CONTRACTS AND COMMERCIAL LAW REFORM COMMITTEE

DISCUSSION PAPER PREPARATORY TO SECOND REPORT ON INSURANCE LAW REFORM

OCTOBER 1979

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INTRODUCTORY

1. In the report by this committee entitled Aspects of Insurance Law (the recommendations wherein were enacted as the Insurance Law Reform Act 1977) we referred to our intention to issue further reports on the topic of insurance law. It is our present intention to submit to the Minister of Justice a second report dealing with the aspects of insurance law referred to in this paper.

2. We readily acknowledge that it is imperative that in preparing our report we should consult with representatives of insurers and their customers. The procedure that we followed in preparing our first report was to circulate a draft as a working paper. The disadvantage of this way of going about the matter is that there is a risk that expressions of opinion by the committee, however tentative such conclusions may be expressed as being, may give the false impression that the committee is likely to be impervious to such arguments as may be advanced contrary to the views expressed in the working paper. The present paper is therefore described as a discussion paper and it will be seen that except in one or two non-controversial instances it does no more than endeavour to identify areas where legislative attention is, in the view of the committee, desirable. It goes without saying that what the committee seek from those who may be interested is expressions of opinion as to the precise reform that is called for.

PROTECTION OF LIFE POLICIES AGAINST CREDITORS

3. Sections 65 and 66 of the Life Insurance Act 1908 provide that "all policies that are dependent on accident, sickness, death or other contingencies of life" (with the exception of life policies maturing within 7 years, and certain paid up policies and policies where the premiums are payable by unequal instalments or at longer intervals than one year) do not pass to the official assignee on bankruptcy, are protected against execution creditors, do not pass under a general assignment of the policyholder's property, and on death are not available to pay creditors or legatees unless the will of the policyholder otherwise provides. The protection is limited in amount to $4,000 plus bonuses, or in the case of annuities to $208 a year.

4. The first statutory provision protecting life policies against creditors seems to have been a United Kingdom statute, the Married Women's Property Act 1870 s.10, which was replaced by the Married Women's Property Act 1882 s.11. The general scheme of those provisions is that a policy effected by a man or woman on his or her own life expressed to be for the benefit of his or her spouse and/or children creates a trust in favour of the objects named. In New Zealand section 48 of the Life Assurance Companies Act 1873 was to similar effect. (The equivalent section is today

the Life Insurance Act 1908 s.75A). The Life Assurance Policies Act 1884 provided an additional protection in sections 33 and 34, which are broadly to the same effect as sections 65 and 66 of the Life Insurance Act 1908. In particular it should be noted that the $4,000 or $208 per annum limit was first fixed by this statute.

5. It is not proposed to trace the provisions corresponding to the New Zealand sections enacted by the various Australian States. The relevant provisions are now to be found in two Commonwealth statutes, sections 92-94 of the Life Insurance Act 1954-1973 and section 116(2)(d) of the Bankruptcy Act 1924-1965. In neither of these provisions is there any limit on the amount of the protection, but the protection on bankruptcy applies only if the policy has been in existence for at least two years (or if a policy of pure endowment, 5 years) before the date of the bankruptcy.

6. The New Zealand provisions have been plagued by poor drafting. Section 65(1) refers to the bankrupcy etc. of the "holder" of the policy. But if the policy is assigned by way of mortgage the holder is the assignee. The Life Insurance Amendment Act 1925 section 3 was enacted to remedy this position, but failed on a strict interpretation so to do, because while the amendment made it clear who was to be protected, the event giving rise to the protection (i.e. the bankruptcy etc. of the holder) remained unchanged. Finally in the case of In re Ainge deceased; Wheeler v. Bank of Australasia [1935] NZLR 691 the Court of Appeal decided that it might properly strain the interpretation of the strict words of the statute to avoid rendering it inoperative and read the provision as if the reference were to the bankruptcy etc. not of the holder but of the life assured. (This history is narrated by Turner J in Bissett v. Australia and New Zealand Bank [1961] NZLR 687, 688 ff.).

7. Against this background it is suggested that a number of questions fall to be decided. The first is whether it is appropriate that such protection as is set out in the Life Insurance Act sections 65 and 66 should continue to exist at all. The philosophy of the provision, namely that a man should be encouraged to make provision for the support of his dependants after his death, dates back well before the existence of the cushion of the welfare state. The amount of the protection is so trifling that it is not today in practice invoked as a selling point, so that the protection could be abolished without any real interference in current patterns of trade in the life insurance industry. And one may question the logic of providing protection for one but not other types of investment.

