Freund, A.E. Sutherland, M.D. Howe, E.J. Brown (eds.), *Constitutional Law: Cases and Other Problems* (4th ed. 1977) 71-85; P. Brest and S. Levinson, note 35 *supra*, 903-928.

38 "More drastic would be the removal of the present Chief Justice by the Governor-General in Council upon the motion of both Houses pursuant to section 72(2) for proved misbehaviour.... Barwick C.J.'s action in giving advice to the Governor-General could be seen to be unconstitutional, inasmuch as it conflicted with the High Court's own rulings that the giving of advice is not part of the judicial power of the Commonwealth and that there must be a strict separation of Commonwealth and judicial and other power so that judicial officers should not exercise powers that were not Commonwealth judicial powers. Considering that the remedy in both *Waterside Workers' Federation of Australia* v. *J.W. Alexander Ltd.* and in *Boilermakers* was to deny the exercise of judicial power to those who purported to exercise both federal judicial and other powers, removal from judicial office could be argued to be appropriate in the case of the Chief Justice."
C.J. Sampford, "Some Limitations on Constitutional Change" (1979) 12 *Melb. U.L. Rev.* 210, 226 (footnotes omitted). On this removal power see generally, J.A. Thomson, "Removal of High Court and Federal Judges: Some Observations Concerning Section 72(ii)" (unpublished manuscript, 1983).

Parliament, The Executive and The Governor-General, by GEORGE WINTERTON, LL.M. (W.A.) J.S.D. (Columbia), Barrister and Solicitor of the Supreme Courts of Western Australia and Victoria, Barrister of the Supreme Court of New South Wales, Associate Professor, University of New South Wales. (Melbourne University Press, Melbourne, 1983), pp. i-viii, 1-376, with Table of Cases and Index. Cloth recommended retail price $39.00 (ISBN 0 522 84242 9; ISSN 0726-4852).

This book is a most impressive, scholarly and well written legal and constitutional analysis of federal executive power in Australia. It is destined to be regarded as a definitive and exhaustive work on the subject with which it deals. As foreshadowed in the preface, the book discusses what the Commonwealth Government can do without legislative authority, the constitutional relationship between the Queen and the Governor-General, the Governor-General and the Ministry, and the Parliament and the Executive. It also deals with the scope of judicial review of governmental action, the reserve powers of the Governor-General and what may be done to prevent a repetition of the constitutional crisis which occurred in 1975.

Chapter 1 contains an incisive examination of the tensions which exist between the principles of federalism, the separation of powers and responsible government, each of which underlies to some extent the Australian Constitution. In particular there is a discussion of the problems created by the clash between the Senate's powers over supply and the British notions of responsible government. The author's conclusion is that this conflict remains in a state of flux which leaves relations between the two Houses of federal Parliament, and hence the Government and the Senate, dangerously uncertain (page 11). The author argues strongly that the powers vested by the Constitution in the Governor-General were intended to be exercised in accordance with the principles of responsible government both as a matter of convention and, by implication, law as well, in some cases. The author also argues that these powers cannot legally be exercised by the Queen or be the subject of instructions issued by Her (pages 17-26).

Chapters 2 and 3 provide a comprehensive analysis of the executive power referred to in section 61 of the Constitution. The author suggests that to be valid the exercise of the power must satisfy two tests. The first is concerned with the *federal* aspect of the powers referred to in section 61. The author accepts that, generally, the executive powers must follow or be relevant to the distribution of

federal legislative authority (page 30). The one exception concerns the entry by the Commonwealth Government into contracts. In his view the voluntary nature of the activity is different from federal law making so that limitations applicable to the latter should not apply to contracts as long as the contract does not require the Commonwealth to engage in activities outside its legislative powers. It is recognized, however, that there is weighty support for the contrary view although the issue is not yet settled (pages 44-7). One issue that is mentioned (page 47) but which could have received more attention is the extent to which some federal executive powers are exclusive in character even if the corresponding legislative power is concurrent, particularly in the fields of defence and foreign affairs although the author's extensive footnotes (notes 216-227, pages 238-240) will provide the reader with a ready reference to the discussion of the issue by others.[1]

