

State members may with the approval of the Committee refer a matter to the Authority for special investigation. The Authority in its Report notes that in public discussion that took place early in its life, fears were raised that 'the Inter-Governmental Committee might thwart the Authority's work by vetoing proposed references'. However, it comments that its dealings with the IGC have proved those fears groundless — all 5 references requested by the Authority were approved by the Committee.

**draconian legislation.** Another speaker at the Seminar, Matthew Goode of the University of Adelaide, also provoked debate by drawing attention to what he regarded as the 'ill-considered, overbroad, draconian legislation' that has been prepared in some jurisdictions in Australia to confiscate assets acquired in relation to criminal activity. Mr Goode argued that while it is defensible social policy to deprive offenders of profits made by the commission of criminal offences, there is little need to attack the 'small fish of crime'. He maintained that it is a waste of time and money to use complicated and expensive legislative procedures to do so. Rather, he argued that the legislation should be aimed at the top end of the criminal spectrum.

Mr Goode also argued that forfeiture of assets legislation generally produces unjust results. He particularly focussed upon the 'civil model' of forfeiture legislation which does not require an antecedent conviction, requires only proof on the balance of probabilities and relates the forfeiture to the time at which the illicit dealing took place, thus rendering any subsequent dealing with the property void. Mr Goode argued that the civil model of forfeiture ought not to be used in Australian legislation. Rather, he maintained that the focus of legislation should be to attack profits by a pecuniary penalty order calculated according to the profit made. He said that this should be backed by carefully limited supporting measures, such as a power to freeze assets, a power to place assets in the

hands of an official trustee, and adequate powers of search and seizure.

**increased organisation.** Dr Wardlaw, a Senior Criminologist with the Australian Institute of Criminology, took a different tack. (See July 1985 *Reform* ) He expressed concern that intensive drug enforcement strategies by the police may have little effect on drug usage and:

may have the unintended side-effect of intensifying market competition and increasing the amount of organisation, sophistication, and violence in the top levels of the drug market.

Dr Wardlaw suggested that there were 'coherent reasons' for being wary of introducing further powers for drug enforcement agencies and called for people not to be stampeded by emotive calls from the agencies themselves for more funds. He suggested that not only has law enforcement failed to control illicit drug use, but that necessarily it fails to do so because of the structure of illegal markets for these commodities.

**more information required.** Dr Wardlaw maintained that the proper strategy was in the direction of compilation of more information about the behaviour of buyers and sellers in Australian markets. He suggested that we need to be more precise about our understanding of the relationship between drug trafficking and organised crime and argued that the 'answers' to the 'drug problem' primarily rest with the demand side of the equation, not the supply side. He argued that:

We have to find strategies which dissuade users from continuing or potential users from starting inappropriate drug use. On the whole, these strategies will not be enforcement ones.

## constitutional commission

The importance of an historical event lies not in what happened but in what later generations believe to have happened . . . History is a process of collective remembrances.

Gough Whitlam, Speech at unveiling of Eureka flag, Ballarat, 3 December 1973

**personalia.** The Constitutional Commission (see [1986] *Reform* 28) had its first meeting in Sydney late in January. It was opened by the Prime Minister Mr Hawke. The Commission's committees have also met. The committees and the chairmen of them are

- executive government — Sir Zelman Cowen, former Governor-General,
- distribution of powers — Sir John Moore, former President, Australian Conciliation and Arbitration Commission,
- trade and national economic management — Mr Justice Everett, President, Interstate Commission,
- individual and democratic rights under the Constitution — Mr Terry Purcell, Director, New South Wales Law Foundation, and
- the Australian judicial system — Mr Justice Jackson of the Federal Court.

**public submissions.** In mid-February the Commission made a call for public submissions. It said that the Commission and its advisory committees were anxious to obtain the maximum possible public involvement in their work. It called for submissions for anyone interested in any area of constitutional reform. The Commission said that it would hold public hearings and public meetings, and endeavour to stimulate public discussion and awareness of issues being headed by the Commission. It said that it welcomed submissions from individuals, business, trade unions, financial, social and political institutions. The Commission is also writing to institutions such as State and Federal Governments, and all political parties represented in the Parliaments throughout Australia, seeking any submissions they wish to make.

**the parliamentary system.** The Constitutional Commission proposes to examine the workings of the Australian Parliamentary system as one of its first tasks.

At a meeting in March, the Commission decided that the Commission itself should take

responsibility for this review, rather than referring the matter to one of its five Advisory Committees.

Details of the work to be undertaken by the Committees will be published shortly.

**consultative papers.** The Committees are now preparing detailed working papers which will serve as the basis of submissions which the Committees will be seeking from the public.

The Committees will hold public hearings on these submissions in the second half of this year, before reporting their recommendations to the Constitutional Commission

In the meantime, the Commission has established its own program of matters on which it will prepare working papers and seek public comment.

Among these issues are matters concerning parliament, such as the approval of 'supply', means of avoiding 'deadlocks' between the two Houses, the 'nexus' between the sizes of the House of Representatives and the Senate, the qualification and disqualifications of Members of Parliament, and the way in which 'money' Bills come before the Parliament.

Other issues on the agenda of the Commission include the proposals adopted by the Constitutional Conventions for the interchange of powers between Commonwealth and State Parliaments, and for the elimination of outmoded provisions in the Constitution, and a review of the means provided for the amendment of the Constitution.

**new secretary.** As noted elsewhere, Mr Ian Cunliffe, the Secretary and Director of Research of the Australian Law Reform has been appointed Secretary of the Constitutional Commission.