



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

04/8586, MC04/8305

12 AUG 2004

Mr RG McCulloch
19 Andergrove Road
MACKAY QLD 4740

Dear Mr McCulloch

Thank you for your letter of 5 July 2004 regarding Australia's status as an independent nation. I trust the following comments are of assistance.

The Australian Constitution was originally enacted as part of a British Act, the *Commonwealth of Australia Constitution Act, 1900*. A British Act was necessary because, before 1901, Australia was a collection of self-governing British colonies and ultimate power over those colonies rested with the British parliament.

The new entity created by the Constitution – the *Commonwealth of Australia* – retained a 'Dominion' status for some time after federation. It was generally thought that, as a Dominion, Australia remained subject to some imperial legislation. However, Australia attained an independent status in international affairs over the course of the 20th century. Australia's enactment of the *Statute of Westminster Adoption Act 1942* is generally seen as significant in the attainment of that status. As its name implies, it adopted the *Statute of Westminster*, enacted by the British parliament in 1931. That statute had formalised a number of imperial conventions regarding the national independence of the Dominions. Among other things, the statute confirmed the power of Dominions to make laws having extraterritorial (or international) operation.

The 1973 amendment of the *Royal Style and Titles Act 1953* is also often seen as significant. That amendment reflected the general understanding that, as Queen of Australia, the Queen held an entirely distinct position from that which her majesty holds as Queen of the United Kingdom (or any other nation).

Consideration of these events by the High Court of Australia has so far not led to any definitive judgment as to whether any of them may be regarded as the single point at which Australia became fully independent for all purposes. However, it is quite clear that Australia is now an independent nation. That was formally acknowledged in the *Australia Act 1986*.

The Australia Act was enacted by the Commonwealth parliament at the request of the Australian States in accordance with subsection 51(xxxviii) of the Constitution. It was enacted in virtually identical terms by the United Kingdom parliament. As the long title of the Act indicates, it brought certain arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a fully independent, federal nation. Section 1, in particular, confirmed that the United Kingdom parliament no longer had power to make laws for Australia.

As to the question of 'sovereignty', I note that term can have different meanings in different contexts. You may, however, be interested in some observations of the current Chief Justice of Australia, the Hon Murray Gleeson AC, in a recent publication, *The Rule of Law and the Constitution* (ABC Books, 2000). The Chief Justice states (at page 6):

In Australia, unlike the United Kingdom we have a basic law, the Constitution, which defines and limits the power of the Parliament to alter the law. Because the basic law can now be altered only by the people of Australia, the sovereignty of our nation lies with the people, both as a matter of legal principle and as a matter of practical reality.

Yours sincerely



Philip Ruddock