Another issue which might have been discussed is the question whether the Commonwealth Government could utilize State and Territory legislation to create companies for the purpose of engaging in activities which would not be relevant to its legislative powers. However, the author does advert to other possible means by which the Commonwealth may be able to engage in activities or enterprises in fields beyond those in sections 51 and 122 of the Constitution such as mining, manufacturing and sales in the course of intra-state trade (pages 39-40 and note 131 at page 233).[2]

The second test which needs to be satisfied concerns the separation of powers, namely, whether the executive act exceeds any limits which are relative to the powers of the other branches of the federal government. The author argues for a restricted approach to the scope of the power to execute and maintain the Constitution and the laws of the Commonwealth and also the incidental and implied national (or "nationhood") powers, particularly as they affect the power to protect and preserve the institutions of government. He is strongly critical of attempts to combine the so called "Constitutional maintenance" powers with the reserve power doctrines so as to create a power in the Governor-General to act on his own initiative to "maintain" the Constitution. This was seen, and rightly so in the view of this writer, as an alarming development flowing from the events of 1975 and of course has obvious relevance to the actions of the Governor-General in dismissing the then Prime Minister in the same year. The author correctly points to the dangers inherent in the development of such theories given the non-elective nature of the office of Governor-General. The theories have led others to suggest that section 61 might even provide a power to dissolve both Houses of federal Parliament as a means of resolving a deadlock over supply, notwithstanding the absence of bills which satisfy the conditions of section 57 of the Constitution. More recently Sir Garfield Barwick has sought to argue that section 61 creates an implied legal, albeit non-justiciable, duty which requires a Governor-General to dismiss a Ministry that is unable to secure supply from both Houses of Parliament.[3] But as Dr Winterton forcefully points out why is it not then equally possible to argue that the requirements of section 83 of the Constitution are waived in an "emergency" so that the "maintenance" of the Constitution impliedly authorises the withdrawal of money from the Treasury without parliamentary appropriation? (pages 36-7).

So far as the incidental and implied national powers are concerned, the warnings

issued in the book against the over optimistic predictions made about the scope of the nationhood power seem to have been vindicated already by the refusal of four judges to recognise it as a basis for coercive Commonwealth legislative authority to protect the environment in *Commonwealth* v. *Tasmania (Tasmanian Dam case)*.[4] There is also a useful discussion of the relationship between sections 2 and 61. The author has followed the view supported by others that section 61 can now be regarded as incorporating all the prerogatives of the Crown relevant to Australian federal affairs so that such prerogatives are exercisable by the Governor-General without the need for an assignment of powers by the Queen under section 2. This extends to certain prerogatives in relation to foreign affairs and defence which might not have been regarded as falling within section 61 in 1901. Such a view has the effect of rendering section 2 largely superfluous although Dr Winterton suggests that it may still have significance in relation to the assignment of functions in matters affecting only the States (pages 51-2).

Chapter 4 analyses the extent to which the separation of powers operates under the Australian Constitution. The author is critical of the doctrine established in the *Boilermakers' Case*[5] and also of the attempts made by some judges to suggest minor limits on the acknowledged ability of the Commonwealth Parliament to delegate the exercise of its legislative powers. The chapter also contains an extensive analysis of the origin of responsible government and its ramifications for the Commonwealth Government. The author is clearly not in favour of the separation of powers as a legal doctrine particularly in relation to any separation of legislative and executive powers. He prefers, in the case of legislative powers, for example, to control the exercise of delegated legislation by strengthening parliamentary and judicial review of such legislation (page 92). There is a useful and modern analysis of the separation of powers doctrine as it operates in the United States — an analysis which serves to underline the limitations on the operation of the doctrine even in that country.

