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LEGAL, CONSTITUTIONAL AND  
ADMINISTRATIVE REVIEW  
COMMITTEE

13/5/00

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

Submission No 2  
Spec 29.1

SUBMISSION NUMBER .....

The Chairman  
LCARC

## **CORRECTION TO LCARC Position Paper (April 2000)**

Review of the Queensland Constitutional Review Commission's  
Recommendations Relating to Consolidation of LCARC  
the Queensland Constitution

Dear Sir,

There is a gross error in LCARC Position Paper (April 2000). I refer to the last paragraph, left hand column, page five, third line which states, "Australia Acts 1986 which are legally in force in all Australian States." Not all of the Australia Acts 1986 are in force in Queensland.

Paragraph 107 of the Australian Constitution states, "*Every power of the Parliament of a Colony which has become or becomes a State, shall unless it is by this Constitution exclusively invested in the Parliament of the Commonwealth or withdrawn from the Parliament of a State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.*"

Some sections of the Australia Act 1986 ARE NOT LEGAL OR ENFORCEABLE. I refer to those sections of the Australia Act 1986 which purport to change the office of the Governor of Queensland.

The power to determine the duties and responsibilities of the Governor of Queensland can only be changed by a referendum of the people of Queensland. I refer to the Queensland Constitution Act 1867-1988, page 55 s.53 REQUIREMENTS FOR A REFERENDUM. The section states,

*"53. Certain measures to be supported by referendum. (1) A bill that expressly or impliedly provides for the abolition or alteration in the office of the Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely -*

*sections 1, 2, 2A, 11A, 11B, 14; and this section 53 shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act."*

Section 53 (2) lays out the requirements to be met by any Bill to change the powers of the Governor. Section 53 (2) states, "*If a majority of the electors voting approve the Bill, it shall be presented to the Governor for reservation thereof for the signification of the Queen's pleasure.*" The Australia Act 1986 has not been submitted to the voters of Queensland and, in the terms of Para 53 "*.. shall be of no effect as an Act.*"

It is important that this CORRECTION be made in the House immediately. To fail to do so would be to knowingly MISLEAD the Parliament.

I have included two pages of the Australia Act 1986 wherein I have underlined the paragraphs which purport to change the powers of the Governor of Queensland. You will observe that almost every paragraph, which cannot be amended without a referendum of the people of Queensland, as mentioned in Section 53 of the Queensland, have been illegally amended.

The effect of these changes would be to deprive the people of Queensland of their inherited rights as outlined in the Magna Carta 1297, the Bill of Rights 1688 and Habeas Corpus 1640. Every right which is in the written statutes and every Common Law tenet would have been subverted had the Australia Act 1986 had any legal and binding powers.

You have been formally advised that, by the safeguards established in Section 53 of the Queensland Constitution, the Australia Act 1986 is of no effect because "*... a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.*"

Please advise your parliamentary colleagues of this gross error.



ENCL:

Pages 3 and 5 of the Australia Act 1986



constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

5 **Powers and functions of Her Majesty and Governors in respect of States**

7. (1) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

10 (3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the  
15 State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

**State laws not subject to disallowance or suspension of operation**

- 20 8. An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon.

**State laws not subject to withholding of assent or reservation**

25 9. (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

(2) No law or instrument shall be of any force or effect in so far as it  
30 purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

**Termination of responsibility of United Kingdom Government in relation to State matters**

35 10. After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State.

**Termination of appeals to Her Majesty in Council**

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of

(2) Section 11A of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

(i) "and Signet"; and

(ii) "constituted under Letters Patent under the Great Seal of the United Kingdom"; and

(b) by omitting from paragraph (b)—

(i) "and Signet"; and

(ii) "whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland".

(3) Section 11B of the Principal Act is amended—

(a) by omitting "Governor to conform to instructions" and substituting "Definition of Royal Sign Manual";

(b) by omitting subsection (1); and

(c) by omitting from subsection (2)—

(i) "(2)";

(ii) "this section and in"; and

(iii) "and the expression 'Signet' means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign".

(4) Section 14 of the Principal Act is amended in subsection (2) by omitting", subject to his performing his duty prescribed by section 11B,".

#### **Amendment of Constitution Act of Western Australia**

**14.** (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

(i) "and Signet"; and

(ii) "constituted under Letters Patent under the Great Seal of the United Kingdom";

(b) by omitting from paragraph (b)—

(i) "and Signet"; and

(ii) "whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia"; and

(c) by omitting from paragraph (c)—

(i) "under the Great Seal of the United Kingdom"; and

(ii) "during a temporary absence of the Governor for a short period from the seat of Government or from the State".