

INSTITUTE OF POLICY STUDIES

DISCUSSION PAPER: "THE TRANS-TASMAN RELATIONSHIP"

THE AUSTRALIA-NEW ZEALAND RELATIONSHIP IN THE 21ST
CENTURYThe Hon Justice M D Kirby AC CMG
Australia

I do not feel competent to comment on much of the paper on the Australia / New Zealand relationship prepared by the Institute of Policy Studies so far as it deals with economic and trade policy issues. Insofar as I have any useful comments on such matters they are contained in earlier writing. See eg "CER, Trans-Tasman Courts and Australasia" [1983] NZLJ 304 and "CER - A Trans-Tasman Court?" in CER - Business and Law Essentials, Part I, Legal Research Foundation Seminar Papers, University of Auckland, 22-23 July 1983, 16 *et seq.* I recently wrote an essay with Philip A Joseph "Trans-Tasman Relations - Towards 2000 and Beyond" now published in P A Joseph (ed) *Essays on the Constitution*, Brooker's, Wellington, 1995, 129ff. I am sure that this will be available to the Institute.

My general conclusions are not dissimilar to those in the paper. There is a real risk in taking our close and relaxed relationship for granted. That risk derives from the imperatives which are changing Australia's view of itself and of its place in geography and history. From a comfortable imperial and post-

imperial outpost of European civilisation, along with New Zealand, we are now coming to terms with our indigenous people (as you, partly, did earlier) and with our relationship to South Asia. There is no doubt that the great economic lift-off in South Asia presents remarkable opportunities for an English-speaking advanced economy, such as Australia, to seize. This is being reflected not only in trade policies but also in constitutional discussion and in immigration policies of Australia.

Because of a quite marked increase in immigration to Australia from sources other than the traditional sources in Europe, which were hitherto shared with New Zealand, it is likely that Australia, more quickly than New Zealand, will change quite markedly in its racial composition. Whether our constitutional institutions will be strong enough to withstand pressures for changing institutional and social values, remains to be seen. But whereas Australia generally looks north, New Zealand tends to look out to the Pacific. The relationship of our two countries is in this sense complementary. It could give a combined utility to the two countries with so many overwhelmingly similar institutions and beneficial links. The risk is there that our two countries will, looking in generally opposite directions, tend to ignore and under-value the precious relationship with each other. It would be a tragedy if the result of this were that we discovered, without noticing it at first, an important gulf emerging when it was too late to do anything really effective about it.

When we shared the same Head of State, Privy Council appeals, constitutional arrangements, defence interests and general population composition, the relationship could, to a very large extent, be taken for granted. We just *felt* that we were basically the same. But as these links are being severed or questioned, the "bonds that bind" slowly and even imperceptibly are pulling apart. The instance drawn to attention in your paper concerns the aviation agreement. But even more startling was the virtually unnoticed imposition by Australia of visas for New Zealand citizens. Whilst most of the

rest of the world is moving towards the abolition of visas (and New Zealand has a much more liberal policy in this regard), the Australian Parliament imposed visas on New Zealanders with hardly a whimper from either side of the Tasman. True, at present they are largely nominal. But immigration bureaucrats have a way of turning nominal visas into real ones. Contrast the furore which emerged when passports were first introduced for Trans-Tasman travel. The apathy reflects the declining reality of the *feeling* of a link. Australia with its urgent press towards Asia and its many Asian faces in the streets now seems increasingly foreign to New Zealanders. Perhaps New Zealand, with its large islander population and Pacific outlook seems increasingly foreign to Australians. These appearances may be no more than the coming to terms with historical anachronisms - two European settler nations on the far side of the world, as far away from Europe as you could get. Perhaps at last our geography is reclaiming each of us. But where does that leave the long-term relationship with each other, unless we work at it? The "crimson thread of kinship" which Sir Henry Parkes said linked Australians and New Zealanders is now looking thin and frayed. Geography is not on its side.

That is why I too favour institutional links. One of the advantages of the present international constitutional monarchy which we share is that it is a link between Australia, New Zealand and indeed other countries in the region. The reversion to geographical nationalism may be irrelevant to the age of cyberspace. But its siren call seems to be potent in Australia at this time. And I do not think that New Zealanders would ever agree (or outside a federation should agree) to surrendering final decisions on their legal matters to the High Court of Australia. Yet the Australian Constitution makes the birth of a hybrid court for Australasia impossible without major constitutional amendments, difficult to procure.

For these reasons, I favour the idea of an Australia-New Zealand Advisory Council. Rekindling the acronym ANZAC in a way suitable for the 21st century has my complete support, as a citizen of Australia, who feels a

special connection with New Zealand, like no other country. Before things change too much, we should initiate the institution that takes CER beyond trade to a re-enforcement with the bond we have assumed and accepted but which should no longer be assumed.