The rejection of any legal separation of legislative and executive powers leads the author to espouse the view that the executive powers exercisable under section 61 and possibly also those specifically conferred on the Govenor-General under such sections as 5, 28 and 57, are subject to legislative control and interference (pages 98 and 100). Such a view is of course consistent with traditional British concepts of parliamentary supremacy and it does have some Australian judicial support in relation to prerogative powers incorporated under section 61. It is, however, as the author himself realises, a much more controversial view in relation to the powers specifically conferred by other sections. If correct, it would enable the Parliament to pass laws preventing the Governor-General from dissolving the House of Representatives or that House and the Senate unless the power was exercised in accordance with advice tendered by a Prime Minister who had the confidence of the House of Representatives.

In the same chapter the author rejects suggestions made by others to the effect that section 61 might prevent the vesting of executive power in State officers or bodies (and thus prevent co-operation between Federal and State levels of government) and also autonomous Federal statutory authorities — a view which the present writer has also rejected.[6] This area, like much of the law concerned with

the executive power of the Commonwealth, has not attracted much judicial elucidation, but Dr Winterton has referred to some *dicta* which point in the direction suggested by him (pages 107-8).[7]

Chapter 6 contains a most useful examination of the prerogative powers. The examination includes the nature and definition of the prerogatives and the circumstances when they cease to be exercisable. The author's civil libertarian values lead him to argue for a restricted view of their scope and their capacity to develop. The author also deals with the ability of the Crown to do whatever private citizens can do provided the acts in question are not forbidden by law and are "identical" (pages 121-2). The acts would not be "identical", for example, in the case of government and private citizens, because the resources of the government would be so much greater than those possessed by ordinary individuals. The present writer sees great difficulty in devising workable tests for giving effect to the latter qualification.

In chapter 7 Dr Winterton examines the extent to which executive action will be subject to judicial review. It is clear that he favours a strong adherence to the rule of law and the need for governmental action to be subject to law. The effect of such decisions as *Re Toohey, Ex parte Northern Land Council*[8] and *FAI Insurance Ltd.* v. *Winneke*[9] have of course changed quite dramatically the scope of judicial review in relation to the exercise of statutory powers vested in the Crown's representative. Dr Winterton seeks to assess the effect of those changes in relation to whether the exercise of constitutionally conferred Commonwealth executive power will be subject to the same limitations which govern the exercise of administrative powers conferred by statute. In some cases the result of the new law may not be markedly different according to the author, who takes the view that it is unlikely that the High Court would invalidate a dissolution of the Parliament for reasons which are *sui generis* to that particular problem (pages 133-34).[10]

The discussion by Dr Winterton of the willingness of some judges, notably Lord Denning M.R. in *Laker Airways Ltd* v. *Department of Trade*[11] and perhaps also Mason J. in the *Toohey* case,[12] to review not only the *existence* but also the *manner* and *way* in which prerogative powers are exercised, serves to underline the potentially far reaching consequences and interesting implications which the new attitude of the courts will have for the prerogative powers exercisable under section 61.

The same chapter contains a briefer discussion of procedural issues which is, however, supported by a wealth of references to text books and other discussion of those issues. Suffice it to say that Dr Winterton seems to envisage very little room for questions in this area being treated as non-justiciable. He would, for example, treat as justiciable the legal validity of the Governor-General's dismissal of the then Prime Minister in November 1975 apparently contrary to the view asserted by the former Chief Justice, Sir Garfield Barwick. Possibly, the difference between those two views is not as great as it may at first appear. In the opinion of the present writer confusion frequently surrounds the use of the terms "justiciability" and "non-justiciability". The latter term can be used to mean that an issue cannot be dealt with by a court because

1. the court does not have *jurisdiction* to deal with it (either as to subject matter,

the parties or the inability to grant appropriate relief) or because

2. the court does have jurisdiction but the exercise of it is likely to show that the issue is not one which gives rise to any ground for legal *complaint*, as may be the case, for example, where the exercise of a challenged power is not subject to any relevant legal limitations.