8. The second issue, if the protection is to remain, is as to the amount of the protection. If $4,000 was an appropriate figure in 1884, it cannot possibly be the appropriate figure nearly a century later. Should there (as in Australia) be no limit as to amount, subject always to safeguards to ensure that someone seeing the writing on the wall does not defraud his creditors by investing all his liquid assets in (for example) fully paid up policies?

9. Finally in this connection it is assumed that if the protection is to remain no one would seriously question the need for a recasting of the relevant sections in the light of the unfortunate drafting history recounted in paragraph 6 above.

INALIENABLE LIFE ANNUITIES ACT 1910

10. The Inalienable Life Annuities Act 1910 s.11 provides protection for life annuities to the extent of $208 only against creditors and alienees, and it would be logical if the limits under the Life Insurance Act were to be reviewed to reconsider this figure. However, we suspect that in practice this statute is rarely if ever employed today, and that it is unlikely to be used even if the protected amount is increased. We would welcome views as to whether or not this statute should simply be repealed *in toto*.

PARTICULAR AVERAGE

11. Where a policy contains a *pro rata* average condition its effect is that where the value of the insured item exceeds the amount of the cover, the loss is borne by insured and insurer in the same proportion as the amount of cover bears to the value. So that if a policy is for $700 on an item worth $1,000 and the loss is $500 the amount to be found by the insurer is only seven tenths of $500 i.e. $350. The full sum insured is paid only if the item is totally destroyed. This compares with an ordinary policy (not subject to average) under which an insurer must pay the full amount of any loss, up to the insured value, whether the loss is total or only partial.

12. In practice in New Zealand an average clause is not usually inserted in domestic policies. But this has not always been so, and there is no legal reason why an insurer should not insert an average condition in a householder's policy. The first matter to be considered therefore is whether the legislature should forbid the insertion of an average clause in certain classes of policy.

13. The second question that arises in the context of average is this. The purpose of *pro rata* average conditions is to prevent an insured obtaining an undue benefit from under-insurance. There can as a matter of principle be no quarrel with the notion that an insured may elect to bear part of the risk himself, and it can fairly be said that the rules as to particular average do no more than reflect the degree of sophistication that has been attained by the insurance law of England and of those nations that have inherited that law. The problem is that in practice there is all too often no genuine election by the insured. The small businessman tends to arrange his insurances unassisted by adequate professional advice. He does not read his policy and if he does, is unlikely to appreciate the implications of an average condition. He is usually completely unaware that such a provision lurks in the small print of his contract until it is too late. Its discovery comes as a nasty shock to him. It may be added that under-insurance is particularly common in periods of inflation. Loss of profits insurance is an example of an area where

frequently in practice an average condition comes as a completely unexpected blow to a businessman who has suffered a fire or like misfortune. Should then the law, while not interfering with freedom of contract between insured and insurer, endeavour to make certain that in non-marine insurance an average condition (as a precedent to its enforceability) is brought specifically to the attention of the insured at the time the contract of insurance is entered into? Perhaps, for example, the law should require a conspicuous, separately signed statement on proposal forms that any policy issued pursuant to the proposal will be subject to average where this is the case.

INSURABLE INTERESTS IN LIFE POLICIES

14. It is well established that one has an insurable interest in one's own life or that of one's spouse. In other cases, if the contract of insurance is to be more than a mere wager, the Life Assurance Act 1774 (U.K.) (in force in New Zealand) requires the proponent to have a pecuniary interest in the life assured. The pecuniary interest must be one reasonably capable of valuation in money and the amount of cover must relate to the actual loss the death causes the proponent. A pecuniary interest has been held to exist as between partners, in the case of a creditor insuring the life of his debtor or a person on whose behalf he has entered into a contract of guarantee and in the case of a master insuring the life of his servant.

15. The requirement of pecuniary interest leads to uncertainty. Although partners have an insurable interest in each other's lives it is not clear that two working members of a two-man company have such an interest. Nor is it clear that parties to a de facto relationship have an insurable interest in each other's lives.

16. The present restrictions are easily avoided by insuring one's own life and then assigning the policy. (McFarlane v. Royal London Friendly Society (1886) 2 T.L.R. 755). Moreover, the insurer may waive the requirement of interest.

