INTRODUCTION

The first edition of this booklet was written and produced primarily for the use of delegates to the Constitutional Convention that met at Old Parliament House Canberra from the Fourth to the Fifteenth of February 1998.

Although the historical information in this booklet can be ascertained by anyone prepared to undertake a great deal of simple research, it is not readily available in any published or collected form. This is surprising because there is nothing erudite or clever in extracting and gathering the information. Indeed, many people would say it is obvious that the constitutional and legal basis of Australia would be exactly what this booklet explains. It is information that should be known to every school child and every citizen. It is not known to them because it is no longer taught or even made easily available for children or adults.

There is no need to stress how important it would have been for the delegates to have the information in their hands and, more particularly, in their heads before and during deliberations at the Convention. A complimentary copy of the first edition of this booklet was given to every delegate before the Convention opened; the booklet was tabled at the earliest opportunity in debate; it received publicity in newspapers and on television; it was referred to in Hansard (the minutes of debate provided daily to each delegate); and it was available in the Convention library and media room. However, inquiries after the Convention revealed that many delegates claimed to be unaware of its existence. Of the delegates who acknowledged its existence most admitted they had not read it and one stated he threw it straight in the waste paper basket without opening it. Perhaps many copies ended as waste paper without being read.

Three thousand copies of the first edition were printed so that any interested Australian would have access to an easy-to-read explanation of the background and intention of the present system, an explanation that is particularly needed at this time when proposals for Australia to change its constitutional structure are being discussed. The first edition sold out in a matter of weeks and, to meet a continuing demand, this slightly revised second edition (including reference to decisions of the Constitutional Convention) is being printed in April, 1998.

This booklet is not intended as an intellectual or academic treatise - it is intended for the ordinary, fair minded Australian to pick up and read and understand without needing to grapple with the niceties of grammar or vocabulary and without being confused by a multitude of references.

The writer sincerely hopes readers will find this booklet informative and persuasive.

ORIGINS OF THE AUSTRALIAN SYSTEM OF LAW

It is very important for Australians to understand the conflict of views that exists in relation to theories of law and government. There are two contrary perspectives on the function of government. The one is that the government of a nation must establish a complete system of rules (or laws) for society and must administer that system. The other view is that the fundamental rules (or laws) exist independently of government or human decision and it is the duty of government to apply and administer those rules for the good of society.

WHAT IS LAW AND WHERE DOES IT COME FROM?

Put simply, law is the measure of right and wrong in society. A basic distinction between the philosophy of humanism and other philosophies, including Christianity, exists in this area. A humanist will say that whether something is right or wrong is the product of human thinking. Others, including Christians, will say that something is right or wrong irrespective of what any number of people might say or think. Although the view that right and wrong exist independently of human thinking is not limited to Christians but is also held by adherents of other religions and even by some who would claim no religion, it is the Christian understanding that forms the historic basis of Australian law and government.

There are essentially four possible sources from which to choose the fundamental measure of right and wrong:

A. REVELATIONAL

For a Christian, or a nation with Christian principles of government, the Bible is the infallible guide to God's measure of right and wrong and will be applied as far as possible to every circumstance. People and nations not holding to Christian principles but recognising a 'revelational' source for right and wrong might have something other than the Bible that they claim to be an infallible guide.

For a humanist, however, or a nation with humanist principles of government, there are three possible measures of right and wrong. Of course there can be an overlapping of these three measures without clear lines dividing them but it is helpful to understand what the humanist measures are:

B. TOTALITARIAN

The government sets the measure of right and wrong. The government is supreme. The government knows "best". The opinions of the people or the statements of the Bible might be taken into account but the government decides.

By way of example we know that even in a home situation the husband (or the wife) might exercise a totalitarian regime, or take occasional totalitarian decisions. Who has not heard "Why must I Mummy?" "Because I say so, Johnny!"? In other words, "I am the government and I know best." Of course, it might well be true, and probably is, that Mummy does know best but the answer and the attitude are totalitarian.

In terms of this definition, are there any evidences of totalitarian practice in government in Australia?

C. ANARCHY

There is no standard measure of right and wrong. Every individual makes his or her own decisions on every occasion. Everyone does what is right in his own eyes. There is complete freedom for everyone to do or say what he likes. There are no laws or rules because rules and laws are the antithesis of freedom; rules and laws inhibit the development of individual personality and necessarily make an individual subservient to the ideas of others. Again by way of simple example, almost everyone could identify one or more homes that run on the basis of anarchy, where the children do exactly as they please. Is it possible in Australian government to identify aspects of what this definition refers to as anarchy? For example: homosexual practices were once illegal, Sabbath observance was enforced on Sundays, blasphemy was forbidden. Now everyone is allowed and, indeed, encouraged to do what is right in his (or her) own eyes.

D. MAJORITY RULE

The people decide every issue. The government does not "know best" but must listen to "the voice of the people". Decisions of the majority of the people are binding on the whole of society. Individuals and minorities must abide by and implement decisions of the majority no matter how prejudicial those decisions might be to the minority or to an individual. No one may do what is right in his own eyes but only what is right in the eyes of "society".

Who hasn't heard a parent telling a child: "You musn't do that! People won't like you if a do!" Indeed, some families run on the basis that all domestic decisions are put to a vote of the family members and the majority always has its way.

Aspects of "majority rule" can be identified in the history of government. Some of the city states of ancient Greece ran on the basis that all the people met to discuss and vote on all affairs of state and the decisions of the majority became law. "People" did not include women, slaves, hired workers, young people (perhaps even those under 40 years of age were excluded in some States), residents of "ethnic" origin or descent, and so on.

