



25 March 2015

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

Dear Chair

DEMISE OF THE CROWN INQUIRY

Thank you for your letter of 6 March 2015 requesting a submission from me in relation to the above Inquiry.

I have consulted with Dr Colin Huntly, Clerk Assistant (Committees) and the following information is submitted for your consideration.

DEMISE OF THE CROWN

The term Demise, when applied to the Crown, refers to the transfer of the Sovereign's earthly possessions to their successor at law. These possessions extend to the political entities known as the kingdom and dominions (including Australia).

Demise of the Crown should not be confused with the Succession. Succession of the Crown is a separate question of law. Since the Glorious Revolution, the Parliament has definitively expressed the view that the law determining the Succession of the Crown is made by Parliament.

It should be noted that, when George, Duke of Hanover, succeeded to the unified Crown, after Queen Anne, he was 58th in line to the throne. The succession to George I was determined by the still current Act of Succession 1701 (Imp), in order to bypass Queen Anne's living Catholic relatives who were closer in hereditary line to the throne. The modern equivalent would be if Mr Rowan Lascelles, grandson of the Earl of Harewood, were to succeed to Queen Elizabeth II.

The currency of the Act of Succession of 1701 (Imp) points to two related legislative principles of particular relevance. Firstly, legislation does not cease to operate merely by the effluxion of time.¹ Second, in its legislative function, the Parliament does nothing in vain.²

RELEVANT LAW

The following table summarises the relevant law which was identified by the WA Law Reform Commission in 1994 as requiring Statutory Reform:

Received Statute	Relevance	Status	Other States?
7&8 William III c.15 1696 Parliament	Parliament is to continue for 6 months beyond the Demise, or must be revived where between sessions.	Arguably applies in WA.	ACT; NSW; Queensland Tasmania and Victoria have legislated.
1 Anne c.2 1702 Demise of the Crown	Legal proceedings continue.	Ss 4, & parts of 5&6 preserve legal proceedings on the Demise of the Crown	ACT; Tasmania NSW; Queensland and Victoria have legislated.
6 Anne c.41 1707 Succession to the Crown	S 9 Great Seal and Public Seals remain valid until further Order	S 9 should be retained.	Victoria has legislated.
1 Edward VII c.5 1901 The Demise of the Crown Act	Holding of Offices from the Crown not affected by the demise of the crown after the demise of Queen Victoria	Applies by paramount force by virtue of the <u>Colonial Laws Validity Act 1865 (Imp)</u>	Tasmania and Victoria have legislated.

¹ The so-called principle of desuetude has never been a part of the English common law (*Stewart v Lawton* (1823) 1 Bing 374 at 376; 130 ER 151 at 152.)

² *Halki Shipping Corp v Sopex Oils Ltd* [1998] 2 All ER 23 at 43-44.

RELEVANT BACKGROUND

During the referral debate, the Hon Attorney General questioned to what extent the relevant received law had been applied in Western Australian parliamentary history. This is summarised in the following Table:

Date of Demise/Ascension	General Election/Prorogation
Edward VII Succeeded 22 January 1901	Prorogation and Dissolution of the Legislative Assembly on 15 March 1901 (End of the 3 rd Parliament); General Election held 24 April 1901
George V Succeeded 6 May 1910	7 th Parliament not in Session, 3 rd Session commenced 28 July 1910
Edward VIII Succeeded 20 January 1936	Prorogation and Dissolution of the Legislative Assembly on 15 January 1936 (End of the 15 th Parliament); General Election held 15 February 1936
George VI Succeeded 11 December 1936	1 st Session of the 16 th Parliament prorogued, on 11 December 1936. 2 nd Session opened on 5 August 1937.
Elizabeth II Succeeded 6 February 1952	3 rd Session of the 20 th Parliament prorogued, on 10 July 1952. 4 th Session opened on 31 July 1952.

It can be appreciated that, due in part to coincidentally timed State General Elections; the past practice of roughly annual Parliamentary sessions with requisite prorogations; and, the relatively rapid action on the day of the 1936 Abdication, the Parliament of Western Australia has, to date, not been in breach of the 1696 Act of William III. This could, of course, be a matter of coincidence.

It has been suggested that the 1696 Act of William III was repealed in Western Australia as a result of either 6 Anne c.41 *Succession to the Crown Act* (1770) or the passing of the *Representation of the People Act 1867* (UK). The former Act may have the implication of repealing the 1696 Act of William III, but learned legal opinion differs on this point. As the 1867 UK Act did not express itself to operate by paramount force outside of England and Wales, its application to Western Australia depends on the date of reception of English law into the Colony. This point has not been litigated and subsequently, legal opinions will necessarily differ. These are the ambiguities that result in the qualification expressed on the force and effect of the 1696 Act of William III in the 1994 Report of the WA Law Reform Commission.

Reference to the 21st edition of Erskine May reveals that, regardless of any legal requirement, the practice of Parliament is to require Members to take the oath afresh to the new sovereign on the first sitting day following the demise of the Crown.³ This practice has been uniformly followed in Western Australia since the establishment of representative government.⁴

I note the relatively recent practice of having single session Parliaments. This recent practice has the potential to invite a test of invalidity in the courts if Parliament is not prorogued within 6 months from the date of the next demise of the Crown. The recent change to four year sessions creates the potential to an extent that was much less likely when parliament was prorogued annually.

I also note that the 1698 Act of William III has been repealed in the ACT, NSW, Queensland, Tasmania and Victoria in order to remove any uncertainty in those jurisdictions.

I suggest that, in this instance, both the balance of convenience and the cautionary principle taken together, favour legislative action to remove all doubt.

