29 May 2002

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House, George Street
BRISBANE QLD 4000

Dear Madam

I write in relation to the Legal, Constitutional and Administrative Review Committee's April 2002 Issues Paper entitled "The Queensland Constitution: Specific Content Issues". I wish to provide the following comments and responses in relation to the issues raised in the paper.

Page 2 of Issues Paper – Comment

While indicating that it did not propose to re-open the issue of a bill of rights for Queensland the committee noted that constitutional recognition of particular rights, such as the right to vote, was important. Apart from the Government's response to the committee's Report No 12 I am not aware if it has announced its attitude towards whether fundamental democratic rights, such as the right to vote, should be constitutionally entrenched. Since 11 September last year governments across the world have been citing the US terrorist incidents to justify the making of laws which infringe individuals' rights and liberties. In view of these developments I consider the need has never been greater for basic democratic rights, such as the right to vote for parliamentary representatives and the right to participate in the political process, to be constitutionally recognised.

In its issues paper the Queensland Constitutional Review Commission (QCRC) indicated that it did not wish to re-open the question of whether Queensland should have a bill of rights and took confidence from the perception that *"things have been getting better in Queensland"* (QCRC 1999, p. 310). However, there is no constitutional mechanism to ensure that a subsequent government, particularly given Queensland's unicameral status, could not ever reverse the current improved situation. It has been observed that Queensland's political history has been frequently characterised by displays of authoritarianism and a lack of respect for individuals' rights and liberties ("*From 1915 to the Early 1980s – A History of Queensland*", Fitzgerald R, 1984, University of Queensland Press, pp. 27, 632). In consideration of this history it would be inadvisable to become complacent about the current situation. Consequently, I hope the question of whether fundamental democratic rights such as the right to vote should be constitutionally protected will be revisited in the near future.

Page 4 of Issues Paper - Comment

The committee noted several arguments against the express incorporation of conventions, including the Governor's reserve powers, into the Constitution. In particular, there is a concern that actions under codified conventions would be subject to review by the courts. In regard to this it was suggested that it could result in the courts becoming politicised with the judicial appointment process being open to allegations that governments will appoint judges likely to be sympathetic to their political interests in considering constitutional matters. But if judges can be expected to be independent and impartial with respect to their duties (refer page 31 of the committee's April 2002 Issues Paper), and in particular with respect to the declaration of illegal or corrupt activities by a Minister (as proposed on page 6 of the committee's April 2002 Issues Paper), then surely they can be relied upon to be similarly independent and impartial with respect to reviewing any actions carried out in accordance with codified conventions. In its issues paper the QCRC also considered the issue of conventions and noted a number of arguments challenging their continued non-codification (QCRC 1999, pp. 609, 610). Clearly, the position against constitutional incorporation of the conventions is not established beyond doubt.

Page 5 of Issues Paper – Issue 1

Should a statement of executive power be included in the Constitution?

A statement of executive power should be included in the Constitution because:

(a) this would be consistent with the principles of constitutionalism (government should be consistent, predictable and limited);
(b) it is necessary to constitutionally define the source of executive power;
(c) the community expects certainty and accountability in governance and a statement of executive power would facilitate such expectations;
(d) in a unicameral state such as Queensland it is particularly necessary for the mode and form of executive power, and how it is derived, to be prescribed.

Page 5 of Issues Paper – Issue 2

If a statement of executive power is included in the Constitution, should the statement include reference to the constitutional conventions which regulate its exercise? How should those conventions be incorporated?

Although the people of Queensland are recognised to be "*the actual font of sovereign power in this State*" (Legal, Constitutional and Administrative Review Committee [LCARC] Report No 31, p. 7), the legal reality is that Queensland is a constitutional monarchy. While this arrangement persists it would be necessary for any statement of executive power to reflect the legal position of the Sovereign at the apex of executive government. Accordingly, it is suggested that the statement of executive power could be worded as follows:

"The executive power of the State is vested in the Sovereign and is to be exercised by the Governor as the Sovereign's representative in accordance with relevant constitutional conventions, principles and practices.

Example of a relevant constitutional convention –

Other than in relation to the exercise of a reserve power the Governor will act on the advice of the Premier in exercising the executive power of the State."

