



AUSTRALIAN SENATE

CLERK OF THE SENATE

hc/fet/13606

2 May 2002

Ms Karen Struthers MP
Chair
Legal, Constitutional and Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Struthers

QUEENSLAND CONSTITUTION: SPECIFIC CONTENT ISSUES

Thank you for the committee's invitation, contained in your letter of 18 April 2002, to comment on the constitutional issues referred to in the committee's issues paper of April 2002.

I doubt that I can make any points which would not already be apparent to the committee, but I hope that the following few brief observations may be of some use.

3. Constitutional principles, conventions and practices

Much of the difficulty involved in referring to the Governor's reserve powers would disappear if the power of prorogation were to be abolished. It could be specified that the Governor is to appoint as Premier the person who has the support of the majority of the Legislative Assembly as expressed in a resolution of the Assembly, and that the Governor may dismiss a Premier from whom that support is withdrawn, without any further provision, provided that the Premier could not resort to the power of prorogation to prevent the Assembly from meeting (and there would have to be a provision for the Assembly to meet within a limited time after a general election: see 8. below). The problem of a Premier acting illegally, and similar difficulties thought to warrant the exercise of the reserve powers, could then be left to the Assembly to resolve. There may remain a gap in relation to periods when the Assembly is dissolved for a general election, but under the current provisions it is not clear what a Governor could do about a Premier acting illegally in such a period in any event. This gap could only be fully overcome by not having the Assembly dissolved for a general election but having the existing Assembly continue until the day before the new Assembly meets.

4. Lieutenant-Governor

It is highly undesirable to perpetuate the old colonial practice of the Chief Justice acting as Governor in the Governor's absence. Apart from the separation of powers principle,

RECEIVED

- 2 MAY 2002

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

No 1

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600

TEL: (02) 6277 3350

FAX: (02) 6277 3199

E-mail: clerk.sen@aph.gov.au

SPEC 42-1

the QCRC was justified in drawing attention to the possibility of litigation coming before the Supreme Court involving actions by the Chief Justice when acting as Governor. It would be better to have some distinguished former office-holders, such as retired Supreme Court justices, designated as Lieutenant-Governors.

7.1 Petitions

Rather than have a petitions committee examining petitions regardless of their content, it would be better to refer petitions to subject-specialised standing committees according to the petitions' subjects.

8. Summoning Parliament

A requirement that the Legislative Assembly meet within a specified period after the return of the writs for a general election is desirable in itself, and would be an essential accompaniment to the abolition of prorogation (see 3. above).

9. Parliamentary secretaries

I can only agree with the QCRC that the numbers of parliamentary secretaries should be limited to restrain the patronage power which the government otherwise has over the Assembly.

11.2 Appropriation

The requirement for a message from the Governor before the Assembly is able to consider an appropriation is an antiquated provision which serves no practical purpose and could well be abolished.

I would be happy to elaborate on any of these points should the committee so require.

Yours sincerely



(Harry Evans)