

Topic 6

Executive and Responsible Government

1. Responsible government principle in Constitution
 - a. Constitution must be read through the lens of responsible government principle (*Re Patterson; Ex Parte Taylor ; Boilermakers' case*)
2. Responsible Government System
 - a. Executive powers vested in Crown exercised by GG only on advice of Ministers (except for reserve powers)
 - i. Ministers must be members of parliament (within 3 months of appointment) (**s64 Constitution**), thus accountable to the parliament;
 1. Parliament ultimately elected from and accountable to the people / public
3. Government Formation
 - a. GG appoints the person with majority of confidence support in Lower House as PM (usually is leader of the majority party/coalition)
 - b. PM advises GG to appoint MPs as ministers
4. Ministerial Responsibility
 - a. Collective Ministerial Responsibility
 - i. Ministers must publicly support cabinet decision or else resign, and maintain secrecy regarding policy deliberation
 - ii. If vote of no-confidence passes in the Lower House (only), all ministers must resign together by convention
 - b. Individual Ministerial Responsibility
 - i. Each minister is responsible to the Parliament regarding its portfolio, and may be questioned on their policy decisions regarding that portfolio.

Exercise of Reserve Powers by GG

1. appointment of PM/Premier where vacant [OK]
 - a. Person who commands the majority support re: confidence (and supply) in the lower house can be appointed PM
2. Refuse advice to dissolve lower house if there is PM alternative [OK]
 - a. By convention, where incumbent PM loses confidence vote in lower house, he can either advise dissolution of houses or resign.
 - b. GG can refuse advice to dissolve houses if satisfied that there is an alternative option for PM who commands the majority of confidence in Lower house.

3. Dismiss PM who has lost confidence of lower house but refused to resign/advise dissolution of parliament [OK]
4. Dismiss PM who failed to obtain supply in Lower House [OK]
 - a. seen as equivalent to failing a no-confidence vote
5. Refuse advice by PM (who retains confidence) to prorogue parliament [Controversial]
 - a. prorogation = suspend/ends the parliament session and clears all the tabled bills to ready parliament for a fresh start (unlike dissolution prorogation does not involve re-election)
 - b. When it would be justifiable to refuse advise to prorogue:
 - i. where it might contravene s6 Constitution (no more than 12 months between parliamentary sittings)
 - ii. where vote of no-confidence is pending and likely to succeed, and gov is seeking to avoid facing parliament to it can govern without being responsible
 - iii. where supply would otherwise run out if Parliament prorogued
 - iv. some debate re avoidance of accountability
6. Dismissing PM for illegality [Controversial?]
 - a. GG may have reserve power to dismiss PM/Premier understood to be acting illegally
 - b. **Proposed Conditions:**
 - i. clear that gov has persisted in breaching a fundamental constitutional provision, and
 - ii. gov has ignored calls from GG to desist from this conduct, and
 - iii. contravention is not 'justiciable' – not capable of being brought before courts
 - c. cf: **Dismissal of NSW Premier Lang** (Opinion towards this is unjustifiable use of reserve power)
 - i. Lang's gov ceased interest payments on state debts. Cth gov attempted to seize the state's revenue to discharge that interest liability. Lang's gov tried to funnel all moneys into treasury where it would be inaccessible by Cth gov, in contravention of Cth laws.
 - ii. Governor Game warned Lang of possible dismissal if he continued with this behaviour, Lang refused to back down, Governor dismissed Lang with reserve power on basis of illegality.
 - iii. Critique:
 1. the case could have gotten to court, it was not a non-justiciable issue
 2. Governor should not have intervened
7. Dismissing PM who has confidence of lower house but failed to secure supply in Upper House