

constitutional links

Australians will always fight for those twenty-two yards. Lord's and its traditions belong to Australia just as much as to England.

John Curtin

australia act. An important step was taken in severing Australia's legal constitutional links with the United Kingdom on 2 March 1986. On that date the Queen signed a proclamation to bring the Australia Act 1986 into force. The Australia Act 1986 (Cth) commenced simultaneously on 3 March 1986 with the Australia Act 1986 (UK). Constitutional links ended by the Australia Acts include: the Acts ended the powers of the UK Parliament and Government over the States of Australia. It also put to an end UK legislation, such as the Colonial Laws Validity Act 1865, which restricted the legislative powers of the States to repeal or amend imperial laws still applying in Australia.

The Federal Attorney-General, Mr Lionel Bowen said the legislation was an important milestone in Australia's nationhood:

the Australia Acts remove the outmoded links between Australia and the United Kingdom parliamentary, government and judicial systems. They reflect Australia's status as an independent and sovereign nation.

The legislation also brought an end to appeals from Australian courts of law to the Privy Council, making the High Court of Australia the final court of appeal for Australian courts.

- power of the UK Parliament to enact legislation having effect as part of Australian law;
- the Colonial Laws Validity Act 1865 and the 'repugnancy' rule that State legislation inconsistent with UK laws is invalid;
- possible implied limitations on powers of State Parliaments deriving from their former colonial status;
- the Merchant Shipping Act 1894, with its limitations on State powers to regulate merchant shipping;

- the monarch's power to withhold assent from or disallow State laws, on the advice of UK Ministers;
- appeals to the UK Privy Council from State Courts;
- residual executive responsibilities the United Kingdom government with respect to the state, which derive from the States' former status as colonies: for example the need for a premier to provide advice to the Queen through United Kingdom Ministers in regard to the appointment of a State Governor.

Other sections of the Australia Act provide:

- the powers and functions of the Monarch with respect to the States, other than the power to appoint and dismiss the Governor, shall be exercisable only by the Governor (except when the Queen is personally present in the State, when she may exercise powers and functions according to an agreement between her and the Premier);
- for the appointment and dismissal of State Governors by the Monarch on the direct advice of Premiers;
- the manner and form of future State laws amending State Constitutions. (*Sydney Morning Herald*, 3 March 1986)

sentencing reform

Smack habit, love habit – what's the difference?
They both can kill you.

Helen Garner, *Monkey Grip*

victorian enquiry. In September 1985 the Victorian Government set up a Committee on Sentencing. The following are the members: The Hon Sir John Starke (retired Supreme Court Judge – Chairman), The Hon Mr Justice Nicholson (Supreme Court Judge – Chairman of Adult Parole Board – Deputy Chairman), His Honour Judge Shillito (County Court), Mr Ben Bodna (Deputy Secretary (Corporate Management) – Law Department), Dr Austin Lovegrove (Depart-

ment of Criminology, Melbourne University) and Mr John Van Groningen (Special Adviser, Law Department — Secretary). The Committee is established in rooms at the Royal Mint Building, 280 William Street, Melbourne. The terms of reference are:

- a review of the current sentencing policy and practice in Victoria, other Australian States and overseas including a review of recent relevant literature in respect of such policy and practice,
- an examination of the purposes of sentencing including a consideration of
 - sentencing guidelines,
 - 'just deserts' concepts,
 - presumptive sentences,
 - other sentences,
- the impact of custodial and non-custodial sentences and the length of such sentences on
 - correctional administration including members in custody,
 - police administration,
 - prisoner morale,
 - staff morale,
 - victims,
 - the offender and his family,
- the impact of remissions, pre-release, parole, temporary leaves and other sentences shortening practices on
 - correctional administration,
 - the courts,
 - police administration,
 - the community,
 - the victim,
 - the offender and his family,
- the framework for prisoners held during the Governor's Pleasure,
- sentencing to Youth Training Centres,
- role of the media,
- information available to the courts and the impact of such information or lack of it on sentencing decisions and services and support available to persons sentenced by the Courts,
- to draft, if thought desirable, legislation to embrace all sentencing procedures within the State of Victoria,

- to make recommendations in respect of the matters raised in these terms of reference.

A wide range of Australian and overseas publications on the subject are being collected and studied by members of the Committee. It is proposed that during the year each State will be visited by some members of the Committee for the purpose of investigating local practices. It is possible that later in the year it will be necessary or desirable to arrange an overseas trip. Mr Justice Nicholson and Mr John Van Groningen have already visited Canada and the United States. The Committee is at present engaged in interviews with selected experts and more will be approached in the near future. In addition the terms of reference have been widely advertised in the daily press and elsewhere and members of the public are invited to make submissions. This Committee is working in close cooperation with the ALRC which is currently investigating a reference on the same subject in respect of Federal law. All members of the Committee attended the Seminar on Sentencing arranged by the Australian Institute of Criminology in Canberra in March 1986, referred to earlier in this issue. At present the research staff is preparing issues papers and research papers and it is hoped that a discussion paper will be prepared and distributed at the end of this year. The first part of next year will be devoted to public consultation in respect of the discussion and research papers. The aim is to have a first draft of the report prepared by 1 October 1987. It is hoped the final report will be released in December 1987.

odds and ends

■ *natural justice, judicial style and law reform by interdepartmental committee.* Some media attention was given to the High Court's rejection on 21 February 1986 of the approach taken by Mr Justice Kirby in the administrative law case of the *Public Service Board of New South Wales v Osmond*. In the Court of Appeal Kirby P and Priestley JA combined (Glass JA dissenting) to rule that the Public