

CONSTITUTION AMENDMENT (DEMISE OF THE CROWN) BILL 2017

First Reading

Bill read a first time, on motion by **Mr M. McGowan (Premier)**.

Explanatory memorandum presented by the Premier.

Second Reading

MR M. MCGOWAN (Rockingham — Premier) [3.36 pm]: I move —

That the bill be now read a second time.

This Constitution Amendment (Demise of the Crown) Bill 2017 proposes an amendment to the Western Australian Constitution Act 1889, which makes express provision for the demise of the Crown. The term “demise of the Crown” refers specifically to the end of the reign of one monarch by death or abdication, resulting in the transfer of sovereignty to another monarch. Such demise has legal consequences. Historically, these included the immediate dissolution of Parliament; the immediate vacation of office of all officers of the Crown; and all proceedings brought on behalf of and in the name of the Crown being discontinued. Over time, these consequences were addressed by various acts of the Parliament of the United Kingdom and, prior to that, of Great Britain. The law in this area has, however, developed in a piecemeal fashion.

Presently, neither the Constitution Act 1889 nor the Constitution Acts Amendment Act 1899 fully address all concerns regarding the demise of the Crown. Currently, the WA Constitution Act 1889 contains only one reference to the demise of the Crown under section 54, which provides that the commissions of judges shall continue notwithstanding the demise of the Crown. The Constitutions of Victoria, Queensland, New South Wales, South Australia, Tasmania and New Zealand all make specific provision for the demise of the Crown.

The purpose of the proposed amendment is to make clear what is presently not clear but should be: that the demise of the Crown has no impact on the Parliament of Western Australia, on offices held by officers of the Crown, on any litigation brought on behalf of and in the name of the Crown, or on any other aspect of the law.

Concerns regarding the lack of provision for the demise of the Crown have been raised on three previous occasions. First, it was raised by the Western Australian Law Reform Commission in its 1994 report, “Project No. 75—United Kingdom Statutes in Force in Western Australia”. The Law Reform Commission reviewed the Imperial statutes concerning the demise of the Crown and recommended that “consideration be given to enacting a general Demise of the Crown Act”.

Second, it was raised by the Standing Committee on Uniform Legislation and Statutes Review in the context of considering the Succession to the Crown Bill 2014, which concerned changes in the rules for succession to the British Crown and the Crown in the 16 commonwealth realms that retain the British Crown as their head of state. In its eighty-eighth report, the standing committee recommended that the Succession to the Crown Bill 2014 be amended to implement the recommendations of the Law Reform Commission relating to the demise of the Crown. This recommendation was not adopted and the Succession to the Crown Act 2015 (WA) does not address the demise of the Crown.

Third, it was raised in August 2015 by the Standing Committee on Legislation in its twenty-eighth report, “Demise of the Crown”. The committee recommended “that the Legislative Council pass a Constitution Amendment (Demise of the Crown) Bill”. The committee’s report also included a recommended draft bill. The committee’s bill is drafted in the same terms—although in different format—as those adopted in New Zealand. This draft bill was supported by the Attorney General on the advice of the Solicitor-General and the Acting Parliamentary Counsel. The draft bill introduced today differs from that recommended by the committee only in date and minor formatting changes.

The purpose of the proposed amendment is to clarify that the demise of the sovereign only has the effect of transferring all functions, duties, powers, authorities, rights, privileges and dignities belonging to the Crown to the sovereign’s successor, and has no other legal effect. As honourable members will be aware, section 73(1) of the Constitution Act 1889 provides the legislature with full power and authority, from time to time, by any act, to repeal or alter any of the provisions of the Constitution Act 1889 itself. This power is, however, subject to the remaining provisions of the Constitution Act 1889. Section 73(2) requires that the second and third readings of certain bills shall be passed with the concurrence of an absolute majority of members of the Legislative Council and Legislative Assembly, and that these bills be submitted to a referendum of electors before the bill is given royal assent.

The amendment does not engage the specific requirements of section 73(2) of the Constitution Act 1889, as it does not affect sections 2, 3, 4, 50, 51 or 73 of the Constitution Act 1889. Accordingly, the Constitution Amendment (Demise of the Crown) Bill 2017 is not required to be passed by an absolute majority of the Legislative Council

and Legislative Assembly during the second and third readings of the bill; nor is it required to be submitted to the electors for a referendum. I commend the bill to the house.

Debate adjourned, on motion by **Mr A. Krsticevic**.