Two things should be noted about this suggested approach. Firstly, the reference to the executive power being vested in the Sovereign and it being exercisable by the Governor as the Sovereign's representative is consistent with the wording of section 61 of the Commonwealth Constitution and with section 7 of the *Australia Act 1986*. Secondly, the use of the example device does not limit the constitutional conventions, principles and practices that may apply and therefore does not necessitate the codification of all relevant conventions (refer section 14D, *Acts Interpretation Act 1954*).

Page 6 of Issues Paper – Issue 3

Should the right of the Governor to be kept fully informed and to request information about matters relevant to the performance of the Governor's functions be recognised in the Constitution?

As noted by the QCRC in its issues paper, under constitutional conventions the Governor-General has the *"right to be consulted, to encourage and to warn in relation to the business of Government transacted in his name"* (QCRC 1999, p. 607). Such conventions would similarly apply to the Governor. Thus, in response to this issue it is suggested that the Constitution could provide as follows:

"In advising the Governor in respect to the exercise of the executive power of the State the Premier is to act in accordance with relevant constitutional conventions, principles and practices.

Example of a relevant constitutional convention –

The Premier is to keep the Governor fully informed and is to comply with any request by the Governor for the provision of information relevant to the performance of the Governor's functions."

As noted earlier, use of the example device would not restrict the constitutional conventions, principles and practices that may apply.

Page 6 of Issues Paper – Issue 4

Should the Governor have power to apply to the Queensland Court of Appeal for a declaration concerning possible illegal or corrupt activities by a member of the ministry?

The following points are offered for the committee's consideration concerning this issue. Seeking a declaration would be a very public matter. The QCRC believed this to be the preferred approach (QCRC 2000, p. 52). But how could the business of government be expected to run smoothly between the time of the request for a declaration and its handing down by a court? Would a Premier or other Minister be expected to stand down while awaiting the court's declaration? What if a Premier or Minister refused? Could the explicit provision of such a power precipitate direct and open conflict between a Governor and a Premier? Would an adverse declaration by the court be taken as a declaration of guilt? What about the general presumption of innocence until guilt is established beyond reasonable doubt? In deciding a declaration would a court be subject to the same rules as in a normal judicial hearing? Could a Governor be accused of bias if he or she, on mere suspicion, applied to a court for a declaration concerning the "possible" illegal or corrupt activities of a Premier or other Minister?

What would a Governor's options be if a court did not substantiate his or her suspicions by handing down an adverse declaration? Should he or she be required to resign? Should there be more solid grounds before a Governor could apply for a declaration? Would an adverse declaration by a court be appealable? Would a Governor be restrained from taking further action until the Premier had appealed the court's declaration? Unless these queries can be satisfactorily addressed, is it advisable for an explicit power to be made in this regard particularly given the acknowledged rarity of such a power ever being exercised (QCRC 2000, pp. 50-52)? If such an explicit power were to be constitutionally incorporated it would likely be necessary for the circumstances and conditions of its exercise to be prescribed so as to avoid any abuse of the power. It would also need to specify the ability of a Premier or other Minister to appeal an adverse declaration.

Page 7 of Issues Paper – Issue 5

Should the Constitution provide that the Governor shall act on the advice of the Premier in appointing and dismissing ministers?

I do not entirely agree with the QCRC's conclusion that the words now contained in section 34 of the *Constitution of Queensland 2001* necessarily amount to *"an indefensible breach of the principle of responsible government"* (QCRC 2000, p. 53). While the provision states that the Governor *"is not subject to direction by any person"* in the appointment and dismissal of Ministers, all this means is that the Governor, as the Sovereign's representative, cannot be dictated to in this regard. However, the provision does not in any way preclude a Governor from voluntarily acting in accordance with the convention and taking the advice of another person (namely, the Premier) concerning such matters. In fact, voluntarism underpins the effective operation of all the conventions.

Nevertheless, in recognition of the principle of responsible government which underpins parliamentary democracy in Queensland, section 34 of the *Constitution of Queensland 2001* ideally should be amended to recognise that a Governor will behave in accordance with constitutional convention and therefore will act on the advice of the Premier in relation to the appointment and dismissal of Ministers.

