sovereigns and accorded a greater or lesser degree of enforcement direct or indirect. There is here no element of a sovereign exercising the power of sovereignty by adjudicating in disputes within the realm.

Contracts between two mutually foreign entities almost invariably provide for the resolution of disputes through arbitration. Not all international engagements include an arbitration agreement and, for completeness, I should briefly touch on two categories of these in conclusion. The first such category is the category recognised as falling within the general scope of the law of Admiralty — a body of jealously guarded fictions and principles that enjoy international acceptance. Most notable amongst the fictions are the personification of a ship for the purposes of an action in rem and the concept of ambulatory (perhaps navigatory would be more fitting) sovereignty inhering in a ship.

The remaining category comprises international commercial contracts that do not include an arbitration agreement. In disputes within this category a sovereign may, in accordance with principles of private international law, extend the sovereign power by entertaining proceedings to which a foreigner is a party.

In the second part of this address I have skimmed over the field of international commercial and maritime disputes. I have done so for the purpose of showing that their relationship to the sovereign judicial power of one or other of the nations involved differs markedly from that relationship in the case of domestic disutes. It is in the field of domestic disputes that there is concern and lack of understanding about the role of ADR procedures. I have sought to dispel that concern. Increasing resort to arbitration, use of expert appraisals, references sent out by the courts and above all properly structured mediation are part of society's overall resources for resolving disputes. □

law reform in queensland

> The Queenslanders are loud-mouthed confident colonists who have justified their boasting by their action.
>
> Marcy Muir quoting Anthony Trollope in *Anthony Trollope in Australia,* Adelaide, 1949

The Queensland Law Reform Commission (QLRC), like many other institutions in the State, is assessing its future role and functions in the wake of the Fitzgerald report which recommends the establishment of two permanent Commissions:

- an Electoral and Administrative Review Commission; and
- a Criminal Justice Commission.

These two Commissions will take over law reform in the areas of administrative law, and criminal law, previously within the functional area of interest of the QLRC. The report justified this more on the basis that there is a special need for administrative reform and 'the peculiar nature of the criminal law'.

The report does deal with the future role of the QLRC:

> The Law Reform Commission in the past has addressed and will continue to address areas of enormous potential significance to the community and will deal with a variety of legal topics and initiatives of major significance in the general law. Its resources for that should be enhanced. In the two respects mentioned, however it is proposed that separate bodies be established to consider appropriate law reform.

The Electoral and Adminstrative Review Commission is to monitor the sufficiency of the QLRC's resources.

The Hon Mr Justice Richard Cooper, the Deputy Chairman of the QLRC, reported to ALRAC on law reform of after Fitzgerald. He drew attention to an interesting article by Rodney Brazier in the Spring 1989 issue of *Public Law* 'Government and the Law: Ministerial Responsibility for Legal Affairs'. Rodney Brazier comments on the criminal law/civil law division in the United Kingdom in matters of law reform:

> The division of responsibility for law reform is reflected (but inaccurately) in the pattern of law reform bodies. They follow the civil law/criminal law divide and report either to the Lord Chancellor or to the Home Secretary. The Law Commission and the Law Reform Committee review civil law questions and report to the Lord Chancellor, while the Criminal Law Revision Committee reviews criminal matters referred to it by, and it reports to, the Home Secretary. But the situation is more complicated than that. The Law Commission considers aspects of criminal law as well — it has reviewed the mental element, defences, criminal damage, forgery and counterfeiting, and criminal attempts, for instance, and indeed is superintending work on a comprehensive draft criminal code — and reports the results not to the minister in charge of criminal law, but to the Lord Chancellor. The latter must then fight the battle usually undertaken by the Home Secretary in the Legislation Committee of the Cabinet for a place in the legislative queue for criminal law legislation. To add a further dash of departmental confusion, either minister, or both jointly, or any other minister, may set up an ad hoc committee to consider the state of the law in any area. At the very least this situation raises the question of whether some rationalisation is needed in the process of inquiring into law reform, and ministerial responsibility for it.

With administrative law to be introduced in Queensland as a third division, Justice Cooper asked:

- where are the boundaries to be drawn and who is to determine them?
- who is to be responsible for law reform in these areas, ie administrative law and criminal law, until the new Commissions are established, staffed, and operating?
- should the QLRC continue to work in these areas on a referral basis using the skill and experience which has been built up from work in them in the past?
- what mechanisms need to be established to co-ordinate work where there is an overlap in work as there inevitably will be?

Justice Cooper pointed out some disturbing trends that the Fitzgerald report seemed to highlight.

> In past years the QLRC has been primarily concerned with 'black letter' law reform. A number of its reports have been translated into legislation. Clearly its future role is seen as being primarily in that area of general law. Within that general law area there is a tendency for both the Commonwealth and the State to refer matters which involve social or policy considerations to particular bodies to deal with them on an ad hoc basis. For example, the reviews by the Administrative Review Council (ARC) and the Family Law Council (FLC) set up to recommend reforms in their respective fields in the Commonwealth area; the Kennedy Commission of Inquiry into Prison Reform and Sentencing in Queensland; the Ministerial Council established under the Co-operative Companies and Securities Arrangements for its reform in the company law area. Increasingly, matters of general law reform are being placed on the agenda of the Standing Committees of Attorney-General with the result that they are withdrawn from the agenda, or possible agenda, of the law reform commissions. This tendency to refer specialist matters to specialist groups will, in my view, see an increase in the role of

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-