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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CROWN REFERENCES AMENDMENT BILL 2023

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister to the Prime Minister, the Honourable
Patrick Gorman MP)

CROWN REFERENCES AMENDMENT BILL 2023

GENERAL OUTLINE

1. Following the accession of His Majesty King Charles III, the Crown References Amendment Bill 2023 (the Bill) would make minor amendments to various Commonwealth Acts to update references to Her Majesty Queen Elizabeth II to “the Sovereign”, to provide flexibility to the application and operation of existing and future legislation, in the event of the accession of a new Sovereign.
2. In accordance with section 16 of the *Acts Interpretation Act 1901*, existing references to Her Majesty Queen Elizabeth II in Commonwealth Acts, are construed as references to the present Sovereign, His Majesty King Charles III.
3. There is benefit in progressing amendments to reflect the accession of a new Sovereign. In particular, it would provide consistency in Commonwealth legislation and the current framing of the proposed Bill would provide flexibility to avoid the need to amend legislation when a future Sovereign accedes.
4. The Bill would amend the *Acts Interpretation Act 1901*, *Administrative Appeals Tribunal Act 1975*, *A New Tax System (Goods and Services Tax) Act 1999*, *Archives Act 1983*, *Australian Capital Territory (Self Government) Act 1988*, *Australian Security Intelligence Organisation Act 1979*, *Copyright Act 1968*, *Customs Act 1901*, *Defence Act 1903*, *Defence Force Discipline Act 1982*, *Defence Force Discipline Appeals Act 1955*, *Defence Service Homes Act 1918*, *Defence (Special Undertakings) Act 1952*, *Director of Public Prosecutions Act 1983*, *Explosives Act 1961*, *Fair Work Act 2009*, *Federal Court of Australia Act 1976*, *High Court of Australia Act 1979*, *Income Tax Assessment Act 1997*, *Judiciary Act 1903*, *Marriage Act 1961*, *Norfolk Island Act 1979*, *Northern Territory (Self Government) Act 1978*, *Parliamentary Counsel Act 1970*, *Royal Commissions Act 1902*, *Royal Powers Act 1953*, *Superannuation Act 1922*, *Transfer of Prisoners Act 1983* and the *Veterans’ Entitlements Act 1986*.
5. Where the above Acts make reference to “Her Majesty” and “the Queen”, and some outdated references “the King”, the Bill proposes to replace these words with “the Sovereign”.
6. To further ensure the Bill caters for the future accession of a new Sovereign, the Bill provides flexibility for oaths and affirmations. The wording of oaths and affirmations is usually prescribed in legislation where an oath-taker or affirmer makes a pledge to the Sovereign of the day. Instead of prescribing “His” or “Her” Majesty in an oath or affirmation, there is a direction to “insert applicable pronoun”. It has been Commonwealth drafting practice since the early 1980’s for statutory provisions to be drafted so as to avoid the use of gender-specific language.
7. The Bill proposes to insert a new defined term, being “Senior Counsel” in the *Acts Interpretation Act 1901* to include “King’s Counsel” and “Queen’s Counsel”. The purpose of this amendment is to remove any confusion where Commonwealth Acts and instruments make reference to “Queen’s Counsel”, “King’s Counsel” or “Senior Counsel”. This change would reflect current practice at the Commonwealth level

which is that Senior Counsel are considered equal in status to King's Counsel (formerly Queen's Counsel).

8. The Bill would not amend all legislative references to Her Majesty Queen Elizabeth II. For example, the Bill would not make amendments to the *Royal Style and Titles Act 1973* and the *Australia Act 1986*, amendments to such Acts potentially require the request or concurrence of the State Parliaments. The Bill will also not amend provisions that refer to "Her Majesty in Council" or "Queen in Council", which are provisions that limited the ability to appeal matters to the Privy Council (UK) in various circumstances. Those provisions have effectively been superseded with the enactment of the *Australia Act 1986*.

FINANCIAL IMPACT

9. The Bill has no financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Crown References Amendment Bill 2023

1. 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

2. Following the accession of His Majesty King Charles III, the Crown References Amendment Bill 2023 (the Bill) would make minor amendments to various Commonwealth Acts to update references to Her Majesty Queen Elizabeth II.
3. The purpose of such amendments would be to provide flexibility to the application and operation of existing and future legislation, in the event of the accession of a new Sovereign.
4. The Bill proposes to amend various legislative references to “Her Majesty” and “the Queen”, and some outdated references “the King”, and replace these words with “the Sovereign”.
5. Furthermore, the Bill proposes to insert a new defined term, being “Senior Counsel” in the *Acts Interpretation Act 1901* to include “King’s Counsel” and “Queen’s Counsel”. The purpose of this amendment is to remove any confusion where Commonwealth Acts and instruments make reference to “Queen’s Counsel”, “King’s Counsel” or “Senior Counsel”.

