

CONSTITUTION AMENDMENT (DEMISE OF THE CROWN) BILL 2017

Second Reading

Resumed from 17 May.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [7.43 pm]: I rise as the lead speaker for the opposition on this Constitution Amendment (Demise of the Crown) Bill 2017 and advise that the opposition welcomes and supports the bill and, as presently advised that, subject to any matters that might arise in debate, it sees no reason for the bill to be referred to and trouble the Committee of the Whole.

The Leader of the House's second reading speech covers the relevant policy considerations underlying the bill, so I will not repeat them any more than is necessary. Although the issue is one of which members of this place who were present during the thirty-ninth Parliament are familiar, I will make some short observations for the benefit of new members.

The term "demise of the Crown" refers specifically to the cessation of the monarch's rein by death or abdication. Such demise had consequences in times past. One consequence was the immediate dissolution of Parliament; another was the immediate vacation of office of all officers of the Crown; and a further consequence was that proceedings brought by or on behalf and in the name of the Crown were discontinued. One can understand the operation of this constitutional principle when the concept of the Crown and the authority derived from it was of a more personal nature and the individual who occupied the position of the King or Queen of the day was in a very real sense the head of state, so the fountainhead of that authority. However, the evolution of the nation-state and of more permanent institutions providing continuity of government and the parliamentary democracy we enjoy today are inconsistent with consequences of the nature I have mentioned. Accordingly, a great deal of legislation in the United Kingdom over the years has dealt with the consequences of the demise of the Crown that I have mentioned—some from as long ago as the sixteenth century.

This bill has its immediate origins in the eighty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review tabled on 17 February 2015, which related to the Succession to the Crown Bill 2014. That bill concerned the changes to the law agreed by all commonwealth sovereign nations several years before to reform the order of succession to the Crown and the eligibility of certain categories of persons to succeed to the throne. It was reflective of changes made by way of the United Kingdom's Succession to the Crown Act 2013, which dealt with those matters in the United Kingdom and needed to be adopted for consistency and constitutional reasons by all commonwealth nations that still regarded the Queen as the notional head of state and of constitutional authority.

As an adjunct to that report, the uniform legislation committee saw fit to refer to a Law Reform Commission of Western Australia report of October 1994 titled "Project 75: United Kingdom Statutes in Force in Western Australia" that reported on imperial legislation that applied in Western Australia and that was in need of repeal or reform. In that context, it also considered imperial legislation dealing with the demise of the Crown and how that issue was dealt with in other Australian jurisdictions. The Law Reform Commission recommended that "consideration be given to enacting a general Demise of the Crown Act". The committee concluded that the potential consequences of the death of the reigning monarch was something that ought to be addressed by specific legislation attending to the situation and proposed an amendment to be passed along with that immediate legislation, the Succession to the Crown Bill, to deal with the question of what happens on the death of the sovereign.

At the time, on behalf of the government, I opposed that proposed amendment, as I recall, on several bases. The first was the issue of the consequences of the demise of the Crown was not something that fitted comfortably within the scope of the Succession to the Crown Bill dealing, as it did, with rather different issues of eligibility for succession to the throne and removing impediments for that succession, and the order of succession to the Crown. Secondly, I wanted to take further advice on the subject about whether a demise of the Crown bill, or legislation concerning it, was necessary and, if necessary or desirable, the best manner in which to implement such a provision. The house took the matter further by referring it to the Council's Standing Committee on Legislation, and a specific inquiry was conducted by the legislation committee and reported on 13 August 2015 in its twenty-eighth report.

I made submissions to that committee on behalf of the government and supported the idea of legislating on the subject and recommended some amendments to the Constitution Act 1889. The amendment I proposed was, as I recall, one drafted by the then Solicitor-General, which the committee adopted, but varied slightly on advice from, as I recall, Parliamentary Counsel, into the form of a draft bill, which now forms the basis of the legislation before the house. The committee reported accordingly, recommending that a bill be passed dealing with the demise of the Crown and proposed that that bill take the form of an amendment to the Constitution Act. Leaving open the question of whether the demise of the Crown had consequences to Western Australia and what those consequences might be, the effect of this bill will be to make clear and readily apparent that which should be clear and readily

apparent—that is the significant advantage of this piece of legislation. I say that I leave open the question of consequences because different opinions were presented to me on the subject. So far as the prorogation of Parliament is concerned, for example, the demise of the Crown has not presented a problem in Western Australia in the past. That said, as the Standing Committee on Legislation pointed out, in the case of past demises of the Crown the Parliament of Western Australia was either prorogued, not in session or was prorogued within six months of the demise. Sessions of Parliament lasting several years, of the character that we are accustomed to now, are a relatively recent development that has taken place within the 64-odd years since the last demise of the Crown and the succession of Her Majesty Queen Elizabeth II. Furthermore, it was suggested to me that officers of the Crown in Western Australia derive their authority differently from those in other jurisdictions. Be that as it may, the position on the demise of the Crown should be clear and readily apparent, and this bill achieves that objective.