Even today, in many "democratic" countries signs of majority rule can be seen on election day when a majority of the people decide who will make their laws (i.e. establish the measure of right and wrong for the nation) for the ensuing number of years, and when public outcry causes the government of the day to take or desist from particular action. Indeed, in some countries there is specific provision for a referendum or majority vote in particular circumstances. Australians are familiar with these signs of majority rule.

Most readers will be aware of the "majority rule" decisions at the foot of Mt. Sinai that resulted in the making and worship of a golden calf, and in Pilate's judgment hall that resulted in the crucifixion of our Lord and Saviour.

AUSTRALIA'S HISTORIC HERITAGE

The principles of government and law in every country in the world are based on one or other of these four principles, one Christian (or Islamic etc.) and three humanistic in origin. In most there is an amalgam, with each of the three humanist principles being discernible. Where Islam etc. or one or other of the three humanist principles dominates (usually the totalitarian principle) the country should not be called a Christian nation. For a country to be called a "Christian nation" it is not necessary for the majority of the population to be Christians. It is countries where government and law are based on the Bible that can properly be called Christian nations. The question then arises: "Is Australia a Christian country?" Is government and law in this nation based on the Bible?

Historically, the power of government in England rested in the king. The king was regarded as God's representative for ruling the nation. He was not unfettered in this responsibility but was required to govern lawfully, justly and mercifully, to maintain God's law and to regard the Bible as the rule for the whole of life and government. (See Coronation Oath Act, 1 Will. and Mar. c. 6 (1688)) Interestingly, these very requirements continue to the present day and were (of course) incorporated in the promises required of Her Majesty Queen Elizabeth II as part of her coronation ceremony.

In addition to the king, in the historical structure there was a Parliament for the purpose of advising the king but he did not have to act on the advice if he believed the advice was contrary to his responsibilities. The idea was that the king

was subject to "the law" (i.e. God's measure of right and wrong) rather than to parliament. The parliament, too, was subject to the law and was expected to tender advice on the basis of the Bible being the rule for the whole of life and government. Christianity was part and parcel of the common law of England.

When the colonists came to Australia in 1788 they brought with them the law of England as it then stood. By 1828, with the enactment of the Australian Courts Act on 25th July 1828, the Governors of the several colonies (subsequently to become the States), the representatives of the king, were advised by their colonial parliaments and exercised authority under God on the same basis as the king historically did in England. The Australian courts of law, too, had responsibility to resolve disputes and administer justice on the same basis.

The correctness of the above assessment of the Christian and biblical character of the law established in the various Australian colonies is demonstrated by the judgment of Mr Justice Hargraves in 1874 in the case of ex parte Thackeray (1874 13 S.C.R. (N.S.W.) 1 at p.61) He said:

> *"We, the colonists of New South Wales, 'bring out with us' (to adopt the words of Blackstone) this first great common law maxim distinctly handed down by Coke and Blackstone and every other English Judge long before any of our colonies were in legal existence or even thought of, that 'Christianity is part and parcel of our general laws'; and that all the revealed or divine law, so far as enacted by the Holy Scriptures to be of universal obligation, is part of our colonial law - as clearly explained by Blackstone Vol. 1 pp. 42-43; and Vol. 4 pp.43-60."*

This statement continues to the present day as a judicially unchallenged precedent. It is not surprising that it remains unchallenged since it presents the true basis of Australian common law.

It is often said that the Christian and scriptural basis of law was terminated in England by the House of Lords in the case of Bowman v. Secular Society in 1917 (1917 A.C. 406). A careful study of that case reveals, however, that it held only that an "offence" against Christianity was no longer necessarily cognisable in the courts. Certainly, no change to the historic Christian basis of law has been formally recognised by the courts in Australia. In fact in 1992, in a somewhat different context, the Supreme Court of Victoria adopted with apparent approval a statement that Australia is "predominantly a Christian country" (Noontil v. Auty 1992 1 V.R. 365).

The Christian theory of government and law in Australia did not change with the agreement of the colonies to establish a federal parliament. Unlike France or the U.S.A., the Constitution of the Commonwealth of Australia does not establish a new principle of government or purport to be the "fountain head" of law or to

establish or guarantee citizens' rights. Indeed, the use of the term "Constitution" to describe the agreement can be somewhat misleading. Rather than being a Constitution in the same sense as the Constitutions of some other countries, it has the nature of a treaty among six Colonies, entered into with the approval of the colonial power (Britain).

The Federal Commonwealth of Australia came into existence on 1st January 1901 as a result of the Commonwealth of Australia Constitution Act of the British Parliament, to which royal assent was given on 9th July 1900. The historic basis of government and law applicable in the former colonies continued in the States and in the newly formed Commonwealth.

The preamble to the Commonwealth of Australia Constitution Act begins:

"Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established ...."

It is important to note that reliance on God was clearly expressed. Quick and Garran in their authoritative book on the Constitution recognise that "this appeal to the Deity was inserted in the Constitution at the suggestion of most of the Colonial Legislative Chambers, and in response to numerous and largely signed petitions received from the people of every colony represented in the Federal Convention" that prepared the text for the Act. Further, the recognition in the preamble that the new Commonwealth was to be under the Crown was a recognition that God's law would be maintained and the Bible would be regarded as the rule for the whole of life and government in accordance with the principles and undertakings expressed in the coronation procedures.

Although modern revisionists might give other interpretations, the fact is that the Constitution was drafted within the **framework that the only measure for right and wrong within the Commonwealth of Australia was to be God's measure.** It could properly be said there is a "constitution" behind the Constitution.

AUSTRALIA TODAY

A.V. Dicey, writing last century, used the expression "sovereignty of parliament". By it he meant that Parliament was supreme and could make any laws it chose without restriction. This, of course, did not accord with the principle that Parliament could only make laws within the "constitution" (God's measure of right and wrong). It was, in fact, an expression of the totalitarian idea that the government decides the measure of right and wrong and the Bible, while its teachings could be considered, was not the unchanging and binding law of the land.

