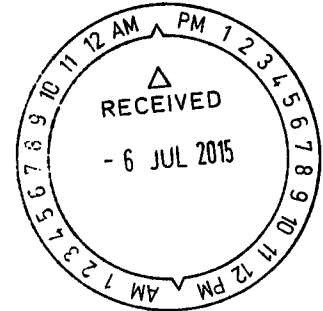




ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our ref: 44-16338



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 6 May 2015.

In it you have asked for my response to a series of questions. After seeking input from the Solicitor-General and Parliamentary Counsel, it occurs to me that the best response to your request is as follows, even if it does not specifically address every issue that you raised.

The term 'demise of the Crown' refers specifically to the cessation of the monarch's reign by death or abdication. Such demise has consequences. In times past, consequences included dissolution of Parliament, vacation of Crown offices and discontinuance of proceedings brought on behalf of and in the name of the Crown.

There has been a good deal of United Kingdom legislation that has dealt with these various matters. The Constitutions of Victoria, Queensland, New South Wales, South Australia and Tasmania make specific provision for the demise of the Crown. I know that the Committee has the 1994 report of the Western Australian Law Reform Commission (in respect of Project No.75) which recommended that "consideration be given to enacting a general *Demise of the Crown Act*" (page 92 of the report). The Commission also reported as to Imperial legislation that applied in Western Australia in respect of the demise.

In my view, Parliament should enact specific legislative provisions dealing with the demise of the Crown. My reason for holding this view is singular and simple; that it would make clear and readily apparent that which should be clear and readily apparent, which is presently not (necessarily) so.

Contrary to the recommendation of the Law Reform Commission, to which I have referred, it occurs to me that it is preferable to have the relevant provision/s included in the *Constitution Act 1889* rather than in the form of "a general *Demise of the Crown Act*". My reason for holding this view is that legislative provisions of this constitutional nature are most sensibly to be included in the State's principal constitutional instrument.

I have alluded above to instruments of the United Kingdom and various Australian States that deal with the demise of the Crown. For the benefit of the Committee, below is re-produced s.5 of the *Constitution Act 1986* (NZ). It occurs to me that a provision in this form (with the marked up change) is perhaps the best to achieve the end of effectiveness, clarity and simplicity.

5 Demise of the Crown

- (1) The death of the Sovereign shall have the effect of transferring all the functions, duties, powers, authorities, rights, privileges, and dignities belonging to the Crown to the Sovereign's successor, ~~as determined in accordance with the enactment of the Parliament of England intituled The Act of Settlement (12 & 13 Will 3, c 2) and any other law relating to the succession to the Throne,~~ but shall otherwise have no effect in law for any purpose.
- (2) Every reference to the Sovereign in any document or instrument in force on or after the commencement of this Act shall, unless the context otherwise requires, be deemed to include a reference to the Sovereign's heirs and successors.

Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE
- 3 JUL 2015