

- extending to other categories of crime special confiscatory powers originally specified for the Drugs Trafficking Bill now before the British Parliament. The report in the *Guardian* says that the package would be introduced in the next session of Parliament.

Most recently, the Law Reform Commission of Victoria has issued its first background paper on the *Role of the Jury in Criminal Trials*. A wide variety of issues is canvassed and some tentative proposals are put forward. An issue raised in the paper relates to the consciousness of jurors of the possible prejudices that they may harbour as a result of socialisation or cultural beliefs. Reference is made to the comments of Justice Gobbo of the Supreme Court of Victoria to the Australian Institute of Multicultural Affairs (17 October 1983) where his Honour enumerated various means of educating juries and 'improving the system', including the access of persons of non-English speaking backgrounds to competent interpreter services at all levels of the system. The Paper notes the disadvantages suffered by Aboriginals and Torres Strait Islanders when involved in the court system. On the role of the woman, it comments that:

Legitimate debate has commenced about the relevance of the 'reasonable man' standards where a woman stands accused of a crime. This is a matter of importance to jury decision-making in important instances — with, for example, instances of pleas of provocation, self-defence, diminished responsibility and the like. (172)

The Commission also addresses the problems raised by complex expert evidence where both the numbers of the experts and the nature of their testimony make comprehension by lay juries extremely difficult. The paper comments that training of judges

should go some way towards improving judicial knowledge and understanding in this area. It is also open to suggest equally strongly that education of jurors in relation to forensic evidence and expert witnesses may be of similar value. (175)

The paper shies away from recommending that complex criminal or commercial cases be withdrawn from juries and favours educating jurors to enable them to participate adequately in the trials in which they become involved. It notes the finding of the Victorian Shorter Trials Committee that a two-thirds majority of Victorian judges did not favour judicial training and points to the contrast with the position in the United States and in the United Kingdom where judicial training schemes have existed for some time.

organised crime

Organised crime activities in the United States will reap more than \$US106.2 billion this year.

Report by Presidential Commission on Organised Crime, *The Australian*, 3 April 1986

nca emasculated ? At a seminar of the New South Wales Institute of Criminology on Organised Crime (12 March 1986) Frank Costigan QC rejoined the debate. He accused the New South Wales Government of emasculating the National Crime Authority by setting up the State Drug Crime Commission. He said:

It reflects a determination that the investigation of any drug related offence in New South Wales shall remain the province of that State. It is a clear warning for others to keep out . . . It has told the National Crime Authority by statute that there will be no reference for investigation of any matter involving drug activity in New South Wales.

Mr Costigan argued that the drug trade is a national industry and that to place a 'Berlin Wall' around New South Wales 'can advantage only those who wish to continue operating within it to the detriment of the whole Australian community'.

The New South Wales Government has by its legislation and its attitudes caused enormous harm to the fight against organised crime in this country. It has failed to respond in any rational manner to the clear evidence available to it of the problems present in this State. Unless there is some dramatic change historians will conclude that the single most serious reason why organised crime continues to flourish in this country lies in this failure.

Mr Costigan's comments were contested by members of the New South Wales Government and of the State Drug Crime Commission. However, they received some support from former Whitlam Government Minister and former Head of the New South Wales Land and Environment Court, Mr Jim McClelland. He agreed with the contention that there was institutionalised corruption in New South Wales. Since that date the New South Wales Minister for Police has told the New South Wales Parliament that a 'Mr Fix-it' was being investigated for allegedly paying police for information. After being named as 'Mr Fixit' by the Rev Fred Nile in the Legislative Council, Sydney businessman Mr Frank Hakim angrily denied the allegations and claimed that he was being victimised by members of the Police Internal Security Unit.

In the *Sydney Morning Herald* of 22 March 1986 Mr McClelland was quoted as saying:

There's no doubt there is massive corruption in the police force . . . I know that there is corruption in high places. It's in the nature of things that corruption is very difficult to detect. But its existence, as far as I am concerned, is an irresistible conclusion from the facts. There wouldn't be a heroin traffic if there were a really determined attempt to eradicate it. I think Costigan was on the right track . . .

state drugs commission defended. In the same day's paper a letter from the New South Wales Premier Mr Wran was published defending the decision to establish a State Drugs Commission. Mr Wran said that every royal commission which had dealt with aspects of organised crime in recent years, from Moffitt to Costigan, had reached the same conclusion — that existing law enforcement agencies, methods and procedures are inadequate to cope with the growth of modern organised crime in Australia:

Implicitly or explicitly, successive royal commissions have recommended the crime commission approach. Both the National Crime Authority and the SDCC have been established in recognition of the need to fill this gap in the armoury against organised crime. The necessity for a State

commission to supplement the operations of the national body is inherent in the Australian federal system itself. It is true that the drug traffic knows no State or indeed national boundaries. But law enforcement, from the police force to the courts, is overwhelmingly a State responsibility under our system. As long as that remains the case no responsible State government can dump the whole burden of the fight against drugs and crime upon the national agencies, however powerful. That would be an abdication of responsibility. Yet it is precisely such an abdication that is proposed by those who claim that the SDCC is unnecessary.

Mr Wran added:

The claim that the National Crime Authority should be the sole body to investigate organised crime in Australia fails to recognise the valuable role played by other law enforcement agencies: the Drug Law Enforcement Bureau, the Joint Task Force, the Australian Federal Police and the Customs Department as well as the State Drug Crime Commission.

In relation to this posse, he said that the 'particular nature and circumstances of the criminal activity under investigation determines which body is most appropriate'. He said that the State Drug Crime Commission provided New South Wales with the most up-to-date techniques available to combat organised crime and a mechanism for ensuring maximum cooperation with bodies whose responsibilities extend across Australia.

I must emphasise, as I did in my Second Reading Speech on October 2, that the STCC itself is an integral part of a comprehensive program which amounts to a full-scale law on illegal traffic unmatched anywhere in Australia. Far from 'building a wall around NSW', we are leading the co-operative national effort in the unending fight against the illegal drug traffic in Australia.

The 1985 Annual Report of the National Crime Authority recently became available. It made a point of noting the role of its Inter-Governmental Committee which is composed of Ministers of the Commonwealth Government and the participating States. All Australian States, as well as the Northern Territory, have contributed members to the Committee. Both the Commonwealth and the

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 'co-gent 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