17. The solution proposed in submissions from the Life Offices' Association of New Zealand Inc. is the enactment of a provision defining insurable interests. A precedent (which the Association regards as requiring expansion) is to be found in the Australian Life Insurance Act (1945-73) s.86. The provision suggested by the Association is as follows:

> An insurable interest shall be deemed to be had by:
>
> (a) any person in his/her own life;
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> (b) a husband - in the life of his wife;
>
> (c) a wife - in the life of her husband;
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> (d) any parent or grandparent of a child under 21 years of age, or a person in "loco parentis" of such a child - in the life of the child;

(e) any individual contributing to the support, welfare or education of a person under 21 years of age - in the life of the person;

(f) children, with consent of the life to be assured - in the lives of their parents, grandparents or persons in "loco parentis";

(g) any person - in the life of another upon whom that person is wholly or in part dependent for support, welfare or education;

(h) a person who has a pecuniary interest in the life of that person;

(i) a corporation or other person - in the life of an officer or employee thereof;

(j) an employee - in the life of his/her employer;

(k) a creditor - in the life of a debtor or guarantor of that debtor;

(l) a trustee - in the life of any beneficiary of the trust or any person in whom the beneficiary has an insurable interest;

(m) a trustee of a superannuation scheme - in the life of any member or any beneficiary of a superannuation scheme".

18. The solution proposed in a discussion paper on Insurance Law issued by the Law Reform Commission of Australia (para. 25) is simply the abandonment of the requirement of interest, perhaps with the addition of the requirement of the consent of the life insured.

INSURING LIVES OF CHILDREN

19. The Life Insurance Act 1908 s.67, as modified by the Life Insurance Amendment Act 1921-22 s.3(1)-(3), lays down rules for the insuring of the lives of children under 10, reflecting no doubt the fear that an evil parent might not scruple to cause the death of a child for the sake of an insurance payment. The Life Offices' Association points out with considerable justice that the monetary amounts in s.67(a) which (return of premiums apart) limit payments on the death of a child under 5 years to $12 (from all insurers) and on the death of a child between 5 and 10 years to $20 are hopelessly out of date, and suggest an increase to $1,000. The Association also suggests an amendment to s.67(b) to enable payments to other than parents or their personal representatives, but this proposal seems to overlook the provisions of the Administration Amendment Act 1964 s.3 (now to be found in the Administration Act 1969 s.65).

20. The Life Offices' Association suggests that although s.67 permits parents to insure on certain terms the lives of children under 10, it is not clear whether parents have an insurable interest in the lives of children over 10. Section 75(2)(a) as substituted by the Minors' Contracts Act 1969 s.17 empowers a minor over 16 to surrender a policy on his own life owned by him "whether the policy has been effected before or after the minor attained the age of 16 years and whether or not the policy has been effected in the first place by the minor". The Association suggests that "it is implicit in this wording that policies may be proposed on the lives of minors under 16 and not just under 10 years of age". We very much doubt whether as a matter of statutory interpretation this is a valid conclusion but we do not dispute the view that the law should be made clear.

21. Any recasting of the law in this area should then deal clearly with the following issues:

(a) Whether there should be a limitation on the insurability of the lives of minors under a certain age of the sort now to be found in s.67.

(b) Whether (if there is to be such a limitation as is referred to in (a)) there should be a limitation on the insurability of the lives of minors over that age.

(c) The rights of minors to insure their own lives.

FRIENDLY SOCIETIES

22. The Friendly Societies Act 1909 s.59 contains limitations on the amounts payable on the death of children which correspond broadly with those contained in the Life Insurance Act 1908, so that any review of the latter statute should be accompanied by corresponding changes to the former.

PAYMENT OF INTEREST AFTER THE DEATH OF A BENEFICIARY UNDER A LIFE POLICY

23. The committee has received a suggestion that insurers should pay interest on life and endowment policies from the date of maturity until the actual date of payment. It is suggested that the rate of interest be the same as the rate which the insurer is charging those who wish to borrow against policies. At present insurers are not under any obligation to pay interest, although there is frequently some delay between the date of maturity and the date of payment while appropriate proofs are obtained (particularly where probate or letters of administration are required). We appreciate that in many instances the delays are beyond the insurer's control. Nevertheless the insurer continues to have the use of the money until it is able to be paid over, and in these circumstances there may be a valid argument for payment of interest at a reasonable rate.