I cannot take credit for the drafting of this bill. It was drafted and ready for introduction previously. It is a rather simple and elegant piece of drafting—a credit to the then Solicitor-General—based, as I recall, on section 5 of the Constitution Act 1986 of New Zealand, and as further refined by Parliamentary Counsel. I have to say that my preference was, and I submitted to the committee accordingly, that the issue be resolved by way of an amendment to and incorporation into the Constitution Act, rather than a standalone piece of legislation, so as to endeavour to consolidate any matters establishing and preserving our body politic in the legislation intended for that purpose. Unfortunately, we, uniquely among Australian jurisdictions, have two Constitution Acts, but nevertheless that does not mean that we should have three or more that address issues of a constitutional nature for Western Australia. I had proposed that such a bill be introduced last year, but unfortunately other legislative priorities interfered. I am pleased that the work done by not only the drafters, but also the two committees that turned their attention to this matter, has come to fruition. It was a very worthwhile exercise that the then Standing Committee on Uniform Legislation and Statutes Review that was dealing with the succession to the Crown bill should have identified the issue and brought it to the attention of this Parliament. The work done by the Standing Committee on Legislation is also very commendable in having taken the issue on board, explored it extensively and made the recommendations that form the basis for the legislation being dealt with today.

On that note, I indicate again that the opposition supports the bill and, as presently advised, sees no reason to go into Committee of the Whole.

HON ALISON XAMON (North Metropolitan) [7.54 pm]: Nobody lives forever, so the Greens will support the Constitution Amendment (Demise of the Crown) Bill 2017.

HON MARTIN ALDRIDGE (Agricultural) [7.54 pm]: Hon Alison Xamon said she was trying to condense her speech, but I was not aware that it would be quite that condensed. I rise on behalf the National Party to indicate our support for the Constitution Amendment (Demise of the Crown) Bill 2017 and, in doing so, make a few brief remarks. It is interesting to note from the second reading speech by Hon Sue Ellery, to some extent reinforced by Hon Michael Mischin, that this issue has faced Western Australia for a number of years, having been first identified in the mid-1990s, resulting in a Law Reform Commission report. This process was kicked off as a result of the Commonwealth Heads of Government Meeting in Perth in 2011, at which commonwealth nations agreed to a range of measures on the succession to the Crown, which I think we dealt with in 2014 in this place, and on review the Standing Committee on Uniform Legislation and Statutes Review made recommendations and observations about this issue still being unresolved. This is a very simple bill, inserting new section 74A into the Constitution Act 1889, to preserve a number of rights, statutes and office-holding positions in Western Australia. As I understand it, the only reference currently in the Constitution Act 1889 is to justices of the court continuing should the demise of the Crown occur. This bill will hopefully put beyond doubt some of the issues associated with the demise of the Crown through death or abdication. Again, I indicate that the National Party will support the bill. I hope this new section in the Constitution Act will not be needed for many years, as Queen Elizabeth continues to reign over her many realms.

HON COLIN TINCKNELL (South West) [7.56 pm]: One Nation supports the passing of the Constitution Amendment (Demise of the Crown) Bill 2017.

HON SUE ELLERY (South Metropolitan — Leader of the House) [7.57 pm] — in reply: I thank members of the house for their support of the Constitution Amendment (Demise of the Crown) Bill 2017. This has been a long time coming. We are one of the last, if not the last jurisdiction to deal with such a piece of legislation, and it is an important technical bill that we need to get through. I thank members for their support, and commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Extract from *Hansard*

[COUNCIL — Tuesday, 27 June 2017]

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Hon Michael Mischin; Hon Alison Xamon; Hon Martin Aldridge; Hon Colin Tincknell; Hon Sue Ellery

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and transmitted to the Assembly.