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A unique and precarious office - the office of Governor-General

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The Governor-General of Australia occupies a unique position in our constitutional system. The appointee is personally selected by the Prime Minister, and formally appointed by the Queen under s 2 of the Constitution. In the same way, the occupant of the office is removed from office by the Queen on the instructions of the Prime Minister. No grounds nor process are prescribed for removal. The unprecedented calls for the resignation of the current Governor-General, Dr Hollingworth, the former Anglican Archbishop of Brisbane, highlight this gap in our constitutional arrangements.

While all other Commonwealth officials, whether they be the Prime Minister, Ministers of State, Justices of the High Court and other federal courts, senior public servants, and the vast army of Commonwealth officials, are liable to removal from their respective offices on well recognised grounds, this is not the case with the Governor-General. No occasion has arisen before in this country to provide any guidance.

So on what grounds should a Governor-General have to resign or else be dismissed? What should be the process by which dismissal occurs if this becomes necessary?

To answer the first query, one might look to the functions of the office and the corresponding qualities required, to determine the circumstances when the continued performance of those functions becomes impossible. The functions are essentially twofold: to act as a de facto head of state who represents all Australians; and to act as a politically impartial constitutional guardian on those rare occasions when the governmental system needs correction.

A Governor-General who is unable to continue to perform these two functions should resign. The circumstances in which this regrettable situation may arise cannot be exhaustively defined. However, they are capable of being defined in general terms. Possibilities include that a Governor-General ought to resign when public confidence in the occupant performing those functions has been undermined, or that the occupant has brought the office into disrespect.

The difficulty with defining, in such general terms, the grounds justifying removal, is that they are so imprecise, and hence, their application is likely to lead to divergent viewpoints within the Australian community.

As to what process should be followed to decide whether a Governor-General should resign or be dismissed, there are several options. They would include: the appointment of an independent commission of inquiry to investigate any seri-

ous allegations; a parliamentary or executive inquiry; a referral to a Council of Constitutional advisers (see para 8 below) for their opinion; a conference between the Governor-General, the Prime Minister and the Leader of the Opposition; or to leave the matter with the Prime Minister. Selecting the appropriate option depends on the nature of the case against the Governor-General. But whichever option is followed, the incumbent must be given the opportunity to respond to the case brought against him or her before the matter is resolved.

An additional issue, raised by the Dr Hollingworth affair, is the selection process of Governors-General. At present, there is no formal process of public consultation. The selection is the personal choice of the Prime Minister. However, a process of public nominations was included in the proposed changes to the Constitution in 1999 for Australia to become a republic. From a short list of names, the Prime Minister and the Leader of the Opposition would agree on one nominee for ratification by two thirds majority of a joint sitting of the Commonwealth Parliament. Such a process could be introduced now without any need to amend the Constitution.

Hence, one might argue at least ten lessons can be discussed from the recent controversy over Dr Hollingworth:

10 Lessons [from The Crisis over the Governor-General, Dr Peter Hollingworth]

1. The background of the appointee should be thoroughly checked, following a public process of consultation.
2. A religious leader should not be appointed to avoid the perception of a church/state relationship which the Constitution expressly forbids in s 116.
3. An appointment as Governor-General should not be accepted if this is likely to arouse personal attacks against the appointee.
4. If personal attacks are made, a written response may be required from the Governor-General. If necessary, an independent arbiter should be appointed to assess any serious allegations. This function could be performed by a Council of constitutional advisers (see para 8 below). This reduces the opportunity for trial by media.
5. Past conduct is relevant to maintaining public confidence in the office. It will usually be judged on the basis of contemporary standards.
6. The Government and the Opposition parties must realise that as soon as either side of politics withdraws support for the Governor-General, the incumbent's resignation is inevitable. The capacity to perform the functions of the office impartially and in a politically neutral way is fatally undermined by such a loss of confidence.
7. Before the Government or the Opposition withdraws their support, they must be satisfied that there are verified grounds which render the incumbent unfit for the office of Governor-General. Such a position is reached when there is such a loss in public confidence that he or she is reasonably seen to be unable to perform the ceremonial and constitutional duties of the office.
8. Verification of allegations ought to be undertaken by a small Council of independent constitutional advisers. Such a Council should be permanently in place to advise the Governor-General; its members, appointed jointly by the Prime Minister and the Leader of the Opposition.

9. The office of Governor-General lacks any formal constitutional protection to prevent arbitrary removal. Other office-holders, such as judges and statutory officials, enjoy security of tenure until removed by the Governor-General in Council on an address from both Houses of the Commonwealth Parliament for either proved misbehaviour or incapacity. Confining removal on these grounds, however, cannot be applied to the Governor-General because, unique amongst public office holders, the incumbent must retain the highest level of public confidence as de facto head of state. Unless serious allegations are quickly answered satisfactorily to the suggested Council of constitutional advisers so as to restore public confidence, the incumbent should resign.
10. Failure to resign, when warranted, damages the office of Governor-General.

Questions for discussion:

1. How should a Governor-General be appointed?
2. What qualities and qualifications are needed for appointment to the office of Governor-General?
3. In what circumstances do you think a Governor-General should resign or be dismissed?
4. What procedure should be followed in order to dismiss a Governor-General?

