Parliamentary Committees

Succession to the Crown Bill 2013

Report No. 22
Legal Affairs and Community Safety Committee
February 2013

Legal Affairs and Community Safety Committee

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Acknowledgements

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Abbreviations

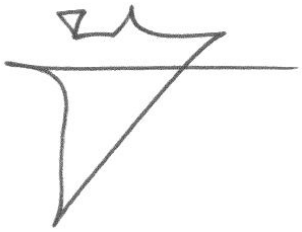
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Succession to the Crown Bill 2013
CHOGM	Commonwealth Heads of Government Meeting
COAG	Council of Australian Governments
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
DPC	Department of Premier and Cabinet
New Zealand Bill	Royal Succession Bill 2013 (New Zealand)
Perth Agreement	means the agreement dealing with changes to the royal succession laws by the 16 Commonwealth realms, during the Commonwealth Heads of Government Meeting in October 2011 in Perth, Australia.
Royal Marriage Act	*Royal Marriages Act 1772* of Great Britain
UK Bill	Succession to the Crown Bill 2012-13 (UK)

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Succession to the Crown Bill 2013 (Bill).

The Committee's task was to consider whether to recommend the Bill be passed, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

I commend this Report to the House.



Mr Ian Berry MP

Chair

February 2013

Recommendations

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Succession to the Crown Bill 2013 (Bill) was introduced into the Legislative Assembly and referred to the Committee on 13 February 2013. By resolution of the House, the Committee was given a report date to the Legislative Assembly of 27 February 2013.

1.2 Inquiry process

On 14 February 2013, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill.

Due to the shortened timeframe in which to consider the Bill, the Committee resolved not to seek written submissions. The Committee also determined that it would not hold a public hearing in relation to the Bill.

1.3 Policy objectives of the Succession to the Crown Bill 2013

The objective of the Bill is to amend the laws relating to the effect of gender and marriage on royal succession, consistently with other Australian jurisdictions and the United Kingdom to ensure that the same person is recognised as the Sovereign of Australia and the United Kingdom.[2]

The Bill will achieve this objective by making amendments in three areas relating to the royal succession as follows:

- allowing for succession regardless of gender;
- removing the bar on succession for an heir and successor of the Sovereign who marries a Roman Catholic; and
- limiting the requirement for the Sovereign's consent to royal marriages to the first six individuals in the line of succession.[3]

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 Succession to the Crown Bill 2013, *Explanatory Notes*, page 1.

3 Succession to the Crown Bill 2013, *Explanatory Notes*, page 1; Transcript of Proceedings, 13 February 2013, page 144.

1.4 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether to recommend that the Bill be passed. After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the Department, the Committee considers that the Bill should be passed.

Recommendation 1

The Succession to the Crown Bill 2013 be passed.

2. Examination of the Succession to the Crown Bill 2013

This part examines each of the three policy objectives being implemented by the Bill and also the mechanics of the Bill used by the Government in achieving these reforms.

2.1 Background to the Bill

The rules of succession to the British Crown currently include two provisions which could be considered as discriminatory. The first relates to discrimination on the basis of gender in that male siblings take precedence over their female siblings regardless of the order of birth. The second relates to discrimination on the basis of marriage in that a person may not take or hold the throne if they marry a Roman Catholic.

There is also a requirement for the descendants of King George II to obtain the consent of the Sovereign prior to marrying, otherwise the marriage may be void.

In October 2011, at the bi-annual Commonwealth Heads of Government Meeting (CHOGM) in Perth, Australia, along with the 15 other countries where the Sovereign is the Head of State, agreed in principle to change the laws to give effect to two reforms to the rules of succession.[4] This agreement has been referred to in some instances as the Perth Agreement.

This was later endorsed by the Council of Australian Governments (COAG) at its meeting in July 2012. The COAG communique stated:

> *Leaders confirmed Australia's support for changes to the rules for Royal Succession agreed by leaders of the Realms on 28 October 2011 which would: allow for succession regardless of gender; and, remove the bar on succession for an heir and successor of the monarch who marries a Catholic.* [5]

The Committee understands the third reform, in relation to the requirement to obtain consent of the monarch prior to certain marriages was not specifically agreed to at the CHOGM, however was proposed as an associated reform by the Government of the United Kingdom. All countries have consented to this additional reform and it was subsequently agreed to by COAG.

