

count such other matters as may be considered irrelevant. There is no positive requirement for the court to allow time to pay. Even if requested to do so, the court need not allow the offender time if it is satisfied that the defendant has sufficient means to pay or there are, in the opinion of the court, 'special reasons for not allowing any time for payment'. But the court must state those reasons. The Victorian Court also retains a discretion whether to order the defendant to pay costs.

Prison is only one of a number of alternatives which a Victorian court can choose once default occurs for one month; but a defaulter cannot be imprisoned if they satisfy the court that they do not have the capacity to pay the penalty or instalment. Other alternatives open to the court are:

- distress;
- community service order;
- vary the instalment order;
- adjourn the matter for up to six months.

Even where the court orders distress and no goods can be found the court may choose between imprisonment and community service.

The New South Wales amendments offer far less choice than the Victorian Act. On default, the court may issue a warrant to commit the defendant to prison or may give the offender another chance to pay or vary the terms of payment and cancel the warrant. The New South Wales legislation is conspicuous in the lack of alternatives to payment or imprisonment.

The New South Wales amendments, unlike the Victorian Act, rule out any appeal against an imprisonment order for failure to comply with payment of a fine.

The New South Wales Attorney-General, Mr Terry Sheahan, has supported the legislation saying that imprisonment would be retained as the ultimate sanction for defaulters but

they would have a reasonable chance to arrange a suitable method of payment.

Those critical of the legislation say that defaulters are treated as criminals and are sometimes placed in maximum security prisons. Usually the amounts owed were small — less than \$200 — but it costs the taxpayer \$85 a day to keep a defaulter in gaol.

According to the Minister for Corrective Services, Mr Akister, community service orders, although an excellent form of punishment, were not suitable for short term sentences because of the time needed to organise training.

constitutional reform

A state without the means of some change is without the means of its conservation.

Edmund Burke,
*Reflections on the
Revolution in France* (1790)

corrigenda. The limited resources of the Australian Law Reform Commission enforce reliance on the press for the basic information contained in articles for *Reform*. Dr Cheryl Saunders of Melbourne University has been good enough to point out the following errors which occurred as a result of this method of collecting information in the article on constitutional reform in the October 1985 issue of *Reform*:

- The proposal for an Australian Constitutional Convention Council which was attributed to the Victorian Attorney-General Mr Kennan was in fact moved by the Victorian Deputy Premier Mr Fordham and seconded by the then Opposition Shadow Attorney-General Mr Brown although Mr Kennan spoke to the motion.
- The Convention in fact passed the motion in favour of providing a right for a majority of States to initiate referenda.

addenda. Dr Saunders also provided the following information:

- The Australian Constitutional Convention Council has had its first meeting and the Victorian Premier Mr Cain has been elected Chairman. The Australian Government was represented at the meeting although its attitude to the Council has still not been finally determined.
- The Convention passed a resolution that the Commonwealth should, within 12 months of the conclusion of a plenary session of the Convention, make a statement to the Parliament concerning its response to the proposals passed by the Convention.
- The proposal for fixed term Parliaments can be traced back to the work of the Convention. The idea was approved at the 1983 Plenary session of the Constitutional Convention and was first taken up by Victoria in 1984.

There have been two further developments in the area of constitutional reform.

Federal Cabinet has approved the nomination by the Attorney-General, Mr Bowen, of six people to form the commission to draw up a revised Constitution. They are former Prime Minister Gough Whitlam, former Victorian Premier Sir Rupert Hamer, Sir Maurice Byers, a former Commonwealth Solicitor-General, now at the Sydney Bar, Professor Leslie Zines, Dean of the Law Faculty of the Australian National University, Professor Enid Campbell of the Law Faculty at Monash University and Mr Justice John Toohey of the Federal Court. The possibility of appointing Malcolm Fraser was excluded when Mr Fraser was appointed to the Commonwealth Committee on South Africa. Mr Whitlam's term as Ambassador to the United Nations Educational Scientific and Cultural Organisation is due to expire during 1986. The Chairman will be Sir Maurice Byers, a former part-time member of the ALRC.

Mr Bowen proposes that the Commission be assisted by a wider group of about 36 people, split into about 6 committees and including

lawyers, academics, businessmen, trade unionists, media figures (to assist in publicising constitutional reform) and others. The commission is to report by June, 1988. (*Age*, 3 December, 1985).

The other development is that the Commonwealth Parliament has passed the Australia Bill and the Australia (Request and Consent) Bill which are necessary to implement the agreement between the Federal Government, the State Governments, the British Government and the Queen to sever the residual constitutional links between Australia and Britain. The Bill was passed by the Senate on 2 December, 1985 having passed the House of Representatives the previous week. (*Age*, 3 December, 1985).

commercial disputes centre

Non nostrum inter vos tantas componere lites.

It's not in my power to decide such a great dispute between you.

Vergil, *Eclogues*, iii, 108

On 25th September 1985 the New South Wales Attorney-General Mr Terry Sheehan announced plans to establish a Commercial Disputes Centre in Sydney (*Australian Financial Review*, 26 September, 1985). The New South Wales Government is to fund the centre which is intended to provide parties to commercial disputes with a method of resolving those disputes which is faster and cheaper than commercial litigation. It is hoped that the Centre will serve as a forum not only for the domestic business sector but for the entire Asia-Pacific region. The Victorian Government has similar hopes for the Australian Centre for International Commercial Arbitration located in Melbourne which was officially opened by the Victorian Attorney-General Mr Kennan in August.

The New South Wales Government has appointed a committee of experts to review the needs to be catered for by the new Centre. The committee is chaired by the Chief Justice Sir Laurence Street and also has Justices Rogers and Smart as members. Mr Michael Ahrens a partner of the law firm Baker and