

SUCCESSION TO THE CROWN BILL 2014

EXPLANATORY MEMORANDUM

Overview

The purpose of this Bill is for State Parliament to request the Commonwealth Parliament under section 51(xxxviii) of the Commonwealth Constitution to make changes to the rules of Royal succession, and for the State to exercise its own power to change the rules of Royal succession to the extent they are part of State law.

The Council of Australian Governments agreed at its meeting on 19 April 2013 that States would request the Commonwealth to make the changes to the rules of Royal succession, and that States could also choose to enact their own complementary legislation dealing with the changes. The Bill provides for this hybrid model.

The Parliament of the United Kingdom passed legislation on 23 April 2013 to make the following changes to the rules of Royal succession:

- to remove the rule of male preference over females in the line of Royal succession;
- to remove the rule disqualifying a person from succeeding to the Crown or from being the Sovereign due to their marriage to a Roman Catholic; and
- to repeal the *Royal Marriages Act 1772* (UK), and replace it with a requirement that the first six persons in the line of succession obtain the consent of the Sovereign before marrying, and to validate certain marriages made void under the *Royal Marriages Act 1772* (UK).

The Commonwealth Realms where the Queen is the head of State have agreed to implement these changes as part of their domestic law.

Preamble to the Succession to the Crown Bill 2013

The preamble outlines the background to the Bill. It refers to the CHOGM decision on 28 October 2011 where leaders of the 16 Commonwealth Realms agreed to change the rules of succession to remove the rule of male preference over females in the line of succession and the rule disqualifying a person from succeeding to the Crown or from being the Sovereign due to their marriage to a Roman Catholic. The preamble also refers to the further proposal to repeal the *Royal Marriages Act 1772* and validate certain marriages made void by this Act, and to disqualify certain persons from the line of succession if they do not obtain the consent of the Sovereign before marrying.

The preamble notes the expediency of the State Parliament requesting Commonwealth Parliament under section 51(xxxviii) of the Commonwealth Constitution to legislate in relation to Royal succession and Royal marriages in the

terms, or substantially in the terms, set out in Schedule 1 to the Bill. It also notes the expediency of the Western Australian Parliament to legislate in relation to Royal succession and Royal marriages.

Part 1 - Preliminary

Clause 1: Short title

This clause provides the short title of the Bill and its citation.

Clause 2: Commencement

This clause provides for the commencement of the Bill at different times. Clauses 1 and 2 commence on the day on which the Bill receives Royal Assent. Apart from Parts 3 and 4, the rest of the Bill commences on the day after the assent day.

Part 3 commences on a day to be fixed by proclamation, and allows different days and times to be fixed for different provisions.

Part 4 of the Bill will commence on the day and time that section 10 of the requested Commonwealth Act comes into operation. Part 4 of the Bill and section 10 of the requested Commonwealth Act provide that references to succession to or possession of the Crown in the *Bill of Rights* and the *Act of Settlement* are to be read as including references to the Bill and to the requested Commonwealth Act respectively.

Clause 3: Terms used

This clause defines various terms. “*Requested Commonwealth Act*” is defined as the Act requested by section 6 of the Bill, which is set out in Schedule 1 to the Bill. “*Act of Settlement*” and “*Bill of Rights*” is defined as the Acts of England by that name. Crown is defined as “*the Crown in all the capacities in respect to which the Parliament of the State has the power to legislate*”.

Clause 4: Object of this Act

This clause outlines the main object of the Act, which is to change the rules on Royal succession consistently with the changes made by the *Succession to the Crown Act 2013 (UK)* to ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

Clause 5: Relationship with Sovereign not affected

This clause protects the relationship between the Sovereign and the State by stating that the Bill is not intended to affect this relationship as existing before the Bill is enacted or by the enactment of the requested Commonwealth Act by the Commonwealth Parliament.

Part 2 – Request for Commonwealth legislation

Clause 6: Request for Commonwealth legislation

In sub-clause (1), the State Parliament requests the Commonwealth Parliament to enact the legislation in the terms or substantially in the terms of Schedule 1 to the Bill. Sub-clause (2) provides that the request in sub-clause (1) is not affected or limited in any way by any other provision of the Bill. This clause ensures that the efficacy of the State's request under section 51(xxxviii) and the resulting Commonwealth legislation is not compromised by the State exercising its own powers to change the rules of Royal succession.

Part 3 – Other provisions

In Part 3, the State is exercising its own power to change the rules of Royal succession to the extent they are part of State law.

