

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-

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-