Sir Garfield may have used the term "non-justiciable" in the latter sense thereby denying the existence of relevant legal limitations which would limit the exercise of the Governor-General's discretion under section 64 of the Constitution.[13] Dr Winterton, on the other hand, may have had the first of the two meanings in mind since he was prepared to conclude that judicial conservatism would probably ensure, for the foreseeable future, that the High Court would be unwilling to review the validity of a Governor-General's dismissal of a government. The latter conclusion was reached despite the availability of arguments which would seek to establish the existence of *implied legal limits* on the exercise of the Governor-General's powers under section 64 with those limits being derived from the principles of responsible government. At the same time, Dr Winterton may also be suggesting that the issue in question *ought* to be justiciable in both senses of the term, and that the arguments for implying legal limits on the exercise of the Governor-General's powers should be accepted by the Court even though this is unlikely to occur for the foreseeable future because of judicial conservatism (pages 125-27).

Some will find surprising the failure of the book to provide a wider ranging review of the reserve powers of the Crown and also a detailed examination of the validity and propriety of Sir John Kerr's dismissal of Mr Whitlam. Dr Winterton has sought to justify this failure by reference to what was said to be a general recognition of the need for change, the detailed analyses of those issues by others and the need to provide guidance for the future (pages 144-45). The assumption regarding a general recognition of the need for change may be questioned since there are doubtless still a significant number of persons in the community who would argue that the present position is not in need of change except possibly for the need to amend the Constitution to ensure that both the Senate and the House of Representatives can be dissolved if the Senate blocks supply.

Chapter 8 takes up the question of reform and the future. It discusses the possibility of removing the power of the Senate to block supply and also the enactment of ordinary legislation to reduce the likelihood of a government being forced to the polls at a time chosen by the Senate. Dr Winterton supports the well known and long standing plea made by Dr Evatt to codify the conventions on the exercise of the reserve powers. He suggests that the plea could be implemented by the passing of resolutions by the Australian Constitutional Convention as a first stage, to be followed in later stages by the enactment of legislation and the approval of constitutional amendments to give effect to the codified conventions (pages 151-52). The view that such conventions should be made legally binding and enforceable will not find favour with everyone, including the present writer. Of course there is, in any event, the initial and threshold difficulty of securing the necessary agreement, as is illustrated by the deferment of a number of sensitive proposed conventions at the meeting of the Australian Constitutional Convention in 1983.[14] The present writer was persuaded by much of the valuable but

necessarily brief outline of the conventions as proposed to be codified by the author but it will probably appear too radical for some, since it is largely influenced by the desire of Dr Winterton "to return the reserve powers to the oblivion they deserve" (page 145). The book ends with a concise analysis of the nature, and the advantages and disadvantages, of a proposal to introduce a fixed term for the Commonwealth Parliament.[15] The author concludes that the fixed term proposal is the most desirable compromise to minimise, although it cannot prevent altogether, a repetition of the events of November 1975, given, as seems likely, the inability to deal directly with the powers of the Senate and the reserve powers (pages 158-60).

Without in any way detracting from the excellent and scholarly nature of the work, the present writer takes issue with the view suggested by Dr Winterton that the Constitution *impliedly* establishes as a judicially enforceable rule an essential principle of responsible government. That principle is, that except when exercising a "reserve power", the Governor-General must act only on ministerial advice even in cases where the relevant constitutional provisions vest a power in the Governor-General alone and not the Governor-General in Council. According to this view the exercise of a power by the Governor-General on his independent initiative may well be invalid subject to the possible survival of emergency or reserve powers in the Governor-General to act without advice (pages 15-17, 125 and see also page 78). The question is, of course, as the author himself realises, not judicially settled, but the High Court *dicta* referred to by him either leave the question open or are equivocal since they can be read as constituting a judicial recognition of the existence and operation of the rule as a matter of *convention* only. This has a legitimate bearing on the way in which the relevant constitutional provisions should be interpreted but it falls short of making the relevant rule judicially enforceable. Apart from the inherent ambiguity of interpreting rules, which at least in their English setting were only intended to operate as conventions, there is the added difficulty of the courts having to grapple with the controversial scope of the so called reserve powers. Even if the author's view is correct, that ministerial advice becomes an implied legal requirement, there is the further issue whether the requirement is mandatory rather than directory in character, thus rendering the purported exercise of the power a nullity if the requirement is not observed.[16]

