

Succession to the Crown Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the *Succession to the Crown Bill 2013*.

Policy objectives and the reasons for them

The objective of the Bill 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 other Australian jurisdictions and in the United Kingdom, so that the same person is Sovereign of Australia and of the United Kingdom.

At a Commonwealth Heads of Government meeting in October 2011, the leaders of the 16 Realms of which the Sovereign is Head of State agreed to two reforms to the rules of royal succession.

The Australian, States and Territories Governments have agreed to support the following three reforms to the rules on royal succession proposed by the government of the United Kingdom:

- To allow for succession regardless of gender;
- To remove the bar on succession for an heir and successor of the Sovereign who marries a Roman Catholic; and
- To limit the requirement for the Sovereign's consent to the marriage of a descendant of King George II to the first six persons in line to the throne.

The Bill gives effect in Queensland to the proposed changes to the rules of royal succession.

Achievement of policy objectives

The Bill will achieve its policy objectives by:

- Allowing for succession regardless of gender.
- Removing the bar on succession for an heir and successor of the Sovereign who marries a Roman Catholic.
- Repealing the *Royal Marriages Act 1772* of Great Britain; limiting the requirement for the Sovereign's consent to the marriage of a descendant of King George II to the first six persons in line to the throne; and repealing the Act so far as it is part of the law of the State.

The Bill will make consequential amendments to other legislation.

Alternative ways of achieving policy objectives

The policy objectives could also be achieved by an approach under section 51(xxxviii) of the Australian Constitution, involving State legislation requesting the changes to be made by a Commonwealth law.

Under this option each State would pass legislation (the request legislation) that requests the enactment by the Parliament of the Commonwealth of an Act to give effect to the required changes to the royal succession rules. The proposed Commonwealth Act would be attached to each State's request legislation.

The Commonwealth would then enact the legislation in the terms attached to each State's request legislation.

Estimated cost for government implementation

There will be no costs to Government for implementation of the Bill.

Consistency with fundamental legislative principles

A potential breach of fundamental legislative principles is addressed below.

The weight of legal and academic opinion is that a referral under section 51(xxxviii) of the Australian Constitution is the most constitutionally sound approach.

The Queensland Government has decided that Queensland is to give effect to the proposed changes to the rules of royal succession in line with an approach involving separate, substantially uniform and coordinated State legislation and complementary Commonwealth legislation, by introducing a separate Queensland Bill.

Consultation

Crown Law and the Office of the Queensland Parliamentary Counsel have been consulted on the development of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland.

However, the Australian and other State and Territory Governments have agreed to support reforms to the rules on royal succession proposed by the United Kingdom.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Clause 3 defines ‘Crown’ to mean the Crown in all of its capacities in respect to which the Parliament of the State has the power to legislate.

Clause 4 establishes the main object of the Act 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 other Australian jurisdictions and in the United Kingdom, so that the same person is the Sovereign of Australia and of the United Kingdom.

Clause 5 provides that the Act is not intended to affect the relationship between the Sovereign and the State as existing immediately before the Act’s commencement.

Part 2 Succession to the Crown not to depend on gender

Clause 6 provides that, in determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person’s descendants, precedence over any other person (whenever born). This date 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 so as to make royal succession not depend on gender.

Part 3 Marriage and succession to the Crown

Clause 7 removes the disqualification from succeeding to the Crown or from possessing it 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 the commencement of the clause.

Clause 8 provides that a person is disqualified from succeeding to the Crown if the person is disqualified from succession by section 3(3) of the *Succession to the Crown Act 2013* of the United Kingdom as in force at the commencement of this clause.

Clause 9 repeals the *Royal Marriages Act 1772* of Great Britain, so far as the Act is part of the law of Queensland.

Clause 10 validates some marriages that were voided by the *Royal Marriages Act 1772* of Great Britain, so far as the Act is part of the law of Queensland before its repeal by clause 9. The clause states that a marriage is to be treated as never having been void if-

- neither party to the marriage was one of the six persons next in line of succession to the Crown at the time of the marriage; and

- no consent was sought under section 1 of the *Royal Marriages Act 1772* of Great Britain, or notice given under section 2 of that Act, in respect of the marriage; and
- in all the circumstances it was reasonable for the person concerned not to have been aware at the time of the marriage that the *Royal Marriages Act 1772* of Great Britain applied to it; and
- no person acted on the basis that the marriage was void before the commencement of this subsection.

This clause applies for all purposes except those relating to succession to the Crown.

Clause 11 clarifies that any amendment made by part 6 of the Bill applies in relation to marriages occurring before the commencement of that part if the person concerned is alive at that commencement (as well as in relation to marriages occurring after that commencement). The clause also clarifies that references to an Act in part 6 are to that Act so far as it is part of the law of Queensland.

Part 4 General

Clause 12 provides that references to the provisions of 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 13 provides that Article Second of the *Union with Ireland Act 1800* of Great Britain and Article Second of the *Act of Union (Ireland) 1800* of Ireland, so far as they are part of the law of Queensland, are subject to this Act.

Part 5 Amendment of Imperial Acts Application Act 1984

Clause 14 states that this part amends the *Imperial Acts Application Act 1984*.

Clause 15 makes an amendment to Schedule 1 of the *Imperial Acts Application Act 1984*.

Part 6 Amendment of Other Acts

Division 1 Amendment of Act of Settlement

Clause 16 provides that this division amends the *Act of Settlement* passed by the Parliament of England.

Clause 17 amends the preamble of the *Act of Settlement* passed by the Parliament of England by omitting ‘or marry a papist’ and ‘or marrying’.

Clause 18 amends section 2 of the *Act of Settlement* passed by the Parliament of England by omitting ‘or shall marry a papist’.

Division 2 Amendment of Bill of Rights

Clause 19 provides that this division amends the *Bill of Rights* passed by the Parliament of England.

Clause 20 amends section 1 of the *Bill of Rights* passed by the Parliament of England by omitting ‘or by any King or Queene marrying a papist’, ‘or shall marry a papist’ and ‘or marrying’. This removes all references to marriage to a Roman Catholic as a bar on succession to the Crown.

Division 3 Amendment of Union with England Act 1707

Clause 21 provides that this division amends the *Union with England Act 1707* passed by the Parliament of Scotland.

Clause 22 amends article II of the *Union with England Act 1707* passed by the Parliament of Scotland by omitting ‘and persons marrying papists’ and ‘or person marrying a papist’. This removes all references to marriage to a Roman Catholic as a bar on succession to the Crown.

Division 4 Amendment of Union with Scotland Act 1706

Clause 23 provides that this division amends the *Union with Scotland Act 1706* passed by the Parliament of England.

Clause 24 amends article II of the *Union with Scotland Act 1706* passed by the Parliament of England by omitting ‘and persons marrying papists’ and ‘or person marrying a papist’. This removes all references to marriage to a Roman Catholic as a bar on succession to the Crown.