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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SUCCESSION TO THE CROWN BILL 2015**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Prime Minister, the Honourable Tony Abbott MP)

## SUCCESSION TO THE CROWN BILL 2015

### OUTLINE

On 19 April 2013, the Council of Australian Governments agreed to use section 51(xxxviii) of the Constitution to implement agreed changes to the rules of Royal succession in Australia, under which each of the States enacts legislation requesting that the Commonwealth enact legislation for the whole of Australia.

All State Parliaments must have requested changes to the rules of Royal succession before the Parliament of the Commonwealth of Australia can change those rules for the whole of Australia.

The Succession to the Crown Bill 2015 (the Bill) will change the law relating to the effect of gender and marriage on Royal succession consistently with changes being made to that law in the United Kingdom. These changes will ensure that the same person is the Sovereign of Australia and of the United Kingdom.

The Bill will give effect to Australia's commitment to change the rules on succession to the Crown in accordance with the agreement of the United Kingdom and the other Commonwealth Realms of which Her Majesty the Queen is Head of State, on 28 October 2011.

The provisions of the Bill:

- end the system of male preference primogeniture so that in future the order of succession will be determined simply by order of birth;
- remove the statutory provisions under which anyone who marries a Roman Catholic loses their place in the line of succession;
- limit the requirement that the Sovereign consent to the marriage of a descendant of his late Majesty King George the Second to the six persons nearest in line to the Crown and validate some marriages voided by the *Royal Marriages Act 1772* of Great Britain.

### Financial Impact Statement

This Bill will have no financial impact.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill**

As set out in the Outline of this Explanatory Memorandum, the Bill will change the law relating to the effect of gender and marriage on Royal succession. These changes are consistent with changes being made to that law in other Australian jurisdictions and the United Kingdom and will ensure that the same person is the Sovereign of Australia and of the United Kingdom.

The changes effected will:

- end the system of male preference primogeniture so that in future the order of succession will be determined simply by order of birth;
- remove the statutory provisions under which anyone who marries a Roman Catholic loses their place in the line of succession;
- limit the requirement that the Sovereign consent to the marriage of a descendant of his late Majesty King George the Second to the six persons nearest in line to the Crown and validate some marriages voided by the *Royal Marriages Act 1772* of Great Britain.

The Bill will give effect to the Government's commitment to change the rules on succession to and possession of the Crown in accordance with the agreement of the United Kingdom, and the other Commonwealth Realms of which Her Majesty the Queen is also Head of State, on 28 October 2011.

### **Human rights implications**

#### *Right to equality and non-discrimination*

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In particular, article 26 of the ICCPR provides that all persons are equal before the law and are entitled without discrimination to the equal protection of the law and that, in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Relevant rights to equality and non-discrimination on the ground of sex are also contained in articles 3 and 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women.

This Bill promotes these rights by removing the element of sex discrimination in the existing common law rules whereby an elder daughter is displaced by a younger son in the line of succession. It also promotes these rights by removing the element of religious discrimination in the existing law on Royal succession, which prevents a person who marries a Roman Catholic from succeeding to the Throne – a legal barrier that applies to Catholics and no other faith.

### *Right to respect for the family*

The right to respect for the family is contained in articles 23 and 17(1) of the ICCPR and article 10 of the ICESCR. In particular, article 23(2) of the ICCPR provides that the right of men and women of marriageable age to marry and to found a family shall be recognised.

The object of this Bill includes narrowing the requirement that the Sovereign consent to the marriage of all descendants of his late Majesty King George the Second to a requirement that the Sovereign consent to the marriage of the six persons nearest in line to the Crown. It also changes the effects of non-compliance with this requirement such that failure to comply no longer voids the marriage not consented to but instead results only in the disqualification of the person and the person's descendants from succeeding to the Crown. As such, clause 3 promotes the right to marry.

### **Conclusion**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as it promotes human rights.

## Notes on Clauses

### Part 1 - Introduction

#### Clause 1: Short title

1. This clause is a formal provision specifying the short title of the Bill.

#### Clause 2: Commencement

2. The table in this clause sets out when provisions in the Bill will commence. Clauses 1, 2, 3, 4 and 5, and Part 5 (and anything else not covered in the table) will commence on the day on which the Bill receives the Royal Assent.
3. Parts 2, 3 and 4, and Schedule 1, will commence on a date to be fixed by Proclamation.

