> ber of old people in Australia, so the subject of enduring powers of attorney is particularly relevant to the ACT. I rose not so much to discuss the content of the report, but rather to recognise the work that the Law Reform Commission has been doing in this regard and to commend that work to the Senate.

The *Canberra Times* reports that the ACT Chief Minister, Ms Rosemary Follett, said

> On several occasions recently I have been made aware of very sad situations in which a person has become incapable of managing their own affairs.
>
> In some cases the only solution for relatives has been the expense and embarrassment of going to the Supreme Court to seek a declaration of insanity under the NSW Lunacy Act 1898.
>
> Under ACT law, with limited exceptions, it is not possible to create an enduring power of attorney. The deficiencies in the law were highlighted by the Australian Law Reform Commission's report in April.
>
> Ms Follett said the Government had agreed to adopt the Commission's report and would introduce amendments at the next meeting of the ACT Legislative Assembly.

reform enacted. The recommendations in the report have now been enacted, with the passage through the ACT Legislative Assembly of the Powers of Attorney Amendment Act 1989 (ACT) which came into operation on 1 November 1989. Given that the report is only slightly older than the jurisdiction itself this must be some sort of a record. □

class actions

> Class actions . . . are responses to the mass production of legal problems.
>
> JM Hazard, 58 FRD 299

In an article on 8 September 1989 the *Australian Financial Review (AFR)* has reported that Senator Bolkus, the Minister for Consumer Affairs, will propose to Cabinet that the ALRC's recommendations on class actions (see ALRC 45) be implemented.

The *AFR* commented that

> Aimed at increasing the public's access to court under federal laws in a cost effective and efficient manner, the Commission's proposal has several contentious elements. These include:
>
> - The ability of one 'principal applicant' with seven other people to start a proceeding without having to identify others in the 'class' on whose behalf the action is taken.
> - The requirement for participants to 'opt out' of a court action if they want to take their own action and being bound by the court decision if they do not opt out.
> - 'Fee agreements' — a form of contingency fees which are decided by the outcome of a case — which have to be agreed by the court.

what is a class action? The high cost of legal proceedings now discourages persons who suffer a loss of, say, a thousand dollars from claiming compensation. The reforms would allow the cost of the proceedings to be shared among all those who have suffered loss so that they can all obtain any compensation to which the law says they are entitled. The reforms also allow claims for larger amounts to be grouped together. This promotes efficiency in the administration of justice. If the ALRC's recommendations are adopted, proceedings could be commenced without the need to identify or obtain the consent of each member of a group. A longer article on class actions appeared in [1989] *Reform* 5–7.

opposition to class actions. The *AFR* pointed out that the ALRC's recommendations have been opposed by some sec-

tions of the business community as well as 'several government departments and the Government's Business Regulations Review Unit'. However the *Sydney Morning Herald (SMH)* pointed out in an article on 30 September 1989 that:

> Departments such as Finance appear to have mellowed in their opposition, belatedly seeming to recognise the economic efficiencies of allowing plaintiffs to combine their actions.
>
> Treasury has adopted the regulatory position which limits courts actions to one plaintiff at a time, even in circumstances essentially the same, rejecting the economically more rational position that parties ought to be free to combine into whatever groups they choose. Similarly, the business regulation review unit, still part of the Department of Industry, Technology and Commerce, is opposing.
>
> Most other departments seemed to have accepted the old lawyers adage that your rights are as good as your remedy. For most consumers the high cost of litigation has meant that, in practice, the courts have become the sole province of the rich, the government and large corporations.

the end of civilisation as we know it. The *Herald* points out that the Business Council and the Confederation of Australian Industry have claimed that Senator Bolkus is rushing his submission through and states one of the reasons they are against the proposal is that 'there has not been enough consultation'. However the *Herald* points out that the ALRC has held public hearings and issued discussion papers and has been holding consultations for twelve years 'after twelve years no one could claim there has not been enough consultation'. The *Herald* article goes on to say:

> Their argument is in the 'end of civilisation as we know it' category. Relying on the US experience as evidence, they say the proposals will lead to a huge increase in litigation and insurance premiums. Strangely they then contradict themselves and say there is no evidence of any need for the changes.
>
> To prove it is a consumerist plot to cripple business with huge damage claims and insurance premiums, the BCA and CAI retained some consultants to try to discredit the Commission's costings, which showed the cost impact would be relatively small. The BCA/CAI analysis came up with a variety of figures ranging from 1.1 billion dollars to around 2 billion dollars a year depending on what methodology is used.
>
> They may as well have picked the figure out of a lucky dip. Citing such objective sources as the insurance industry, the consultants decided that the initial impact of the changes would be to increase insurance premiums by 10%. In a very arguable calculation, they determine Australia's national premium rate to be at 0.22% of all insurable industry activity ($400 million) compared with the US where they say it is between 3 to 5%.
>
> Despite an admission that forecasting the impact of the new proposals will be is 'extremely speculative' they *assume* the changes will leave Australia with a national premium rate of a quarter that of the US, about one percent, or five times the current rate. In total, about $2 billion based on a finger in the air assumption. Just straight guess work.
>
> No attempt was made to quantify the effect that the signficant differences between the US and Australian legal system would have on the impact of the changes. No mention of that document the American's call the Bill of Rights. Nor that the US system allows triple damages, and that the Commission specifically ruled out contingency fees being fixed as a percentage of any damages awarded, as is the case in the US. □

reform of product liability laws

> . . . the most enlightening judicial policy is to let people manage their own business in their own way.
>
> Oliver Wendell Holmes,
> Dr Miles Medical Co v Park & Sons