

PREMIER, DAVID BARTLETT MP

CONSTITUTION (DOUBTS REMOVAL) BILL 2009

SECOND READING SPEECH

I move – That the Bill now be read for the second time.

The *Constitution (Doubts Removal) Bill 2009* validates actions taken by Lieutenant-Governors between 1986 and the commencement of the Bill, as if they had been properly appointed.

Mr Speaker, this measure is necessary to remove any doubt that all official actions performed by Lieutenant-Governors since the commencing of the Australia Act 1986 (Cth) are valid as if they had been correctly appointed.

The reason that the Bill needs to be introduced into Parliament this week is that the Victorian Government has advised that it will be introducing legislation into its Parliament next week to clarify the process for appointing Lieutenant-Governors of Victoria and validate the actions of previous Lieutenant-Governors who have not been appointed properly.

The Solicitor-General has advised that, in light of Victoria's proposed action, it would be prudent for Tasmania to pass similar legislation before Parliament rises this year.

The background to this matter is as follows.

In July 2006 the Solicitors-General of the states of Tasmania, New South Wales, South Australia, Victoria and Queensland formed a joint view that, since the *Australia Act 1986* (Cth) came into force, the power to appoint a Lieutenant-Governor to administer the government of a state of Australia could only be exercised by the Governor of that state and not the Queen, unless the Queen was physically present in the state.

Despite the effect of the *Australia Act 1986* a number of states, including Tasmania, continued to have the Queen appoint Lieutenant-Governors beyond 1986.

In Tasmania's case this occurred between 3 March 1986 and 21 November 2005, at which time Tasmanian practice changed through the amendment of Letters Patent so that Lieutenant-Governors are now appointed by the Governor.

Indeed, the current Lieutenant-Governor was appointed by the Governor.

However, the validity of those appointments made between the commencement of the *Australia Act* and 21 November 2005, and the official actions of the Lieutenant-Governors performed under these appointments, is now in question.

The Bill before the House serves to validate those actions.

As the actions of Deputy Lieutenant-Governors, Administrators and Deputy Administrators during that period may similarly be open to challenge the Bill also validates these.

The Bill limits the liability of the State arising from potential legal claims, except in the case where an action against the State might have been successful had the Lieutenant Governor been validly appointed as, for example, in the case of a negligence claim.

It also makes a consequential amendment to the Tasmanian *Constitution Act 1934* to clarify that the appointments in questions are not made by the Queen.

Since 2006 this matter has been the subject of significant and complex discussions amongst Solicitors-General of the affected states.

Ultimately the Solicitors-General recommended that this problem be fixed at a national level by requesting the Commonwealth to amend the Australia Act to specify that the Governor of a state appoints Lieutenant-Governors and to validate the appointment of past Lieutenant-Governors appointed by the Queen.

Section 15(1) of the Australia Act requires that amendment of that Act can only occur at the request of, or with the concurrence of, the parliaments of all the states. To date states have not been able to reach agreement to progress such an amendment concurrently.

Mr Speaker, as I previously pointed out, the Victorian Government has now announced that, in the absence of states being able to reach agreement on amendments to the Australia Act, it intends tabling state-specific legislation in the Victorian Parliament, to address the problem I have outlined, within the next week.

The Solicitor-General has advised that given Victoria's intentions it would be prudent for Tasmania to pass similar legislation at the same time and not wait for a national solution.

Mr Speaker, enacting specific doubts removal legislation applicable only to Tasmania will remove any doubt about the validity of official actions performed by Lieutenant-Governors since the commencement of the Australia Act and ensure that legislation is in train by the time Victoria tables its legislation.

Without the Bill the appointment of Lieutenant Governors between 1986 and 21 November 2005, and the official actions they have taken, may be open to legal challenge.

The Bill provides for certainty in this regard.

I commend the Bill to the House.