EXCUSING NON-COMPLIANCE

24. Our attention has been drawn to section 18 of the Commercial Transactions (Miscellaneous Provisions) Act 1974 (N.S.W.) which provides as follows:

> 18(1) In any proceedings taken in a court in respect of a difference or dispute arising out of a contract of insurance, if it appears to the court that a failure by the insured to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.
>
> (2) Where an order of the nature referred to in subsection (1) has been made, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

Our enquiries have revealed little information as to the way in which the clause has worked in practice, and we have been able to locate only one (unreported) case: Dolso Constructions Proprietary Ltd v. Southern Pacific Insurance Corporation Ltd (N.S.W. Supreme Court No.8971/1977 date of judgment 21/3/78). In that case Meares J held that a defendant insurer's claim that it had been prejudiced should be tested subjectively, and that the onus was on the insurer to establish prejudice. In the circumstances of the case the judge found that prejudice had been established (whether on a subjective or objective test) and accordingly held in favour of the insurer.

25. The question to be considered is whether the introduction of a similar provision in New Zealand might cover a gap in the provisions of the Insurance Law Reform Act 1977. Although section 11 of that Act deals with non-causative exemptions or exclusions, the New South Wales section 18 has a wider field of operation. It appears to us that the provisions of the clause would be valuable in any case where an insurer endeavoured unfairly to rely upon the strict terms of a policy.

We also consider that reputable insurers would have nothing to fear from the introduction of a provision similar to section 18. We again record our belief that the majority of insurers in New Zealand endeavour to interpret their policies reasonably. In our view, however, that is no answer to the proposition that the law should ensure that a policyholder is able to receive fair treatment when an insurer fails to observe appropriate standards.

THE DUTY OF DISCLOSURE

26. Our attention has also been drawn to the decision in Gulf Charters and Brokers Limited v. Guardian Royal Exchange Assurance of New Zealand Ltd given in the Supreme Court in February of this year. Several matters were in issue in the litigation, which arose following an insurer's repudiation of

liability for a claim for the value of a pleasure craft lost as a result of fire. One of the issues concerned the insured's general duty of disclosure when the proposal asked a series of specific questions. The judge found that the insured's governing director had failed to comply with his obligations to disclose certain criminal convictions. In the course of the judgment the judge said:

> "The declaration at the foot of the proposal is as follows:
>
> > "I declare that the answers in this proposal are full and true, and that I have withheld no information that might tend to increase the Company's risk or calculated to influence their decision in regard to this proposal. The signature of this form does not bind the proposer to complete the insurance but it is agreed that this form shall be the basis of the contract should this insurance be completed."
>
> The proposal form does not contain any specific question such as "Have you ever been convicted of any criminal offence?" and so Mr N. is quite entitled to ask how was he to know that his convictions should be disclosed. He could say that Guardian Royal Exchange asked him a series of other questions and if the question of a proponent's past is important then it could equally well have asked him about them. He is also able to say that if Guardian Royal Exchange regarded him as of sufficiently good character and repute to be appointed one of its agents to enlist business for it amongst the business community and the public generally of Auckland and to be its worthy representative, then why should it now be allowed to say, when he has a claim against the company he represents, that he is a person of ill repute.
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> There is a lot to be said for this argument. Most people would regard it as fair and logical. And of course, as I have previously stated, the very asking of specific questions could lead a person to think that that was all he was required to do. It would obscure the general duty of disclosure - a duty no doubt unknown to most people - and lead a person to feel that having answered the specific questions that was all he was required to do.
>
> However the law as I have previously stated is clear although many people might not regard it as fair and logical. The law is that there is a duty to disclose material circumstances. The failure to disclose may give an insurance company the ability (not the right) to repudiate for example a policy of insurance effected by a policyholder on say a pleasure craft bought out of savings after years of a reformed life following an unsettled youth and discovered through the employment of a private investigator, and following the payment of premiums over a number of years in the faith and trust that he had a valid policy of insurance. The books are full of references to the moral and physical hazards facing an insurer, but there seem to be moral hazards facing the man who has taken out what he believes is effective insurance."

In the light of the above comments we raise for consideration whether any modification of the duty to disclose material circumstances is required where the proposal asks a series of specific questions and does not contain some warning statement or question drawing the general duty of disclosure clearly to the proponent's attention.

INSURANCE COVER ON BUILDINGS WHEN PROPERTY IS SOLD

27. This topic has been the subject of concern for a considerable time, with there being general agreement that the present legal rules are not satisfactory. For convenience we first briefly summarise these rules (which were largely developed by the common law). In so doing we record that we have been particularly assisted by a report for the New Zealand Law Society by Mr I.L.M. Richardson shortly before he was appointed to the Supreme Court Bench.