Following the CHOGM, the New Zealand Government undertook to carry out the work of coordination between the realms to ensure that the all the requisite changes could take place together. Coordination was vital to reforms due to the obvious practical desire to maintain the same monarch at all times, and an argument that there is a legal necessity to gain assent from one another to make changes.

The Committee examines the three separate reforms in further detail below.

2.2 Succession to the Crown not to depend on gender

Part 2 of the Bill contains a single provision (section 6) to give effect to the first reform. Section 6 states that in determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person's descendants, precedence over any other person (whenever born).

What does the Bill do?

Currently, when determining the heir to the throne, age is the determining factor between brothers and also between sisters, however a male heir to the throne takes precedence over his female

[4] http://www.chogm2011.org/Resources/Latest_News/agreement-principle-among-realms.html, accessed 14 February 2013.

[5] http://www.coag.gov.au/node/431, accessed 14 February 2013.

siblings regardless of their relative ages. These two principles, succinctly stated as "brothers before sisters" and "older before younger" create of system known as "male preference primogeniture".[6]

The Committee will not attempt to delve into the detailed history of how these rules of succession were developed save as to say that these rules have developed over many centuries.[7]

The Bill removes the gender bias of the "brothers before sisters" principle to ensure that regardless of the gender, the eldest child will take precedence over his or her younger siblings.

Committee comment

The Committee notes that this reform has been subject to much debate over many years and now has the support of the British Government and all of the other 15 realms of which the Queen is Head of State.

There is an element of retrospectivity contained in the clause in that it applies to all persons born after 28 October 2011. The significance of this date being the date upon which the Perth Agreement was reached and the Prime Minister of the United Kingdom, the Right Honourable David Cameron MP announced the reforms to the rules of succession would proceed.

On this issue, the Rt Hon Cameron MP stated on 5 December 2012:

> *…At the Perth Commonwealth conference, I chaired a meeting of the Prime Ministers of all the different realms and we agreed we should bring forward legislation to deal with this issue. All the realms have now agreed to do that. We will introduce legislation into this House very shortly. It will write down in law what we agreed back in 2011: that if the Duke and Duchess of Cambridge's first child is a girl, she can one day be our Queen. That is the key point. But it is important to explain that the changes will apply to a child born after the date of the Perth announcement of last year even if the birth is before the legislation is passed. I hope it will not take long—certainly not nine months—to pass this legislation, but, just in case, there would not be a problem.*[8]

The Committee considers the element of retrospectivity is necessary to ensure the clause has the same application as the relevant clause in the UK Bill. Section 6 of the Bill is identical to the equivalent clause in the UK Bill and the Committee is therefore satisfied the desired reform will be achieved, as intended.

2.3 Removal of disqualification arising from marriage to a Roman Catholic

Part 3 of the Bill contains a number of provisions relating to marriage and succession to the Crown. Section 7 of the Bill gives effect to the second reform. It states that a person is not disqualified from succeeding to the Crown or from possessing it as a result of marrying a person of the Roman Catholic faith.

Section 7 applies in relation to marriages that took place prior to the commencement of the section if the person concerned was alive at the commencement date and to all marriages after commencement.

What does the Bill do?

Currently, the rules of succession provide that a person may not succeed to the Crown if they are married to a person of the Roman Catholic Faith.

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6 House of Commons Research Paper 12/81, Succession to the Crown Bill 2012-13 (UK), 19 December 2012.

7 Further details of the rules of succession are set out in the House of Commons *Research Paper 12/81 on the* Succession to the Crown Bill 2012-13 *(UK)*, 19 December 2012.

8 House of Commons Debate, 5 December 2012, page 864.

As set out by the Political and Constitutional Reform Committee of the House of Commons:

> *The provision relating to marriage to a Catholic dates back more than three hundred years to the Glorious Revolution and Bill of Rights of 1688–89. It serves little if any contemporary purpose, and is seen as an injustice, especially as there are no other restrictions on the religion of the spouse of a person in the line of succession. This lack of other restrictions is almost certainly because the provision is so antiquated that the marriage of a monarch to anyone of another religion was inconceivable when it was drafted.*[9]

The Bill will simply remove the disqualification from a person who marries, or has married, another person who is of the Roman Catholic faith.

Committee comment

The Committee agrees with the comments of the Political and Constitutional Reform Committee that the current disqualification rule serves little contemporary purpose and is out-dated in today's modern society, especially given there is no comparable provision about any other religion.