Much has been said and written about the legitimacy of drawing implications from the Constitution, but one thing that can be said in the present context is that such a legal technique is unlikely to persuade opposing sides in any constitutional conflict such as that which occurred in 1975. Apart from the implied legal obligation referred to above, Dr Winterton also argues that sections 62 and 64 impliedly establish the principles of responsible government whereby the Governor-General chooses as his Ministers those enjoying the confidence of the Parliament, and retains them only as long as they continue to enjoy it (page 78). It is not entirely clear to what extent this is meant to express a legally enforceable requirement (leaving aside, of course, the express requirement contained in the last paragraph of section 64) but from what is written earlier in the book Dr Winterton may well have in mind the confidence of only the House of Representatives (pages 5-8). Sir Garfield Barwick, on the other hand, asserts the existence of a non-justiciable legal duty which requires the Governor-General to appoint as his advisers Ministers who can secure supply

from *both* Houses of Parliament — an assertion which was also said to be based on the principles of responsible government, as modified no doubt, in their Australian federal setting.[17] The present writer prefers to avoid such contradictory results which flow from implications, especially when those implications are said to be based on requirements which were not defined with the precision required to operate as enforceable legal rules. The failure of the founders to go further than merely establish in the express provisions of the Constitution the machinery by which the rules of responsible government could operate and develop, including of course the establishment of the Federal Executive Council and the requirement that Ministers should be members of Parliament, is perhaps both significant and fortunate. The present writer prefers to maintain the distinction between the mere recognition of the operation of the principles of responsible government as something relevant to the interpretation of constitutional provisions and their judicial enforcement. It is a distinction which was aptly described by Muhammad Munir C.J. in *Federation of Pakistan* v. *Moulvi Tamizuddin Khan* in relation to the legal powers of the King or his representative to dissolve Parliament, assent to bills and dismiss Ministers:

> The question in what circumstances these powers of the King are to be exercised is an entirely different question and has nothing to do with the legal powers of the King, though clearly defined conventions have come to be recognised which the King can ignore only if he wishes to take the responsibility of ceasing to be a constitutional monarch. But these conventions cannot be enforced by the courts, though they will undoubtedly be taken cognizance of in the interpreting of written constitutions. The only issue that the court is required to determine in such cases is whether the legal power existed or not, and not whether it was properly and rightly exercised, which is a purely political issue.[18]

The present writer also has difficulty with the view that legislation can be enacted without the need for a constitutional amendment to regulate the exercise of the Governor-General's discretion under such provisions as sections 5 and 57 in relation to the power of the Governor-General to dissolve the Parliament. Thus the legislation could make the exercise of the power to dissolve legally conditional upon the Governor-General receiving advice to dissolve from ministers who enjoy the confidence of the House of Representatives. Ultimately reliance would need to be placed on the incidental powers of legislation under section 51(xxxix) in the absence, of course, of a direct or express grant of legislative power. (Unlike some other provisions in chapter 1 of the Constitution, sections 5 and 57 were not expressed in such a way as to attract the operation of section 51(xxxvi). The legislation envisaged by Dr Winterton could well be thought to go beyond what is merely *incidental* to the execution of the relevant powers since it is strongly arguable that the "discretionary" nature of the powers granted to the Governor-General is an important and fundamental aspect of the powers in question. According to that view the legislation would not be incidental but, instead, *inconsistent* with the powers created by such sections as 5 and 57. Perhaps the strongest argument which supports Dr Winterton's conclusion is that it will be difficult to draw a distinction between the likely ability of the Parliament to override and interfere with the prerogatives exercisable under section 61 and its ability to control the exercise of the specifically conferred executive powers vested in the Governor-General under other provisions