Page 7 of Issues Paper – Issue 6

Should the Constitution provide that ministers must be members of the Legislative Assembly? If so, should they be allowed a period of three months (or some other period) from their appointment as a minister to be elected to Parliament?

Again, in recognition of the principle of responsible government it is necessary that the Constitution provide that Ministers must be members of the Legislative Assembly. I would not support any suggestion that a person could be appointed as a Minister without first being elected to the Legislative Assembly. In fact, appointing a person as a Minister without the person first receiving the electorate's endorsement is highly presumptuous and is contrary to the concept of representative democracy *"in which the right to exercise government power is acquired through success in elections"* (*Political Ideologies*, Heywood, A, 1992, Macmillan, London, p. 281). Any *"rare and minor inconveniences"* that might arise as a consequence of insisting that a person cannot be appointed as a Minister unless they are first elected as a member of the Legislative Assembly would be just that – rare and minor.

Page 9 of Issues Paper – Issue 7

Should a provision be included in the Constitution stating that the Governor:

(a) may appoint as Premier the member of the Legislative Assembly who, in the Governor's opinion, is most likely to command the support of a majority of the Legislative Assembly; and/or

(b) must dismiss the Premier when the Legislative Assembly passes: (i) a resolution requiring his or her appointment to be revoked; or (ii) a vote of no confidence against the Premier?

As noted by the QCRC in its issues paper, under the reserve powers the Governor may: appoint and dismiss the Premier, and summon, prorogue and dismiss the Legislative Assembly (QCRC 1999, p. 1213). The power to appoint operates in tandem with the convention that the member who has the support of the majority of the members of the Legislative Assembly should be appointed as Premier. Consequently, I would support the inclusion of a provision in the Constitution that specifically provides for the Governor to appoint as Premier the member of the Legislative Assembly who, in the Governor's opinion, is most likely to command the support of a majority of the Legislative Assembly. However, I suggest that the Constitution should also require the Legislative Assembly to meet within a short period of time following a new Premier's appointment in order to test his or her support on the floor of the House. (Also see my comments in relation to Issue 23).

The Governor's reserve power to dismiss a Premier should ideally be recognised in the Constitution. The scenarios given under Issue 7(b) of the Issues Paper could be listed as examples of when the Governor would dismiss a Premier. As mentioned previously, use of the example device would not limit the Governor with respect to the situations he or she might need to consider dismissing a Premier (refer section 14D, *Acts Interpretation Act 1954*).

Page 9 of Issues Paper – Issue 8

If either such a provision as outlined in issue 7(b) is included:

(a) should it expressly state that such a resolution is not the only ground for dismissing a Premier?

(b) should it require an absolute majority of the members of the Legislative Assembly to pass the resolution or vote, that is, a majority of the number of seats in the Assembly?

Any resolution of the Legislative Assembly for a Premier to be dismissed by the Governor should require an absolute majority of the number of seats in the Assembly.

Page 9 of Issues Paper – Issue 9

Should any other constitutional principles, conventions and practices be included in the Constitution?

The following constitutional conventions, principles and practices should be considered for inclusion in the Constitution:

(a) In its report the QCRC referred to the Governor as *"the ultimate guardian of the State's constitution and its laws"* (QCRC 2000, p. 52). This role reflects the Sovereign's duties in this regard (QCRC 1999, p. 605). Therefore, in view of the Governor's role as the representative of the Sovereign (section 7, *Australia Act 1986*), consideration should be given to constitutionally recognising this function of the Governor.

(b) On page 3 of its Issues Paper the committee stated that it is *"customary for Executive Councillors to be the same persons who comprise the Ministry and Cabinet"*. In view of the principles of responsible government, consideration should be given to constitutionally providing for this convention.

(c) Clarification is needed with respect to section 42(2) of the *Constitution of Queensland 2001* which provides that the Cabinet is *"collectively responsible to the Parliament"*. I note the Explanatory Notes relating to this provision stated:

"The clause also provides a statement reflecting the principle of collective ministerial responsibility. That is, that Cabinet is collectively responsible to the people through the Parliament. The statement is not intended in any way to alter the recognised constitutional position of the Cabinet. The constitutional

relationship between the Cabinet and the Parliament recognised and practiced by convention prior to the enactment of this clause is to continue in the same manner after the enactment of this clause".

