

REMARKS BY THE HONOURABLE PETER UNDERWOOD AC,
GOVERNOR OF TASMANIA OPENING THE 36TH ANNUAL SCIENTIFIC
MEETING OF THE AUSTRALIAN & NEW ZEALAND BURN
ASSOCIATION, HOBART WEDNESDAY, 10TH OCTOBER 2012

As is always the case, it is a pleasure for me as the Governor of Tasmania to welcome you all to this the 36th Annual Scientific Meeting of the Australian & New Zealand Burn Association. To those of you who are visitors to our island State I extend a particularly warm welcome and express the hope that if it is your first time here that you will be able to find a little time to look around because Tasmania is always particularly beautiful in the Springtime.

Now when I open a conference I like to make some comment on one or more of the topics that are scheduled for a session at the conference. But I have to confess that when I looked at your programme my eyes slid over such topics as "The development of analgesia and sedation management flowcharts for the intubated ICU burns patient" and "Extensive burn scars: Artificial dermis or tissue expansion for skin replacement?" and I realised that with my background in the law, the only entries that I understood were Morning and Afternoon tea, Lunch and Government House reception!!

For a brief moment I thought that I might treat you to my 3-hour dissertation on the development of the law of trusts and the history of the independence of the judiciary but my wife talked me out of that. It's a pity for they were always a bit hit with the law students as you can imagine. I well remember as Chief Justice I had

to give a keynote address at a conference for a newly formed group of law students. Actually, I thought my talk went down quite well. People laughed at the right places and nodded wisely at the serious message that I wanted to convey and clapped enthusiastically at the end. On the way out the President who was escorting me to the door asked me how much my fee was. I asked him what he meant and he said the fee for the talk. I was taken aback and looked horrified. I drew myself up to my pompous best and lectured him that Judges don't ask for fees to deliver speeches, especially to law students as it is part of a judicial officer's duty to do that sort of thing etc. etc. and he said "Oh that's good because we don't have much money and we're saving up to get someone really good to speak next year."

Although I am not qualified to speak about burns, as it is the Queen's Jubilee Year and as I am her representative in the State of Tasmania I thought I might just spend a moment talking to you about the role of the State Governor in today's world for I have found that it is not something that is widely understood.

First the appointment; I am appointed by the Queen, for the Australian Constitution adopted by the Australian Government when the colonies came together in a Federation in 1901 declared the Queen and her successors to be the Queen or King of Australia and the Head of every State. However, although I would like to think it, Her Majesty didn't wake up one morning, nudge the Duke of Edinburgh and say "Hey, that Peter Underwood down there in

Tasmania is not a bad bloke what about making him Governor?" She in fact took advice from the State Premier and importantly, in this State and I think in most other States, before the Premier gives that advice he or she consults with the leaders of the other parties in the parliament to get a consensus about the appointment, for it is vital that the Governor's appointment is apolitical and is supported by all or virtually all the members of the Lower House of Parliament.

Although appointed by the Queen it is not widely known that since the passage of the Australia Act in 1986 the Governor is not answerable to the Her Majesty for the way in which he or she exercises the powers that for many centuries have by convention, vested in the King or Queen. Although the Governor represents Her Majesty he has authority by that 1986 Act of Parliament to exercise the Queen's powers as Head of State without reference to her, unless she is actually in the State. So you might say that although the Queen does the appointing, in reality the Governor is chosen by the Parliament and is empowered to exercise the Queen's powers in whatever manner he or she thinks is appropriate.

Those powers include signing Bills passed by Parliament to turn them into laws and presiding over meetings with Ministers in what is called the Executive Council to administer the State doing such things as declaring national parks, appointing judges and magistrates, appointing people to Boards and bodies like the Medical Council. There isn't time to go into all that this morning but the most

important powers that a Governor has are called Reserve Powers. These powers are established by long custom and convention and are designed to operate to make the democratically elected Parliament work, and work properly.