Human rights implications

6. This Bill does not engage any of the applicable rights or freedoms.
7. The amendments in Schedule 1 are machinery and minor in nature and do not affect the rights or obligations of any person.
8. The provisions in the Bill relate only to the Sovereign and their title, and that of their heirs and successors, in Commonwealth legislation. It does not otherwise functionally affect any of the legislation it amends.
9. However, the Bill proposes adopting a gender neutral term for the Sovereign and allows for pronouns used to refer to the Sovereign to reflect those of the Sovereign of the day. These amendments are in keeping with principles which recognise gender equality.

Conclusion

10. This Bill is compatible with human rights as it does not raise any human rights issues.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

1. This clause provides for the short title of the Bill upon its enactment by the Parliament to the *Crown References Amendment Act 2023*.

Clause 2 – Commencement

2. This clause provides for the commencement of the *Crown References Amendment Act 2023*. The whole of the *Crown References Amendment Act 2023* would commence on the day after the Act receives the Royal Assent.

Clause 3 – Schedules

3. This clause provides that legislation specified in a Schedule to the *Crown References Amendment Act 2023* is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1- Amendments

Acts Interpretation Act 1901

4. Item 1 inserts the definition of “Senior Counsel” in section 2B, to include “King’s Counsel” and “Queen’s Counsel”.
5. The purpose of this amendment is to remove any confusion where Commonwealth Acts and instruments make reference to “Queen’s Counsel”, “King’s Counsel” or “Senior Counsel”. This change would reflect current practice current practice at the Commonwealth level which is that Senior Counsel are considered equal in status to King’s Counsel (formerly Queen’s Counsel).

Administrative Appeals Tribunal Act 1975

6. Item 2 amends the oath or affirmation under Schedule 2 to omit “Her Majesty Queen Elizabeth the Second, her Heirs and Successors according to law, that I will truly serve Her”, substitute “(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’) Heirs and Successors according to law, that I will truly serve (insert applicable pronoun, such as ‘Him’ or ‘Her’)”.
7. The oath or affirmation is taken by a person appointed or re-appointed as a member of the Administrative Appeals Tribunal.

A New Tax System (Goods and Services Tax) Act 1999

8. Item 3 amends section 38-505(1)(a) to omit “Her Majesty” and substitute “the Sovereign”. This section refers to individuals who has served in the Defence Force or in any other armed force of Her Majesty.

Archives Act 1983

9. Item 4 amends the definition of *Royal Commission* in subsection 3(1) to omit “the Queen” and substitute “the Sovereign”.

Australian Capital Territory (Self Government) Act 1988

10. Item 5 amends the oath or affirmation under Schedule 1 to omit “Her Majesty Queen Elizabeth, Her” (wherever occurring), substitute “(*insert name of the Sovereign*), (*insert applicable pronoun, such as ‘His’ or ‘Her’*)”.

Australian Security Intelligence Organisation Act 1979

11. Item 6 amends subparagraph 34AD(1)(c)(iv) to omit “a Queen’s Counsel or”. This subparagraph currently provides that a “Queen’s Counsel or a Senior Counsel” may be appointed as a prescribed authority by the Attorney-General.
12. Item 7 adds a note at the end of subsection 34AD(1), that “Senior Counsel” is given an extended meaning by section 2B of the *Acts Interpretation Act 1901*.

Copyright Act 1968

13. Item 8 amends subsections 211(1) and 220(1) to omit “Queen’s dominions”, substitute “Sovereign’s dominions”.
14. Subsection 211(1) relates to the application of the Act to original works made before the commencement of the Act, for which the author was a qualified person including a person domiciled in any part of the Queen’s dominions.
15. Subsection 220(1) relates to the application of the Act to sound recordings made before the commencement of the Act, for which the maker was a qualified person including a person domiciled in any part of the Queen’s dominions.
16. Item 9 amends the oath or affirmation under the Schedule to omit “Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her” (wherever occurring), substitute “(*insert name of the Sovereign*), (*insert applicable pronoun, such as ‘His’ or ‘Her’*) Heirs and Successors according to law, that I will well and truly serve (*insert applicable pronoun, such as ‘Him’ or ‘Her’*)”.

Customs Act 1901

17. Item 10 amends sections 274 and 275 to omit “His Majesty”, substitute “the Sovereign”.

18. These sections relate to the reporting and searching of ships and aircrafts holding commission from ‘His Majesty or from any foreign State’.