The Committee notes however, the requirement that the monarch themself must not be of the Roman Catholic faith, remains unchanged by these reforms. The Committee understands the role of the Crown in the Church of England may be considered by the British Government at a later date.

While this provision removes the disqualification for all marriages occurring after the commencement, the Committee notes the retrospective effect in the Bill will also mean that people who have lost their place in the present line of succession to the throne will regain their places ahead of others already in line, notwithstanding that they are unlikely to succeed to the throne. Given that a person's position in the line of succession may regularly change as a consequence of births, deaths or marriages of those persons higher in the line of succession, this does not appear to the Committee to be an objectionable consequence.

Section 7 of the Bill is identical to the equivalent clause in the UK Bill and the Committee is satisfied that the second desired reform will also be achieved, as intended.

2.4 Requirement to obtain consent prior to marriage

Part 3 of the Bill also contains provisions to give effect to the third reform agreed to by the Commonwealth realms after the Perth Agreement was finalised. It is understood that while not directly discussed at the CHOGM in 2011, the Prime Minister of the United Kingdom referred the matter of the requirement for certain persons to obtain the consent of the monarch prior to marrying, to the leaders of the other realms for consideration.

On 2 December 2012, the Government of the United Kingdom received final written agreement from all the realms regarding the three aspects of the succession reforms and they were publicly announced as proceeding shortly thereafter.[10]

Section 8 of the Bill contains a new limitation that only the next 6 persons in the line of succession must obtain the consent of the monarch before marrying. Failure to do so, will disqualify that person and the person's descendants from that marriage, from succeeding to the Crown.

Section 9 of the Bill repeals the Royal Marriage Act in so far as it applies as a law of Queensland.

Section 10 of the Bill validates some marriages previously voided by the Royal Marriage Act in so far as that Act was part of the law of Queensland before its repeal.

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9 *Rules of Royal Succession*, Political and Constitutional Reform Committee, 11th Report 2010-12, HC 1615, 7 December 2011.

10 Paragraphs 7 and 11, *Explanatory Notes,* Succession to the Crown Bill (UK), HL Bill 81-EN.

What does the Bill do?

The current position on the requirement to obtain consent of the monarch prior to marriage is contained in the Royal Marriage Act. That Act provides, subject to certain exceptions, that the marriage of any descendant of George II is rendered void if the person failed to obtain the consent of the monarch prior to the marriage. The Explanatory Notes for the UK Bill state:

> *The Act probably applies to several hundred people, many of whom will be unaware of the Act or its impact on the validity of their marriages. It was passed in haste as a result of King George III's disapproval of the marriages of two of his brothers.*[11]

The Bill will mirror the amendments in UK Bill which remove this blanket requirement for all descendants to obtain consent and replace it with a provision requiring the consent of the monarch to the marriages of only the six people nearest in line to the Crown at any time. If one of the 'top six' marries without consent, they, and their descendants from that marriage, will lose their place in the line of succession. The person's marriage itself will not be voided as is the current situation under the Royal Marriage Act.

As a corollary of the repeal of the Royal Marriage Act, the Bill will also recognise that previously voided marriages are to be treated as never being void if:

(a) neither party to the marriage was one of the 6 persons next in the line of succession to the Crown at the time of the marriage; and

(b) no consent was sought under section 1 of the Royal Marriage Act, or notice given under section 2 of that Act, in respect of the marriage; and

(c) in all the circumstances it was reasonable for the person concerned not to have been aware at the time of the marriage that the Royal Marriage Act applied to the marriage; and

(d) no person acted on the basis that the marriage was void before the commencement of the section.

Committee comment

The Committee notes the comments in the Explanatory Notes of the UK Bill referred to above and considers that the reforms contained in the Bill are appropriate given the potential wide impact on those persons currently caught by the Royal Marriage Act. Limiting the requirement to contain consent to the first six in line to the Crown is a substantial and sensible reduction of the number of persons required to obtain consent of the monarch.

The Committee also supports the removal of the provisions voiding certain marriages and the retrospective validation of previously voided marriages as a practical reform.

Again, the provisions in Part 3 of the Bill mirror the provisions contained in the UK Bill with minor differences in drafting style. The Committee is satisfied that the third desired reform will be achieved under the Bill, as intended.

2.5 Consequential amendments

In order to achieve the desired reforms, the Bill makes several amendments to other Acts, some of which were made by Parliaments outside of Queensland. The *Imperial Acts Application Act 1984*

[11] Paragraph 5, *Explanatory Notes,* Succession to the Crown Bill (UK), HL Bill 81-EN.

