

CLAUSE NOTES

SUCCESSION TO THE CROWN (REQUEST) BILL 2013

Preamble

This section provides some background information about the purpose of this Act ('the Request Act').

All States have agreed to request under section 51 (xxxviii) of the Constitution of the Commonwealth that the Parliament of the Commonwealth of Australia enact legislation (the 'proposed Commonwealth Act') to give effect to the changes to the law in Australia relating to the effect of gender and marriage on royal succession consistently with changes to be made to that law in the United Kingdom, so that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

The proposed changes are:

- a to provide that royal succession is not dependent on gender, and so allow an older daughter to precede a younger son in the line of succession (for all Royal births occurring after midnight on 28 October 2011 (UK time), being the date that the 16 realms of which Her Majesty is Sovereign agreed to the change);
- b to remove statutory restrictions under which anyone who marries a Roman Catholic loses their place in the line of succession; and
- c to repeal the *Royal Marriages Act 1772* of the United Kingdom which (with some exceptions) makes void the marriages of any descendants of King George II who fail to obtain the Monarch's permission prior to marriage (and to provide instead that the first 6 people in the line of succession require the permission of the Monarch to marry and that they and their descendants are removed from their place in the line of succession if they marry without that permission).

PART 1 – PRELIMINARY

Clause 1: Short Title

This provides the short title to be used when citing the Request Act for any legal purpose.

Clause 2: Commencement

Apart from Part 3 and clause 8, the provisions of the Request Act will commence on Royal Assent.

Part 3, which deals with an amendment to the Criminal Code of Tasmania, will commence on the commencement of section 6 of the proposed Commonwealth Act which provides that succession to the Crown does not depend on gender.

Clause 8 commences on the day that the similar provision in the proposed Commonwealth Act commences, which will be a date and time specified by proclamation.

Clause 3: Object of this Act

This clause states the reasons why the Request Act is necessary.

Clause 4: Relationship with Sovereign not affected

This clause confirms that enactment of the proposed Commonwealth Act will not affect the relationship between the Sovereign and the Commonwealth, the States and the Territories as existing immediately before its enactment.

This Clause ensures that the current relationship between Tasmania and the Monarch is not in any way disturbed by the proposed Commonwealth Act.

PART 2 – REQUEST FOR COMMONWEALTH LEGISLATION

Clause 5: Request for Commonwealth Legislation

This Clause requests the Parliament of the Commonwealth of Australia to enact the proposed Commonwealth Act.

PART 3 – CRIMINAL CODE AMENDED

Clause 6: Section 56 of the Criminal Code amended (Treason)

Clause 6 amends section 56 of the Criminal Code to remove from the provisions of that section the assumption that the gender of the heir to the Sovereign will be male.

PART 4 – MISCELLANEOUS

Clause 7:

This Clause confirms that if there are any residual references to the succession to, or possession of, the Crown in any law that is part of the law in Tasmania to the provisions of the *Bill of Rights* or the *Act of Settlement* then they are to be read as including references to the provisions of the Request Act and the proposed Commonwealth Act.

The *Bill of Rights* is an Act of the Parliament of England passed in 1689. It lays down limits on the powers of the Crown and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement for regular elections to Parliament and the right to petition the monarch without fear of retribution. It also barred Roman Catholics from the throne of England and provided that the monarch was required to swear a coronation oath to maintain the Protestant religion.

The Act of Settlement is an Act of the Parliament of England passed in 1701 to settle the succession to the English and Irish crowns. Under the Act of Settlement anyone who becomes a Roman Catholic, or who marries a Roman Catholic, becomes disqualified to inherit the crown.

Clause 8: Administration of Act

The Request Act will be assigned to the Premier and administered by the Department of Premier and Cabinet.

SCHEDULE 1 – SUCCESSION TO THE CROWN ACT 2013 OF THE COMMONWEALTH

This Schedule contains the text of the proposed Commonwealth Act that, under section 51(xxxviii) of the Australian Constitution, the Parliament of the Tasmania is requesting the Parliament of the Commonwealth of Australia to enact.

That request is made by clause 5 of the Request Act

The text contained in Schedule 1 has been agreed by all states and the Commonwealth as the specific provisions that the Parliament of the Commonwealth needs to enact to change the law in Australia relating to royal succession and royal marriages, and related purposes, to ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

PART 1 – PRELIMINARY

Clause 1: Short Title

This provides the short title to be used when citing the proposed Commonwealth Act for any legal purpose.

Clause 2: Commencement

Apart from Parts 2, 3 and 4 and Schedule 1, the provisions of the proposed Commonwealth Act will commence on Royal Assent.

Part 2, which provides that succession to the Crown is not to depend on gender, Part 3 which removes certain disqualifications to succession to the Crown arising from particular marriages and part 4 which ensures other aspects of the law are to be read as being affected by this Act and Schedule 1 which amends the *Act of Settlement* and the *Bill of Rights* and repeals the *Royal Marriages Act 1772* commence on times and days to be fixed by proclamation. This will ensure these provisions commence when the same provisions in the *Succession to the Crown (UK) Act 2013* commence.

