

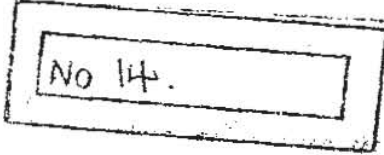


**Queensland  
Government**

**Matt Foley MP**  
Member for Yeerongpilly

Minister for Employment,  
Training and Youth  
Minister for the Arts

**FACSIMILE HEADER**



**TO:** Ms Karen Struthers MP  
**FAX NO:** 3406 7070  
**FROM:** Peter Clarke  
**SUBJECT:** Issues of Constitutional Reform  
**DATE:** 11 October 2002  
**NO OF PAGES:** 3 (including header)

Please see attached.

Kind regards

Peta Ward

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11 October 2002



**MATT FOLEY, MP**  
*Member for Yeerongpilly*

Ms Karen Struthers MP  
Chair  
Legislative Assembly of Queensland  
Parliament House  
George Street  
BRISBANE QLD

Dear Ms Struthers

I write in reference to your letter dated 27 August 2002 regarding Issues of Constitutional Reform.


I wish to make a submission in the terms of my address to the Parliament on 27 November 2001.

As indicated to the Parliament at that time the views I express "are my own views. I do not put them forward as the views of the Queensland Government".

I have enclosed a copy of my speech from that time.

Thank you for the opportunity to make a submission.

Yours sincerely

 **Matt Foley**  
Member for Yeerongpilly

27 Nov 2001

Constitution of Queensland; Parliament of Queensland Bill

3815

Presently, the National General Assembly of Local Government 2001 is under way. It is interesting to note that on the agenda are three resolutions from the Australian Local Government Association itself, the Western Australian Municipal Association and the city of Whitehorse in Victoria, all seeking constitutional recognition of local government. It is impossible to predict how the constitutional debate will unfold in Queensland or in Australia in the future. Whatever happens, it is certain, and there is widespread recognition of the fact, that the people have the right and should have the opportunity to understand their own constitutional system and be engaged in decisions about its future. This level of understanding and involvement will continue and can be expected to grow. The people's voices, rights and wishes must be respected. In acknowledging the people's voices, rights and wishes, a government can truly show its understanding of responsible government, accountability and democracy.

**Hon. M. J. FOLEY** (Yeerongpilly—ALP) (Minister for Employment, Training and Youth and Minister for the Arts) (3.14 p.m.): I believe that the three great tasks of constitutional reform facing our community are the establishment of an Australian republic, constitutional recognition of the prior indigenous ownership of this land and adjacent seas, and the enactment of a bill of rights to safeguard fundamental human rights and freedoms. These are my own views. I do not put them forward as the views of the Queensland government. The bills before the House merely consolidate and simplify the existing law. That is worth doing. Goodness knows it has taken us all long enough to get this far. The past 12 years have seen the labours of the Electoral and Administrative Review Commission, several all-party parliamentary committees, a Constitutional Convention, a Queensland Constitutional Review Commission and various rounds of consultation. At last we are here. We are at the beginning. After this long journey, we have reached the beginning.

These bills clear away a tangled thicket of imperial and colonial legislation, letters patent for the Governor and the order-in-council of 1859. This clarification removes the convenient alibi of complexity which has delayed state constitutional reform for too long. Now there is no excuse. It is crystal clear. The constitutional law of Queensland is spelt out in all its manifest absurdity. Most absurd is the stark provision that the parliament of Queensland consists not merely of the elected Legislative Assembly but also of the unelected Queen or King for the time being. The Crown thus not only embodies the executive but is also a constitutional part of the legislature. The Crown is a constitutional part of the power to make laws, embodies the executive's power to administer laws and signs the commissions appointing judges to hear and determine disputes according to law. This is undemocratic. It should be changed by referendum.

In a democracy power flows from the people, not from a divine right of kings. In the Legislative Council chamber nearby, the regal claim of divine right—*Dieu et Mon Droit*—is made below the symbols of the lion and the unicorn. The stark absurdity of this claim is apparent to all schoolchildren who visit these gilded halls. Painfully absent from the bills before this House is any reference to the rule of law prevailing in this state and its waters for many millennia. It is a mark of our immaturity that our Constitution stands mute and absurd towards its predecessors. Here in our Constitution—of all places—we should face up to the truth of prior Aboriginal and Islander ownership of this land and its seas.

The courts have done it in the Mabo case and subsequently. This parliament has done it through the Aboriginal Land Act and the Native Title Act. Why not here? Why not spell it out in the Constitution, the instrument which sets out the font and origin of lawful power in this state? This task will require humility. It will require imagination. It will require an honesty to face up to a different way of seeing the world. Consider, for example, the huge challenge facing the original Supreme Court judge hearing the Mabo case in coming to terms with the evidence of indigenous ownership on the island of Mer. Justice Moynihan wrote as follows in his judgment of the enormous difficulty in reconciling two profoundly different systems of law and different ways of looking at things—

A culture of which it can be said 'everything is owned—land, reef, rocks, stones, stars, winds, tracts of sea—and the names of those things are severable and may be separately transferred, a man in telling the stories of the island may speak for what is his and no more' apparently has a different concept of cosmology and of ownership to that from which I come.

We should expressly recognise in our Constitution the existence of the indigenous rule of law and systems of ownership of land and sea. This process is not just the business of lawyers or politicians; it is everybody's business. It is the business of the head and the heart. The great Queensland poet Judith Wright put a similar challenge in her poem *Reason and Unreason* when she said—