Nevertheless, there is ambiguity concerning the actual meaning of the expression "collectively responsible". The fact is that conventions are generally ill defined and can be ignored by Cabinets and Ministers, without legal repercussions, if it is considered necessary or expedient to do so. The experience with the principle of "collective responsibility" has been similar (for example, refer to *Public Policy in Australia*, 2nd edn, Davis *et al* 1993, Allen & Unwin, St Leonards, NSW, pp. 81 – 83 and *Parliament, Parties & People*, Jaensch 1991, Longman Cheshire Pty Ltd, Melbourne, pp. 253 – 255). The QCRC in its issues paper also noted similarly (QCRC 1999, pp. 603 – 604). Therefore, to ensure clarity, consideration should be given to incorporating "examples" in section 42(2) as to its possible practical applications and implications.

(d) Consideration should be given to including a statement in the Constitution which recognises the democratic values that underpin Queensland's parliamentary system. These include regular free and fair elections, equality before the law, the importance of citizens participating in the political process, the need to respect minorities, and recognition of the people as "*the actual font of sovereign power in this State*" (LCARC Report No 31, p. 7).

(e) In view of the principle of responsible government, consideration should be given to including a statement in the Constitution which recognises the convention that the executive has *"monopoly of initiation"* which respect to matters introduced into the Legislative Assembly (QCRC 1999, p. 520; also, the committee's April 2002 Issues Paper, p. 25).

Page 10 of Issues Paper – Issue 10

Are there difficulties with the current arrangement whereby the Chief Justice automatically becomes the Administrator in the Governor's absence?

A number of difficulties are evident with the current arrangement whereby the Chief Justice automatically becomes the Administrator in the Governor's absence. As noted by the QCRC in its issues paper, it appears to conflict with the doctrine of the separation of powers (QCRC 1999, p. 1227). Although this doctrine is not currently rigidly enshrined in the Constitution (*The Constitutions of the Australian States*, 5th edn, Lumb, R 1992, University of Queensland Press, pp. 132, 137), maintaining the current arrangement could create difficulties if the Constitution was amended to specifically recognise the impartiality and independence of the judiciary (refer to the committee's April 2002 Issues Paper, p. 31). Also, the current arrangement could put the Chief Justice in a difficult situation whereby an executive action he or she approved as Administrator might at a later date be subject to judicial review.

Page 10 of Issues Paper – Issues 11 and 12

If there are difficulties with the Chief Justice automatically becoming the Administrator in the Governor's absence, how might these difficulties be overcome?

Should a Lieutenant-Governor for the state be appointed? What qualifications might be appropriate for appointment to the position of Lieutenant-Governor?

Any difficulties with the Chief Justice automatically becoming the Administrator in the absence of the Governor may be overcome with the use of a Lieutenant-Governor. As the *Constitution of Queensland 2001* (section 41) already provides for the making of such an appointment there is no need for a specific constitutional amendment to be made. The qualifications of an appointee to the position of Lieutenant-Governor should be no different to those required of the Governor. Importantly, candidates for the office should not simply be chosen from the traditional fields of law and politics (refer QCRC 1999, p. 606). The office should be open to any citizen of the State who has been distinguished in their particular field and who, in that role, has been a positive role model and has made a valuable contribution to Queensland. The Lieutenant-Governor should possess: a thorough understanding of people and the community; a high level of interpersonal skills and abilities; sufficient life experience and depth; and, an understanding of the role, including its constitutional constraints.

Page 12 of Issues Paper – Issue 14

Should there be a mandatory requirement that members of the Queensland Legislative Assembly swear or affirm allegiance to the Crown? Should members have the option of swearing or affirming allegiance to the Crown, or only to the people of Queensland?

The value of the oath of allegiance has recently been considered in the context of the British Parliament. In a House of Commons Research Paper (00/17 February 2000), the history of the oath was examined. It appears that no specific oath for members of the House of Commons was required until 1563. Between this time and the nineteenth century members were required to swear three different oaths, all of which were developed in response to perceived political threats and to accommodate wider religious views. The oath currently in use was instigated during the mid nineteenth century. The paper noted various objections to the oath of allegiance: objections to the religious loyalties still implicit in the oath; republican objections to the requirement to pledge allegiance to the Crown; objections that the oath contains no pledge of duty towards the people or towards democracy; and, objections to members of Parliament having to take an oath at all. The information in this paper is of particular relevance to the committee's current enquiries concerning the use of the oath in the Queensland Parliament.