Since the passing of the Australia Acts in 1986, it is anachronistic to rely on received Statutes and Statutes having application by virtue of the Colonial Laws (Validity) Act 1867 (Imp) as a legal basis for the exercise of Sovereignty in Western Australia.

I also note that this matter has been awaiting a legislative response since the 1994 Law Reform Commission Report.

³ At p229.

⁴ See the attached Extracts from Hansard.

Having had the benefit of seeing the draft legislation recommended by the Uniform Legislation Committee, I note that it has the great advantage of plain language drafting, in addition to addressing all of the concerns raised by the Law Reform Commission in 1994.

I thank Dr Huntly for his research into this matter and trust that the above will be of some assistance to the committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Pratt', with a long horizontal line extending to the right.

Nigel Pratt
Clerk of the Legislative Council
Att:
A492140

DUNISE
OF
QUEEN VICTORIA

WESTERN AUSTRALIA.

PARLIAMENTARY DEBATES.

FIRST SESSION OF THE FOURTH PARLIAMENT.

OPENING OF PARLIAMENT.

The First Session of the Fourth Parliament under Responsible Government was convened for the despatch of business on the 28th June, 1901.

Parliament was opened by His Excellency the Governor.

Legislative Council, Friday, 28th June, 1901.

Opening of Parliament by Commissioners.—Swearing-in of Members; new Members; Minister for Lands—Governor's opening Speech; Roads Act Amendment Bill first reading.—Papers Presented.—Address-in-Reply moved.—Adjournment.

OPENING OF PARLIAMENT.

The Legislative Council met at 12 noon, pursuant to proclamation, which was read by the Clerk of Parliaments.

COMMISSIONERS.

HIS EXCELLENCY'S COMMISSIONERS (His Honour Acting Chief Justice Stone and His Honour Justice Hensman) having entered the Chamber a Message was sent to the Legislative Assembly requesting the presence of members in the Council Chamber.

Members of the Legislative Assembly having accordingly arrived, the Acting Chief Justice (as senior Commissioner) read the following Speech:—

HONOURABLE CHIEF JUSTICE OF THE LEGISLATIVE COUNCIL, AND GENTLEMEN OF THE LEGISLATIVE ASSEMBLY.—

We have it in command from His Excellency the Governor to notify to you, with profound regret, the demise of Her late Most Gracious Majesty Queen Victoria, of blessed and glorious memory, and we have it also in command to inform you that, at three o'clock this

afternoon, the causes of His Excellency's calling this Parliament will be declared to you; and it being necessary that a Speaker of the Legislative Assembly should be first chosen, His Excellency's pleasure that you, Gentlemen of the Legislative Assembly repair to the place where you are to sit, and having been duly sworn by the Commissioner appointed by His Excellency, you do elect your Speaker, and notify the same to His Excellency. Owing to the demise of the Crown as aforesaid, and by virtue of the provisions of Section 22 of the Constitution Act, 1869, members of both the Legislative Council and Legislative Assembly are required to take and subscribe the Oath or Affirmation of Allegiance to His Most Gracious Majesty King Edward VII.

SWEARING-IN OF MEMBERS.

Consequent on the demise of Queen Victoria and the accession of King Edward VII, the members of the Legislative Council took the oath of allegiance to His Majesty the King. All the members present swore allegiance, the Hon. J. E. Richardson making affirmation.

NEW MEMBERS.

The following members, elected since the prorogation, took and subscribed the oath of allegiance as required by law, and signed the members' roll:—C. Sommers, B. C. O'Brien, and J. D. Connolly.

The Commissioners then left the Chamber, and the President took the Chair. Commission was read by the Clerk, authorising the President to administer the oath to members not already sworn.

thousand nine hundred and ten. The Governor therefore desires that honourable members will, before they proceed to sit and vote in their respective Houses, severally take and subscribe the oath of allegiance to His Most Gracious Majesty King George the Fifth, before a Commissioner duly authorised by the Governor to attend in the Chamber of the Legislative Council and of the Legislative Assembly respectively this day to administer the same.

We have it also in command from His Excellency the Governor to let you know that he will in person in this place declare the reasons for calling the Parliament together so soon as the members of the Legislative Council and the Legislative Assembly have been sworn and the Council has elected its President.

The members of the Legislative Assembly having retired, and the Junior Commissioner having left the Chamber, the Clerk read a Commission from His Excellency appointing the Chief Justice a Commissioner for administering to the members of the Legislative Council the oath of allegiance to His Majesty King George V.

SWEARING-IN OF MEMBERS.

Consequent on the demise of King Edward VII. and the accession of King George V., the members of the Legislative Council took the oath of allegiance to His Majesty the King.

New Members.

The following members (one-third of the Council) elected since the prorogation, signed the members' roll and took their seats:—Hon. H. Briggs (West), Hon. W. Kingsmill (Metropolitan), Hon. Sir E. H. Wittenoom (North), Hon. V. Hamersley (East), Hon. R. D. McKenzie (North-East), Hon. W. Patrick (Central), Hon. E. McLarty (South-West), Hon. D. G. Gawler (Metropolitan-Suburban), Hon. J. E. Dodd (South), Hon. C. McKenzie (South-East).

The Commissioner left the Chamber.

ELECTION OF PRESIDENT.

The COLONIAL SECRETARY (Hon. J. D. Connolly): Hon. members, since we last met, the office of President has become vacant owing to the effluxion of time of the seat of the Hon. Henry Briggs. I am certain I am voicing the opinion of the majority of members when I say we all heard with the greatest pleasure that the Hon. Henry Briggs was re-elected to his old seat, and that we were, therefore, given the opportunity of re-electing him to the office of President, a position which he has filled with such dignity and credit both to himself and to the members of the House. I have very much pleasure, therefore, in moving—

That the Hon. Henry Briggs be President of this honourable House.

