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Butler – the Governor

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Introduction

Last year, the former butler to Princess Diana was the focus of international media attention when criminal charges against him were dropped after the Queen remembered a conversation with him which supported his defence. In August this year, a different Butler with royal connections in Tasmania was not so fortunate to be saved by his Queen. Perhaps, to avoid the risk of being the first State Governor to be dismissed by the Queen since colonial times, the Governor of Tasmania, Mr Richard Butler, agreed to stand down after a meeting with the Premier. The catalyst was the resignation of the Governor's Official Secretary and other senior members of the Governor's household in circumstances which clearly indicated a loss of confidence in their master. This was the final straw in what had been a string of controversies over the vice-regal behaviour of the Governor. Instead of the resignation alleviating the controversy, it actually deepened with the revelation by the Premier that he had agreed to pay Mr Butler an ex gratia payment of \$600,000 for standing down 10 months into his term as Governor. By convention, the term is for five years. It was also revealed that the Governor's annual salary was \$370,000 – the highest vice-regal salary paid in Australia by its smallest State.

Role of Governors

Understandably, these events tend to undermine the office of Governor. But they should not be seen as supporting the adoption of a republic – unless this involves the abolition of a head of state at the State level. And that would be a pity. As the de facto head of state, State Governors currently perform an important constitutional and ceremonial role in their respective States which cannot be performed as well by any other official. What the Tasmanian incident highlights is the need to ensure that the selection of a State Governor pays due regard to the personal qualities required for the office. The essential quality is the capacity to represent the people of the State in an impartial and apolitical way. This extends to their personal dealings with their ministers, members of parliament, public servants, the media, and the public. How else can they truly represent the people of the State? And how else can they perform their constitutional role, such as in determining who has the confidence of the Legislative Assembly to form government? Even though by convention they must always act on the advice of their ministers, Governors are still entitled privately to consult, encourage and warn them in respect of their activities and advice. They need to tread that fine line between questioning government activities and at the end of the day acting on ministerial advice. The success of the incumbent will depend on the ability to balance these two responsibilities, and the pre-

paredness of government to allow the Governor to find the correct balance.

Process of Selection

Those are the qualities which ideally should be found in State Governors. So how do we find the individuals who possess those qualities? Currently, it seems to be accepted that the selection of a Governor is the prerogative of the Premier. This is utterly unacceptable and repugnant for appointment to an office the essential qualification for which is political impartiality. Reform is desperately needed to legitimize the appointment of Governors. A small step was taken in Queensland in 2003 when Mr Beattie submitted his nominee for Governor, Quentin Bryce, to the Legislative Assembly. But this still does not provide the key ingredient of bipartisan agreement for any appointment. At least the process suggested in 1999 for the selection of the President of an Australian republic did. Following a process of public nominations to a committee, a short list of names was to be submitted to the Prime Minister who would agree with the Leader of the Opposition on the submission of one name to a joint sitting of the Commonwealth Parliament for ratification. This same process is equally appropriate for State Governors today and could be implemented immediately without the need for legislation.

A vulnerable office

The Tasmanian incident also highlighted the vulnerability of the office. A Governor can be removed by the Queen, acting on the advice of the Premier, at anytime for any reason. There is no security of tenure. Indeed, as the Hollingworth experience demonstrated, nor is there any clearly established standard of conduct against which a Governor must be judged. In other words, circumstances warranting removal and the process determining their existence have never been sufficiently articulated. Only one slight safeguard is in place – it is clear that the Tasmanian Premier could not have dismissed Governor Butler orally when they met. The power to dismiss is vested in the Queen, not the Premier. Whether a mere phone call from the Queen to Governor Butler would have been effective is unclear.

Grounds for dismissal

On what grounds is their dismissal justified? Uncertainty exists here, given the lack of any Australian precedent. The general principle must be that a Governor who is unable to perform the constitutional and ceremonial roles with bipartisan support should resign, or else be dismissed. 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 general standards such that a Governor ought to resign when public confidence in the occupant performing those functions has been manifestly undermined, or that the occupant has brought the office into disrepute; or more specific standards such as proved misbehaviour or incapacity. The difficulty with these formulations is that they are so imprecise, and hence, their application is likely to lead to divergent viewpoints within the community.

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

allegations; a parliamentary or executive inquiry; a conference between the Governor, the Premier and the Leader of the Opposition; or to leave the matter with the Premier. Selecting the appropriate option depends on the nature of the case against the Governor. 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.

Conclusion

The office of State Governor was the first official position established in Australia under English law. While it may surprise some that the office still arouses uncertainties and the need for reform, this is to be expected given the continual evolution of the constitutional system and the relatively few occasions when the office has itself given rise to controversy.