(Qld) terminates the effect of Imperial Acts as they apply in Queensland[12] and preserves the effect of others which are listed in Schedule 1 of that Act.[13]

Amendments to the Act of Settlement and Bill of Rights

Both the *Act of Settlement* and *Bill of Rights* appear in Schedule 1 of the *Imperial Acts Application Act 1984*[14] and therefore it appears that they continue to have the same force and effect (if any) in Queensland as they did immediately prior to the commencement of that Act.

Section 11 of the Bill states that references to an Act in part 6 (Amendment of other Acts) are references to that Act as it is part of the law of Queensland with section 12 of the Bill providing that references, however expressed in any law that forms part of the law of Queensland, to a provision in the *Bill of Rights* or the *Act of Settlement* relating to the succession to, or possession of, the Crown are to be read as including references to the provisions contained in the Bill (once passed).

Sections 16 – 20 make minor consequential amendments to the *Act of Settlement* and *Bill of Rights* (in so far as they are laws of Queensland) to give effect to the reforms essentially removing references to "marrying" or "marrying a papist" as required.

Committee comment

The Committee is satisfied the amendments are required to ensure those Imperial Acts passed by the Parliament of England and which continue to have application in Queensland by virtue of the *Imperial Acts Application Act 1984* are appropriately modified to give effect to the reforms.

Union with Ireland Act 1800 of Great Britain and Act of Union (Ireland) 1800 of Ireland

The Committee notes the UK Bill contains a Schedule of consequential amendments to give effect to the changes to the rules of succession in the United Kingdom.

The consequential amendments provision in the UK Bill states:

> *4(2) The following enactments (which relate to the succession to, and possession of, the Crown) are subject to the provision made by this Act –*
>
> *Article II of the Union with Scotland Act 1706;*
>
> *Article II of the Union with England Act 1707;*
>
> *Article Second of the Union with Ireland Act 1800;*
>
> *Article Second of the Act of Union (Ireland) 1800.*

Section 13 of the subject Bill states:

> *So far as they are part of the law of the State, Article Second of the Union with Ireland Act 1800 of Great Britain and Article Second of the Act of Union (Ireland) 1800 of Ireland are subject to this Act.*

Committee comment

It is not clear to the Committee on what basis these Acts are part of the laws of Queensland. Given the limited time provided to examine the Bill, the Committee has not been able to properly review the effect of this clause, however it appears at first glance that these Acts have no application in Queensland. Unlike the *Act of Settlement* and the *Bill of Rights,* these Acts are not listed in the *Imperial Acts Application Act 1984,* Schedule 1 'Imperial enactments continued in force' as having

12 Section 7, *Imperial Acts Application Act 1984*.

13 Section 5, *Imperial Acts Application Act 1984*.

14 Schedule 1 – items 9 and 11.

any application in Queensland and no information as to why the clause is necessary is provided in the Explanatory Notes tabled by The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General).

Accordingly, it is not clear why section 13 has been included in the Bill.

The Committee also notes that the New Zealand Bill recently introduced into the New Zealand Parliament does not contain any similar provisions, however the Committee recognises there may be other valid reasons for this, due to the manner in which New Zealand recognises the Crown within its own jurisdiction.

Recommendation 2

The Attorney-General and Minister for Justice explain to the House the justification for including section 13 in the Bill and how the *Union with Ireland Act 1800* of Great Britain and the *Act of Union (Ireland) 1800* of Ireland apply as part of the laws of Queensland.

Amendments to the Union with England Act 1707 of Scotland and Union with Scotland Act 1706 of England

Sections 21 -24 of the Bill purport to amend the *Union with England Act 1707* of Scotland and *Union with Scotland Act 1706* of England in so far as those Acts are part of the laws of Queensland.

As set out above, similar provisions appear in the UK Bill.

Committee comment

Again, it is not clear to the Committee on what basis these Acts are part of the laws of Queensland as it would appear that the application of them in and for Queensland was terminated by the *Imperial Acts Application Act 1984*, section 7.

These Acts are also not listed in the *Imperial Acts Application Act 1984,* Schedule 1 'Imperial enactments continued in force' so it is not clear on what basis the *Union with England Act 1707* (Scotland) and the *Union with Scotland Act 1706* (England) form part of the law of Queensland. Similarly, no information is provided in the Explanatory Notes as to why the clauses are necessary.