As far as Australia is concerned, Dicey's statement of the sovereignty of Parliament was judicially approved for the first time in 1983 (In South Australia in the case of Grace Bible Church v. Reedman). Of course, Dicey's principle had been taught in law schools for many years before that, and the teaching of the supremacy of the Bible had fallen into disuse long ago. It is not surprising, therefore, to find a judge adopting Dicey's humanist approach. What is surprising is that judges, having been taught humanist theories of law as students, have not been more outspoken in those theories when giving judgments.

The constitutional basis of law and government in Australia is that the Governor-General, the Parliaments (both Federal and State), the courts and the administration are all subject to God and the Constitution and are bound by the Bible and the exact words of the Constitution. Is this basis of law and government also the current practice?

Many administrators, parliamentarians, lawyers and judges would laugh at the idea that all legislation contrary to the Bible is invalid. Indeed, some might laugh at the idea that parliamentarians will be held to account on the Day of Judgment for the legislation they have passed. Some might even laugh at the idea that there is going to be a Day of Judgment or that there is a God. Laugh they might, but the fact is that Australia's historic measure to distinguish right from wrong has not been formally changed. Perhaps the historic position is not made clear in any current text books; perhaps it has not been taught in schools for the last several generations; perhaps it sounds inappropriate to minds that have not been directed towards eternal things; but the fact remains - legal theory recognises the Bible as the measure provided by God for discerning right and wrong and anything described as wrong by that measure is "unconstitutional".

THE HIDDEN AGENDA

Unfortunately, people arguing for Australia to become a Republic have not normally addressed the central point of the issue. The central point is, of course, Australia's ultimate measure for determining right and wrong.

While it would be theoretically possible to establish the Bible as the "constitution" behind the Constitution in a Republican structure (indeed this is exactly what Oliver Cromwell attempted to do in 17th Century England), such a possibility is not realistic in the present climate.

At the Constitutional Convention there was opportunity for delegates to put forward proposals for matters to be included in the preamble to a new Constitution for a Republic. The Convention then determined which proposals were worthy of further consideration.

One proposal put forward by the writer of this booklet and seconded by Brigadier Alf. Garland was to "..affirm the principles and rules for government expressed and acknowledged up to this time in the historic oath and ceremonies of the coronation of Kings and Queens of Great Britain.." The mover of the proposal explained in debate that the intention was to ensure the undergirding of the Constitution by Christian principles would be retained if Australia becomes a Republic. He recognised it might be possible to find better words to express the principle. The proposal and the principle were vigorously opposed by pro-republican delegates. When put to the vote they were overwhelmingly rejected as a matter not worthy to be discussed for possible inclusion in any Republican Constitution for Australia.

Without a formal and legally enforceable provision included in a Republican Constitution to secure the historic principle that the basis of Australian government would continue to be "to govern lawfully, justly and mercifully, to maintain God's law and to regard the Bible as the rule for the whole of life and government", that principle would cease with the termination of the present system of constitutional monarchy. To sever Australia from the Queen would sever this nation from the coronation oaths and from the historic basis of law and government. Any change in this regard would be far from "minimal". It would be a classic case of "throwing the baby out with the bath water".

Another proposal put forward at the Convention (proposed by Mr Alasdair Webster and others, and finally presented by an appointed delegate from Queensland) was that an expression of "reliance on Almighty God" should be retained in the preamble to any Republican Constitution. In debate on this proposal it was explained that the term "Almighty God" would be intended to mean anything that any person would like it to mean. After hearing this explanation, the delegates voted to adopt the proposal. Of course, it is encouraging that the Convention agreed to the inclusion of the term "Almighty God" but the explanation of its intended meaning is disheartening (and I am sure Mr Webster is as disheartened as the writer of this booklet that the intention of his motion was distorted). Further, it needs to be understood that a reference to "the blessing of Almighty God" does not carry with it any reference to the undergirding basis of law or any inference that the Christian measure of right and wrong is to be the measure of right and wrong in the nation.

Most people supporting proposals for Australia to become a Republic are totally unaware that this change would entail a severance of the nation from the historic principle that God's measure is supposed to be the basis of law and government in this nation.

This booklet is not suggesting malice, or even knowledge of what they are doing, on the part of those promoting change. In pointing to a hidden agenda this booklet simply draws attention to a basic fact that is not readily obvious in a nation where the majority of people have neither been taught nor have they become aware of the real issues. Perhaps it might have been better to use the term "hidden factor" rather than "hidden agenda" but I know every reader will understand what is meant.

The Constitutional Convention provided an opportunity for delegates to appreciate the issues themselves, to take a stand for godliness and to take steps to ensure that the people of Australia become fully informed so that the whole nation can return to, and make factual, the historic theory of godliness. That 'window of opportunity' is now closed and shuttered.

Every delegate to the Convention bears a special accountability for Australia's future and will ultimately answer to the King of kings. That accountability rests not only on the delegates but now also rests firmly in the lap of the Prime Minister and Members of Parliament who will be responsible for the final structure of the formal proposals for a Referendum. It also rests on every citizen of Australia for his or her attitude and actions relating to the proposed changes, and for the way he or she votes at the forthcoming Referendum.

Will the people of Australia be fully informed? A Republic would destroy the Christian basis of law in Australia.

