



Dr Anne Twomey
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23 March 2015

The Hon Robyn McSweeney MLC
Chair
Standing Committee on Legislation
Legislative Council,
Parliament House
PERTH WA 6000

Dear Madam Chair,

I refer to your letter of 6 March 2015 requesting a submission in relation to the inquiry of the Standing Committee on Legislation into a *Demise of the Crown Statute*. My submission is as follows.

As the Western Australian Law Reform Commission previously reported in 1994 there are a number of very old British laws that deal with the consequences of the demise of the Crown in a way that potentially applied to the Australian colonies, later the Australian States.

The historic effect of the demise of the Crown in the United Kingdom was to dissolve Parliament. This was altered in the United Kingdom in 1707 by the *Succession to the Crown Act* (6 Anne c 7) which required that upon the demise of the Crown Parliament shall meet immediately and sit so that all Members could then take a new oath of allegiance. It also provided a grace period of 6 months in which new oaths could be taken and Parliament could sit.

There have been doubts as to whether this law, or indeed the dissolution of a legislature upon the demise of the Crown, were ever intended to extend to the colonies. Chitty noted in 1820 that there were cogent reasons why the demise of the Crown did not dissolve colonial legislatures, including the fact that colonists would not be aware of the demise of the Crown for a long time and could therefore not take appropriate action (J Chitty, *A Treatise on the Law of the Prerogatives of the Crown*, (Butterworths, 1820) p 37).

The situation arose in New South Wales in 1837 when actions were undertaken by the Governor and the Legislative Council in ignorance of the death of William IV. The Privy Council held that the authority of the Governor and the Legislative Council were not terminated by the demise of the Crown (*Devine v Holloway* (1861) 14 Moore 290), although the judgment was unclear as to whether this was because the Legislative Council was established by British legislation that overrode any earlier legislation or common law requirement of dissolution, or whether it was because of the application of older British laws such as 6 Anne c 7.



Litigation also occurred in Queensland in 1901 after the death of Queen Victoria. In this case the question was about whether a Justice of Peace remained validly appointed if he had not taken the oath to the new Sovereign. The Supreme Court of Queensland in that case did apply the 6 months grace period set out in 6 Anne c 7 (*In re Cardew; Ex parte Bank of Australasia* (1901) 10 QLJ 176 (Griffith CJ) 178).

It seems to me most unlikely that the demise of the Crown would have any substantive effect upon Parliament, or indeed upon the offices of persons appointed under the Crown or litigation involving the Crown. Nonetheless, this is precisely the sort of thing that obsessed people like to litigate about. The strongest reason for having express provisions to clear away any doubts is to discourage litigation about the issue when a demise of the Crown occurs. Given that there has not been a demise of the Crown for a very long time, it would also be helpful from a public education point of view to be able to point to applicable legislation when it does occur which makes it clear that it has no significant consequences for the ongoing functioning of the State and for legal business within the State. As a demise of the Crown might occur without warning, it would be prudent to remove all questions and uncertainties as soon as practicable.

It is also worth noting that most jurisdictions in Australia have express legislation which has dealt with these issues. Hence, people might wonder why Western Australia does not have it, when other jurisdictions do. In New South Wales, s 12 of the *Constitution Act* 1902 (NSW) deals with the continuance of the Houses after a demise of the Crown, requiring Members to take an oath or affirmation of allegiance to the new Sovereign. Section 49A of the *Constitution Act* 1902 (NSW) deals with the effect of a demise of the Crown upon offices held under the Crown. This time it does not require the taking of new oaths. Section 8 of the *Crown Proceedings Act* 1988 (NSW) also clarifies that the demise of the Crown does not affect civil or criminal proceedings involving the Crown.

In my view, it would be wise either to deal expressly with the consequences of a demise of the Crown (perhaps in the Constitution or in a separate *Demise of the Crown Act*) or to deal with it as a statute law revision measure which preserves any useful and relevant part of the old British laws dealing with demise of the Crown and repeals the rest. Either way, it would be helpful to have something to point to that establishes that the matter has been dealt with, rather than to have to establish implied repeal or argue about whether or not old British statutes ever applied to the State as part of its laws. If you need any further clarification, please let me know.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Anne Twomey'.

Anne Twomey
Professor of Constitutional Law