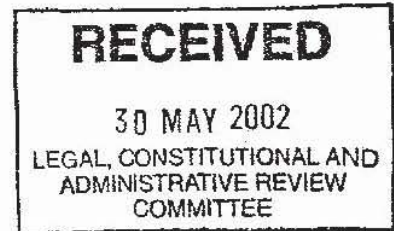


CHAMBERS OF THE CHIEF JUSTICE  
SUPREME COURT  
BRISBANE



Your Ref:  
Our Ref: 1:192

28 May 2002

Ms Kerryn Newton  
The Research Director  
Legal, Constitutional and Administrative  
Review Committee  
Parliament House  
George Street  
BRISBANE Q 4000

Dear Ms Newton,

I refer to your invitation for submissions in relation to the "Specific Content Issues" paper dated April 2002 in relation to the Queensland Constitution. I have separately written expressing views which may be taken generally to reflect a collegiate view within the Supreme Court. Because the issue in relation to a Lieutenant Governor particularly concerns the office of Chief Justice, I have felt it appropriate to make a separate submission dealing just with that issue. I *enclose* that submission.

Yours sincerely

A handwritten signature in cursive script that reads 'Paul de Jersey'.

The Hon P de Jersey AC  
Chief Justice



## Chief Justice's submission on the position of Lieutenant Governor

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That there has been no perceived need for the appointment of a Lieutenant Governor in the State of Queensland for so many decades tends to corroborate the adequacy and appropriateness of the current situation, whereby the Chief Justice, or in the absence of the Chief Justice, the next available senior Supreme Court Judge, acts as Deputy Governor or Administrator. The Queensland Constitutional Review Commission, after public consultation, discerned no problem.

While in theory a Chief Justice, or other Supreme Court Judge, acting as Governor, may be argued to be inconsistent with the separation of powers, the reality is that the Judges' discharge of that role has not, over five decades, produced any practical conflict. The short periods and limited duties involved have not led to any substantial interference with judicial work.

The particular advantage of the present system is that the people accept it and are comfortable with it. The public is reassured that the duties of Governor are discharged, as necessary and ordinarily for quite short periods, by a public officer in whose office they apparently have the utmost confidence, and for which they fortunately have, again apparently, considerable respect.

The Constitutional Commission chaired by Professor Hughes accepted that there was no need for change, and directly said as much, describing the present situation as "completely satisfactory". The expression of that view followed extensive public consultation, including consultation with the Chief Justice. There is reason to accord that view of the Commission considerable respect.

Interestingly, in the State of New South Wales, the position of Lieutenant Governor (currently held by the State Chief Justice, the Hon J Spigelman AC) has for a long time been filled, by formal appointment, by the State Chief Justice, and it seems without adverse consequence. The position is similar in Western Australia. There is no reason why Queensland should proceed differently, to the extent of appointing a Lieutenant Governor other than the Chief Justice – not that I am suggesting that our Chief Justice should be appointed as Lieutenant Governor. My point is that there being no suggestion of any real, practical problem, there is no justification for change, especially where introducing change may be interpreted adversely to the position of Chief Justice. Why could that be?

With the very best will in the world, appointing now, as Lieutenant Governor of Queensland, someone other than the Chief Justice of Queensland, would be seen by some, probably by many, as signalling executive dissatisfaction with the level of objectivity of the person currently holding the office of Chief Justice. That would be very bad for the office of Chief Justice, and more broadly, very bad for the institution of the Supreme Court.

The issues paper particularly raises the possibility, should the Chief Justice be acting as Governor, that his decisions possibly be subject to review by less senior Judges. That is



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a most unlikely possibility: the occasion for judicial reconsideration of a governor's decisions has rarely arisen. But should it occur, there would hardly be difficulty: the present Chief Justice regularly sits in the Trial Division of the Supreme Court, with his decisions subject to appeal, sometimes successfully. This is an every-day feature of the accountability of the judiciary. Public confidence in the office of Chief Justice appears not to have dimmed because the current Chief Justice's decisions have sometimes been reversed on appeal. It is not a reason, by resort to utter theory, to question, or to seek to re-arrange, a system which presently works effectively, and has for years worked effectively, in the public interest.

For substantially these reasons, the present position should be left undisturbed.

A handwritten signature in cursive script, reading 'Paul de Jersey'.

The Hon P de Jersey AC  
**Chief Justice**  
28 May 2002