AN INDEPENDENT NATION

The principle of British colonisation was that the law of England existing at the time of settlement applied to the new colony but the date of settlement would be a "cut-off" date after which new English laws did not apply to the colony unless the words of the new law expressly (or by necessary implication) made the law applicable to the colony. For Australia, however, this ordinary principle was varied and 25th July 1828 was established as the "cut-off" date for New South Wales (including what subsequently came to be known as Victoria and Queensland) and Van Diemen's Land (now known as Tasmania). For South Australia (including Northern Territory) and Western Australia the "cut-off" dates are the respective dates of settlement. It is readily understood, therefore, that a degree of independence for the Australian colonies existed from 1828. This independence is universally agreed in relation to statute law but, despite a judicial comment by the late Mr. Justice Lionel Murphy in 1968 (Dugan v. Mirror Newspapers 1978 142 CLR 583 at 609), the principle that English laws would not apply to a colony after the "cut-off" date also includes the inapplicability of common law declared in English courts (see R. v. Farrell 1831 1 Legge 510).

From the "cut-off" date the colonies made their own laws and their own courts established their own judicial precedents. The British parliament retained the power to pass statutes applying expressly (or by necessary implication) to the Australian colonies but the English courts could no longer establish precedents binding on the Australian courts. Appeal lay from the Australian courts to the Judicial Committee of the Privy Council but, when dealing with appeals from Australia, the Privy Council sat as an Australian court, not as an English court, and applied Australian law (not English law). (The terms 'English' and 'British' are not being used indiscriminately in this context but are expressing different concepts. The term 'British' applies, for example, to the parliament at Westminster with legislative responsibility for Great Britain, whereas there were (and still are) distinct systems of courts for Scotland on the one hand and England and Wales on the other, each administering its own distinct laws. It was English (not Scots) law that came with the colonists to Australia.)

With the establishment of a constitution for each of the Australian colonies, the parliaments of each colony passed their own statutes without reference to Britain. The colonies appointed their own judges and their own public servants and raised their own armies. It was by independent local decision that colonial troops were sent from Australian colonies to the Boer War.

In 1901, with the formation of the federal Commonwealth of Australia and the establishment of the Commonwealth of Australia Constitution a degree of (perhaps complete, if the late Murphy J. is correct) independence as a matter of law devolved on the newly formed Federation.

Although complete independence from Britain might have existed as a matter of law since 1st January 1901, this was not widely perceived either in Britain or in Australia. The perception dawned slowly over the years. On the outbreak of World War I, although it was generally thought that Britain's involvement automatically included Australia, it was exclusively the independent decisions of the Australian Federal Parliament that established the 1st A.I.F., recruited and conscripted the troops, and sent them to the war. It was recognised at the Imperial War Conference held in 1917 that Australia was an independent participant in the war. The participation of Australia in hostilities as an entity independent of Britain was confirmed at the signing of the Versailles Peace Treaty on 28 June 1919 when Prime Minister William Morris Hughes signed on behalf of the Commonwealth of Australia as an independent nation. On returning to Australia Hughes informed the Commonwealth Parliament (10 September 1919) that Australia had entered the family of nations on a footing of equality.

On 20 January 1920 the League of Nations came into existence with Australia as one of the 28 independent founding member nations. Article 1 of the Charter of the League of Nations demonstrably recognises Australia's complete independence. Following this demonstration, a concept of Australian citizenship (distinct from citizenship of great Britain) was formally established. The League of Nations Charter has been referred to as "Australia's declaration of independence".

On 11 November 1921 Australia appointed its first diplomatic representative to Britain. His credentials were accepted as the representative of an independent nation.

The Washington Naval Treaty was signed by Australia in 1922. It is sometimes incorrectly said that this was the first international treaty in which Australia participated independently of Britain (in fact, it seems likely the first such treaties related to postal matters prior to federation, entered into by the colonies or some of them) but it is true that the Washington Naval Treaty was the first defence pact established by Australia independently of Britain.

The "Balfour Declaration" of 1926 (perhaps most often cited in relation to Palestine) acknowledged Australia's equal status with Britain. "Imperial Conferences" were held in 1926 and 1930. At the 1926 Conference it was recognised and agreed that the Governor-General (not the Queen) represents Australia overseas. It was recognised that the Queen not only does not but cannot represent Australia.

These conferences also declared the complete legislative independence of Australia (and the other self-governing dominions). This independence and certain of the decisions of the Imperial Conferences were given statutory recognition by the Statute of Westminster, 1931. This raised, at last, a general perception that Australia was indeed a truly independent nation.

Despite that general perception, there were continuing expressions of doubt. Doubters claimed that if it were true to say the British Parliament had no legislative authority for Australia, the Statute of Westminster itself had no legal effect. This doubt was set at rest in 1942 with the passing by the Commonwealth of Australia Parliament of the Statute of Westminster Adoption Act, 1942 adopting the Statute of Westminster as Australian law.

In 1945 Australia signed the Charter of the United Nations as a foundation member and as a completely independent nation. Australia's complete independence was again publicly declared by Britain and recognised by the nations of the world.

In 1948 new Citizenship Acts in Britain and Australia further clarified the distinction between Australian Citizens on the one hand and Citizens of the United Kingdom and Colonies on the other hand. The distinction was completed in 1983 and 1984 when Britain and Australia respectively legislated with the effect of Australian Citizens becoming aliens in Britain and citizens of Britain becoming aliens in Australia.

Although the Privy Council sat as an Australian Court when hearing appeals from Australia, it was increasingly felt that a right of appeal to a court constituted outside Australia with judges not appointed by an Australian government was not appropriate for an independent nation. The possibility of an appeal from an Australian court to the Privy Council was finally terminated in 1986.

