

# NOTES ON THE STYLE OF THE LAW

## *A Dirty Trick in Victoria*

by

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≈ Australia ≈ Victoria ≈ the Crown ≈ gender  
≈ statutory interpretation ≈ government ≈ policy  
≈ opposition ≈ amendment ≈ legislation ≈



VICTORIA'S recently introduced legislation to amend various statutes with regards to references to the Sovereign, ostensibly to change references from 'Her Majesty' to 'His Majesty', *etc.*<sup>1</sup> This really should be sensibly done by global interpretation legislation telling courts to read 'Her Majesty' as 'His Majesty', as is the case in the UK.<sup>2</sup> Regrettably, the bill instead makes a number of surgical amendments to various parts of legislation, with no consistency, sometimes replacing 'Her Majesty' with 'His Majesty', sometimes changing references to 'Her Majesty or His Majesty' and in one place using 'Her Majesty/His Majesty'.<sup>3</sup> This is, to put it simply, a mess.

However, messy legislation is hardly newsworthy. Far notable is the fact that the Bill makes numerous changes to the use of royal appellations in various places. For example, HM Attorney-General becomes the Attorney-General for the Crown in right of Victoria.<sup>4</sup> This is a somewhat nonsensical change, since of course the Crown in right of Victoria is, to borrow Maitland's phrasing, a subterfuge for saying the Attorney-General of the King, which is, of course, the

<sup>1</sup> Statute Law Amendment (References to the Sovereign) Bill 2023 (Vic), hereinafter 'Bill'

<sup>2</sup> Interpretation Act 1978, s 10: 'In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being.'

<sup>3</sup> I am most grateful to Mr Stuart Jeffrey for first finding and then sharing with me these inconsistencies.

<sup>4</sup> Statute Law Amendment (Bill, schd 1, para 3; note that in this context I am using the Australian, hyphenated form of the law officer's title.

same as saying HM Attorney-General. These sort changes would appear to be a removal of royal symbolism from various titles, which the elected legislature of Victoria is perfectly competent to do. This publication respects the sovereignty of Victoria, and while the Crown itself is a matter for all the Australian people rather than any one state, it is perfectly open to the legislature to change various titles to make them more or less royal.<sup>5</sup>

The issue with the Bill is thus not the fiddling with the styles of various offices,<sup>6</sup> It instead comes from what I can only describe, in spite of my usual reticence to employ strong language, as a dirty trick. The Bill provides that the Leader of HM Opposition will instead be simply known as the Leader of the Opposition. Yet, by convention,<sup>7</sup> the style of the government will remain officially HM Government, it appears.

This asymmetry is a problem. The appellation HM, which appears before everything from judges to ships to prisons, is a sign of legitimacy and authority. When applied to the Opposition, it becomes a protector of democracy. The government, with access to state resources, may try to attack the opposition, paint them as unpatriotic, allege that they are not loyal to the country or foreign infiltrators.<sup>8</sup> The badge of HM Opposition is a vaccine against this nasty sort of politics. The King, the head of state and source of power, recognises that the opposition is as important to the State as the government, and that the critique of the government is as much in the King's name as the carrying out of government policy. It is the counterpart to the Speech from the Throne: the reminder that debating and rejecting parts of that speech is as much the Sovereign's bidding as giving it.

Victoria's government, led by the Hon. Daniel Andrews MP can do better than this. The title of the Opposition should change to lose royal patronage only if the title of the Government is so changed.<sup>9</sup> To do otherwise is a dirty trick that creates an uneven playing field, and is thus rather un-sporting (and therefore quite un-Australian). I hope that this is an unintentional slip—charity directs me to at least initially assume that the Hon. Premier did not want to attack the opposition with this Bill. His Majesty's Government in Victoria should take a closer look and, it is respectfully submitted, reconsider re-naming the opposition.

5 It is hardly a secret that I am a constitutional monarchist, but I am first and foremost a democrat, and indeed support constitutional monarchy only because it is a bulwark of democracy. If the people decide to remove royal symbols, or indeed the monarchy altogether, then they may do so provided they follow all legal and constitutional requirements for changing such law.

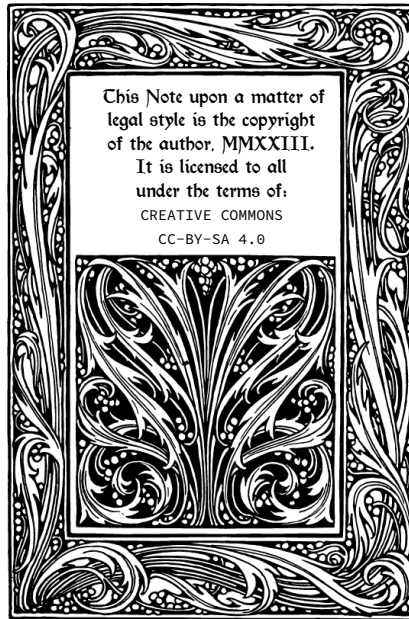
6 Although that itself is rather interesting to we who observe such things...

7 There seems not to be any statutory source for this appellation, so absent any statutory contradiction, the official style continues unimpeded, albeit usually unused.

8 This, of course, is precisely what happened in certain countries in Europe and elsewhere in recent years...

9 How exactly one might rename the Crown in right of Victoria and the government under that Crown is a tricky matter I leave to others...





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