of the Constitution. Possibly the answer to this difficulty will be found in the availability of the *express* rather than *incidental* heads of legislative power contained in section 51 in relation to the control or interference with the prerogative powers exercisable under section 61.[19]

Disagreement with some of Dr Winterton's conclusions does not take away from the immense value and use of the book since the author is careful to discuss or refer to other writers' discussion of any views which may run counter to his own. Indeed one of the major strengths of the book is the wealth of information and references contained within it, especially in the footnotes. The author will perhaps not be surprised, however, with the difficulty felt by some readers as a result of having to read half of the discussion in the text and the remaining half in footnotes which are set out separately in the second part of the book. The present writer's preference would have been to attempt to incorporate more of the footnote discussion in the text but that of course is a matter of style which is personal to each writer.[20] Even so the reader is greatly assisted by the references to the corresponding pages in the text at the top of the pages which contain the footnotes. The book is well printed and bound, and printing errors were rarely encountered.

All in all Dr Winterton is to be congratulated for providing such a valuable and scholarly work. It forms a worthy addition to the Studies in Australian Federation published by the Melbourne University Press.

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FOOTNOTES

1 For a somewhat surprising possible instance of a State Government participating in the conduct of Australia's foreign affairs where it appears a State Premier may have been in touch with the President of Indonesia regarding the annexation of East Timor see *Parliamentary Debates (Senate)* Vol.68 p.2332 (3 June 1976), and Vol.69 p.1194 (14 October 1976).

2 The general issue was not resolved by the challenge raised against the acquisition of certain shares by the Australian Atomic Energy Commission in *Kathleen Investments (Aust) Ltd* v. *Australian Atomic Energy Commission* (1977) 139 C.L.R. 117.

3 G. Barwick, *Sir John Did His Duty* (1983) 95-6, 100. The present writer is not convinced by this argument. The language of section 61 is framed in terms of powers not duties.

4 (1983) 46 A.L.R. 625. The Justices were Gibbs C.J., Wilson, Dawson and Deane JJ.

5 *Attorney-General (Cth)* v. *The Queen*; *Ex parte The Boilermakers' Society of Australia* (1957) 95 C.L.R. 529.

6 P. Finn and G. Lindell, "The Accountability of Statutory Authorities" in the *Fifth Report of the Senate Standing Committee on Finance and Government Operations on "Statutory Authorities of the Commonwealth" (1982) Appendix 4, 173.*

7 The remarks of Gibbs C.J. in *Re Duncan*; *Ex parte Australian Iron and Steel Pty Ltd* (1983) 57 A.L.J.R. 649, 654-55 probably provide recent additional support. A number of justices stressed the desirability of ensuring that the Constitution is not construed as precluding co-operation between the Commonwealth and the States but this was directed to the question of co-operation in relation to legislative powers.

8 (1981) 56 A.L.J.R. 164.

9 (1982) 56 A.L.J.R. 388.

10 The author also points to continuing practical and evidentiary problems which may impede the chances of a successful challenge in the courts. The present writer believes that as regards *statutory* powers, some of those difficulties would be alleviated by amending the definition of the phrase

"decision to which this Act applies" in section 3 of the Administrative Decisions (Judicial Review) Act 1977 (Cth) so that the considerable benefits created by that Act and, in particular, the right of a person to obtain reasons for a decision under section 13, would then apply to administrative decisions made by the Governor-General in Council. The present exclusion of such decisions was framed at a time when it was assumed that the limitations which governed the exercise of administrative powers did not apply to the exercise of such powers when they were vested in the Crown's representative.