Apart from its historical value, the question may rightly be asked as to what purpose is continued to be served by members of the Legislative Assembly being required to swear an oath of allegiance to the Sovereign. In the 1860s when Queen Victoria personified the British Empire and Queensland was a remote British colony highly dependent on the

Empire's resources and good will it is not unexpected that members were required to pledge their allegiance to the Sovereign in line with the practice in the Imperial Parliament. But its continuing use is incongruous with Australia's modern status as a sovereign, independent and federal nation (refer *Australia Act 1986*). It is also out of step with the recent decision by the High Court which found Britain to now be a "foreign power" for the purposes of section 44 of the Commonwealth Constitution (*Sue v Hill* [1999] HCA 30 (23 June 1999). It has been argued that while the Queen may be the resident of a "foreign power" she is still the "Queen of Australia" pursuant to the *Royal Style and Titles Act 1973 (Cth)*. However, the fact remains that under the Commonwealth Constitution the Monarchy is very much linked to the United Kingdom. The Imperial Act covering the Constitution provides that references to the Monarch shall extend to the Monarch's *"heirs and successors in the sovereignty of the United Kingdom"*. Similarly, the Constitution's schedule relating to the oath of allegiance provides that *"the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted"* for the reigning Monarch.

The committee is canvassing public opinion as to whether members of the Legislative Assembly should continue to be required to swear/affirm allegiance to the Sovereign. My view is that the oath/affirmation of allegiance no longer serves any practical purpose in the context of modern day Queensland and it should be dispensed with as a mandatory requirement. This should not cause alarm since, as mentioned earlier, there was a time when even members of the British House of Commons were not required to swear an oath of allegiance to the Sovereign. Rather than being required to pledge their allegiance to the Sovereign, I consider it is far more important for members to be required to publicly and formally commit themselves to respecting and advancing the common interests of the people of Queensland (*"the actual font of sovereign power in this State"* [LCARC Report No 31, p. 7]) and to upholding Queensland's democratic system and values.

Page 14 of Issues Paper – Issue 15

Should the *Referendums Act 1997* (Qld) provide for indicative plebiscites prior to a referendum to enable citizens to be involved in the formulation of a referendum question?

While I support the concept of indicative plebiscites I consider it would still be necessary for discretion to be permitted with respect to deciding whether a referendum should always be preceded by a plebiscite.

Page 14 of Issues Paper – Issue 16

If provision for indicative plebiscite is not introduced, are there any alternative mechanisms by which the QCRC's concerns might be addressed?

See my previous comment. Provided any constitutional provision for the holding of a plebiscite prior to a referendum was discretionary, there should be no reason why the appropriate provision should not be made.

Page 14 of Issues Paper – Issue 17

If provision for indicative plebiscites were to be introduced:

(a) Should there be any restrictions on the subject matter of an indicate plebiscite, for example, constitutional issues only?

No. Any issue that necessitates a government gauging overall community support and sentiment should be the subject of a plebiscite.

(b) Should voting at indicative plebiscites be compulsory or should this be decided on an ad hoc basis by the Legislative Assembly?

Voting at plebiscites should be compulsory if a true measure of community support and sentiment in relation to an issue is to be obtained.

(c) Should the results of an indicative plebiscite be binding, that is, should the government be required to put the most popular question to the people at referendum?

A decision in this regard would depend on the issue and the reason for the plebiscite.

(d) should there be provision to enable indicative plebiscites to be held by post?

Yes.

Page 17 of Issues Paper – Issues 18 and 19

Should there be a statutory committee (a petitions committee) established and charged with responsibility for considering and report on petitions received by the Legislative Assembly? Alternatively, should this responsibility be conferred on an existing parliamentary committee and, if so, which one?

If a petitions committee is established (or if this responsibility is conferred on an existing parliamentary committee), what should its jurisdiction be and what parts of its jurisdiction should be mandatory?