Division 1 – Succession to the Crown not to depend on gender

Clause 7: Succession to the Crown not to depend on gender

This clause removes the rule of male preference over females in determining the succession to the Crown and allows the order of succession to be determined by order of birth. The clause will apply to persons born after the date of the CHOGM meeting held in Perth on 28 October 2011 (by UK time) and will, therefore, have retrospective effect.

Division 2 – Marriage and succession to the Crown

Clause 8: Removal of disqualification arising from marriage to a Roman Catholic

Sub-clause (1) removes the rule disqualifying a person from succeeding to the Crown or from being the Sovereign as a result of marrying a Roman Catholic. Sub-clause (2) provides that sub-clause (1) applies in relation to marriages occurring before the commencement of this clause (if the person concerned is still alive) and after the commencement.

Clause 9: Disqualification arising from marriage

This clause provides that a person is disqualified from succeeding to the Crown if the person is disqualified by section 3(3) of the *Succession to the Crown Act 2013* (UK). Section 3(3) of the UK Act disqualifies a person and that person's descendants from succeeding to the Crown if they have not obtained the consent of the Sovereign before marrying and they are one of the first six persons in the line of succession.

Clause 10: Amendments relating to marriage to a Roman Catholic

This clause amends the *Act of Settlement* and the *Bill of Rights* to the extent they are part of State law by deleting references relating to marriage to a Roman Catholic.

The amendments apply to marriages before the commencement of this clause (if the person concerned is alive at the commencement) and to marriages occurring after the commencement.

Clause 11: *Royal Marriages Act 1772* repealed

This clause repeals the *Royal Marriages Act 1772* of Great Britain so far as this Act is part of the law of the State.

Clause 12: Validation of some marriages voided by the *Royal Marriages Act 1772*

This clause validates marriages that were void under the *Royal Marriages Act 1772* (to the extent this Act is part of the law of the State) if the following conditions are met:

- neither party to the marriage was one of the six persons next in line to the Crown at the time of the marriage;
- the party did not seek consent for the marriage or no notice was given in respect of that marriage;
- it was reasonable for the party in all the circumstances not to have been aware at the time of the marriage that the *Royal Marriages Act 1772* (UK) applied to it;
- no person acted on the basis that the marriage was void before the commencement of this provision.

The validation of the marriage if these conditions are met applies for all purposes except those relating to succession to the Crown, that is, parties to a formerly void marriage do not regain their place in the line of succession.

Division 3 – Other modifications of parts of the law of the State

Clause 13: Union legislation affected by this Act

This clause provides that certain Articles of the *Union with Scotland Act 1706*, the *Union with England Act 1707*, the *Union with Ireland Act 1800* and the *Act of Union (Ireland) 1800* are subject to the Bill so far as they are part of the law of the State. These Union Acts establish the union between England, Ireland and Scotland and include provisions relating to Royal succession.

Clause 14: References to Bill of Rights and Act of Settlement

This clause provides that references to the *Bill of Rights* or the *Act of Settlement* relating to succession or possession of the Crown in any law of the State are to be

read as including references to the provisions of the Bill and the requested Commonwealth Act.

Schedule

Schedule 1 – Requested Commonwealth Act

Overview

Schedule 1 is the Commonwealth Act being requested by all State Parliaments under section 51(xxxviii) of the Commonwealth Constitution. Section 6 of the Bill contains the State Parliament's request to the Commonwealth to enact the legislation in the terms, or substantially in the terms of this Schedule. As many of the provisions in the Commonwealth Act mirror the provisions in the Bill, this part of the explanatory memorandum provides a more concise explanation of the clauses.

Preamble

The preamble outlines the background to the requested Commonwealth Act and refers to the CHOGM decision on 28 October 2011, and the further proposal to repeal the *Royal Marriages Act 1772*, validate certain marriages, and limit the requirement to obtain the Sovereign's consent to a marriage to the first six persons in the line of succession. The preamble also notes that all State Parliaments have requested the Commonwealth under section 51(xxxviii) of the Commonwealth Constitution to enact the legislation in the terms, or substantially in the terms of, the Act in schedule 1 to the Bill.

Part 1 – Preliminary

Clause 1: Short title

This clause provides for the short title of the requested Commonwealth Act.