Despite the Statute of Westminster Adoption Act 1942, the revised citizenship arrangements and recognition by the United Nations and the nations of the world, there was still (or perhaps 'again' rather than 'still') some feeling that further steps were needed to establish Australia's independence. To deal with this continuing feeling the Australia Act, 1986 was enacted by the Federal Parliament, every State Parliament and the British Parliament. Prime Minister Robert Hawke declared that with the enactment of the Australia Act the Constitution was "brought home" and independence was complete at last. This was not enough for the Prime Minister. He had set up in 1985 a Constitutional Commission consisting of three of Australia's leading constitutional experts and asked it to report on the revision of the Constitution required to "adequately reflect Australia's status as an independent nation". The Commission reported in 1988, after tracing the history of constitutional and legislative development outlined above, that "it is clear from these events, and recognition by the world community, that at some time between 1926 and the end of World War II (in 1945) Australia had achieved full independence as a sovereign state of the world."

Independence from Britain was complete. However, with the growing concept of a global village and interdependence of the nations of the world, independence from Britain does not mean Australia is free from international control.

THE PLACE OF UNITED NATIONS LAW IN AUSTRALIAN LAW.

After World War II the United Nations Organisation was established in the hope of preventing another terrible war. The hub of the plan was the General Assembly and the Security Council, with the various UN Agencies effecting rehabilitation of the war-torn world, re-establishment of displaced and distressed people and organisation of international activities such as health, trade, aviation and crime control.

There is a view that inequality is a basic cause of war and, in any case, inequality should be abolished on a worldwide basis in the interests of social justice and friendship. in the ultimate, this would mean that a worker in China or India should enjoy exactly the same working, living and social conditions as a worker in Australia or the USA. It follows that the conditions and standard of living of people in the third world would need to be improved while in Australia and the USA the standard of living and general conditions might need to be lowered. To achieve equality, attention needs to be given to social political and economic circumstances.

In order to achieve economic, social and political equality and conformity throughout the world, it would be necessary to establish a universally applicable system of law. The question is (of course): "What system of law?" If the historic Christian base of the law inherited by Australia were to be adopted, other legal systems would have to give way and not be recognised as equal. What needs to be done, then, (it is thought) is for the General Assembly of the United Nations to develop a scheme of law recognising "a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that the energies and talents of every person should be devoted to the service of his fellow men". For a Christian, the problem with this high sounding proposal is that "man" is determining the measure of law, the measure of right and wrong. The scheme developed by the United nations becomes "the rule of life and government". The chief purpose of mankind ceases to be the service of God and becomes the service of mankind.

Steps towards a universal law of equality for all people have been taken by the United Nations General Assembly in a series of instruments referred to as "human rights conventions (or treaties)".

Historically treaties were made for the purpose of establishing binding rules for the relationship of nations with one another, such as a peace agreement after a war or a trade or defence agreement or the delineation of international borders. The idea of treaties to establish standardised laws in many or all countries was first

introduced through the International Labour Organisation before World War II. Since World War II, however, international treaty machinery has been widely used to lay down standards to be applied throughout the world. Consistently with the principles referred to above, such treaties are for the purpose of ensuring fundamental human rights, the dignity and worth of the human person, and the equal rights of men and women and of nations large and small. They are intended to supersede or replace any inconsistent laws, rules or standards previously existing in every country so that laws throughout the world will be identical, or at least consistent, and will no longer vary in accordance with differing history, religions, cultures, traditions or practices. While any or all such treaties might be formulated with the highest and best motives, their syncretic nature is likely to cause concern among people committed to historic or religious values if any particular value of theirs is challenged or changed.

Australia is a member of the United Nations. In addition to our Australian representative, Australia has a team of officers stationed overseas and in Canberra participating in and providing a leading role in the preparation of "human rights treaties" and has been active in promoting, signing and adopting such treaties. When Australia ratifies (the technical term for adopting and undertaking to fulfill) a human rights treaty, the treaty does not automatically replace or supersede any Australian law. It only does so if and when it is incorporated into, or its terms are reflected in, an actual law made in Australia. Incorporation can occur in any of several ways.

UNITED NATIONS LAWS BECOME AUSTRALIAN LAWS

In 1986, with the agreement of all the members of the Federal Parliament, a law was passed empowering the Commonwealth Attorney-General to declare by notice in the Commonwealth of Australia Gazette that any particular "international human rights instrument" is part of Australian law for the purpose of the Human Rights and Equal Opportunity Commission Act. This procedure requires the "instrument" and the declaration of the Attorney-General to be tabled in both Houses of Federal Parliament within fifteen sitting days after the declaration appears in the Gazette. The "instrument" becomes applicable in Australia from the date it appears in the Gazette but ceases to be applicable if not tabled within those fifteen days. If it is tabled within fifteen days, any Member of the House of Representatives and any Senator may, within a further fifteen days, give notice of motion to "disallow" the instrument. If such notice is given and the matter is not disposed of by the relevant House within fifteen days after the giving of such notice, the "instrument" then ceases to be part of Australia's internal law. The Convention on the Rights of the Child and the Declaration on the Elimination of All Forms of Discrimination and Intolerance Based on Religion or Belief are among the "international human rights instruments" introduced into Australian law by this method.

A second method of incorporating the terms of a human rights treaty is simply to amend existing legislation to comply with the treaty.

A third method is to pass a special Act of Parliament as (for example) has been done in the case of the International Convention on the Elimination of All Forms of Racial discrimination (Racial Discrimination Act, 1975) and the Convention on the Elimination of All Forms of Discrimination Against Women (Sex Discrimination Act, 1984).

In some recent decisions the High Court has held that ratified human rights treaties should be followed in the making of administrative decisions even if the treaty has not been formally incorporated into Australian law.

REMARKABLE SIGNIFICANCE.