Therefore it is not clear why sections 21 to 24 have been included in the Bill.

Again, it is noted the New Zealand Bill contains no similar provisions.

Recommendation 3

The Attorney-General and Minister for Justice explain to the House the justification for including sections 21 -24 in the Bill and how the *Union with England Act 1707* of Scotland and the *Union with Scotland Act 1706* of England apply as part of the laws of Queensland.

Amendment of the Imperial Acts Application Act 1984

Sections 14 and 15 of the Bill appropriately amend the *Imperial Acts Application Act 1984* to remove the *Royal Marriages Act 1772* of Great Britain from the Schedule as it is repealed under the agreed reforms

2.6 Appropriate mechanism to give effect to the reforms

The Committee considers that it would be appropriate to include some discussion in this Report on the mechanism used to give effect to the agreed reforms in Queensland and how this has developed.

As mentioned in Part 1 of this Report, after the Perth Agreement was reached the New Zealand Government undertook to carry out the work of coordination between the realms so that all necessary changes could take place together.

At this stage, apart from Queensland, the Committee is aware that the United Kingdom and New Zealand have introduced Bills into their respective Parliaments; however both are yet to commence. The Explanatory Notes for the New Zealand Bill state:

> *The changes are being implemented in a co-ordinated manner with the other Realms to ensure all Realms have consistent succession laws and the Bill's commencement will allow for concurrent implementation with the other Realms.*[15]

How is Queensland playing its part?

Shortly after the 2011 CHOGM at a joint press conference with the Prime Minister of the United Kingdom, the Prime Minister of Australia, the Hon Julia Gillard MP stated:

> *'Prime Minister, I am in a position where I can inform you that I have consulted with each of our State Premiers and each Australian state gives its in principle agreement to these changes and the Australian nation gives its in principle agreement to these changes, and we look forward to working with you and with your officials on now doing the technical work that needs to be done to ensure that we, along with other realm countries, enact the necessary legislation. In Australia that does need to be legislation at both the Federal and at the level of each state.'*[16]

The issue of reforms to the rules of succession were taken up further by Australian jurisdictions at the COAG meeting in December 2012. Following that meeting, in response to queries that the manner in which the reforms were to be implemented had not been settled, the Premier, Hon C Newman MP stated:

> *'Well Queensland has a view that others don't agree with…*
>
> *Well our view is that we will pass legislation in accordance with our position as a separate sovereign state. We're a federation of states, we're going to do it the right way, the proper way and that's our view.'*

The Prime Minister provided the Federal Government's view as:

> *'The advice that the Federal Government has very loud and very clear is that there is one crown in Australia.*
>
> *Obviously that one crown plays a variety of purposes – Governor-General, Governors – and that the way in which we should deal with this, the most legally affective way to deal with it is that states would pass legislation referring to the Commonwealth the ability to make these changes to succession.*
>
> *For that to be a legally effective process all states have to do it. If one state doesn't do it then it doesn't work. We are continuing some discussions in that regard.'*[17]

It was confirmed by the Premier at that press conference, that Queensland was the only State taking a contrary position to the Commonwealth.[18] At the time of writing, the Committee is not aware of any other State or the Commonwealth having introduced a similar bill.

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15 *Explanatory note*, Royal Succession Bill (NZ), General policy statement, page 1.

16 Transcript of Joint Press conference with Prime Minister Cameron, 28 October 2011. http://www.pm.gov.au/press-office/transcript-joint-press-conference-prime-minister-cameron

17 Transcript of COAG Joint Press Conference, Friday 7 December 2012, http://www.pm.gov.au/press-office/transcript-coag-joint-press-conference.

The Attorney-General stated when he introduced the Bill:

> *The government remains committed to preserving Queensland's longstanding ties and direct relationship with the Crown. It is for this reason that the government has decided to give effect to the measures in the United Kingdom Succession to the Crown Bill in line with an approach involving separate, substantially uniform and coordinated state legislation and complementary Australian legislation by introducing a separate Queensland bill.*
>
> *Queensland reserves its right as a sovereign state to amend its own laws regarding royal succession. Queensland considers its approach reflects its full commitment to implementing these important changes to the rules of royal succession whilst at the same time ensuring its longstanding ties and direct relationship with the Crown is preserved.*[19]

From advice received from the Department of Premier and Cabinet (DPC) through the Department of Justice and Attorney-General, the Committee understands the Bill has been '*modelled on a working draft model State Complementary Bill which was developed by a COAG working group on Royal Succession as an option to progress Royal Succession reforms.'* Unfortunately, the Committee has not been able to obtain a copy of the draft model Bill for perusal.