Hon. J. W. HACKETT (South-West): I have unqualified pleasure in seconding and supporting the proposition of the hon. member opposite. We have made a good trial of our late President, and I speak, I am sure, with the thought of every one in this Chamber when I say he has been successful throughout. The hon. member has entirely justified the selection of the House. I have much pleasure in seconding the proposition.

Hon. H. BRIGGS: Mr. Clerk and hon. members, I thank the mover and seconder of my nomination, and I beg leave to submit myself to the will of the House.

There being no other nomination the Hon. H. Briggs was thus duly elected, and was conducted to the Chair by his proposer and seconder.

The PRESIDENT-ELECT, standing on the upper step, said: I beg leave to express my humble acknowledgment for the honour that you have been pleased to confer on me in again electing me as President. I hope that your kindly feeling which has led to my election to the office may be continued to sustain me in the discharge of its important duties. For I recognise that the Council is what it is, not merely by virtue of the rules of debate which it obeys, nor the impartiality with which these rules are admin-

istered, but by reason of the high spirit of public duty which pervades its proceedings. Its past history has been enriched by the fine character of members who used the Standing Orders in a spirit of fairness, reverence, decorum, and honesty of purpose. In thus interpreting the spirit of the House, I shall always be your obedient servant. I feel sure that in the future, as in the past, I shall have the support of hon. members in every endeavour to uphold the honour and dignity of the Council, and with such support I may hope to deserve your confidence so generously bestowed.

Congratulations.

The COLONIAL SECRETARY (Hon. J. D. Connolly): Allow me as leader of this House to offer to you, Mr. President, my hearty congratulations on your being unanimously elected as President of this honourable House. I trust you may be long spared to fill the office to which you have for the second time been elected. On my own behalf I have to thank you for the kindness and courtesy you have always shown to me as leader of the House, and I have very much pleasure indeed in congratulating you on your re-election to the high office.

The PRESIDENT: Hon. members, I thank the leader of the House for his kind words of congratulation. I have nothing to add to what I have just said, except that I trust in the support of members of this House. It is very pleasing that, although ten of us had to go to the electors, all those who desired to be returned again to Parliament have been re-elected, so that virtually we have only three new members in the House, the Hon. D. G. Gawler, the Hon. J. E. Dodd, and the Hon. C. McKenzie. The Hon. Sir Edward Wittenoom has been elected twice, but I think this is the first occasion he has sat in the House as the result of those two elections. We cannot, however, look upon him as a new member. When I entered the Council in 1896 he was the leader of this House, and he served this House and his country in various ways, not only here but also in the Mother country. That explains why it is that we cannot look upon him as a

new member. We may congratulate ourselves that the House has the benefit of his ripe experience, knowledge, and judgment. The other new members, the Hon. Mr. Dodd, the Hon. Mr. McKenzie, and the Hon. Mr. Gawler, are now appearing in this House for the first time; but they were not new in this State for the tongue of good report has already long been heard in their favour. I feel sure their entrance to this House will be an acquisition to the debating power of the Legislative Council and the sound wisdom of the decisions of the Chamber. I welcome them, and it will be my pleasure, as it is my duty, to afford the new members any information they may desire to obtain from me. Members, I thank you.

DEMISE OF KING EDWARD VII:
ACCESSION OF KING GEORGE

The COLONIAL SECRETARY (Hon. J. D. Connolly): On account of the death of our late beloved King I beg to move the following motion—

We, the members of the Legislative Council in the Parliament of the State of Western Australia, take this the earliest opportunity of expressing our deep sympathy in the great sorrow which your Majesty has sustained through the death of your illustrious father and our late beloved Sovereign, King Edward VII.

Hon. J. W. HACKETT (South-West): I second the motion.

Question passed.

The COLONIAL SECRETARY (Hon. J. D. Connolly): I beg to move—

We, the members of the Legislative Council in the Parliament of the State of Western Australia, humbly offer our sincere congratulations on your Majesty's accession to the Throne. We desire to assure your Majesty of our loyalty and devotion, and to express the hope that your Majesty may enjoy a long and prosperous reign.

gether of this Parliament; and it being necessary that a Speaker of the Legislative Assembly should first be chosen, it is His Excellency's pleasure that you, members of the Legislative Assembly, repair to the place where you are to sit, and having been duly sworn by the Commissioner appointed by His Excellency you do elect your Speaker and notify the same to His Excellency the Lieut.-Governor.

SWEARING-IN OF MEMBERS.

Members of the Legislative Assembly having retired, and the Junior Commissioner having left the Chamber, the Clerk read a Commission from His Excellency appointing Mr. Justice Draper a Commissioner for administering to members of the Legislative Council the oath of allegiance to His Majesty King Edward VIII.

Consequent on the demise of King George V. and the accession of King Edward VIII., members of the Legislative Council took the oath of allegiance to His Majesty the King.

The Senior Commissioner left the Chamber.

New Members.

The Clerk produced returns to the writs for the election of members to serve in the Council for various provinces, from which it appeared that the following gentlemen were duly elected for the province set opposite their respective names:—Hon. L. B. Bolton (Metropolitan), Hon. W. H. Kitson (West), Hon. G. W. Miles (North), Hon. J. M. Drew (Central), Hon. G. B. Wood (East), Hon. L. Craig (South-West), Hon. A. Thomson (South-East), Hon. E. M. Heenan (North-East), and Hon. J. M. Macfarlane (Metropolitan-Suburban).

The new members then took and subscribed the oath and signed the roll.