In brief outline the rules are:

(a) In the absence of an express provision to the contrary, both equitable ownership and risk pass to the purchaser on the execution of a contract of sale, and the purchaser can thereafter be compelled to complete notwithstanding the destruction of the property prior to the date of settlement.

(b) From the time when the contract of sale is signed the vendor and purchaser both have an insurable interest.

(c) Unless the benefit under the vendor's insurance policy has been assigned to the purchaser with the consent of the insurer, the purchaser has no claim to the insurance moneys to which the vendor is entitled.

The qualification concerning consent of the insurer is important. Although a vendor may covenant to hold an insurance policy on trust for the purchaser, if such agreement is made without the consent of the insurer then the vendor may find that, although he is obliged to hand the insurance money over to the purchaser, he will be liable when he later receives the full purchase price, on completion of the sale, to refund the amount of the insurance money to the insurer (see Williams on Vendor and Purchaser, paragraph 1157). Some of the cases in relation to the above rule are not entirely easy to reconcile, and it may be possible for the vendor to avoid the obligation to account to the insurer if the settlement is completed before a claim is made against the insurer or, alternatively, if the vendor covenants to confer the benefit of the policy. There is, however, some disagreement concerning these matters. Other problems may also arise when an insurer enforces its rights of subrogation: see Budhia v. Wellington City Corporation [1976] 1 NZLR 766.

(d) A purchaser can require the vendor's insurer to lay out the policy moneys in rebuilding or reinstating the premises: section 83 of the Fires Prevention (Metropolis) Act 1774 (U.K.). This Act applies in New Zealand, and it is probable that if a vendor is required, pursuant to his statutory obligation, to lay out the money in rebuilding, the vendor cannot then be called upon to refund the insurance money when he in due course receives the price of the property (see Williams at page 552).

28. The above rules may operate inequitably, as is shown by the relatively recent decisions in Budhia (ante) and Carly and Anor. v. Farrelly and Ors. [1975] 1 NZLR 356. Indeed, the rules are probably not thought satisfactory by anyone. The difficulty lies in devising a suitable alternative. This was attempted in the United Kingdom (and followed, for example, in Victoria) by section 47 of the Law of Property Act 1925 which provides:

> (1) Where after the date of any contract for sale or exchange of property money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract the money shall on completion of the contract be held or receivable by the vendor on behalf of the purchaser and be paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.
>
> (2) This section has effect subject to:
>
> (a) any stipulation to the contrary contained in any contract;
>
> (b) any requisite consents of insurers;
>
> (c) the payment by the purchasers of the proportionate part of the premium from the date of the contract.

We understand that, prior to the passing of the United Kingdom Act, it was usual to stipulate in contracts of sale that, subject to the consent of the insurer, the purchaser would have the benefit of the vendor's insurance. While section 47 removes the need to make such a stipulation, it does not remove the need to obtain the insurer's consent: see Megarry and Wade, the Law of Real Property (4th Edition) page 577, where it is pointed out that, if the insurance is left in the vendor's name only, section 47 will not normally apply at all; for if the vendor can prove no personal loss, no insurance money will ever become payable under the policy.

A further problem in relation to the United Kingdom section 47 is that it does not adequately protect the purchaser. As is pointed out in Cheshire, Modern Law of Real Property (11th Edition) page 713, note 1:

> "If the house which is the subject of the sale is burnt down, the purchaser is nevertheless obliged to pay the

purchase money, and if the insurance company refuses to give the requisite consent to the transfer of the insurance money, he will be unable to obtain payment of that money under this section. On the other hand, having regard to the nature of fire insurance it seems clear that a vendor is not entitled both to the insurance money and to the purchase money. A purchaser is well advised to insure the property himself immediately after the contract and not to rely on this section."

It seems therefore that the United Kingdom provision does not satisfactorily ameliorate the difficulties.

29. In New Zealand there have been discussions between the Law Society and certain insurers which have resulted in those insurers including special terms in their policies. An example is the following term which we understand is included in policies issued by State Insurance Office:

"Notwithstanding the provisions of condition 4(d) of this policy, if at the time (during the Period of Insurance or during any further period in respect of which the General Manager shall have agreed to accept a premium) of destruction of or damage to the building or buildings hereby insured the Insured either as owner or mortgagee shall have contracted to sell his interest in such building or buildings or a part thereof and the purchase shall not have been but shall thereafter be completed within 3 calendar months of the making of such contract, the purchaser, on the completion of the purchase, shall be entitled to the benefit of this Policy so far as it relates to such destruction or damage (but excluding destruction of or damage to contents) but without prejudice to the rights and liabilities of the Insured either as owner or mortgagee or of the General Manager under this Policy up to the Date of completion;

Provided always that

(a) the purchaser shall as though he were the Insured observe fulfil and be subject to the terms exclusions and conditions of the Policy;

(b) if the purchaser is otherwise indemnified in respect of such destruction or damage then, notwithstanding the provisions of Condition 11 of this Policy, the benefit of this Policy shall not apply to the purchaser until the full amount of such other indemnity has been applied as far as it will go in satisfaction of such destruction or damage."