The Committee also understands from advice from the DPC there has been no consultation with other jurisdictions regarding Queensland's Bill and Queensland did not receive the endorsement of the other Australian jurisdictions for this approach prior to introduction of the Bill. Following the Bill's introduction, the Bill and Explanatory Notes (which are publicly available) have been circulated to all other Australian Governments, to show what Queensland has developed to implement the changes to the rules of Royal Succession.

Committee comment

By introducing a separate Bill, the Queensland Parliament has retained its ability to make Queensland-specific amendments to the implementation of the COAG agreement. The Committee considers this is a factor operating in favour of having sufficient regard of the institution of Parliament.

However, the Committee notes there has been a loss of cooperation with the other Australian jurisdictions and the other realms by taking this approach and considers it is disappointing that agreement could not be reached with the other Australian jurisdictions on a preferred approach.

The Committee considers it is difficult to reconcile the approach taken by the Government as involving '*separate, substantially uniform and coordinated state legislation'* when there has been no consultation with other Australian jurisdictions on the Bill. DPC has advised the Committee that is not known what the intentions of the other States and the Commonwealth are regarding the enactment of similar legislation.

Further, the Committee understands that there has been no liaison with the New Zealand Government (as lead jurisdiction for all the Commonwealth realms) on this matter. Ultimately, this may impact on the ability for New Zealand to fulfil its agreement at CHOGM that it will coordinate all the necessary changes from all the realms to ensure they take place together.

Recommendation 4

The Attorney-General and Minister for Justice confirm to the House that the approach taken by Queensland will not impact the ability for all the Commonwealth realms to maintain the same Monarch at all times and that it is consistent with the agreement reached at the 2011 CHOGM.

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18 Transcript of COAG Joint Press Conference, Friday 7 December 2012, http://www.pm.gov.au/press-office/transcript-coag-joint-press-conference.

19 *Hansard*, 13 February 2013, page 144.

2.7 Alternate options – Constitutional validity

The Committee notes, as briefly mentioned in the Explanatory Notes, that the policy objectives could also be achieved by an approach under section 51(xxxviii) of the Australian Constitution, involving State legislation requesting the changes to be made by a Commonwealth law.

This approach would involve each State passing legislation (the 'request legislation') which requests the enactment by the Commonwealth Parliament of an Act to give effect to the reforms. The proposed Commonwealth Act would be attached to each State's request legislation and the Commonwealth Act would then enact the legislation in the terms of each State's legislation.

The Explanatory Notes state:

> *'The weight of legal and academic opinion is that a referral under section 51(xxxviii) of the Australian Constitution is the most constitutionally sound approach.*
>
> *The Queensland Government has decided that Queensland is to give effect to the proposed changes to the rules of royal succession in line with an approach involving separate, substantially uniform and coordinated State legislation and complementary Commonwealth legislation, by introducing a separate Queensland Bill.'*[20]

Committee Comment

For Queensland, as one of the states of Australia, which is both a constitutional monarchy and a federation, matters relating to the Crown and succession to the Crown are closely integrated with matters of constitutional law.

No further information other than that above has been provided on why the Queensland Government has determined to take an approach that is not consistent with the '*weight of legal and academic opinion'*.

The Committee understands that advice from the Solicitor-General and Crown Law has been sought and the approach taken in the Bill is considered to be valid. The Committee also notes from the press conference after the COAG meeting that the Federal Government appears to have differing legal advice as to the preferred manner in which to give effect the reforms.

As there has been limited time for the Committee to examine the Bill and in absence of being able to consider either legal advice - it is difficult for the Committee to comment in depth on the validity of the approach taken.

The Committee therefore has determined to take an approach similar to that of the former Scrutiny of Legislation Committee, outlined in its report on Scrutiny of Bills for Constitutional Validity.[21]

That report sets out the former Scrutiny of Legislation Committee's approach as:

> 3.1 The constitutional validity of legislation in the Australian context is a complex and difficult subject. An Act of the Queensland Parliament could theoretically be invalid on several distinct grounds, namely:
>
> - it might exceed the Parliament's competence to legislate extra-territorially;
> - it might conflict with the entrenched "manner and form" provisions of the *Constitution of Queensland 2001*;
> - it might offend, in any of a large number of ways, against the provisions of the *Commonwealth Constitution* or the *Australia Acts 1986*.