DEMISE OF KING GEORGE V.: ACCESSION OF KING EDWARD VIII.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [12.23]: On account of the death of our late beloved King, I beg to move the following motion:—

We, the members of the Legislative Council in the Parliament of the State of Western Australia, take this the earliest opportunity of expressing our deep sympathy in the great sorrow which Your Majesty has sustained through the death of your illustrious father and our late beloved Sovereign, King George V.

THE HONORARY MINISTER (Hon. W. H. Kitson—West): I second the motion. Question passed, members standing.

THE CHIEF SECRETARY (Hon. J. M. Drew—Central) [12.24]: I beg to move the following motion:—

We, the members of the Legislative Council in the Parliament of the State of Western Australia, humbly offer our sincere congratulations on Your Majesty's accession to the Throne. We desire to assure Your Majesty of our loyalty and devotion, and to express the hope that Your Majesty may enjoy a long and prosperous reign.

THE HONORARY MINISTER (Hon. W. H. Kitson—West): I second the motion. Question passed, members standing.

Sitting suspended from 12.40 to 3 p.m.

LIEUT.-GOVERNOR'S OPENING SPEECH.

His Excellency the Lieut.-Governor entered the Council Chamber at 3.5 p.m. and, the members of the Legislative Assembly having also attended in the Chamber, obediently to summons, His Excellency was pleased to deliver the following speech:—

Mr. President and Honourable Members of the Legislative Council—

Mr. Speaker and Members of the Legislative Assembly—

It is with pleasure that I open the First Session of the Sixteenth Parliament of Western Australia for the transaction of public business.

With the deepest sorrow I refer to the recent passing of His Most Gracious Majesty King George V. of blessed and glorious memory.

By his wise counsel his serene and discriminating outlook upon Empire and Dominion affairs, and his identifying himself with the aspirations of his subjects in all parts of his realm, the late King deservedly won the love and support of all sections of his people.

In the accession to the Throne of His Most Gracious Majesty, King Edward VIII., we are fortunate in having a Monarch who also has acquired a personal knowledge of Western Australia and its people.

During the month of June the people of this State were honoured by a visit from the recently appointed Governor General, in the person of His Excellency Baron Gowrie, V.C., G.C.M.G., C.B., D.S.O. While on

DEATH OF
KING
GEORGE V.

WESTERN AUSTRALIA.

PARLIAMENTARY DEBATES.

FIRST SESSION OF THE SIXTEENTH PARLIAMENT :

The Legislative Assembly was dissolved by Proclamation on the 15th January, 1936.

The Sixteenth Parliament was convened for the despatch of business on the 6th August, 1936, and the First Session was commenced on that day.

Legislative Council.

Thursday, 6th August, 1936.

	PAGE
Opening of Parliament	1
Proclamation	1
Commissioners	1
Swearing-in of Members	2
Demise of King George V.: Accession of King Edward VIII.	2
Lieut.-Governor's Opening Speech	2
Bill: Boat Licensing Act Amendment, 1B.	6
Lieut.-Governor's Speech, distribution	6
Address-in-reply, first day	6

name for the opening of the first session of the Sixteenth Parliament.

The Commission was read.

The Senior Commissioner read the following statement:—

Honourable gentlemen of the Legislative Council and members of the Legislative Assembly—

I have it in command from His Excellency the Lieut.-Governor to deliver to you the following message:—

The Lieut.-Governor informs the Legislative Council and the Legislative Assembly that he has officially learned, with the deepest regret, that our Most Gracious Sovereign, His Majesty King George V. departed this life on the 20th day of January, 1936. The Lieut.-Governor further informs the Legislative Council and the Legislative Assembly that his Most Gracious Majesty King Edward VIII. was duly and lawfully proclaimed King of Great Britain, Ireland, and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India, Supreme Lord and over the State of Western Australia, whereof public proclamation and due notification was fully and lawfully made by the Lieut.-Governor within this State on the 22nd day of January, 1936. The Lieut.-Governor therefore desires that honourable members will, before they proceed to sit and vote in their respective Houses, severally take and subscribe the oath of allegiance to His Most Gracious Majesty King Edward VIII., before a Commissioner duly authorised by the Lieut.-Governor to attend in the Chamber of the Legislative Council and of the Legislative Assembly respectively this day to administer the same.

Mr. President, Honourable gentlemen of the Legislative Council and members of the Legislative Assembly—

I have it also in command from His Excellency the Lieut.-Governor to inform you that at 3 o'clock this afternoon His Excellency will declare to you the causes of the calling to-

OPENING OF PARLIAMENT.

The Legislative Council met at 12 noon. The PRESIDENT took the Chair.

PROCLAMATION.

The Clerk of Parliaments (Mr. A. R. Grant) read the Proclamation of His Excellency the Lieut.-Governor, summoning the first session of the Sixteenth Parliament.

COMMISSIONERS.

His Excellency's Commissioners (His Honour Mr. Justice Draper and His Honour Mr. Justice Dwyer) having entered the Chamber at noon, a message was sent to the Legislative Assembly requesting the presence of members in the Council Chamber.

Members of the Legislative Assembly having arrived accordingly, His Honour Mr. Justice Draper (Senior Commissioner) requested the Clerk to read His Excellency's Commission to do all things necessary in his

ABDICATION
OF
KING EDWARD VIII

WESTERN AUSTRALIA.

PARLIAMENTARY DEBATES.

SECOND SESSION OF THE SIXTEENTH PARLIAMENT:

The Parliament was prorogued to the 29th July, 1937. It was further prorogued to the 5th August, 1937, when it met for the despatch of business.

Legislative Council,

Thursday, 5th August, 1937.

