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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

21 June 2002

Ms Kerry Newton
Research Director
LCARC
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Newton

Specific content issues Issues Paper — April 2002

Please find below my response to the committee's issues paper. Please pass on my thanks to the committee for inviting me to make a submission. I would request that my submission (or that part dealing with the petitions committee) remain confidential until the e-petitions process is settled and approved by the House.

ISSUES

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

SUBMISSION

I am not convinced that a precise statement of executive power is necessary or desirable. I am not dissatisfied with, and do not believe that the public are concerned about, the current status quo. I become concerned that the more matters that are placed in statute, the more likely that people will argue about the meaning and result in legal proceedings.

ISSUES

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?
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?

SUBMISSION

I do not believe an adequate argument has been made out for any statutory amendments to implement the above.

I am particularly concerned about the suggestion that the Governor apply to the Court of Appeal for a declaration concerning possible illegal and corrupt activities. The issue of the reserve powers of a Governor as regards the illegal activities of the ministry has arisen rarely in Australia. When such matters have arisen, they have been dealt with in a relatively expeditious manner, within existing conventions and without involving the courts in what is essentially a political issue.

On the other hand, I envision that the mere existence of such provisions would lead to regular calls by the disgruntled for the Governor to apply for a declaration.

ISSUES

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

SUBMISSION

In relation to issues 5 and 6, I believe that they are best considered in the reverse order.

I believe that the Constitution should provide:

- that ministers must be members of the Legislative Assembly; or
- that a person appointed as a minister must become a member of the Legislative Assembly within three months from their appointment as a minister; or
- the Legislative Assembly, by resolution, may notify the Governor that a person who is not a member should be appointed a minister responsible for particular matters for a particular time.

The constitution should provide that the Governor shall take into account the advice of the Premier and resolutions of the Legislative Assembly in appointing and dismissing ministers. If this were the case the Governor could have acted on the resolution of the Legislative Assembly during the Borbidge Government, when the Assembly expressed no confidence in

the then Attorney-General who never resigned and advice to have him dismissed was not tendered.

ISSUES

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

SUBMISSION

The practical reality is that if the matters in issue 7 were not complied with, there would be a government unable to pass legislation or obtain supply. However, I do not see a problem with including this matter in the constitution. I would add to 7(b)(ii) "or their government". Of course the issue then turns to what actually is a motion of no confidence and the form it has to take.

In relation to issue 8, why is it deemed desirable to ask for an absolute majority? We do not ask for an absolute majority in any other instance in Queensland. Our system of government may end up relying on the attendance of one or two people to their duties in Parliament.

I also draw attention to the dismissal of a Minister following a vote of no confidence, as a separate issue to a vote of no confidence in the Premier or government.

ISSUES

10. Are there difficulties with the current arrangement whereby the Chief Justice automatically becomes the Administrator in the Governor's absence?
11. If there are difficulties with the Chief Justice automatically becoming the Administrator in the Governor's absence, how might these difficulties be overcome?
12. Should a Lieutenant-Governor for the state be appointed? What qualifications might be appropriate for appointment to the position of Lieutenant-Governor?
13. If there are no difficulties with the Chief Justice automatically becoming the Administrator in the Governor's absence, should the provisions regarding the appointment of a Lieutenant-Governor be retained?

SUBMISSION

I think that it would be theoretically best not to have the Chief Justice act as Administrator in the Governor's absence. But I would not like to see another expensive office created. Perhaps the role of Lieutenant-Governor could be performed by another existing office holder.

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?

SUBMISSION

I would prefer members to swear an Oath of Office that includes a commitment to the state than the current Oath of Allegiance. The Oath of Allegiance dates from another time when there were disputes about claims to the throne and is an unsuitable modern vehicle for reminding members of their duties to the people and State that they represent. Loyalty is not an issue. The discharge of duty in a proper manner is an issue.

ISSUES

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?
16. If provision for indicative plebiscites is not introduced, are there any alternative mechanisms by which the QCRC's concerns might be addressed?
17. If provision for indicative plebiscites were to be introduced:
- (a) should there be any restrictions on the subject matter of an indicative plebiscite, for example, constitutional issues only?
 - (b) should voting at indicative plebiscites be compulsory or should this be decided on an ad hoc basis by the Legislative Assembly?
 - (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?
 - (d) should there be provision to enable indicative plebiscites to be held by post?
 - (e) what other matters should be covered?

SUBMISSION

We have a system of representative democracy. Indicative plebiscites are not compatible with representative democracy. We live in a complicated world, many things having invisible effects. I would be very concerned that complicated issues would have to be presented and debated in simple terms with simple unachievable outcomes.

ISSUES

18. Should there be a statutory committee (a petitions committee) established and charged with responsibility for considering and reporting on petitions received by the Legislative Assembly? Alternatively, should this responsibility be conferred on an existing parliamentary committee and, if so, which one?
19. 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?
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?

SUBMISSION

I would not support the creation of a petitions committee.

There is no demonstrated benefit to the public in the creation of a committee. If there was a need established, I suggest the function could be given to an existing committee or there be a rationalisation of current committees.

The right to petition is very important. We have an effective, popular petitions process whereby the public can petition and the Ministry may respond to the concerns raised.

The petitions process is being improved shortly with the introduction of an on-line "e-petitions" system. The details of the e-petitions project will be finalised before and hopefully approved by the Parliament at its next sitting.