[20] Succession to the Crown Bill 2013, *Explanatory Notes*, page 2.

[21] Scrutiny of Legislation Committee, Report No. 26, December 2002.

3.2. The committee considers it would be a breach of the FLPs for Parliament to enact laws which are clearly constitutionally invalid. Such cases, however, are likely to be comparatively rare. On the other hand, there will be a much larger number of cases in which there might simply be an element of doubt (even significant doubt) about a bill. In the committee's view, it would not generally be a breach of the FLPs for Parliament to enact bills of the latter type.

3.3. Two further factors are relevant from the committee's standpoint.

3.4. Firstly, the committee has neither the significant expertise required to investigate the constitutional validity of every bill which comes before it, nor the considerable financial resources which would be required to obtain such expertise externally.

3.5. Finally, in most cases time would not permit such an investigation.

3.6. In light of the considerations mentioned above, the general approach of past and present committees to the issue of constitutional validity has been not to conduct a detailed examination of that aspect of bills, but to consider and report on it only where it is readily apparent such an issue exists. This might, for example, be as a result of the committee's own scrutiny of a bill, or because the matter dealt with by the bill is known to have been the subject of recent judicial consideration, or because the issue is raised in the Explanatory Notes or in the Minister or Member's Second Reading speech.

3.7. Where the committee does report on an issue about the constitutional validity of a bill, its approach has been almost always been to query the sponsoring Minister as to whether he or she is confident the bill is constitutionally valid.

3.8. Given the matters outlined above, the lack of any mention of the issue of constitutional validity in the committee's report on a bill cannot be interpreted as an implicit statement that the committee is satisfied the bill is constitutionally valid.

The Committee therefore invites the Attorney-General and Minister for Justice to report to the Parliament that he is confident the Bill is constitutionally valid.

Recommendation 5

The Attorney-General and Minister for Justice provide further detail to the House, on the steps taken by the Government to develop the Bill and advise the House whether he is confident the Bill is constitutionally valid.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. This Committee brings the following to the attention of the Legislative Assembly.

3.1 Retrospectivity

Does the bill adversely affect rights and liberties, or impose obligations, retrospectively?

The Committee has touched on the varying retrospective nature of each of the three reforms earlier in this report. It was the approach of the former Scrutiny of Legislation Committee to bring to the attention of Parliament all retrospective Bill provisions, even if it was not concerned about the implications of the provisions:

> *As the committee has done since its establishment, the committee has continued to bring all provisions in bills which have effect retrospectively, to the attention of Parliament—even if it was not concerned about the implications of the provisions. The committee has consistently examined retrospective provisions to ensure that they do not adversely affect rights and liberties, or impose obligations, retrospectively.*[22]

As set out in Part 2 of this Report, under each of the specific reforms, it does not appear to the Committee that the retrospective nature of any of the provisions fall within the category of objectionable retrospective provisions. Notwithstanding the Committee's views, ultimately, to ensure that any future monarch of the United Kingdom is properly recognised as the Head of State of Queensland, there is an overriding need for the provisions in the Bill to be consistent with the provisions contained in the UK Bill. The Committee is therefore not concerned about the implications of any retrospective provision in the Bill.

3.2 Constitutional validity

The issue of whether the Bill is constitutionally valid is discussed at Part 2.7 of this Report.

3.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

The Committee notes the *Legislative Standards Act 1992* sets out the minimum requirements for Explanatory Notes. The Committee considers the Explanatory Notes provided with the Bill could usefully have included a detailed explanation as to why the Queensland Government decided on an approach involving separate, substantially uniform and coordinated State legislation and complementary Commonwealth legislation - rather than an approach considered to be the most Constitutionally sound.

[22] Scrutiny of Legislation Committee, Annual Report 1997-1998, page 7.

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

SUCCESSION TO THE CROWN BILL 2013

26 February 2013

Statement of Reservation

I wish to submit the following Statement of Reservation to the report of the Legal Affairs and Community Safety Committee on the Succession to the Crown Bill 2013.