Whatever method of incorporation is used, the new law incorporating the terms of a human rights treaty has some remarkable features. The first is that it must be interpreted in accordance with the intention of the treaty, and judgments in foreign countries interpreting the treaty are precedents to be used in Australia. The second, and of great significance, is that if a human rights treaty has been ratified by Australia, Australia is in breach of international law if the Australian law applying the treaty is amended inconsistently with the terms of the treaty or if the law is repealed. This is clearly a limitation on the independence and legislative sovereignty of Australia and on the power of the Parliament to legislate in accordance with its will or the will of the people or even in accordance with the Bible. The third, and probably the most serious, remarkable feature is that the **measure of right and wrong has been drawn up by people and, what is more, by people who have not been elected by Australians (or, indeed, by anyone).**

As already explained, one step in establishing a perception of Australia's independence was abolishing appeals to the Privy Council on the basis that Australian justice should be administered by Australian judges in Australian courts rather than in "foreign" courts. Interestingly, subsequent to removing the jurisdiction of the Privy Council, the Australian government has, by administrative process, opened the way for Australians whose recourse within Australia has been exhausted to take their complaints to United Nations tribunals. These tribunals do not adjudicate on the basis of Australian law, they are not (even theoretically) sitting as Australian courts, the adjudicators are not Australians and Australia has no control over the adjudicators, the measure of justice they apply is man's measure. Was the Privy Council preferable to what exists now?

THE RELEVANCE TO THE REPUBLIC DEBATE.

Australia is independent from Britain but the law of God remains as the only valid rule for life and government. The move to dependence upon or subjection to the United Nations demonstrates that independence and nationhood is not the issue. If Australia becomes a Republic it will be no more independent than it is now. Indeed, far from achieving independence, there would be a greater probability of subjection to the humanist principle of the United Nations. The call is not for national independence from other supposedly more powerful nations; it is the very call of Psalm 2 -

> "Why do the nations rage
> and the peoples plot in vain?
> The kings of the earth take their stand
> and the rulers gather together
> against the Lord
> and against his anointed one.

Christian people, and all people of good will, have a responsibility to do all in their power to maintain godliness in the nation. It is easy to see the thrust towards the humanism and godlessness of "one world government" as we consider how Australia is being drawn or pushed into the United Nations judicial system as outlined above. The historic constitutional structure of Australia has fallen into misuse and abuse. The system is under attack and the people who are supposed to lead and be examples in the system are being criticised. This is the moment for all Christian people and all men and women of good will to remember that our historic constitutional structure is undergirded by godliness. It is the duty of the people of Australia to reassert godliness, not to reject it. We must reject a Republic because, with a Republic the undergirding would go. We must call the nation and its leaders back to their duty, back to recognition of the Lord God of eternity, His measure for discerning right from wrong, and His law as the only rule for life and government.

A REPUBLIC IS NOT INEVITABLE!

HEAD OF STATE

The very term 'head of state' is an emotive and misleading slogan used by republicans and others. It often causes people to ask: "Who is Australia's head of state?" That question is often answered: "The Queen, thousands of miles away and not even an Australian citizen, advised by the British government and not by Australians."

The immediate and natural reaction of fair minded Australians to such a misleading question and answer is one of deep concern. Their concern is not justified as the following facts quickly reveal:

Of course the Queen is not an Australian citizen. She is not a British citizen either. Historically, 'citizenship' was itself a term appropriate only to republics. British people (including those born in Australia, United Kingdom and certain other places) were 'subjects' of the Queen with full rights to protection by her and the system she represents. The Queen could not be a 'subject' because she was the figure head of the system of constitutional law and government to which the people were 'subject'. The concern was for 'people' and loyalty to a system of principles rather than to a land mass or nation. With pressure from the practice of republics to relate to an area of the world (or nation) rather than to a system, both Britain and independent Australia have adopted the term 'citizen' or 'citizenship' to describe people born within a particular country or pledging allegiance to that country. The adopted term ('citizenship') has an uncomfortable place in a system with its theory deriving from historic British practice. This is demonstrated by the complaints of some people that the Queen is not an Australian citizen. Nowadays, by 'citizenship' we mean a right to protection within the historic Australian system of law and government explained in the first chapter of this booklet. It would be a nonsense for the Queen to have 'citizenship' when it is her office - the Crown - that provides what citizenship means. Is it part of the hidden agenda or hidden factor for 'citizenship' to fully change its meaning to its republican sense?

In his otherwise excellent address to the opening session of the 82nd State Annual Conference of the Victorian Branch of the Returned Services League of Australia, Sir David Smith (a delegate to the Constitutional Convention) said: "The Queen is our symbolic head of state and the Governor-General is our constitutional head of state. We simply have two heads of state ....." While Sir David's statement is a helpful and easy to understand explanation of the respective roles of the Queen and the Governor-General, it does beg the question: "How can there be two heads of state? Why not change the system so that we get rid of any confusion and have only one head of state performing both symbolic and

constitutional roles?" In fact, like 'citizenship', the term 'head of state' fits uneasily in Australia's constitutional system of law and government 'Head of state' is a republican term. We have a Queen and a GovernorGeneral and a Prime Minister and a Senate and a House of Representatives and a High Court - none of these is 'head of state', each has its own function.

There might be some people who insist that 'head of state' is a generic term applicable to all systems of government, and there might be some who would want to use the term by way of "harmless" compromise with those who would wish to see Australia's historic form of constitutional government broken down. The fact is, however, the term 'head of state' was not omitted from the Australian Constitution by oversight or mistake but because it is not applicable. Proposals to recognise a 'head of state' (whether such person be Queen, Governor-General or Prime Minister, let alone a President) could lead to an undermining of the system that has served Australia so well since 1788 and has been entrenched in the Commonwealth of Australia Constitution.

Although it is right to say the Queen is normally thousands of kilometres away from Australia it is important she should be. She has no constitutional or governmental function in Australia even if she is physically present - all such functions are exercisable only by the Governor-General except for appointing and dismissing the Governor-General. The GovernorGeneral is appointed or dismissed by the Queen only on the advice of the Prime Minister of Australia. So, why not simply streamline the system by removing the 'office' of Queen?