Clause 2: Commencement

Sub-clause (1) provides for the commencement of the requested Commonwealth Act at different days and times depending on the section or Part of the Act and is set out in a table. The commencement information is set out in a table. Sections 1-5 and Part 5 will commence when the Act receives Royal Assent. Parts 2, 3 and 4 and schedule 1 will commence at a time and day or times and days to be fixed by Proclamation. All other provisions not covered in the table commence on the day the Act receives Royal Assent. There is a note to the table that the commencement times only apply to original provisions and will not be amended to deal with any later amendments.

Sub-clause (2) provides that the date and details of commencement information may be inserted into column 3 of the table in any published version of the Act but will not form part of the Act.

Clause 3: Object of this Act

This clause provides that the main object of the Act is to change the rules of Royal succession.

Clause 4: Relationship with Sovereign not affected

This clause states that the proposed Act is not intended to affect the relationship between the Sovereign, the Commonwealth, the States and the Territories as existing immediately before its enactment.

Clause 5: Definition of Crown

This clause provides the definition of “Crown” as “*the Crown in all of its capacities*”.

Part 2 - Succession to the Crown not to depend on gender

Clause 6: Succession to the Crown not to depend on gender

This clause provides that succession to the Crown does not depend on the gender. The clause is retrospective and applies to persons born after 28 October 2011.

Part 3 - Marriage and succession to the Crown

Clause 7: Removal of disqualification arising from marriage to a Roman Catholic

Sub-clause (1) removes the rule disqualifying persons from succeeding to the Crown or from being the Sovereign as a result of marrying a Roman Catholic.

Sub-clause (2) applies sub-clause (1) in relation to marriages occurring before and after the commencement of the provision.

Clause 8: Disqualification arising from marriage

This clause provides for the disqualification of a person from succeeding to the Crown if the person is disqualified by section 3(3) of the *Succession to the Crown Act 2013* (UK). Section 3(3) disqualifies a person and that person’s descendants from succeeding to the Crown if they have not obtained the consent of the Sovereign before marrying and they are one of the first six persons in the line of succession.

Clause 9: Amendments and repeal relating to marriage and succession to the Crown

This clause provides that Acts of the United Kingdom specified in schedule 1 to the requested Commonwealth Act (so far as they are part of the law of the Commonwealth, a State or Territory) are amended or repealed as set out in schedule 1 and that any other item has effect according to its terms.

Part 4 – Other modifications of parts of the law of the Commonwealth, States and Territories

Clause 10: References to Bill of Rights and Act of Settlement

This clause provides that any reference in Commonwealth or Territory law to the *Bill of Rights* or the *Act of Settlement* relating to succession to or possession of the Crown are to be read as including references to the provisions of this Act.

Clause 11: Union legislation affected by this Act

This clause provides that certain Articles of the Union Acts, which establish the union between England, Ireland and Scotland, are subject to the requested Commonwealth legislation so far as they are part of the law of the Commonwealth, a State or Territory.

Part 5 - Repeal or amendment of this Act

Clause 12: Repeal or amendment of this Act

This clause provides that the requested Commonwealth Act may only be expressly or impliedly repealed or amended by an Act passed at the request or with the concurrence of all State Parliaments.

Schedule 1 to the requested Commonwealth Act – Further provisions relating to marriage and succession to the Crown

Part 1 – Amendments relating to marriage to a Roman Catholic

Act of Settlement

Clauses 1-2: Preamble

These clauses amend the preamble to the *Act of Settlement* by removing certain words relating to marriage to a Roman Catholic.

Clause 3: Section 2

This clause amends section 2 of the *Act of Settlement* by removing certain words relating to marriage to a Roman Catholic.

Bill of Rights

Clauses 4-6: Section 1

These clauses amend section 1 of the *Bill of Rights* by removing certain words relating to marriage to a Roman Catholic.

Clause 7: Application of amendments

This clause notes that the amendments made by Part 1 of schedule 1 to the requested Commonwealth Act apply in relation to marriages made before (if the person is alive at commencement) and after the commencement of Part 1.

Part 2 – Repeal of the *Royal Marriages Act 1772*

Clause 8: The whole of the Act

This clause repeals the *Royal Marriages Act 1772*.

Clause 9: Validation of some marriages voided by the *Royal Marriages Act 1772*

Sub-clause (1) provides for the validation of certain marriages voided under the *Royal Marriages Act 1772* if certain conditions are met. If these conditions are met, the marriage is treated as never having been void. Sub-clause (2) provides that sub-clause (1) applies for all purposes except those relating to succession to the Crown.