	PAGE
Opening of Parliament	1
Proclamation	1
Commissioners	1
Accession of His Majesty King George VI.	1
Swearing-in of Members	2
Congratulations to the King	2
Lieut.-Governor's Opening Speech	2
Bill: Mining Act Amendment, 1A.	7
Lieut.-Governor's Speech, distribution	7
Address-in-reply, first day	7

OPENING OF PARLIAMENT.

The Legislative Council met at 12 noon.
The PRESIDENT took the Chair.

PROCLAMATION.

The Clerk of Parliaments (Mr. L. L. Lenke) read the Proclamation of His Excellency the Lieut.-Governor summoning the second session of the Sixteenth Parliament.

COMMISSIONERS.

His Excellency's Commissioners (His Honour Mr. Justice Draper and His Honour Mr. Justice Dwyer) having entered the Chamber at noon, a message was sent to the Legislative Assembly requesting the presence of members in the Council Chamber.

Members of the Legislative Assembly having arrived accordingly, His Honour Mr. Justice Draper (Senior Commissioner) requested the Clerk to read His Excellency's

Commission to do all things necessary in his name for the opening of the second session of the Sixteenth Parliament.

The Commission was read.

**ACCESSION OF HIS MAJESTY
KING GEORGE VI.**

The Senior Commissioner read the following message from His Excellency the Lieut.-Governor:—

Hon. gentlemen of the Legislative Council and members of the Legislative Assembly—

I have it in command from His Excellency the Lieut.-Governor to deliver to you the following message:—

The Lieut.-Governor informs the Legislative Council and the Legislative Assembly that His Most Gracious Majesty, King George VI., was duly and lawfully proclaimed King of Great Britain, Ireland and of the British Dominions beyond the seas, Defender of the Faith, Emperor of India, Supreme Lord in and over the State of Western Australia whereof public proclamation and due notification was fully and lawfully made by the Lieut.-Governor within the State on the 12th day of December, One thousand nine hundred and thirty-six.

His Excellency therefore desires that hon. members will, before they proceed to sit and vote in their respective Houses, severally take and subscribe the oath of allegiance to His Most Gracious Majesty King George VI. before a Commissioner duly authorised by the Lieut.-Governor to attend in the Chamber of the Legislative Council and of the Legislative Assembly respectively this day to administer the same.

February, 1952. The Governor further informs the Legislative Council and the Legislative Assembly that Her Most Gracious Majesty, Queen Elizabeth II, was duly and lawfully proclaimed Queen of Great Britain, Ireland and the British Dominions beyond the seas, Defender of the Faith, whereof public proclamation and due notification was fully and lawfully made by the Governor within the State on the eighth day of February, One thousand nine hundred and fifty-two.

The Governor therefore desires that hon. members will, before they proceed to sit and vote in their respective Houses, severally take and subscribe the oath of allegiance to Her Most Gracious Majesty, Queen Elizabeth II, before a Commissioner duly authorised by the Governor to attend in the Chamber of the Legislative Council and the Legislative Assembly, respectively, to administer the same.

SWEARING-IN OF MEMBERS.

Members of the Legislative Assembly having retired and the Junior Commissioner having left the Chamber, the Clerk read a Commission from His Excellency appointing Mr. Justice Wolf a Commissioner for administering to members of the Legislative Council the oath of allegiance to Her Majesty Queen Elizabeth II.

Consequent on the demise of King George VI, and the accession of Queen Elizabeth II, members of the Legislative Council took the oath of allegiance to Her Majesty the Queen.

The Senior Commissioner then retired from the Chamber.

[The President resumed the Chair.]

DEMISE OF HIS MAJESTY KING GEORGE VI: ACCESSION OF HER MAJESTY QUEEN ELIZABETH II.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [5.3]: I desire to move, without notice—

That the following Address be transmitted to His Excellency the Governor for presentation to Her Majesty the Queen:—"We, the members of the Legislative Council in the Parliament of the State of Western Australia, take this the earliest opportunity of expressing our deep sympathy in the great sorrow which Your Majesty has sustained through the death of your illustrious father, and our late beloved Sovereign, King George VI."

HON. J. A. DIMMITT (Suburban): I beg leave to second the motion.

Question passed; members standing.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [5.6]: I desire to move, without notice—

That the following Address be transmitted to His Excellency the Governor, for presentation to Her Majesty the Queen:—"We, the members of the Legislative Council in the Parliament of the State of Western Australia, humbly offer our sincere congratulations on Your Majesty's accession to the throne. We desire to assure your Majesty of our loyalty and devotion, and to express the hope that Your Majesty may enjoy a long and prosperous reign."

HON. J. A. DIMMITT (Suburban): I desire to second the motion.

Question put and passed.

MOTIONS—OBITUARY.

Late Hon. G. B. Wood, M.L.C.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [5.8]: It is with deep regret that I move, without notice—

That this House place on record its sincere appreciation of the services rendered to the State by the late Hon. Garnet Barrington Wood, who at the time of his passing occupied the portfolios of Minister for Agriculture and the North-West and who was a member for the Central Province, and express its deep sympathy with his widow and the members of his family in the irreplaceable loss they have sustained by his decease; and that the President be asked to convey the foregoing to his widow and family.

The late Mr. Wood was a member of the Legislative Council for a little over 15 years, having first entered Parliament in May, 1936, as a member for the East Province. He was appointed Honorary Minister without portfolio on the return of the present Government in April, 1947. In January, 1948, he was given the portfolio of Agriculture to which, in April, 1950, was added that of the North-West. He was granted full status as a Cabinet Minister in October, 1950.

