



AUSTRALIAN SENATE

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hc/let/12851

18 May 2000

The Research Director
Legal, Constitutional and Administrative
Review Committee
Parliament House
George Street
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Dear Ms Newton

REVIEW OF QUEENSLAND CONSTITUTIONAL REVIEW COMMISSION'S RECOMMENDATIONS

Thank you for your letter of 3 May 2000 conveying the committee's invitation to make a submission in relation to the review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland constitution.

There is one matter involved in the first stage of the committee's review, as indicated by the position paper dated April 2000 accompanying your letter, on which I feel the need to make a brief observation.

The position paper indicates that the committee regards recommendation 6.7 of the Commission as involving no controversy. That recommendation is "that a ready understanding of the system of government will be assisted by a statement that Cabinet is the principal instrument of policy and charged with the direction and control of the Government of Queensland".

It is not clear what "principal instrument of policy" means. The Commission does not explain what it means. If the policy of the state is taken to include policy contained in legislation and administration, the proposal is misconceived because legislation is the responsibility of the legislature and not the executive government constituted by the cabinet. Is the word "instrument" intended to indicate that the cabinet implements rather than frames the policy of the state? If so, is there to be a statement that the legislature is the principal framer of the policy of the state? Unless the meaning of the phrase can be made clear, it would not be wise to include it in the constitution. It reminds one of similarly vague phrases appearing in the so-called constitutions of authoritarian countries (for example, "the leading role of the Party") which are used to justify all manner of government dominations of society. I can well imagine the phrase being used by ministers to justify, for example, the withholding of information from the legislature.

RECEIVED

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
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Submission No 5

The phrase "charged with the direction and control of the Government of Queensland" is similarly ambiguous and open to many interpretations. If by "Government" is meant only the executive government, well and good, but the term government, with or without a capital g, is often used to refer to all of the branches of government, particularly including the legislature. It may be an unfortunate fact that the executive now controls the legislature, but it would be unwise to place in the constitution a phrase which suggests an enshrinement of this situation.

That is my only observation at this stage of the committee's work. The manner in which the reform of the Queensland constitution is being undertaken and some of the assumptions on which it appears to be based, however, are cause for considerable concern. I would therefore like to have an opportunity to comment on subsequent stages of the review of the constitution.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Harry Evans". The signature is fluid and cursive, with a long horizontal stroke at the end.

(Harry Evans)