



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our ref: 44-17569

Hon Robyn McSweeney MLC
Chair
Standing Committee on Legislation
Parliament House
PERTH WA 6000

Dear Ms McSweeney

INQUIRY INTO A DEMISE OF THE CROWN STATUTE

Thank you for your letter of 10 July 2015. I will deal with each of your requests in turn.

The first bullet point on page 1 of your letter - section 73(2)(e) of the *Constitution Act 1889*

This request relates to section 73(2)(e) of the *Constitution Act 1889*. It provides that:

A Bill that —

...

- (e) expressly or impliedly in any way affects any of the following sections of this Act, namely —

sections 2, 3, 4, 50, 51 and 73,

shall not be presented for assent by or in the name of the Queen
unless

[particular manner and form are followed]

Plainly, nothing in the draft provision to which I referred in my letter of 3 July 2015 (call this, "my draft") has any effect on any provision of sections 2, 4 or 73 of the *Constitution Act 1889*.

Section 3 of the *Constitution Act 1889* is an empowering provision, empowering the Governor to fix the place and time of sessions of, and the prorogation and dissolution of, the Legislative Council and Legislative Assembly. Nothing in my draft has any effect on this power, exercisable by the Governor.

Section 50 of the *Constitution Act 1889* deals generally with the office of Governor. Section 50(1) provides that, "The Queen's representative in Western Australia is the Governor who shall hold office during Her Majesty's pleasure". Nothing in my draft affects this provision. The Governor does hold office during Her Majesty's pleasure.

Section 50(3) is, in essence, a definition provision extending the definition of Governor in Western Australian legislation to include the person appointed by the Queen by Commission under Her Majesty's Royal Sign Manual, any other person appointed by dormant or other Commission under the Royal Sign Manual and any person appointed to exercise powers and authorities of the Governor by the Governor. Nothing in my draft affects these provisions. The Governor is and would remain, for the purpose of Western Australian legislation, the person appointed by Commission under Her Majesty's Royal Sign Manual, a person appointed by dormant or other Commission and a person appointed to exercise powers and authorities of the Governor by the Governor.

Section 51 of the *Constitution Act 1889* defines the Royal Sign Manual for the purpose of section 50. Were my draft enacted, the Royal Sign Manual for the purpose of section 50 of the *Constitution Act 1889* would continue to be the signature or royal hand of the Sovereign.

The second bullet point on page 1 of your letter

No. It makes no difference, for the purpose of section 73 of the *Constitution Act 1889*, whether any enactment is in the form of "a general *Demise of the Crown Act*", or in the *Constitution Act 1889*.

The first bullet point on page 2 of your letter

This asks whether there is a need for a repeal clause in terms of the form of 'clause 18' included in the Standing Committee's Report 88, and a savings clause as recommended by the WA Law Reform Commission in its 1994 Report on Project No 75.

In my opinion, a repeal clause is unnecessary. A provision in the terms of my draft would displace any Imperial legislation applicable in Western Australia that deals with the consequences of the demise of the Crown. With no repeal clause, a savings provision would not be required.

The task of expressly 'dis-applying' in Western Australia 'unwanted' Imperial legislation, including any relating to the demise of the Crown, is best dealt with as part of the general legislative exercise to implement the recommendations in the WA Law Reform Commission's 1994 Report on Project No 75. This exercise is ongoing. I can provide details of progress made in the drafting of implementing legislation if you wish.

As you are aware, generally when Imperial enactments are repealed, a provision that applies the *Interpretation Act 1984* Part V is included. An example is the *Statutes (Repeals) Act 2014* section 14, which provides as follows:

- (1) The following Imperial Acts are repealed in so far as they are part of the law of Western Australia -
 - (a) 3 & 4 Will. IV c.105 (1833)
[An Act for the Amendment of the Law relating to Dower]
[Adopted by *Imperial Acts Adopting Act 1836*];

...

- (2) In respect of each Imperial Act referred to in subsection (1), the *Interpretation Act 1984* Part V applies as if a reference in that Part to the repeal of a written law or to the repeal of an enactment were a reference to the repeal of the Imperial Act.

The second bullet point on page 2 of your letter

This asks whether my draft addresses issues concerning the Public Seal. It does not occur to me that there is any issue concerning the continuation of the Public Seal on a demise of the Crown. Clause IV of the *Letters Patent Relating to the Office of Governor of the State of Western Australia* (of 14th February, 1986) provides that "The Governor shall keep the Public Seal of the State for sealing all instruments required to bear the Seal."

This power will be unaffected.

I have also reflected further on sub-clause (2) in my draft. Such a clause is strictly unnecessary due to section 11 of the *Interpretation Act 1984*.

Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

22 JUL 2015