This and similar terms included in the policies of other insurers go a considerable distance towards ameliorating the difficulties inherent in the old rules, whilst also protecting the vendor and his mortgagees (although some further consideration may need to be given to the rights and obligations of the parties in relation to

mortgages, e.g. when insurance moneys are used to repay a mortgage there should presumably then be an equivalent reduction in the price the purchaser is obliged to pay). As matters at present stand, however, there is no obligation upon insurers to continue including the term, and in any event the same or a similar term has apparently not been adopted by all insurers. It should also be noted that the term is only included in policies relating to residential buildings, presumably on the ground that in farm sales the buildings usually form only a small part of the total price. In principle, however, there would not seem to be any reason to distinguish between residential, commercial or farm buildings.

30. We do not suggest that a statutory provision providing for the inclusion of an appropriate term is necessarily the only way of dealing with the problem. For example, another possibility is a statutory provision making it clear that a vendor who confers the benefit of insurance moneys on a purchaser is not liable to account for the insurance moneys to the insurer when the purchase price is received (whether or not the policy required notice or was made subject to cancellation in such an event.)

31. We have, however, formed the tentative conclusion that the law should require all insurers to give similar protection to that offered by those insurers who include an appropriate term in their policies. We consider this course to be preferable to any attempt to alter the existing rules relating to the passing of risk, which would involve complex and far reaching changes with considerable drafting difficulties. The existing rules as to passing of risk are well known and have been developed through a long history of case law. They apply whether or not there is any question of insurance and they also have some consistency with the rules for passing of risk on sales of chattels (where, however, the common law principles have to some extent been changed by statute).

32. We appreciate that any extension of cover may to some extent place insurers at a greater risk. Thus vendors sometimes vacate a property a considerable time before possession or settlement, which is generally thought to increase the risk. Similarly, if a purchaser is automatically given the benefit of the vendor's policy (even if only for a limited period), the purchaser becomes insured without the insurer having the opportunity to consider whether the purchaser is an acceptable risk. There may also be practical problems of which insurers have become aware as a result of including the clause in their policies. One potential problem would appear to be that a purchaser is unprotected if a vendor does or omits to do something which would enable the insurer legitimately to decline to indemnify. It seems, however, that the potential difficulties have not prevented many insurers from including the term in their policies and it would seem to be fairer if a similar obligation is placed upon all insurers. This would also have the great advantage that purchasers and their advisors are not placed in a situation where they may be trapped by failing to ascertain whether a policy has the appropriate condition in it.

CONTINUING REVIEW

33. Some two years have now elapsed since the passing of the Insurance Law Reform Act 1977. We would therefore be interested to learn whether insurers or their customers have encountered any problems in relation to the provisions of the Act.

34. This discussion paper is another step in our continuing review of insurance law. During the progress of our review we have received helpful suggestions from both insurers and their customers. We would welcome further comments on any matters which are thought to need further consideration. One area in which there appears to be some dissatisfaction on the part of the public, relates to allegedly unfair aspects of excess provisions. We recognise that this is a difficult matter, and appreciate that if insurers are compelled to accept risks which they at present exclude, then in due course this is likely to be reflected in premium increases. There is a need to find a reasonable balance, ensuring on the one hand that so far as possible cover is provided equitably, and on the other hand that insurers may require those who are poor risks to pay higher premiums, accept excess provisions, or otherwise obtain cover commensurate with the risk. If the appropriate balance is not achieved, then those who are prudent and good risks may be unfairly penalised by rising premiums. As we have said, we would welcome submissions on that topic or any other matters which are of concern to insurers and their customers.

35. Those who wish to make their views known to the Committee should present submissions in writing to the Secretary, Contracts and Commercial Law Reform Committee, C/o Department of Justice, Private Bag, Postal Centre, Wellington 1.

for THE CONTRACTS AND COMMERCIAL LAW REFORM COMMITTEE

Peter Connell

Secretary

Wellington, ... October 1979