Whilst the details are yet to be finalised and approved by the House, I can in the interim and **confidentially** outline the following details to the committee:

- An e-petition is a petition in the correct form, stating a grievance and containing a request for action by the House.
- An e-petition will be sponsored by a Member and lodged with the Clerk for publication on the Parliament's Internet Website for a nominated period ("posted period").
- Persons may elect to indicate their support of ("join the petition") by electronically providing their name, address (including postcode) and signifying their intention to join the petition.
- Only one e-petition dealing with substantially the same grievance and requesting substantially the same action by the House shall be published on the Parliament's Internet Website at the same time.
- Once the posted period for an e-petition has elapsed, a paper copy of the petition shall be printed by the Clerk in full (including the names and addresses of the persons who joined the petition) and presented to the House in the name of the Member that sponsored the e-petition.
- The E-Petitions system will be located in the Petitions section within the Queensland Parliament Web site, and allow for users to view and join E-Petitions online.
- The Petitions Web Site will be updated to include:

- A record of current E-Petitions - including subject matter, precise wording, eligibility, principal petitioner's name and contact details, current number of signatures (tally) and closing date.
- A record of closed E-Petitions - including subject matter, precise wording, eligibility, principal petitioner's name and contact details, sponsor's name (MP) – included after tabling, number of signatures collected, closing date, and current status (ie date tabled and referred to Minister; or date Minister's response tabled and a link to the response) (see Appendix); and
 - Ministerial responses to tabled E-Petitions (if a response is tabled).
- In the future, a record of tabled paper petitions and their current status will also be included as part of the site. This will include:
 - A record of tabled paper petitions - including subject matter, precise wording, number of signatures collected, closing date, principal petitioner's name and contact details, tabling MP, eligibility and current status (ie. date tabled, date referred to Minister, or date Minister's response tabled and a link to the response); and
 - Ministerial responses to tabled paper petitions (if a response is tabled).

Given the current petitions process, the new e-petitions system and the plans to publish ministerial responses and information about the process widely via the internet, I believe the need for a petitions committee is even less necessary.

If a petitions committee was deemed necessary, I would recommend a review of the current committee system and rationalisation of same. There is a limit to the number of committees a small Parliament can sustain. Options would, however include:

- Amalgamation of the PWC and the PAC
- Amalgamation of the Standing Orders Committee and the MEPPC
- The MEPPC taking on petitions as part of its role and being renamed the Procedures and Ethics Committee
- The Travelsafe role being taken over by the PWC and the abolition of the Travelsafe Committee.

ISSUES

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?
22. 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 'enhancing the transparency of public administration'?

SUBMISSION

I have no difficulty with and would support the above proposals.

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?

SUBMISSION

I have no difficulty with the above proposal.

ISSUES

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

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

SUBMISSION

I believe that this issue can only be addressed after the nature of the role of Parliamentary Secretaries and their functions is reviewed and considered. Are they part of executive government or does their office make them less likely to review government decision-making? If so, their numbers should be limited. If they are part of executive government, then they should probably not be able to participate in asking questions in the House or be part of committees.

ISSUE

The following issue is predicated on an assumption that there will be, at some time in the future, a referendum which will provide the opportunity to validly make appropriate amendments. In the absence of approval at such referendum, it will not be possible to address the situation raised by the Government.

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?

SUBMISSION

I believe that the above proposal is unnecessary and in any event, not the way the matter should be handled. If there has been a mistake, the matter should be referred back to Parliament (both the Legislative Assembly and the Governor) for rectification as in 1995.

ISSUES

30. 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?
31. 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?

SUBMISSION

On the basis that the Legislative Assembly is the supreme organ of government in Queensland, I do not believe that a message from the Governor for an Appropriation Bill should be required.

ISSUE

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

SUBMISSION

The starting point in my submission should be a review of the local government electoral systems, some of which are undemocratic. Local government systems should mirror the State Parliament's system.

ISSUES

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?
34. If special recognition of certain statutory office holders is to be made in the Constitution, is the QCRC's list of statutory office holders appropriate? Should other office holders be added to, or removed from, this list?
35. If special recognition of certain statutory office holders is to be made in the Constitution, is clause 58 of the QCRC's Constitution appropriate? If not, how should the clause be amended?
36. Is there a need for parliamentary committee involvement in the budget of the identified statutory office holders beyond that which already exists?
37. If the QCRC's R7.3 is to be adopted, do the terms of clauses 86(1)(e), 97(c) and 114 of the QCRC's Parliament of Queensland Bill 2000 achieve the objective of the QCRC's recommendation? If not, how might they be improved?
38. To what extent can the above parliamentary committees make a meaningful determination of whether the office holders allocated to them have been given sufficient resources? What other implications might be the result of expanding the jurisdiction of certain parliamentary committees in this regard?

39. Instead of a number of committees having responsibilities regarding the resourcing of statutory office holders, would it be preferable for a designated committee—for example, a statutory officers committee—to be conferred this role?

SUBMISSION

Special procedures should be established to remove all officers of Parliament, including those colloquially accepted as being officers of Parliament (such as the Auditor General) and other “independent” Commissioners. It is probably best that the officers, to the extent possible, all be grouped/listed in one place. It is equally important that the conditions of appointment and the conditions of termination and the procedures to be followed be similar. The list of persons that appear in the issues paper appears appropriate.

In respect of committee oversight, I refer to my comments above re the petitions committee.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Ray Hollis', with a long horizontal flourish extending to the right.

Hon Ray Hollis MP
Speaker – Queensland Parliament