

the Commission as a body providing independent advice and opinion to the Minister in relation to the submissions to, and the recommendations of, such bodies.

Because the Commission under its Act is restricted to working and reporting upon references made by the Minister there is a limited scope for the Commission to initiate for itself the contents of its programme or its priorities. It can, of course, make recommendations for inclusion in its programmes.

Although wide public advertising has in the past been undertaken to identify areas where the public perceives a need for reform in the law, those attempts have been unproductive. It seems that it will lie with governments and the Commission to identify the need for, and set the priorities in, law reform in Queensland.

In recent times, due to an alteration in the administrative arrangements, some significant legislation eg The Real Property Acts and The Property Law Act have passed out of the control of the Minister for Justice and Attorney-General. The consequence has been that the concerns for reform have been seen through the perspective of non-lawyers which, in my view, has been to the benefit of the law reform process generally.

In the future I would see some system of direct contact between the Commission and the various departments of State to determine whether, in the department's field of operation, there has arisen any area of the general law appropriate for consideration by the Commission. An unsolicited example of this occurring, was a recommendation by officers of the Health Department as to the need for some form of guardianship for the aged; a matter which the Commission is now taking up. I would see the Commission continuing to act on reference from the Minister for Justice and Attorney-General although the base from which appropriate topics may be drawn being expanded in the way I have indicated.

As I said at the beginning of this paper the short to medium term outlook for the Commission is one of assessment of its role which will depend ultimately on the

final form in which the recommendations of the Fitzgerald Report are implemented. While that process is being undertaken the Commission will continue to operate as it has in the past. This would mean that the reference undertaken would continue to be primarily in the area of 'black letter' law reform. □

customs and excise

licensing of warehouses and depots. The ALRC's review of Customs and Excise laws has produced a discussion paper on the licensing of warehouses and depots.

The paper is in the form of draft legislation which is based on and intended to replace *Customs Act* Parts V and VA. The draft contains a number of changes designed to simplify the legislation.

A major change proposed by the Commission is that the Comptroller should no longer be able to refuse to grant a licence on the basis that the applicant (or an employee, director, officer or shareholder of the applicant who participates in the management and control of the licensed premises) is not 'a fit and proper person'. Instead the Commission proposes that the Comptroller should not grant a licence if, in his or her opinion, the grant of the licence would result in a significant risk to the revenue or a significant risk of non-compliance with the Customs Act, Excise Act or any Commonwealth Act relating to the entry or departure of goods and persons into or out of Australia. In making this suggestion the ALRC was mindful of recent, regular visits by the Broadcasting Tribunal to the Federal Court.

Other major changes include

- the rejection of throughput, or the number of container lines likely to be dealt with at the premises, as a factor that should be relevant in determin-

ing whether the applicant should be granted a licence

- a new clause which enables the Comptroller to refuse to grant a licence if the location of the premises is such that Customs cannot effectively service it
- the replacement of the requirement for annual licence renewals with a licence that continues in force until suspended.

Copies of the Discussion Paper 41 *Customs and Excise: Licensing Provisions* are available from the Commission. Comments are sought by 20 November. It is being distributed to attract comment from depot and warehouse proprietors and other persons who may be affected by the proposals, including stevedores, excise manufacturers and duty free shop proprietors. □

senator praises alrc

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.

Senator Robert Hill, (SA)
(Liberal Party),
Australian Senate, 27 May 1989

In April 1989 the ALRC's report *Enduring Powers of Attorney* (ALRC 47) was tabled in Federal Parliament. This is the third report in the Community Law Reform Program for the Australian Capital Territory and the fifth of the reports which have flowed from that program. It deals with a suggestion made to the Commission under the program that it should be possible in the Australian Capital Territory for a person to give a power of attorney that continues to operate after the

person becomes legally incapable. (An article on ALRC 47 appears in the April issue of *Reform* (1989) *Reform* 103-104.

Commenting on this report in the Australian Senate, Senator Hill (South Australia) said on 27 May 1989:

This is another area in which an important body, the Australian Law Reform Commission, has undertaken work on behalf of the Australian community for which it receives, regrettably, little recognition.

ALRC 47 examines the present law in the Australian Capital Territory under which, as soon as the donor of a power of attorney becomes incapable, (through sickness, old age etc) the power of attorney lapses. It concludes that the law ought to be amended to allowing enduring powers of attorney to overcome this anomaly.

Senator Hill continued:

Law reform in the Australian Capital Territory is important. The Australian Capital Territory not having had self-government in the past and having only just got self-government, areas such as law reform, where the States have a more direct input and can establish law reform commissions of their own, have had to be met by the Commonwealth. Unfortunately, I regret to say that the Commonwealth has not always well met its responsibility. The Australian Law Reform Commission has stepped into the breach in that regard and has put down a number of papers on areas of reform in relation to Australian Capital Territory law. This particular one, as I said, deals with enduring powers of attorney. As far as the ACT is concerned, this reform is long overdue. This matter has been the subject of reform in various States.

The recommendations included in this report for the establishment of enduring powers of attorney seem to me, on their face, to be sound. Certainly I hope they will be debated and, after due consideration, adopted. It is worth reminding ourselves that the ACT has the fastest growing num-