By now the reader will know the answer. If the Queen and her coronation principles are removed, the whole theory of the basis of law and the responsibility of government goes with her. To this must be added the additional fact that the requirement for the Prime Minister to recommend to the Queen, rather than making an appointment or effecting a dismissal himself, immediately establishes a 'buffer' for deeper consideration. The "buffer" would be strengthened if the Queen were to question the wisdom of a particular appointment or dismissal in the event of the recommendation appearing on its face to be contrary to the interests of the people of Australia or to her coronation principles.

In Britain the Queen performs functions similar to those performed in Australia by the Governor-General. For her functions in Britain she receives advice from the British Prime Minister but receives no advice from him relating to her performance of functions in Australia. There are two reasons for this. One reason is, as already explained, she has no function in Australia. The second is that it would be completely against the law and inimical to Australia's independence if the Queen were advised by British ministers regarding her Australian functions including or, rather, limited to (because she has no other Australian function) the appointment and dismissal of Governors-General. The

Imperial Conference of 1930 agreed that recommendations for the appointment of Governors-General would be made by the Prime Minister of the Dominion concerned. Since that date all recommendations for the appointment of Governor-General of Australia have come from the Australian Prime Minister alone, without reference to British Ministers.

For more than thirty-five years the person holding the office of Governor-General has been an Australian. From now on the Governor-General will always be Australian. Indeed, for obvious reasons, it would be desirable for Prime Ministers to ensure that any person recommended by him for appointment as Governor-General is not "under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power". But this is probably too much to ask. The quotation is from section 44 of the Constitution in relation to the requirements for eligibility to be a member of the Commonwealth Parliament. There are a number of members of the Commonwealth Parliament at present who are disqualified by section 44 but no action is being taken to remove them - this is not by virtue of ignorance of the constitutional provision but by blatant disregard (The High Court has drawn attention to the matter, as has the press). If parliamentary party leaders disregard this constitutional provision in relation to their own parliamentarians, how could a Prime Minister be expected to apply the principle to a person he recommends for appointment as Governor-General when there is no strict legal requirement for him to do so?

In addition to destruction of the historic system, there are serious dangers attached to establishing a president as 'head of state' irrespective of the method used for his or her appointment and irrespective of the powers or lack of powers attaching to the office.

CURIOUSER AND CURIOUSER

It was Alice, during her wanderings in Wonderland, who coined the phrase "curiouser and curiouser". This phrase well fits the progress of the Constitutional Convention towards "a preferred Republican model" and the final resolution itself.

The final resolution, after all other proposals had been excluded, was supported by more delegates than any other model but was not supported by a majority of the delegates. This "preferred model" proposes that Australia's president should be elected by a two thirds majority of the members of Federal Parliament. The election would be of a person nominated by the prime minister after wide consultation with community groups. The president would be subject to instant dismissal by the prime minister. The duties, powers and responsibilities of the president would be substantially the same as those at present exercised by the Governor-General except that the president would not be the representative

of the Queen (with the consequence that the President would have none of the responsibilities expressed in the historic coronation oaths and procedures).

The present Prime Minister and the Leader of the Opposition have promised that this "preferred model" will be put to the people of Australia at a Referendum in 1999.

Fundamental flaws in the "preferred model are obvious, for example:

- it could no longer be said that the true philosophy of Australian government is expressed in the historic formula of the coronation oaths and ceremonies with the requirement to "govern lawfully, justly and mercifully, to maintain God's law and to regard the Bible as the rule for the whole of life and government";
- the appointment of a president requires the support of two thirds of the members of parliament, with the consequence that the president would have more parliamentary endorsement than the prime minister;
- the president would have unlimited formal power (including the powers of section 58 of the Constitution unrestricted by the limits on discretion referred to later in this booklet) but would be subject to instant dismissal by the prime minister if he used any of his powers;
- the power of instant dismissal of the president given to the prime minister would dramatically increase the dominance of the already dominant office of prime minister;
- in the unlikely event of two thirds of the federal parliamentarians belonging to the government party there would be no need for any bipartisan approval of a president. In the more likely event of an opposition holding at least one third (plus one) of the seats, an obstructionist opposition could prevent the appointment of any president simply by refusing to vote in favour of any of the prime minister's nominees.

Australia already has a "resident" system with "resident" people in exclusive control of government. Claims to the contrary are untrue. Adoption of the Constitutional Convention's "preferred model" would not make government any more Australian than it is now and would not make it any more representative of the people than it is now. What, then, are the proposals intended to achieve? It is very curious!!

THE QUEEN'S REPRESENTATIVE

The legislative power of the Commonwealth vests in the Parliament, which consists of the Queen, the Senate, and the House of Representatives (section 1 of the Constitution). The term "Queen" must be understood to mean the royal power and responsibility as recognised at the coronation (the Crown), rather than the actual person of the Queen. Therefore, the power of the Parliament is not absolute but is subject to the Constitution and to the parameters of the wider constitutional structures and strictures of the historic overriding basis of fundamental principles and rules.

As far as a personal presence in Australia of the "Crown" is concerned, that presence is manifested by the Governor-General. The executive power of the Commonwealth is exercisable by him as the Queen's representative (section 61 of the Constitution).

Until the Imperial Conference of 1926 it was generally perceived that the Governors-General of the several dominions were the representatives of the British government in their respective countries. At that Conference it was agreed Governors-General would from then on stand in the same constitutional relationship with their respective dominion governments and hold the same position in relation to public affairs in the dominion as the monarch did in England and were no longer to be representatives of the British government. In that year Britain appointed a High Commissioner to represent British interests in Australia and his credentials as the diplomatic representative of a separate nation were presented and received.