Mr. Wood inherited a flair for politics and administration, as his father represented West Perth in the Legislative Assembly, from 1894 to 1901, and the Metropolitan-Suburban Province in the Legislative Council from 1902 until his death in August, 1903. The late Mr. Wood, senior, was a member of the first Ministry under responsible Government,

**Erskine May's
Treatise on
The Law, Privileges, Proceedings
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THE CROWN IN

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the date thereof, under the Prorogation Act 1867.¹ The writ of summons has always named the day and place of meeting,² without which the requisition to meet would be imperfect and nugatory.

Demise of the Crown

The demise of the Crown is the only contingency upon which Parliament is required to meet without summons in the usual form. By the Succession to the Crown Act 1707, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act; and if adjourned or prorogued is immediately to meet and sit. In such circumstances, Parliament has met on Sunday.³ The case of a demise of the Crown after a proclamation has been given summoning a new Parliament is now governed by section 20 of the Representation of the People Act 1985.⁴ This replaces provisions of the Meeting of Parliament Act 1797 (under which the old Parliament was recalled if a demise of the Crown occurred after dissolution at a general election but before polling day) with a provision postponing polling day by a fortnight. By the Representation of the People Act 1867,⁵ the Parliament in being at the demise of the Crown continues as long as it would otherwise have done.

Causes of summons

As the Queen appoints the time and place of meeting, she also at the commencement of every session declares to both Houses the causes of summons, by a speech delivered to them in the House of Lords by herself in person or by Commissioners appointed by her. Until she has done this, neither House can proceed with any business; but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them (see p 233).

On two occasions, during the illness of George III, the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions. On the first occasion, Parliament had been prorogued till 20 November 1788, then to meet for the despatch of business. When Parliament assembled on that day, the King was under the care of his physicians, and

1 The power of accelerating the meeting of Parliament for despatch of business by proclamation, given by the Meeting of Parliament Act 1797, as amended (see p 223), applies only to a meeting of Parliament pursuant to a prorogation.

2 When Parliament temporarily sought other accommodation during the 1939 war (see p 166 n 4), its place of sitting was always within Westminster, and therefore within the terms of its summons.

3 Queen Anne CJ (1714–18) 3; Geo 2, *ibid* (1757–61) 933; Geo 3, *ibid* (1820) 89. For other occasions of the demise of the Crown, see *ibid* (1727–32) 5 (Geo 1); *ibid* (1830) 589 (Geo 4); *ibid* (1837) 490 (Will 4); *ibid* (1901) 5 (Queen Victoria); *ibid* (1910) 147 (Edw 7); *ibid* (1935–36) 50 (Geo 5); *ibid* (1936–37) 59 (Edw 8); *ibid* (1951–52) 88 (Geo 6).

4 1985 c 50.

5 S 51.

cases such adjournments have scarcely differed from prorogations.¹ But although no instance has occurred in which either House has refused to adjourn, the communication might be disregarded. Business has been transacted after the Crown's desire has been made known; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment and division.² The pleasure of the Crown was last signified on 1 March 1814;³ and it is probable that the practice will not be revived.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The Meeting of Parliament Act 1799, as amended by the Meeting of Parliament Act 1870, enacts that when both Houses of Parliament stand adjourned with more than fourteen days still to run, the Queen may issue a proclamation, with the advice of her Privy Council, declaring that the Parliament shall meet on a day not less than six days from the date of the proclamation; and the Houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either House, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

Dissolution

The Queen may also close the existence of Parliament by a dissolution, but is not entirely free to define the duration of a Parliament. Before the Triennial Act 1694 there was no constitutional limit to the continuance of a Parliament but the will of the Crown. Under the Septennial Act 1715 it ceased to exist after seven years from the day on which, by the writ of summons, it was appointed to meet, a period which was reduced to five years by the Parliament Act 1911. Two great wars have made it necessary to prolong Parliaments for more than the five-year period prescribed by the Act of 1911.⁴ Before the Revolution of 1688 a Parliament was dissolved by the demise of the Crown; but by the Act 7 & 8 Will 3, c 15, and by the Succession to the Crown Act 1707, a Parliament was dissolved six months after the demise of the Crown⁵ (see p 59), and so the law continued until, by section 51 of the Representation of the People Act of 1867, it was provided that the Parliament in being, at any future demise of the Crown, shall not be dissolved by

1 Adjournment by royal commission CJ (1547-1628) 639; Rapin ii. 205; CJ (1667-87) 158, 423, 426, 427, etc; Marvell i. 337, 343, 346, 356.

2 2 Hatsell 312, 316, 317; CJ (1547-1628) 807, 808, 809, *ibid* (1688-93) 694; *ibid* (1711-14) 26, 275; *ibid* (1799-1800) 49; 34 Parl Hist 1196; Colchester i 192.

3 LJ (1813-14) 747; CJ (1813-14) 132.

4 The duration of the Parliament which began on 31 January 1911 was extended to eight years by the Parliament and Registration Act 1916, s 1(1), the Parliament and Local Elections Act 1916, s 1, and the Parliament and Local Elections Act 1918, s 1. The duration of the Parliament which began on 26 November 1935 was extended to ten years by the Prolongation of Parliament Acts of 1940, 1941, 1942, 1943 and 1944. See also the Parliament and Local Elections Act 1916, s 3, for a conditional limitation of the duration of a Parliament.