The creation of a dedicated petitions committee would have at least two benefits. Firstly, the presence of such a committee would greatly increase accountability and transparency in the way petitions were processed by the executive. This would also increase the confidence of petitioners in the system. Secondly, the establishment of an additional parliamentary committee would provide important training opportunities for more back-bench members of the Legislative Assembly. Benefits such as these would far outweigh any financial costs associated with the committee. Therefore, I support the creation of a dedicated petitions committee and that it be given responsibilities similar to those proposed by the QCRC (cited on page 15 of the committee's April 2002 Issues Paper).

Page 17 of Issues Paper – Issue 20

If a petitions committee is not established, should there be a review of the current standing and sessional orders regarding petitions? In what respect do the current orders require review?

If a dedicated petitions committee is not established, then at the very least Sessional Order 238A should be amended to provide that a Minister must (not just "may") provide a response to the House. If electors go to the trouble of organising a petition it is only considerate that a full response be required. Any response should include reasons in the event the request of petitioners was rejected. This would enhance accountability and transparency.

Page 18 of Issues Paper – Issue 21

Should the objects clause to the chapter of the *Parliament of Queensland Act 2001* (Qld) dealing with statutory committees of the Assembly be amended to include the words 'and extend democratic government'? Should this amendment be conditional on the establishment of a petitions committee?

In 1989 the Fitzgerald Inquiry proposed the introduction of *"a comprehensive system of parliamentary committees to enhance the ability of Parliament to monitor the efficiency of Government"* (Fitzgerald Inquiry Report 1989, p. 124). Instead of being amended to include the words *"and extend democratic government"* (which are rather vague), I consider that section 78(1) of the *Parliament of Queensland Act 2001* should be amended to more closely reflect Fitzgerald's original recommendation. Accordingly, consideration should be given to amending the provision along the following lines:

"The main object of this chapter is to enhance the accountability of executive government to the Parliament and the transparency of public administration in Queensland."

Such an amendment would be more concrete than that proposed by the QCRC. Irrespective of whether a dedicated petitions committee is established an amendment along these lines needs to be incorporated into the *Parliament of Queensland Act 2001*.

Page 19 of Issues Paper – Issue 23

Should the Constitution include a requirement that the Queensland Parliament meet within 30 days (or some other specified period) after the day appointed for the return of the writ for a general election?

Yes. It is only reasonable that the Legislative Assembly be required to meet no later than 30 days after the day appointed for the return of the writ for an election. How else can support for a newly elected government be tested but on the floor of the House? (Also see my comments in relation to Issue 7).

Page 22 of Issues Paper – Issue 27

Should there be a statutory limit to the number of parliamentary secretaries? If so, at what level should this limit be set?

Yes. The number of parliamentary secretaries should be statutorily set at five.

Page 22 of Issues Paper – Issue 28

Should there be any other amendments to the provisions in the Constitution regarding parliamentary secretaries?

To enhance transparency and accountability, section 25 of the *Constitution of Queensland 2001* should be amended to require that the functions of parliamentary secretaries as decided by the Premier should be tabled in the Legislative Assembly. Consideration should also be given to whether the Constitution should include a provision recognising the principle that a parliamentary secretary is bound by the collective responsibility of Cabinet (refer *Queensland Cabinet Handbook*, section 2.8).

Page 24 of Issues Paper – Issue 29

Where a bill assented to by the Governor contains an error or errors such that it is not the bill passed by the Legislative Assembly, should the Constitution include a provision which deems in any such case that the bill has been duly assented to in the form as passed by the Assembly?

In the rare instance that an erroneous Bill is assented to by the Governor, it should not just be "deemed" to have been the Bill passed by the Legislative Assembly. To ensure accountability, the matter should be resubmitted for the Assembly's consideration and subsequent reassent by the Governor.

Page 25 of Issues Paper – Issues 30 and 31

Should the Constitution retain the requirement for a recommendation by a message from the Governor before the Legislative Assembly is able to originate or pass a vote, resolution or bill for the appropriation of an amount from, or an amount required to be paid to, the consolidated fund?

If the requirement for a recommendation by a message from the Governor is to be retained, should there be some exception to that requirement? For example, should there be an exception where a bill or motion is introduced or moved by a minister that would appropriate money from the consolidated fund?