It has been said that, “the primary role of the modern Australian governor is as a form of insurance. It is a hedge against constitutional impropriety. Since this role is so rarely needed, it has become more customary to think of the governor in terms of the secondary activities associated with this office – the pomp and the ceremony. These activities have an important role in unifying society and recognising community service but the primary purpose of separating the head of state from the head of government should not be forgotten.”¹

As you know the well-established convention is that as Head of State, the Governor only exercises the powers conferred on him or her by many Acts of Parliament eg, the *Electoral Act*, the *Constitution Act* and so on, only on the advice of the Premier and other Ministers, but the Reserve Powers are exercisable without, or contrary to such advice.

Generally, there are three areas in which the powers are exercisable, viz the appointment of the Governor’s Chief Minister or

¹ Dr Richard Herr Utas. See <http://www.govhouse.tas.gov.au/governor/function-governor>.

Premier, the removal of that Minister, and the granting or withholding of an election.

(1) The appointment of a Chief Minister is usually made after an election or the death or early resignation of the Premier. Convention demands that the Governor appoint the person most likely to secure the confidence of the House of Assembly, “but in the event of no party enjoying a majority of seats the [Governor] must begin the sometimes delicate exercise of facilitating negotiations for a coalition government or for agreement among minor political parties to support the majority leader on the floor of the House.”² I had to do that at the last State election when the Liberals gained 10 seats, the Labor party 10 seats and the Greens 5 seats so no party had a majority.

(2) The Governor may dismiss the Premier if he or she has lost the confidence of the House or unable to get a significant Supply Bill passed and he or she refuses to resign or refuses to ask the Governor to dissolve the House and issue writs for an election. In the event of a dismissal the Governor may appoint a new Premier without or contrary to the advice of the dismissed Premier. The dismissal of Prime Minister Gough Whitlam is the classical example of that power being used

² “The Queen’s Other Realms” Professor Peter Boyce Federation Press 2008, p55.

(3) The Governor may refuse a Premier's request for an early election if it is made very soon after the holding of an election, and there is no vote of no confidence. Say Tasmania has had some good financial news and the Premier might want to hold an election even though it is but a short while after the last election because she thinks that because of the good news she might be able to increase her majority. Well, in that case the Governor would be entitled to reject her advice and refuse to call another election.

(4) The Governor may dismiss the Premier (without or contrary to his or her advice) and consequently dissolve the House of Assembly leading to fresh elections if the government is acting unlawfully³

(5) It is recognised that there is no limit upon the circumstances in which the Governor may exercise a reserve power except to say that it is the Governor's fundamental duty to safeguard the constitution.

(6) In addition although not a power, it is an accepted convention that the Governor has a right to be consulted and a right to warn and where appropriate, a right to encourage his or her Ministers⁴. The Premier and I meet over breakfast about once a

³ An example occurred in 1932 when Premier Lang in NSW was dismissed when his government refused to comply with the provisions of the loan repayment conditions of the federal government's Financial Agreement with the States. *Supra* at 58. Another example was the famous dismissal of Gough Whitlam in 1975 when he was unable to get the Senate to pass Supply.

⁴ Walter Bagehot 1826 – 1877.

fortnight and we have a confidential discussion about things Tasmanian.

So you can see that the Governor's job is not just cutting ribbons and eating watercress sandwiches. Further, as this is the Queen's Jubilee year and as you were obviously not excited about my 3-hour legal dissertation, I thought that you might be interested in the Governor's constitutional work and how it acts as a check and balance on the workings of our democratic, representative parliamentary system of government. It is a system that served this country very well and in consequence we live in a very stable and peaceful society quite unlike many other places in the world like Syria, Egypt, Yemen, Palestine and so on. And even if Australia moved to a Republic there would be no need to change that basic system.

However, if I don't stop talking and open your conference you too will start saving up to get someone really good to open your conference next year, so I will wish you all a pleasant stay in Tasmania, a stimulating, interesting and successful conference and formally open the 36th Annual Scientific Meeting of the Australian & New Zealand Burn Association.