5 Even the Privy Council expired at the demise of the Crown, and its members were reappointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, *Reign of Anne*, p 44.

such demise, but shall continue, unless dissolved

Parliament is usually called having been prorogued issued at a time when business issued by the Queen, with that the Queen has given the Secretary of State for and according to law, for and returnable in due course

Since the dissolution not dissolved Parliament by the Prince Regent in that form, but proceeded 1831 William IV, having come to meet you for the its *immediate dissolution* the following day. On 1 on the same day.² On 1 ment, announced her in ingly dissolved by pro despatched by that ever not the invariable,⁵ pra Parliament is prorogued both Houses were adjc

Other powers

In addition to these se meeting, directing the c from time to time by p Crown has other parlia parts of the book in de

1 CJ (1922) 330; *ibid* (1963-

2 CJ (1818) 427; *ibid* (1830-

3 CJ (1847) 960; *ibid* (1847-

4 21 March 1857; 23 April 1

28 November 1910; 16 N

25 October 1935; 15 June

8 February 1974.

5 1859, prorogation, 19 Ap

mation, 26 June; 1895, 1

August, proclamation, 17

24 October and 11 Decem

8 January 1906; 1909, p

prorogation, 21 Novemb

further prorogation, 21 J

October, proclamation, 5

6 See p 222, n 1, for details

Speaker, thus elected and the Parliament, unless in the case of a Speaker during

Speaker's death at a time too late for the election of a successor at the time the Speaker at the earliest has been made, the mace is laid under the Table.¹ A motion moves the adjournment of the House in the direction of the House'. A motion is made for the election of a Speaker to be moved after the Clerk's report to the election.²

The House of the cause that Order No 1 provides that a Speaker in his office shall continue to be chosen.

1-72⁴ recommended that in the middle of a session, giving notice and, if circumstances had been elected.

instead of Her Majesty's in the House of Lords, a motion moves the House that Her Majesty with to the choice of a new Speaker in the Chair until the day, at which point he leaves the Chair; but in the event of the Speaker's election following upon the same manner as at the Speaker's service in the Chair (see

The Minister acquaints the House should present their

Abercromby *ibid* (1839) 271; Mr Speaker *ibid* (1872) 9; Mr Speaker Brand *ibid* (1905) 243; Mr Speaker *ibid* (1928) 210. A letter from Mr Speaker Morrison and Mr Speaker Morrison and Mr Speaker Morrison at the end of the Parliament (HC Deb (1922-23) 42, c 919 and CJ (1982-83) 125) on a motion to relinquish his office on a day see CJ (1975-76) 125.

ibid (1905) 249; *ibid* (1921) 114; early instances of proceedings on a motion see CJ (1066-1625) 1,

Speaker tomorrow (at an hour stated) in the House of Peers, for Her Majesty's royal approbation.¹ The Speaker Elect puts the question for adjournment, and, when the House adjourns, he leaves the House without the mace before him. On the following day the Speaker Elect takes the chair, after prayers have been read, and awaits the arrival of Black Rod from the royal commissioners, by whom the royal approbation is given under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.² On returning from the House of Lords the new Speaker reports his approbation by the Queen, and repeats his acknowledgments to the House. The appointed business for the day is then entered upon.

Oath in the Commons

The Speaker, who has been elected at the commencement of a Parliament, on returning from the Lords, reports to the House his approbation by the Queen and the confirmation of their privileges and 'repeats his most respectful acknowledgments to the House for the high honour they have done him'. He then puts the House in mind that the first thing to be done is to take and subscribe the oath required by law; and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other Members who are present.

The occupants of the government front bench (see p 167) are generally the first to be sworn, and after them the occupants of the opposition front bench. When these and any privy counsellors not included among them have taken the oath the Speaker calls the other Members present bench by bench, giving precedence to the various benches at his discretion, but as a rule calling those on his right and those on his left alternately.³

On the following day the daily prayers are read, for the first time, by the Speaker's chaplain.

The Members normally continue to take the oath on that day and on one subsequent day, after which the greater part are sworn and qualified to sit and vote.

Oath on demise of Crown. In the event of the demise of the Crown Parliament meets immediately, pursuant to the Succession to the Crown Act 1707, and all Members of both Houses again take the oath.⁴

There appears to be some doubt whether the obligation to take the oath in these circumstances is statutory or rests merely upon the custom of Parliament. The latter opinion has been stated with authority in the House of

1 In 1895 and in 1905 the Speaker was elected on the day upon which the House adjourned for Easter and Whitsuntide respectively, and was presented for the sovereign's approbation on the first day on which the House met after the adjournment, CJ (1895) 149; *ibid* (1905) 249. See also *ibid* (1970-71) 184-185 for a recent instance where approbation was signified on the same day as the election of a Speaker.

2 LJ (1839) 308; CJ (1693-97) 272; *ibid* (1839) 274; *ibid* (1872) 23; *ibid* (1884) 74; *ibid* (1895) 149; *ibid* (1905) 249; *ibid* (1921) 115; *ibid* (1928) 215; *ibid* (1964-65) 412. On the election of Mr Addington, in 1789, the King himself came down to the House of Lords to signify his approbation in person, CJ (1788-89) 435.

3 HC Deb (1959-60) 612, c 20.

4 LJ (1837) 420, etc; CJ (1837) 490, etc; LJ (1901) 4, etc; CJ (1901) 5, etc; LJ (1910) 121, etc; CJ (1910) 150, etc; LJ (1935-36) 51, etc; CJ (1935-36) 50, etc; LJ (1936-37) 59, etc; CJ (1936-37) 59, etc; LJ (1951-52) 77, etc; CJ (1951-52) 88.

Commons.¹ On the death of Edward VII the House of Commons met on Saturday 7 May 1910 but, owing to the unavoidable absence of the Speaker, the Chairman of Ways and Means and the Deputy Chairman, adjourned to the following Monday, the Clerk of the House fulfilling the role which, in the now superseded procedure, he played in the election of a Speaker. The Chairman of Ways and Means, acting as Deputy Speaker, and other Members then took the oath. The Speaker took the oath at the first sitting of the House at which he was present.²

Manner of taking the oath. The ordinary form and manner of administering and taking the oath are prescribed by section 1 of the Oaths Act 1978. Under this section the person taking the oath holds the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and says or repeats after the officer administering the oath the words, 'I swear by Almighty God that . . .' followed by the words of the oath prescribed by law.