If a statement of executive power as proposed on page 5 of the committee's April 2002 Issues Paper was included in the Constitution, and if such a statement recognised the Sovereign at the apex of the executive government, it would be appropriate for the Constitution to retain the requirement for a message to be forwarded by the Governor. In this regard I note the comments by the QCRC in its issues paper concerning the long

established principle in Westminster model systems that the executive has a monopoly of initiation and that any departure from this would introduce a radical transformation of government and politics (QCRC 1999, p. 520).

Page 26 of Issues Paper – Issue 32

Should the Constitution include a provision stating that a fresh election of the councillors of a local government for which an administrator has been appointed should be held as soon as possible after the appointment of the administrator?

Yes. The Constitution should include such a provision in consideration of the democratic rights and expectations of citizens to choose their own local representatives.

Page 27 of Issues Paper – Issue 33

Is there a need for special recognition of certain statutory office holders in the Constitution? Are existing statutory provisions sufficient and/or appropriate to make the independent status of the offices clear?

Incorporating mention of the relevant statutory office holders in the Constitution would only be effective if the constitutional provisions concerned were entrenched. Mere inclusion will offer no more protection than what is currently afforded.

Page 31 of Issues Paper – Issue 44

Should the Constitution make reference to the principle of an impartial and independent judiciary? If so, how should such a principle be incorporated in the Constitution?

Yes, a statement should be incorporated into the Constitution that recognises the principle of judicial independence and impartiality. This statement could simply state:

"This Act recognises the principle of judicial independence and impartiality."

An explanation of the implications of the principle could then be provided in the Explanatory Notes to the relevant amendment Bill (note section 14B, *Acts Interpretation Act 1954* on the importance of explanatory notes in assisting the interpretation of a statute).

Page 35 of Issues Paper – Issue 45

Should further consideration be given to:

(a) the process for, and extent of, consultation prior to judicial appointments

Yes. The appointment process must be accountable and transparent if the community is to have confidence in the outcome.

(b) mechanisms for investigation complaints against the judiciary; and/or

Yes. The judiciary needs to be seen to be accountable if public confidence in the system is to be maintained.

(c) the constitutional recognition and protection of the independence of magistrates?

Yes, on the same basis as for the judiciary (see Issue 44).

Page 35 of Issues Paper – Issue 46

If the matters raised in issue 45 should the subject of further consideration, who should conduct the relevant review?

The review into matters raised under Issue 45 should ideally be undertaken by the Legal, Constitutional and Administrative Review Committee given its particular responsibilities for constitutional reform.

Page 37 of Issues Paper – Issue 47

Should there be provision in the Constitution to appoint acting judges to the Supreme Court and/or the District Court?

To maintain the independence of the judiciary, particularly if the Constitution is amended to recognise the principle of judicial independence and impartiality (refer Issue 44), acting judicial appointments should be made only if they are absolutely necessary and then only with the consent of the Chief Justice or Chief Judge. Ideally, the same process used to appoint permanent judges (refer Issue 45(a) of the committee's April 2002 Issues Paper) should be used in the appointment of acting judges.

Page 38 of Issues Paper – Issue 48

Should provision for compulsory retirement of Supreme and District Court judges at age 70 be retained?

Yes. This is because it acts to preserve judicial independence and is consistent with the arrangement for judges under the Commonwealth Constitution.

Page 40 of Issues Paper – Issue 49

In the event that a tribunal is established to inquire into the conduct of a judge, should only specific allegations against the judge be referred to the tribunal?

Yes, only specific allegations against a judge should be referred to the tribunal.

If so,

(a) should these allegations confine the jurisdiction of the tribunal?

No. The tribunal should be empowered to seek the Legislative Assembly's authority to extend its inquiry if this was necessary and could be justified.

(b) are the words suggested by the QCRC appropriate, namely, that the resolution should *'state full particulars of the grounds on which it is proposed to remove the judge'*? If not, what other words would be more appropriate?

No. In view of the concern discussed on page 39 of the committee's April 2002 Issues Paper the resolution could *"state full particulars of the grounds warranting investigation by the tribunal concerning whether the judge should be removed."* A form of words along these lines does not presuppose that the removal of a judge would be the necessary outcome of a tribunal's investigation.

Thank you for the opportunity to present my views on these matters. I trust they will assist the committee in its deliberations.

Yours faithfully

Don Willis