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

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

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

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

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

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

The *Australian Financial Review* reports:

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

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

abortion — the judiciary and the legislature

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

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

> decision goes against women — and I predict it will — I believe it will have a significant effect here in Australia.

abortion in the usa. *The Australian* reported on 10 July 1989 that:

> pro-abortion activists are threatening to bring 1 million people to Washington DC in October for the biggest protest rally the nation has ever seen.

In July, in a 5–4 decision, the United States Supreme Court upheld the constitutionality of a Missouri law that restricted the availability of publicly funded abortion services and required doctors to test for the viability of a foetus at 20 weeks or two-thirds of the way through the second trimester of pregnancy. This is a partial overturning of the landmark case, *Roe v Wade* that established a woman's right to abortion. In his *Roe v Wade* judgment, Justice Blackmun of the United States Supreme Court declared that there is a constitutional right to privacy and that right is 'broad enough to encompass a woman's decision whether or not to terminate her pregnancy'. The Blackmun decision outlined a trimester scheme that left the decision on whether to have an abortion or not up to the woman and her doctor during the first three months. During the second three months the State could intervene only to protect the health of the mother. In the final trimester the State could proscribe abortion unless the mother's life or health was endangered.

The Missouri law that was upheld by the United States Supreme Court in July banned the use of State facilities and prohibited State employees from performing abortions. *Time* magazine reported on 17 July 1989 that Chief Justice Rehnquist said:

> The goal of constitutional adjudication is surely not to remove inexorably politically divisive issues from the ambit of the legislative process, whereby the people through their elected representatives deal with matters of concern to them.

The *Bulletin* reported on 18 July 1989 that the July Supreme Court decision *Webster v Reproductive Health Services*:

> Clearly invited State legislatures to experiment with new laws designed to limit access to abortion — an attempt to force abortion policy out of the courts and into the political arena.

In an interesting article in the *Australian Financial Review* on 14 July 1989 Gregory Hywood reported that the issue of abortion could be as damaging to the Republican Party as the Vietnam issue was to the Democrats in the 1960s and 1970s:

> In those years the anti-War movement was brilliantly successful at undermining public support for the Vietnam conflict. But the effect was to destroy the Democrats as the dominant national political party.

However Hywood pointed out that the *Roe v Wade* decision permitted the Republican Party to sidestep the issue of abortion:

> So long as *Roe v Wade* stood, this was not a problem. The Republicans could support the anti-abortionists in the full knowledge that the middle-class constituency was free to make a choice. Now the Republicans are caught in the political hell of supporting the removal of a right dearly held by core supporters. The young (18 to 29 year olds) a constituency where the Republicans have drawn great support through the 1980s are particularly supportive of abortion rights. . . . The Republicans will be particularly vulnerable to extremists who, in the abortion battles in State legislatures, will be unwilling to compromise to frame laws acceptable to the middle ground.
>
> Already in Louisiana a group of the State's Attorneys-General is preparing to rule out abortion in that State under any circumstances. While frightening to many American women this is manna from heaven for politically astute Democrats.

abortion in australia. The issue of abortion has been both a judicial and a parliamentary issue recently in Australia. The *Sydney Morning Herald* reported:

> The Private Member's Bill to abolish Medicare funding for abortions now seems headed for oblivion after it was debated in the House of Representatives yesterday. The Bill would have allowed Medicare payments for an abortion only if it prevented the death of the mother or was a case where a medical procedure resulted in an unexpected abortion. (*SMH*, 3 Nov 1989)

On 12 July 1989 Justice Lindenmayer disallowed an application by a husband to restrain his estranged wife from having an abortion.

In his decision Justice Lindenmayer said:

> On balance it would not be proper to grant the injunction sought by the husband in the particular circumstances of this case. My principal reasons for so doing are as follows:
>
> Firstly, the marriage does appear to have broken down. . . . thus the underlying and fundamental basis upon which the parties embarked upon the procreation of their intended offspring, namely the continuation of the marriage and the nurturing of that child within that relationship, has now disappeared.
>
> Secondly, to grant the injunction would force the wife, under threat of proceedings for contempt of court, to carry to the end a foetus which she clearly does not want and, barring unforeseen events, to give birth to a child which she clearly does not want and which she may very well resent in those circumstances. . . .
>
> Thirdly, the fact that the foetus must grow within the wife's body, not the husband's, cannot, in my opinion be overlooked. To grant the injunction would be to compel the wife to do something in relation to her own body which she does not wish to do. That would be an interference with her freedom to decide her own destiny. Whilst it might be said to refuse the injunction will permit the wife to interfere with the destiny of the intended child, I have already held that the unborn child has no legal right to born which this court can protect. (Earlier in the judgment, Justice Lindenmayer said: In my opinion, as a foetus has no legal personality, it is, in law, a non-person, and it therefore cannot have a inchoate legal right anymore than it can have a fully developed one).