Defence Act 1903

19. Item 11 amends subsection 4(1) to omit “Queen’s dominions”, substitute “Sovereign’s dominions” in the definition of *Service Decoration*.
20. Item 12 amends subparagraph 124(1)(nc)(i) to omit “King’s dominions”, substitute “Sovereign’s dominions”.
21. Subparagraph 124(1)(nc)(i) relates to the Governor-General’s regulation making powers in relation prohibition of the use of a word, group of letters, object or device which is descriptive or indicative of a part of the Naval Forces, Military Forces or Air Forces of a part of the King’s dominions.

Defence Force Discipline Act 1982

22. Item 13 amends the oaths and affirmations in Schedules 4 and 5 to omit “Her Majesty” (wherever occurring), substitute “(insert applicable pronoun, such as ‘His’ or ‘Her’) Majesty”.
23. The oath or affirmation under Schedules 4 and 5 are made by various officers, such as a Defence Force magistrate, in the context of service tribunal proceedings for Defence disciplinary matters.

Defence Force Discipline Appeals Act 1955

24. Item 14 amends the oath or affirmation under the Schedule to omit “Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her” (wherever occurring), substitute “(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’) Heirs and Successors according to law, that I will well and truly serve (insert applicable pronoun, such as ‘Him’ or ‘Her’)”.
25. The oath or affirmation is made by members of the Defence Force Discipline Appeal Tribunal.

Defence Service Homes Act 1918

26. Item 15 amends the definition of *Australian Soldier* under subsection 4(1) (paragraphs (c) and (d)), to omit “King’s dominions”, substitute “Sovereign’s dominions”.
27. Item 16 amends paragraph 4(2)(a), to omit “Queen’s dominions” (wherever occurring), substitute “Sovereign’s dominions”.
28. Item 17 amends subsection 4(2B) to omit “King’s dominions”, substitute “Sovereign’s dominions”.

Defence (Special Undertakings) Act 1952

29. Item 18 amends paragraph 6(a) to omit “Queen’s dominions”, substitute “Sovereign’s dominions”. Paragraph 6(a) is in relation to the declaration of a special defence undertaking to defend Australia or some other part of the Queen’s dominions.
30. Item 19 amends subsection 7(1) to omit “the Queen”, substitute “the Sovereign”. Subsection 7(1) is in relation to prohibited areas that is a place, whether or not it belongs to or is used for the purposes of the Queen, the Commonwealth or a State.
31. Item 20 amends section 8 to omit “the Queen”, substitute “the Sovereign”. Section 8 relates to the Minister’s ability to declare an area of land or water or an area of land and water to be a prohibited area whether or not it belongs to or is used for the purposes of the Queen, the Commonwealth or a State.

Director of Public Prosecutions Act 1983

32. Item 21 amends the oath or affirmation under the Schedule to Omit “Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her” (wherever occurring), substitute “*(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’)* Heirs and Successors according to law and that I will well and truly serve *(insert applicable pronoun, such as ‘Him’ or ‘Her’)*”.
33. The oath or affirmation is made by the Director of Public Prosecutions or Associate Director of Public Prosecutions before they take their office.

Explosives Act 1961

34. Item 22 amends section 8 to omit “Queen’s dominions”, substitute “Sovereign’s dominions”. Section 8 refers to the interpretation of *vessel* in Part II of the Act, which does not include a vessel belonging to the naval forces of the Queen’s dominions.

Fair Work Act 2009

35. Item 23 amends subparagraph 115(1)(a)(vi) to omit “Queen’s birthday holiday”, substitute “holiday for the birthday of the Sovereign” in relation to the meaning of *public holidays*.

Federal Court of Australia Act 1976

36. Item 24 amends the oath or affirmation under the Schedule to omit “Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her”, substitute “*(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’)* Heirs and Successors according to law, that I will well and truly serve *(insert applicable pronoun, such as ‘Him’ or ‘Her’)*”.
37. The oath or affirmation is made by a Judge of the Federal Court of Australia before they discharge the duties of their office.

High Court of Australia Act 1979

38. Item 25 amends paragraph 33(a) to omit ‘the Queen’, substitute the “Sovereign”. Paragraph 33(a) provides that all writs, commissions and process issued from the High Court shall be in the name of the Queen.
39. Item 26 amends the oath or affirmation under the Schedule to omit “Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her”, substitute “(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’) Heirs and Successors according to law, that I will well and truly serve (insert applicable pronoun, such as ‘Him’ or ‘Her’)”.
40. The oath or affirmation is made by a Justice of the High Court before they discharge the duties of their office.

Income Tax Assessment Act 1997

41. Item 27 amends table item 5.1.2 in subsection 30-50(1) to omit “Her Majesty’s dominions”, substitute “the Sovereign’s dominions”.
42. Item 28 amends table item 5.1.2 in subsection 30-50(1) to omit “Her Majesty’s armed forces”, substitute “the Sovereign’s armed forces”.
43. Item 5.1.2 describes a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the armed forces of Her Majesty’s dominions; or any allied or other foreign force serving in association with Her Majesty’s armed forces.

