public enforcement obligations. Simultaneously, until the grant of jurisdiction to State courts, the cost of Federal Court litigation has prevented most private enforcement by consumers.

However, when the State courts (and possibly tribunals) do finally hear local section 52 and 82 cases, they will do so under the influences of *Parkdale* v. *Puxu* and *Gates* v. *C.M.L.*. Together with previous Federal Court decisions, the authors of these judgments seem to have been intent on reducing the exciting remedy given to consumers by sections 52 and 82, to a mere distorted reflection of the common law. The tendency of the section 52 cases has been to reduce a strict liability provision into one in which the claimant must show his or her own lack of negligence before recovery. The statute does not mention the words "negligence" or "reasonable care", those being creatures of the courts through their abandonment of the ordinary person test. The section 82 cases show that even if the section 52 barrier is hurdled, the test of damages is not one which reflects the consumer protection origin of the statute, but the narrow tort test. Again, the courts have simply chosen to adopt the test, regardless of the intention of Parliament. There could not be a clearer illustration of the need to hasten the process of removing consumer protection litigation from the hands of the courts into those of broadly based tribunals.

In relation to the insurance legislation, it is obvious that unless sub-sections 11(1) and (23) are substantially amended, insurers and their agents will be only marginally perturbed by the rule that insurers are now responsible for any loss or damage caused by the conduct of their agents or employees.

52 Discussed above, under "Access to the Remedy".

Clearly, insureds must be given a statutory right under section 11 to seek recovery for the loss they believe they have sustained. That is, insurers must be required to indemnify them as if the policy ostensibly purchased had in fact been issued. This amendment is particularly important in the light of the High Court's decision in *A.M.P. Society* v. *Goulden*.[53] As a result of that decision, consumers complaining about deceptive or unfair practices by insurers or their agents will not be able to take advantage of the reforms noted above. Nor will they be able to take advantage of existing statutory provisions such as the N.S.W. Insurance Act or the N.S.W. Contracts Review Act.[54]

In *A.M.P.* v. *Goulden,* the High Court held that State anti-discrimination laws, in this case the N.S.W. Anti-Discrimination Act 1977, conflict with the provisions of the Commonwealth Life Insurance Act,[55] so that, applying section 109 of the Commonwealth Constitution, the latter must take precedence.

By way of a concluding note, it should be acknowledged that insurers are employing new methods of marketing consumer insurances. Direct mail solicitations have from time to time been used in Australia with varying degrees of success, particularly in connection with life and disability cover. The links between insurers and other financial institutions are also presently being expanded, and with the development of direct marketing by computer terminals a revolution in insurance marketing is rapidly approaching. Neither the Insurance Contracts Act nor the Insurance (Agents and Brokers) Act contain provisions which recognise this possibility, and while such a development may dispense with the need for canvassers, consumers may not receive more equitable treatment. Section 11 may not, as presently drafted, be applicable to marketing arrangements which rely on consumers initiating sales queries via their own home computer terminals, although the development of 'plain English' policies by some companies, and the adoption of standard cover terms, may assist. Whether they will solve all problems remains to be seen, but it is clear that if section 11 remains in its present form and the decision in *Gates* stands, consumers are vulnerable and insurers and their agents are under no real pressure to market their products in a responsible way. Certainly the vast majority of insurers and agents do seek to attain high levels of behaviour but this does not assist consumers as a group, especially during a period of economic recession when consumers are constrained to purchase the cheapest product and some agents are constrained to puff their products in order to maintain their own income levels.

53 (1986) 65 ALR 637.
54 Insurance Act 1902, No. 49; Contracts Review Act 1980, No. 16.
55 Life Insurance Act 1945, No. 78.