

Parliament, the Executive, the Governor-General and the Republic: The George Winterton Thesis

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George Winterton's considered position on the nature of the executive power of the Commonwealth was the fruit of extensive and original scholarship.¹ Not deterred by the relatively scant academic commentary and judicial exegesis on the subject, nor by its enigmatic nature, he produced the seminal monograph dedicated to its understanding: *Parliament, the Executive and the Governor-General: A Constitutional Analysis*.² As a consequence, the late Professor Winterton was able to turn his mind to aspects of Australia's present constitutional arrangements which invited reform, especially if Australia were to become a republic. Of particular importance in this regard was his consideration of the so-called 'reserve powers' of the Governor-General, that is, those powers which, under the Constitution, the Governor-General may exercise independently of, and indeed contrary to, ministerial advice. In view of the importance of these powers on the rare instances when they are exercised, and the potential for their controversial exercise to result in constitutional crisis (such as the dismissal of the Whitlam government in 1975),

* This chapter was originally planned by the late Professor George Winterton for his festschrift, in collaboration with Dr Peter Gerangelos. Due to the limitations imposed by his final illness, however, George Winterton was unable to complete it. In the event, it was completed by Peter Gerangelos under his instructions. It is an attempt to set out his considered views reflecting a lifetime's analysis of the executive power of the Commonwealth. It was thought fitting by the editors to publish it in this work as a commemoration of his elevated scholarship and contribution to constitutional law. This chapter was completed before *Pape v Commissioner of Taxation* [2009] HCA 23 and it was not possible to incorporate an examination of that important decision into the discussion.

1 George Winterton's own words have been used as far as possible, in particular from the following articles written by him: 'The Limits and Use of Executive Power by Government' (2003) 31 *Federal Law Review* 421 and 'The Relationship Between Commonwealth Legislative and Executive Power' (2004) 25 *Adelaide Law Review* 21, and his seminal monograph, *Parliament, the Executive and the Governor-General: A Constitutional Analysis* (Melbourne: MUP, 1983). Any inadequacies in this chapter remain those of Peter Gerangelos alone.

2 G Winterton, *Parliament, the Executive and the Governor-General: A Constitutional Analysis* (Melbourne: MUP, 1983).

This is a preview. Not all pages are shown.