



ATTORNEY- GENERAL'S DEPARTMENT

Office of Legal Services Coordination

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8 April 2003

Mr Ralph Moss 156 Tamar
Street BALLINA NSW
2478

Dear Mr Moss

Thank you for your letter of 7 March 2003 to the Attorney-General regarding the status of certain actions under the Australian Constitution. Unfortunately, the Attorney-General is unable to respond personally to all the correspondence that he receives. On this occasion I have been asked to reply to your letter on his behalf.

As you have observed, the Constitution was passed as part of the *Commonwealth of Australia Constitution Act* (Imp), an Act of the British Parliament, and took effect on 1 January 1901. A British Act was necessary because before 1900 Australia was a collection of self-governing colonies and ultimate power over those colonies rested with the British Parliament.

However, neither the legal force of the Constitution nor its status as the fundamental law of Australia is threatened by the fact that it was originally enacted as part of an 'imperial' statute, or by the fact that Australia became an independent nation in the course of the last century. A previous Chief Justice of Australia, Sir Anthony Mason, observed in *Australian Capital Television Pty Ltd v Commonwealth* (*Commonwealth Law Reports*, volume 177, page 138) that while the Constitution owes its legal force to its character as a statute of the imperial parliament enacted in the exercise of its legal sovereignty, the Constitution brought into existence an enduring system of national government:

Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative government for Australia in which the elected representatives exercise sovereign power on behalf of the Australian people.