Judiciary Act 1903

44. Item 29 amends subsection 69(2) to omit ‘the Queen’s’, substitute the “Sovereign’s”, in relation to appointments by commission in the Queen’s name.

Marriage Act 1961

45. Item 30 amends the definition of *overseas country* in subsection 5(1) to omit “Queen’s dominions”, substitute “Sovereign’s dominions”.
46. Item 31 repeals the definition of *Queen’s dominions* in subsection 5(1).
47. Item 32 inserts the definition of *Sovereign’s dominions* which is similar to the previous definition of *Queen’s dominions* in subsection 5(1).
48. Item 33 amends subsection 71(2) to omit “Queen’s dominions”, substitute “Sovereign’s dominions”. Subsection 71(2) relates to the circumstances in which the Governor-General’s may declare that a part of the Queen’s dominions is an overseas country.

Norfolk Island Act 1979

49. Item 34 amends the oath or affirmation under Schedule 4 to Omit “Her Majesty Queen Elizabeth, Her heirs and successors according to law, that I will well and truly serve Her” (wherever occurring), substitute “*(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’)* Heirs and Successors according to law, that I will well and truly serve *(insert applicable pronoun, such as ‘Him’ or ‘Her’)*”.
50. The oath or affirmation is made by a Judge of the Supreme Court of Norfolk Island before they discharge the duties of their office.

Northern Territory (Self Government) Act 1978

51. Item 35 amends the oath or affirmation under Schedule 2 to omit “Her Majesty Queen Elizabeth the Second, substitute a “*(insert name of the Sovereign) and (insert applicable pronoun, such as ‘His’ or ‘Her’)*”. The oath or affirmation under Schedule 2 is made by a member of the Legislative Assembly of the Northern Territory of Australia before they take their seat.
52. Item 36 amends the oath or affirmation under Schedule 6 to omit “Sovereign Lady the Queen”, substitute “*(insert Sovereign)*”. The oath or affirmation under Schedule 6 is made by the Administrator, and Acting Administrator or a deputy of the Administrator of the Northern Territory of Australia before they enter the duties of their office.

Parliamentary Counsel Act 1970

53. Item 37 amends the oath and affirmation in the Schedule to omit “Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her” (wherever occurring), substitute “*(insert name of the Sovereign), (insert applicable pronoun, such as ‘His’ or ‘Her’)* Heirs and Successors according to law, that I will well and truly serve *(insert applicable pronoun, such as ‘Him’ or ‘Her’)*”.
54. The oath and affirmation is made by the First Parliamentary Counsel or a Second Parliamentary Counsel before they perform the duties of their office.

Royal Commissions Act 1902

55. Item 38 amends section 1A to omit “the King” substitute “the Sovereign”, in relation to the power to issue any Royal Commission.
56. Item 39 amends paragraph 16(1)(a) to omit “the King”, substitute “the Sovereign”, in relation to documents purporting to be Letters Patent in the name of the King.

Royal Powers Act 1953

57. Item 40 amends the Title to omit “the Queen”, substitute “the Sovereign”. The Title currently states “An Act relating to the exercise by the Queen of Powers under Acts of the Parliament”.
58. Item 41 amends section 2 (heading) to omit “the Queen”, substitute “the Sovereign”, which currently states “Exercise of statutory powers by the Queen”.
59. Item 42 amends section 2 to omit “the Queen” (wherever occurring), substitute “the Sovereign”. Section 2 relates to the exercise of statutory powers by the Queen.

Superannuation Act 1922

60. Item 43 amends paragraph 147(2)(a), in relation to the meaning of *the Forces*, to omit “King’s dominions”, substitute “Sovereign’s dominions”.

Transfer of Prisoners Act 1983

61. Item 44 amends paragraphs 3(17)(c) and (d) to omit “the Queen”, substitute “the Sovereign”. Paragraph 3(17) relates to a sentence, order or direction for, the imprisonment or detention of a person during the pleasure of the Queen.
62. Item 45 amends subsections 24(2) and (3) to omit “the Queen”, substitute “the Sovereign”. Subsections 24(2) and (3) relates to the royal prerogative of mercy.

Veterans’ Entitlements Act 1986

63. Item 46 amends the oath or affirmation under Schedule 4 to omit “Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law, that I will well and truly serve Her” (wherever occurring), substitute “(*insert name of the Sovereign*), (*insert applicable pronoun, such as ‘His’ or ‘Her’*) Heirs and Successors according to law, that I will well and truly serve (*insert applicable pronoun, such as ‘Him’ or ‘Her’*)”.
64. The oath or affirmation is made by members of the Veterans’ Review Board before they discharge the duties of their office.