Clause 3: Object of this Act

This clause states the reasons why the proposed Commonwealth Act is necessary.

Clause 4: Relationship with Sovereign not affected

This clause confirms that enactment of the proposed Commonwealth Act will not affect the relationship between the Sovereign and the Commonwealth, the States and the Territories as existing immediately before its enactment. This Clause ensures that the current relationship between Tasmania and the Monarch is not in any way disturbed by the proposed Commonwealth Act.

Clause 5: Definition of the Crown

This clause confirms that the proposed Commonwealth Act deals with the Crown in all 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, in determining the succession to the Crown, the gender of a person born after midnight on 28 October 2011 (UK time) does not give that person, or the person's descendants, precedence over any other person (whenever born).

This date (which is when there was a Commonwealth Heads of Government meeting in Western Australia) has been chosen as it is the date that the United Kingdom, and the 15 other Commonwealth realms of which Her Majesty the Queen is also Head of State, agreed to changes to make royal succession not dependent on gender.

The change allows an older daughter to precede a younger son in the line of succession for all Royal births occurring after that date.

Part 3 – Marriage and succession to the Crown

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

This Clause removes the disqualification from succeeding to or possessing the Crown as a result of marrying a person of the Roman Catholic faith. The removal of the disqualification applies in relation to marriages occurring before the commencement of the clause if the person concerned is alive at that commencement.

Part 1 of Schedule 1 of the proposed Commonwealth Act makes amendments to the *Act of Settlement* and the *Bill of Rights* (so far as they are part of the law of the Commonwealth, a State or a Territory) consequent on the removal of this disqualification.

The *Bill of Rights* and the *Act of Settlement* cannot be altered in any realm except by that realm's own Parliament and, by convention, only with the consent of all the other realms, as they touch on the succession to the shared crown.

Clause 8: Disqualification arising from marriage

This Clause disqualifies a person from succeeding to the Crown if they are disqualified from succeeding to the Crown under section 3 of the *Succession to the Crown Act 2013* of the United Kingdom.

That section provides that the first 6 people in the line of succession must obtain the consent of the Sovereign before marrying. The effect of failing to obtain that consent is that the person and their descendants from the marriage are disqualified from succeeding to the Crown.

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

This Clause specifies, by reference to Schedule 1 to the proposed Commonwealth Act, the amendment or repeal of various Acts of England and Great Britain and provides that in so far as those Acts are part of the law of the Commonwealth, a State or a Territory, those amendments and repeals also apply to that law of the Commonwealth, State or Territory.

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 to provisions in the *Bill of Rights* and the *Act of Settlement* that form part of the law of the Commonwealth or a Territory are to be read as including references to the provisions of the proposed Commonwealth Act.

Clause 11 Union legislation affected by this Act

This clause provides that certain specified Articles of various Acts of Union related to England, Scotland and Ireland, in so far as they form part of the law of the Commonwealth, a State or Territory, are subject to the provisions of this Act.

Part 5 – Repeal or amendment of this Act

Clause 12: Repeal or amendment of this Act

This Clause provides that the proposed Commonwealth Act can only be amended by the passing of an Act to make amendments at the request or with the concurrence of the Parliaments of all the States.

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

Part 1: Amendments relating to marriage to a Roman Catholic

Part 1 of Schedule 1 makes amendments to the *Act of Settlement* and the *Bill of Rights* (so far as they are part of the law of the Commonwealth, a State or a Territory) consequent on the removal of the disqualification provided for by clause 7 of the proposed Commonwealth Act.

Clauses 1, 2 and 3 of Part 1 of Schedule 1 amend the *Act of Settlement* by removing references to words that mean Roman Catholic.

Clauses 4, 5 and 6 of Part 1 of Schedule 1 amend the *Bill of Rights* by removing references to words that mean Roman Catholic.

Clause 7 of Part 1 of Schedule 1 provides that the amendments made by clause 1 to 6 apply in relation to marriages occurring before the commencement of the Part if the person concerned is alive at that commencement (as well as in relation to marriages occurring after that commencement).

Part 2: Amendments relating to marriage to a Roman Catholic

Clause 8 of Part 2 of Schedule 1 repeals the *Royal Marriages Act 1772* of Great Britain (so far as that Act is part of the law of the Commonwealth, a State or a Territory). That Act (with some exceptions) made void the marriages of any descendants of King George II who failed to obtain the Monarch's permission prior to marriage.

Clause 9 of Part 2 of Schedule 1 also validates certain marriages that were voided by the *Royal Marriages Act 1772* (including where neither party to the marriage was one of the first 6 people in the line of succession, it was reasonable for the person concerned not to have been aware at the time of the marriage that that Act applied to it and no person acted on the basis that the marriage was void before the commencement of the relevant provision in the proposed Commonwealth Act).