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31 May 2002

Ms K L Struthers
Chairperson
Legal, Constitutional and Administrative
Review Committee
Level 6, Parliamentary Annexe
BRISBANE QLD 4000

Dear Ms Struthers

Please find attached a copy of my submission to your Committee in response to its calls for comment on reform of the Queensland Constitution.

This submission is made on behalf of the Queensland National Party Opposition and the Queensland National Party.

Of course, I stand willing to provide additional information, either written or oral, as requested by your Committee.

Yours sincerely

LAWRENCE SPRINGBORG MP
Member for Southern Downs

Legal, Constitutional and Administrative Review Committee

Issues of Constitutional Reform

SUBMISSION

Introduction

The Shadow Attorney-General makes this submission on behalf of the Opposition and the National Party as part of the Legal, Constitutional and Administrative Review Committee's ('LCARC') review of the Queensland Constitution relating to issues of substantive constitutional reform.

This submission seeks to address the issues raised by LCARC in its issues paper of April 2002.

Incorporation of Constitutional Principles, Conventions and Practices

LCARC in its issues paper, recognises that not all principles, laws and conventions that form the overall constitutional regime under which Queensland operates, are embodied in one single constitution document. For that matter, many conventions and principles are not documented at all.

A significant and vital institution which LCARC suggest the powers and position of which are not all recognised in the Constitution, is that of Governor of Queensland. To date, many of the powers and functions of Governor have been prescribed by unwritten convention rather than reduced to writing in the Constitution.

The Governor's powers and functions derive originally from the Royal prerogative. That is, the Monarch, as Head of State, has absolute powers over the territory in question. These powers cannot be codified as they are absolute, subject only to certain limitations such as the rule of law. When these powers are vested in the Governor, those that are not codified in the Constitution are known as the 'reserve powers'.

While some of the current reserve powers could be codified and incorporated in the Queensland Constitution, those which are not will remain as reserve powers. In light of this, it is the belief of the submission maker that it is preferable, in the interests of flexibility and responsiveness that the reserve powers of the Governor not be codified.

It may be appropriate to give consideration to the insertion of further provisions in the Constitution that establish the institutions which exist in Queensland, such as the Executive arm of Government. However, this should only extend so far as to make provision for the establishment of a body of executive power, such as Executive Council. It should not go so far as to codify constitutional conventions with respect to such bodies.



With respect to the appointment of Ministers, it has been suggested that the Constitution does not sufficiently set down procedures to be followed in the appointment of Ministers. The appointment of Ministers has always been a result of the application of the Governor's powers to make such appointments. Convention dictates that such appointments are made on the recommendation of the Premier. It is important, however, not to detract from the Governor's powers to appoint Ministers by imposing a code provision in the Constitution that allows the Governor only to appoint or dismiss Ministers on the advice of the Premier. To do so would impinge the flexibility of our system of Government.

The LCARC report contemplates the fact that there is virtually no reference to the office of the Premier in the Constitution. Similar to the submissions above concerning the office of Governor, it would be beneficial for the Constitution to make reference to the Premier but the process of appointment should be left to conventions concerning this.

Lieutenant Governor

As the LCARC report points out, there has not been a Lieutenant Governor appointed in Queensland for more than 50 years. In that time, there has never been a significant problem with the Chief Justice of the Supreme Court acting as the Administrator of the State.

There has, in the past, been issues raised concerning the independence of the Chief Justice when acting as Administrator of the State. Clearly, no actual conflict of interest can ever arise as the Chief Justice does not hear cases while acting as the Administrator of the State. Further, no conflict arises if the Chief Justice is acting as the State's Administrator at a time when their Judicial colleagues are hearing cases regarding the State as each Judge is independent from the other in the decision that they may make.

As such, it is not believed that there is any change required to the current system of the Chief Justice acting as Administrator when the Governor is unavailable. To appoint a Lieutenant Governor would only incur unnecessary and unreasonable costs for the State.

Members' Oath or Affirmation of Allegiance to the Crown

It is believed that it should be mandatory for Members of the Legislative Assembly to swear an oath of affirmation or allegiance to the Crown. The simple reason is that the Crown is the Head of State and all Members of the Parliament of Queensland must recognise it as such to properly discharge their duties to the Parliament.

Indicative Plebiscites

While the motivations for indicative plebiscites are admirable, it is not believed that the system proposed will resolve the difficulties experienced with drafting of questions for referendums. Rather, such a plebiscite will only add another step in the process.



Petitions Committee

Citizens already have the right to petition Parliament. The submission maker submits that rather than establish another committee, petitions presented to Parliament should receive greater attention from the Government and the respective Ministers.

Summoning Parliament

As it stands, the Constitution does not contain a requirement that the Parliament be summonsed within a prescribed period after the return of the writs for an election. It is not believed that such a requirement is necessary, rather the flexibility of the current system is preferable.

Waste Lands of the Crown

It is important for the Crown to retain the power to make laws with respect to waste lands. It is submitted that any actions that are necessary for these powers to be consistent with the Native Title regime that is in place in Australia must be taken.

The Number of Parliamentary Secretaries

It is not believed there is any reason why the number of Parliamentary Secretaries needs to be limited.

Non-Compliance with Requirements - Assent

The proposal under consideration here is that if the Governor assents to a Bill that is not that which has been passed by the Legislative Assembly that the Constitution make provision for the Bill as passed by the Parliament be assented to.

Already there are processes which can be used to correct a situation where a Bill is assented to in a form not the same as that which it passed through Parliament. As such, it is not believed that there is any need for a provision such as that proposed.

Non-Compliance with Requirements – Appropriation

It is not believed that there needs to be any Constitutional change to the process which is currently in place requiring a message from the Governor before a Bill can be presented to the Parliament appropriating money from the Consolidated fund.

Restoration of a Local Government after Suspension

It is not believed that a requirement should be imposed to require an election as soon as possible after the appointment of an administrator of a local government. The reason for this is that upon suspension of a local government, there may be reasons why the administrator should stay in place longer in certain situations than others. That is, longer than a period of time in which it would be possible to hold a fresh election of councillors.



Statutory Office Holders

LCARC raise the possibility recognition of certain statutory office holders in the Constitution. This is not believed to be necessary as statutory officers are established by Acts of the Parliament. The role of the Constitution should not extend beyond giving the Parliament power to make such laws.

Similarly, there is no need for the Constitution to make provision with respect to the removal or resources of statutory office holders.

The Judiciary

While the Constitution makes provision for the institution of the Judiciary, it is not believed that the Constitution is the appropriate mechanism to embody principles of independence of the Judiciary. Nor is the Constitution the appropriate mechanism to establish a committee approach for the appointment of Judges of Magistrates.

Further, there is no need for the Constitution to recognise the Magistracy as the Supreme Court is the ultimate source of judicial power in Queensland and it is recognised in the Constitution.

It is not believed that the system that is currently in place with respect to Acting Judges requires any alteration. In any case, the Constitution is not the appropriate place to make such provisions.

It is believed that the provisions relating to the compulsory retirement age for judges is appropriate.

With respect to the removal of judges and the concept of the establishment of a Tribunal to hear any allegations of misbehaviour by Judges, it is not believed that such a Tribunal is necessary. In any case, the Constitution is not the appropriate document to establish such a Tribunal.