#### Clause 3: Object of this Act

4. This clause sets out the main object of the Bill, which is to change the law relating to the effect of gender and marriage on Royal succession consistently with changes being made to that law in the United Kingdom. This is to ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

#### Clause 4: Relationship with Sovereign not affected

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

#### Clause 5: Definition of *Crown*

6. This clause defines the term *Crown* to mean 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

7. This clause provides that, in determining the succession to the Crown, the gender of a person born after 28 October 2011 (by United Kingdom time) does not give that person, or that person's descendants, precedence over any other person (whenever born). This change means that the gender of a person who was born after 28 October 2011 will have no relevance when determining succession to the Throne. The words "(whenever born)" make it clear that this will be the case even where the "other person" was born on or before 28 October 2011.

## **Part 3 – Marriage and succession to the Crown**

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

8. This clause provides that a person will not be disqualified from succeeding to the Crown or from being the Sovereign as a result of marrying a person of the Roman Catholic faith. The removal of the disqualification applies to marriages occurring before the commencement of the section if the person concerned is alive at the commencement of the section, as well as to marriages occurring after the commencement of the section.

### **Clause 8: Disqualification arising from marriage**

9. This clause disqualifies a person from succeeding to the Crown if he or she is disqualified from succeeding to the Crown under subsection 3(3) of the *Succession to the Crown Act 2013* of the United Kingdom.
10. Subsection 3(3) of the *Succession to the Crown Act 2013* of the United Kingdom provides for the consequences of a person's failure to obtain the Sovereign's consent before marrying, if that person (when the person marries) is one of the six persons nearest in line to the Crown. The consequences of such a failure are that the person and the person's descendants from the marriage are disqualified from succeeding to the Crown.
11. The effect of this item is that the Sovereign's consent will only be required for the first six people in the line of Royal succession.

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

12. This clause confirms that each Act of England or Great Britain that is specified in Schedule 1, so far as that Act is part of the law of the Commonwealth, a State or a Territory, is amended or repealed as set out in Schedule 1, and any other item in Schedule 1 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**

13. This clause provides that references in any law of the Commonwealth or a Territory to 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 of this Act.

### **Clause 11: Union legislation affected by this Act**

14. This clause provides that, so far as they are part of the law of the Commonwealth, a State or a Territory, the following are subject to this Act:
- Article II of the *Union with Scotland Act 1706* of England;
  - Article II of the *Union with England Act 1707* of Scotland;
  - Article Second of the *Union with Ireland Act 1800* of Great Britain;
  - Article Second of the *Act of Union (Ireland) 1800* of Ireland.
15. These four Acts deal with succession to the Crown.

### **Part 5 – Repeal or amendment of this Act**

#### **Clause 12: Repeal or amendment of this Act**

16. This clause provides that this Act may be expressly or impliedly repealed or amended only by an Act that is passed 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**

##### *Act of Settlement*

#### **Clause 1: Preamble**

17. This clause amends the preamble of the Act of Settlement by omitting “or marry a papist”.

#### **Clause 2: Preamble**

18. This clause amends the preamble of the Act of Settlement by omitting “or marrying”.

#### **Clause 3: Section 2**

19. This clause amends section 2 of the Act of Settlement by omitting “or shall marry a papist”.

##### *Bill of Rights*

**Clause 4: Section 1**

20. This clause amends section 1 of the Bill of Rights by omitting “or by any King or Queene marrying a papist”.

**Clause 5: Section 1**

21. This clause amends section 1 of the Bill of Rights by omitting “or shall marry a papist”.

**Clause 6: Section 1**

22. This clause amends section 1 of the Bill of Rights by omitting “or marrying”.

**Clause 7: Application of amendments**

23. This clause provides that the amendments in clauses 1 to 6 in this Part apply to marriages occurring before the commencement of this Part where the person concerned is alive at the commencement of this Part. Clauses 1 to 6 also apply to marriages occurring after the commencement of this Part.

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

**Clause 8: The whole of the Act**

24. This clause repeals the *Royal Marriages Act 1772*.

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

25. This clause validates marriages that were voided by the *Royal Marriages Act 1772*, subject to certain specified conditions listed in subclause (1). Subclause (2) provides that marriages validated by subclause (1) are validated for all purposes except those relating to succession to the Crown.