LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Report No. 22 on the

Succession to the Crown Bill 2013
QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 13 February 2013 the Succession to the Crown Bill 2013 (the Bill) was introduced into the Parliament.

The Bill was subsequently referred to the Legal Affairs and Community Safety Committee (the Committee) with a report back date of 27 February 2013.

On 27 February 2013, the Committee tabled Report No.22 in relation to the Bill (the Report).

The Queensland Government response to the Report's recommendations on matters raised by the Committee and key fundamental legislative principles is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1

The Succession to the Crown Bill 2013 be passed.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

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.

Queensland Government response:

In order to progress the Royal Succession reforms the Council of Australian Governments (COAG) established a COAG Working Group on Royal Succession (the COAG working group). The COAG working group developed a working draft model State Complementary Bill as an option to progress Royal Succession reforms. The Queensland Succession to the Crown Bill 2013 (the Queensland Bill) is based on the working draft model State Complementary Bill.

The working draft model State Complementary Bill included a provision that is, apart from immaterial stylistic differences, effectively identical to section 13 of the Queensland Bill.

While the Union with Ireland Acts were not expressly preserved by the *Imperial Acts Application Act 1984*, section 5 and schedule 1, it is possible that they were saved by section 6 from the general termination of the application of Imperial laws under section 7. Section 6 preserves any Imperial Act 'which independently of the provisions of the Imperial Act 9 George 4 Chapter 83 (*Australian Courts Act 1828*) is made applicable to Queensland by express words or necessary intendment'. The Union with Ireland Acts contain no express words of extension to New South Wales (which then included what later became Queensland). But, interpreted in light of the understanding of the nature of the Crown in 1800, the Union with Ireland Acts may, by necessary intendment, have been applicable to the colonies, independently of the Australian Courts Act, section 24. In that case, they may be part of Queensland law.

Even if they are no longer part of Queensland law, they would have been prior to the commencement of the *Imperial Acts Application Act 1984* on 12 October 1984. In that case, the possibility that the operation of the Union with Ireland Acts before that date may have a bearing on the future succession to the Crown cannot be excluded. Accordingly, clause 13 of the Bill has been included out of an abundance of caution. At worst, if the Union with Ireland Acts are not part of the law of the State, clause 13 in its own terms will simply have no effect.

A proposed amendment to clause 13 of the Bill to include the *Union with England Act 1707* of Scotland and the *Union with Scotland Act 1706* of England is discussed below.

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.

Queensland Government response:

The COAG working group draft model State Complementary Bill referred to above included provisions that are, apart from immaterial stylistic differences, identical to sections 21 to 24 of the Queensland Bill.

Similar considerations apply to the Union with Scotland Acts as to the Union with Ireland Acts. That is, while the Union with Scotland Acts were not expressly preserved by the *Imperial Acts Application Act 1984*, they may, by necessary intendment, have been applicable to the colonies, independently of the Australian Courts Act, section 24. In that case, they may be part of Queensland law.

Even if they are no longer part of Queensland law, they would have been prior to the commencement of the *Imperial Acts Application Act 1984* on 12 October 1984. In

that case, the possibility that the operation of the Union with Scotland Acts before that date may have a bearing on the future succession to the Crown cannot be excluded.

Accordingly, clauses 21 to 24 of the Bill have been included out of an abundance of caution. At worst, if the Union with Scotland Acts are not part of the law of the State, clauses 21 to 24 will simply have no effect.

A proposed amendment to clause 13 of the Bill to include the *Union with England Act 1707* of Scotland and the *Union with Scotland Act 1706* of England is discussed below.

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.

Queensland Government response:

Queensland has participated in the COAG process to work towards a position where all realms maintain the same Monarch at all times. The proposed amendments to incorporate a request under section 51 (xxxviii) of the Commonwealth Constitution referred to below are the result of discussions at the recent April 2013 COAG meeting.

The substantive reforms in the Bill are consistent with those agreed to by all the realms.

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.

Queensland Government response:

As stated previously the Bill is based on the working draft model State Complementary Bill developed by the COAG working group as an option to progress Royal Succession reforms.

The Government is confident the Queensland Bill as introduced and when enacted would be a valid Act to give formal recognition within Queensland of the proposed changes to the succession to the Crown.

Notwithstanding this, and in a spirit of compromise following further discussions with the Commonwealth and the States at the recent April 2013 COAG meeting, the Government has agreed to amend the Bill before the Parliament to also include a request under section 51 (xxxviii) of the Commonwealth Constitution for the Commonwealth Parliament to enact a law implementing the same reforms as in the current Queensland Bill. The Attorney-General will be moving amendments to give effect to this in the consideration in detail of the Bill.

In addition the Attorney-General will be moving other amendments to the Bill to:

- resolve an ambiguity in clause 10(1)(d) of the Bill;
- make an amendment to clause 13 of the Bill to include a reference to Article II of the *Union with Scotland Act 1706* of England and Article II of the *Union with England Act 1707* of Scotland so that the treatment of these Acts is consistent with the way the Succession to the Crown Bill 2012-13 recently passed by the United Kingdom Parliament treats these Acts; and
- align the retrospectivity in the succession to the Crown not dependent on gender amendments provided for in clause 6 of the Bill to United Kingdom time.

The proposed amendments have been the subject of discussion between Department of the Premier and Cabinet officers and Commonwealth counterparts.

Fundamental legislative principles

The Queensland Government notes that the Committee gave detailed consideration to the application of fundamental legislative principles to the Bill. In particular the Committee's report brings to the attention of the House whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

The Government notes, for the reasons stated in the report, that the Committee is not concerned about the implications of any retrospective provision in the Bill.

The Government notes the Committee has determined, in relation to the issue of constitutional validity, to take an approach similar to that of the former Scrutiny of Legislation Committee, as outlined in that committee's 2002 report on Scrutiny of Bills for Constitutional Validity.

The Government notes the Committee's comments regarding the Explanatory Notes to the Bill.

The Queensland Government thanks the Committee for its consideration of the application of fundamental legislative principles in the Bill.