Although the factual recognition of the Governor-General as an officer exercising his powers in his own right flowed from the Imperial Conference of 1930, the real legal position was very different. The structure of the Commonwealth of Australia Constitution had, from its inception on 1st January 1901, established the office of Governor-General with statutory powers and responsibilities. His authority flows from the Constitution, not from the Queen. This was recognised and stated by Mr Justice Andrew Inglis Clark and others when the Constitution was drafted by them. In 1922 this fact was judicially recognised by Lord Haldane in the Privy Counci (the Engineer's Case). This fact is now recognised by all relevant legal and administrative authorities in Australia and in Britain. It will come as no surprise to the reader, therefore, that the Governor-General neither receives directions from, nor reports to, nor is accountable to the Queen; the Queen can neither appoint nor dismiss a Governor-General on her own initiative.

Even when the Queen is present in Australia all "her" constitutional powers and responsibilities are exercisable by, and only by, the Governor-General. All

'head of state' powers and functions were given to the Governor-General and to no other person by the Constitution on 1st January 1901.

Then, how can it be said the Governor-General is the Queen's representative?

The Governor-General's duty is to represent the Queen by honouring the coronation principles, ensuring that government in Australia is lawful, just, and merciful, by maintaining God's law and by regarding the Bible as the rule for the whole of life and government.

Section 58 of the Constitution is pivotal:

> "58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure."

This section, with power to withhold assent to proposed legislation in the discretion of the Governor-General, might be thought by some people to give dictatorial powers. In fact the very opposite is true. By using the term 'discretion' the framers of the Constitution empowered the Governor-General to protect the people against dictatorial or totalitarian action by a government intentionally or unwittingly offending the underlying basis of the Constitution. As representative of the Queen the Governor-General has both the power and the duty to exercise his 'discretion' in this regard. His discretion is not unfettered but is limited by his 'representative' capacity. He cannot exercise his discretion at his whim but only for fulfilling the same responsibilities and duties as the monarch has traditionally held in England.

The power in section 58 to reserve a proposed law for the Queen's pleasure does not mean the Governor-General can send it to Britain for the Queen's enjoyment or amusement (or even for her decision). What it does mean is that the Governor-General can delay his decision whether or not to give his assent to that proposed law while he gives consideration to its propriety (or 'constitutionality') in the terms of his responsibilities.

If the monarchy were to be abolished in Australia, thereby severing the ties with the historic godly measure of law and justice and destroying the 'representative' responsibilities of the Governor-General, the nature of section 58 would immediately be changed from that of a very important protection to one causing deep concern.

If the monarchy were to go, who would assent to the laws? The President? Would he have a discretion to reject the decisions of both Houses of Parliament?

What fetters would apply to that discretion? It would not be the fetters of the principles of godliness on which Australia's constitutional monarchy has been based because the monarchy and all it means (as explained earlier in this booklet) would have gone. Would the President have no discretionary power to reject legislation but be required to "rubber stamp" his assent? This would dramatically increase the power of politicians. If the "preferred model" produced by the Constitutional Convention were to be adopted, the theory would be that the president would have unrestricted and unfettered discretion but, by virtue of the prime minister's power to instantly dismiss the president, the factual authority of the president would be non-existent and he would act only as a "rubber stamp". (The details of the Constitutional Convention's "preferred model" have been referred to earlier in this booklet.) Even if the "preferred model" of the Constitutional Convention were not strictly adhered to and some discretion were allowed, it is certain the power of the politicians would increase. Is this part of the hidden agenda?

CONCLUSION

There is more to the proposal for Australia to become a republic than meets the eye. Some issues that do meet the eye and are attractive to the emotions of nationalists who have not looked below the surface are based on mistaken understandings or downright deceptions.

Australia is fully independent now. It is recognised by the international community of nations as independent. It cannot be one whit more independent, or be recognised as more independent, by becoming a republic. If the name 'republic' is the attraction, it should be understood that 'republic' is derived from two Latin words 'res publica' (things owned by all the people). The ordinary word in the English language to describe things owned by all the people is 'commonwealth', the very name enjoyed by our nation, "Commonwealth of Australia".

The claim that Australia should have a resident 'head of state' is misleading and deceptive. If the term 'head of state' means the person who assents to laws, opens and closes parliament, represents the nation on state visits abroad, commissions and gives credentials to diplomats, issues passports, commissions defence personnel and so on, there is already a resident head of state. In fact 'head of state' is not a term known to the Australian Constitution or to our historic system of government. The nation has survived well for over two hundred years without the term 'head of state' as has Britain since at least the time of Alfred the Great (9th Century). What has changed? What is behind the proposal? Do "they" really not know the facts or is there more to it than is normally disclosed?

Underlying the whole movement is the fact that the proposed change would undermine the theory that law and government in this nation is based on Christian principles. Becoming a republic would sever Australian government and laws from the recognition by the monarch (with the Governor-General as representative) that the Law of God is the only rule for government.

Neither this booklet nor the writer as a delegate to the Constitutional Convention propose 'no change'. The theory of the present structure of government is Christian and godly. The change needed is to turn the theory into practice. Throwing out the Monarch and the Coronation Oath and principles would throw out the theory that it is the responsibility of government in Australia to administer godliness for the benefit of the people.

Dear reader, can you visualise any Republican Constitution that might be adopted in Australia at the present time requiring the President (or whoever has ultimate supervisory power over legislation) to acknowledge that the Law of God is the only rule for government and to undertake to the utmost of his or her power to implement that law? The Constitutional Convention declined to countenance such a suggestion.

It is clear that anyone seeking to uphold or assert Christian principles as the proper basis for government and law must oppose the current attempt to change the basis of the present system and must vote "NO" at the forthcoming Referendum.

A REPUBLIC IS NOT INEVITABLE.