A Member may also take the oath with uplifted hand in the form and manner in which an oath is usually administered in Scotland.³

Members who desire to do so may take the oath prescribed in the Promissory Oaths Act 1868 (with the necessary alteration in the sovereign's designation)⁴ and kiss the book. The form of that oath is, 'I do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.'⁵

Affirmation in lieu of oath. Members who object to be sworn may avail themselves of the power granted by section 5 of the Oaths Act 1978⁶ which provides that any person who objects to being sworn shall be permitted to make his solemn affirmation instead of taking an oath.

Time for taking the oath. A definite time at the beginning of a sitting, usually immediately after Prayers, is reserved for Members returned after a general election who desire to take the oath or make the affirmation required by law on any day after the days set aside for taking the oath at the beginning of a Parliament.⁷

Penalties for omission to take the oath. By the Parliamentary Oaths Act 1866, any Peer voting by himself or his proxy, or sitting in the House of Lords without having taken the oath, is subject, for every such offence, to a penalty of £500; and any Member of the House of Commons who votes as such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he were dead. These penalties can be

1 HC Deb (1937) 319, c 762.

2 CJ (1910) 147, 150, 154.

3 Oaths Act 1978, s 3.

4 Oaths Act 1978, s 3.

5 Promissory Oaths Act 1868, ss 2, 8.

6 See also SO No 5. The permission to substitute for an oath a solemn affirmation was first accorded by the Oaths Act 1888, s 5.

7 CJ (1886) 5; Parl Deb (1886) 302, c 21. See also SO No 6. On 9 March 1882, the Speaker had stated that to object to any Member taking the oath except on grounds public or notorious, or within the cognizance of the House, would be simply vexatious, Parl Deb (1882) 267, c 441.

recovered upon the suit or neglected to take the oath indemnity have been passed neglect.² In the Commons immediately the omission

But although until he is he may vacate his seat but entitled to all the other privileges regarded, both by the House and other disqualification has

Members of the Commons nominated to committees

Certificate of return. A Crown in Chancery delivered Book of the names⁵ of the practice the book is received Assistant standing below return of a Member.

Subscription of oath and sworn, or has made his affirmation which is a bound parchment which he has taken or not Speaker by the Clerk of the House in the manner of taking the oath pp 298-300.

When the greater part of preliminaries peculiar to the opening of Parliament and Parliament is ready to begin the initial business of the session

OPENING OF NEW PARLIAMENTS

In every session but the first the Speaker, nor any general business is done once by the Queen's speech in the House. Until the causes

1 [1883] *Bradlaugh v Clarke* 8

2 45 Geo 3, c 5 (Lord J Thynne v Grosvenor); 5 Vict c 3 (Earl of Devonshire's private Acts, none of them printed); introduced. Four peers having taken the oath on the Standing Orders of the House

3 CJ (1805-06) 148; *ibid* (1812) 148; *Bradlaugh's case*, however,

4 CJ (1714-18) 59; 6 Chandler. (1857-58) 162, 167; Parl Deb (1882) 267, c 441.

5 The Committee of Privileges shall appear in the official record of the House under the title (HC Deb (197

gation of Parliament at the
riament was prorogued by
functions on this occasion
g by virtue of a commission
ing royal assent a clause is
gnified.² In this case royal
ueen's Speech.³ Otherwise
he reading of the Speech
c. At the conclusion of the
ed in the commission.⁴
amber, the Speaker, sitting
e House the terms of the
to be entered in the Votes

A Sitting: general arrangements in the House of Commons

The purpose of this chapter is to give an account of the arrangements made for conducting a sitting of the House of Commons. This will include the rules regulating the meeting and adjournment of the House, the requirement of a quorum for divisions, and such arrangements as exist for distributing the time of the sitting between various classes of business.

DAYS AND HOURS OF SITTING

The House normally sits upon Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, rarely on Saturdays, never (except in emergency) on Sundays. The times of sitting and of other proceedings given in this and the succeeding chapter (see pp 256–257), are those laid down by Standing Orders. They were put into force under a sessional order made on 13 November 1946, which was incorporated into Standing Orders on 4 November 1947. On 17 January 1980 Standing Order No 5 (relating to Friday Sittings), now SO No 11, was amended to provide that the House should meet at half-past nine o'clock instead of at eleven o'clock.

EXTRAORDINARY SITTINGS AND ADJOURNMENTS

Under Standing Order No 11 (6) a sitting on Saturday or Sunday (except in the case of the demise of the Crown or of a recall in accordance with Standing Order No 12) can only be secured by a resolution of the House, made normally by a Minister of the Crown at the commencement of public business. As a sitting on either of these days is not subject to any rules of the House regulating the hours of meeting, interruption, and adjournment, such matters have been provided for in the resolution appointing a Saturday sitting or, when the House is recalled under Standing Order No 12, in a resolution moved at the commencement of the sitting; and such sittings have been held under the limiting conditions applying to Friday sittings,¹ or subject to special directions, such as that when government business is concluded,² or at a stated hour³ the House shall adjourn without question put.

6th edn, p 294.
on was authorized by a separate

) 383; *ibid* (1820) 764; *ibid* (1892)

21.

1 CJ (1920) 492; *ibid* (1921) 51, 65.

2 CJ (1889) 453; *ibid* (1890) 553; *ibid* (1893–94) 57.

3 CJ (1955–56) 429; *ibid* (1981–82) 286.