- The *Succession to the Crown Bill* (the Bill) was introduced into the Legislative Assembly by the Hon Jarrod Bleijie MP, Attorney-General and Minister for Justice, on 13 February 2013, and referred to the Legal Affairs and Community Safety Committee in accordance with Standing Order 131. It was resolved by the Parliament that the committee is required to report on the Bill by 27 February 2013.

- The Attorney-General stated in his explanatory speech, 'The bill brings about changes to the law in Queensland relating to the effect of gender and marriage on royal succession, consistently with changes being made to that law in the United Kingdom and in other Australian jurisdictions. However, this legislation is contrary to the views of all other Australian jurisdictions, and no other jurisdiction has introduced legislation to effect these changes at this stage.

- At the Commonwealth Heads of Government Meeting (CHOGM) held in Perth in October 2011, the Prime Ministers of the Commonwealth realm nations agreed to the proposal by British Prime Minister David Cameron that the rules for the Royal Succession be reformed. To give full effect to the changes, it is necessary for the reforms to be approved by the parliaments of all 16 realms

- The Australia Acts 1986 terminated the power of the United Kingdom to legislate for Australia. Hence, any changes made by British law to the succession to the British Crown would not affect the Act of Settlement or the Bill of Rights to the extent that they form part of Australian law.

- At the Council of Australian Governments meeting held in Canberra on 7 December 2012, the Prime Minister and the Premiers and Chief Ministers of the States and Territories agreed to the proposed changes to the rules relating to succession to the British Crown. There was not, however, unanimous agreement as to how those changes should be effected, with Queensland the only jurisdiction which did not agree on the proposed approach. It was therefore agreed that further work in the area would be undertaken.

- Under section 51(xxxviii) of the Commonwealth Constitution, the States can pass legislation requesting the Commonwealth to make changes to the law. As the Explanatory Notes to the Bill explain,

> *'Under this option each State would pass legislation (the request legislation) that requests the enactment by the Parliament of the Commonwealth of an Act to give effect to the required changes to the royal succession rules. The proposed Commonwealth Act would be attached to each State's request legislation.*

- At the media conference held after the COAG meeting in December 2012, the Honourable the Premier, Campbell Newman MP, in response to questioning about the failure of the meeting to reach agreement about how the changes would be effected, replied, 'Well Queensland has a view that others don't agree with.' After further questioning about whether he was the only Premier with that position, he answered 'It seems so'.

- The Bill seeks to make three important changes, in line with what was agreed to in principle at CHOGM in 2011 and at COAG in 2012 by:

    - Allowing for succession regardless of gender.
    - Removing the bar on succession for an heir and successor of the Sovereign who marries a Roman Catholic.
    - Repealing the *Royal Marriages Act 1772* of Great Britain; limiting the requirement for the Sovereign's consent to the marriage of a descendant of King George II to the first six persons in line to the throne; and repealing the Act so far as it is part of the law of the State.

- As the Prime Minister advised after COAG, '*The advice that the Federal Government has very loud and very clear is that … the most legally affective way to deal with it is that states would pass legislation referring to the Commonwealth the ability to make these changes to succession. For that to be a legally effective process all states have to do it. If one state doesn't do it then it doesn't work. We are continuing some discussions in that regard.'*

Conclusion

- The Bill in its current form does not reflect the views of the other members of COAG, and does not reflect the clear advice received by the Prime Minister, that '*the most legally affective way to deal with it is that states would pass legislation referring to the Commonwealth the ability to make these changes to succession'.*

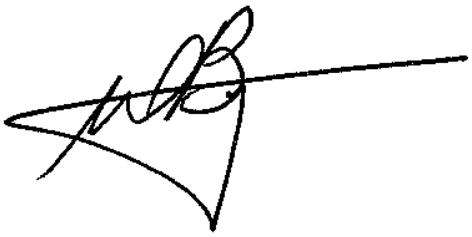
- The decision of the COAG meeting was for further work to be done to ensure that the changes are effected in the most effective manner possible.

- The actions of the Queensland Government in enacting its own legislation, without reference to the Commonwealth and the other States and Territories, denies all other jurisdictions the option of taking an effective, co-operative approach, as would be expected in a mature Federation of States.

- With each jurisdiction being required to introduce its own legislation, the potential for conflict and inconsistency is very real, and could put in jeopardy the effectiveness of the law changes.

- Whilst the Opposition does not oppose the changes to be effected by this Bill, we will detail further reasons for our concerns about the process during the parliamentary debate on *the Succession to the Crown Bill 2013*.

Yours sincerely



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Member for Rockhampton