11 [1977] Q.B. 643, 705.

12 Note 8 *supra*, 184.

13 Note 3 *supra*, 83-4. The asserted non-justiciable legal duty of the Governor-General to dismiss Ministers who cannot secure supply from both Houses of Parliament, on the other hand, seems to involve a further and different use of the term not adverted to in the text above. It seems to assume the existence of some "legal" duties the performance of which is not enforced by a court of law.

14 *Official Record of Debates of the Australian Constitutional Convention* (Adelaide, 1983) 243 and 294-5. The relevant proposed conventions were Practices 20-27 and 31.

15 The proposal discussed by Dr Winterton subsequently became known as the Constitution Alteration (Fixed Term Parliaments) Bill 1982 (No. 441) and it underwent some changes before being passed by the Senate on 17 November 1982. For a further analysis of the objections raised against the proposal before it was passed by the Senate, see the analysis by Senator Evans: *Parliamentary Debates (Senate)* 348-354 (19 August 1982) and 2015-17 (28 October 1982) especially in relation to the operation of the proposal if the Senate retained its power to withhold supply. Standing Committee D of the Australian Constitutional Convention published as a separate document all the papers relating to the proposal including the parliamentary debates in the Senate, the relevant bills and the entries in the Journals of the Senate (February 1983). The present federal Labor Government was committed to the introduction of a fixed term proposal following its election in March 1983 but it was unable to obtain the support of the Australian Constitutional Convention at the meeting held in Adelaide in April of the same year: see *Official Record of Debates of the Australian Constitutional Covention* (Adelaide 1983) 150-52 and 179. Notwithstanding the failure to obtain that support the same Government later introduced in the Senate the *Constitutional Alteration (Fixed Term Parliaments) Bill* 413, 421-5 (12 May 1983). That measure was substantially the same as the 1982 Bill passed by the Senate but the Government subsequently decided to postpone debate on the measure and later succeeded in having the Bill withdrawn apparently because it was felt that it had not attracted the degree of cross party support which was necessary to ensure its success at a referendum: see *Attorney-General's Press Releases* dated 24 May and 22 August, 1983 respectively and also *Parliamentary Debates (Senate)* at 00.824, 827, 832-833 (21 September 1983).

16 Although not quite germane to the problem it is interesting to note that in *Wrathall* v. *Fleming* [1945] Tas. S.R. 61 it was held that the exercise of a statutory power vested in the Governor alone was valid even though the Governor had acted on the advice of the Executive Council. The relevant provisions expressly defined a reference to the Governor to mean a reference to him alone and not the Governor acting with the advice of the Executive Council. The case involves the reverse of the problem raised by Dr Winterton.

17 Note 3 *supra*.

18 Quoted in M. Harris and J. Crawford, "The Powers and Authorities Vested in Him" (1969) 3 *Adelaide Law Review* 303, 311. See also L. Zines, *The High Court and the Constitution* (1981) 202,203-204 and D. O'Brien, *The Powers of the Governor-General to Dissolve the Houses of Parliament* (unpublished A.N.U. LL.M. thesis, 1982) 66-75.

19 See also the discussion by D. O'Brien, *id.*, 47-65.

20 *E.g.*, note 158 at page 214 and note 203 at page 237.

The Torrens System in Australia, by D.J. WHALAN, LL.M.(N.Z.),Ph.D.(Otago), M.I.Env.Sc., Barrister and Solicitor of the High Court of New Zealand and of the Supreme Court of the Australian Capital Territory, Professor of Law, Austraian National University. (The Law Book Company Limited, Sydney, 1982), pp.i-lxvii, 1-410 with Table of Statutes, Table of Cases and Index. Cloth recommended retail price $32.50 (ISBN 0 455 20357 1). Paperback recommended retail price $22.50 (ISBN 0 455 20358 X).