In an editorial on 14 July 1989 the *Age* said:

> The ruling follows a long line of judicial decisions in Australia and England that clearly say an unborn child has no rights to force its mother to give it life.

However, the editorial also points out that:

> In all Australian States except South Australia and the Northern Territory, abortion is still an illegal act under criminal laws. But successive Supreme Court rulings have made abortions legal, under common law, where necessary to preserve the mother's life or health.

judiciary v legislature. Will the issue be settled in the courts or in parliament? The *Age* editorial comments:

> The Hon Mrs Peg Lusink, formerly a judge of the Family Court in Melbourne, believes it is probably better for laws relating to abortion to be interpreted by judges than to try to pass statutory laws that inevitably will be opposed by a large section of the community. 'I don't believe it is a subject that can be satisfactorily legislated on. The trouble is that it's more a social and philosophical issue than a legal one. Laws, values and morals tend to become so mixed up. The bottom line is that it is the woman who has to live with the decision and that she is the one that has to make the choice. It would be a brave judge indeed who would say to a woman "You must bear this child"'.

Mr Justice Nicholson, the Chief Judge of the Family Court, commented on the role of the legislature and the judiciary in the abortion issue. He was reported by *The Age* on 21 July 1989 as saying:

> It seems to me it is an area that will just have to be addressed. Whether it is to be addressed by the legislature or the courts is another question. I think there is probably a strong argument that the legislature ought to give some guidance to it. I think in a sense they are hoping the courts will do it for them, and it gets back to the philosophical question, who ought to make the law, the courts or the Parliament?
>
> I would have thought most people would recoil from the concept that you could not prevent an abortion taking place when the baby was almost at term. If you say that, it means it does involve a degree of recognition at some stage of the pregnancy of the rights of the unborn child. Those are the issues that haven't been addressed.
>
> *The Age* reports that Justice Nicholson also commented on whether an Act of Parliament can cover all the issues:
>
> No, says Mr Justice Nicholson, judges will always have to make decisions in each particular case. 'But the simple statement, what right if any does the foetus have, could be addressed by Parliament. You could say, for example, that abortion would not normally be permitted after a certain stage of pregnancy, you could not have it without leave of the court. The difficult task would be to choose what stage.
>
> In this sort of area, which affects very basic issues in the community, I think that is one of the roles Parliament has, to make the laws. It just seems to be on an issue as basic as this, Parliament has to make a decision. It represents the people.' ☐

genetic manipulation

> Recombinant DNA technology is new and very difficult to explain, and usually not well explained in the media. It is definitely easy to get a quick headline and raise people's fear and very easy to mis-explain.
>
> Professor Max Charlesworth, reported in *The Age*, 14 September 1989.

The *Sun Herald* reported on 17 September 1989 that:

> Victoria's IVF pioneer and the head of the Centre for Early Human Development at Monash Medical Centre, Dr Alan Trounson, said germ cell gene therapy was not yet possible in humans, but he believes that it should be banned.
>
> Dr Trounson was commenting on a report by the Law Reform Commission of Victoria (VLRC) *Genetic Manipulation* (VLRC 26). He said:
>
>> It's something I feel very strongly about. We would prefer to see it completely out.
>>
>> Dr Trounson said similar experiments in animals had produced totally unexpected changes such as tumours, structural deformities and shortened life spans.
>>
>> He said the insertion of a new gene into human chromosomes could not be controlled and might lead either to changes which would worsen a patient's condition or produce serious genetic disorders which would only appear generations later.
>>
>> Dr Trounson rejected the suggestion that further research could make germ cell gene therapy safe and doubted whether such techniques could ever be shown to be safe.

However *The Age* stated that the VLRC report 'is a sober and rational assessment of science technology' (editorial, 14 September 1989). It called the report 'a landmark report' which 'accepts the view of the scientific community that genetic engineering is not intrinsically dangerous and should not be singled out for special regulation'. *The Age* editorial continued: