

Constitution (Doubts Removal) Bill 2009

FACT SHEET

The purpose of the *Constitution (Doubts Removal) Bill 2009* is to validate actions taken by Lieutenant-Governors between 1986 and the commencement of the Bill, as if they had been properly appointed. 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 (for example a negligence claim.)

On 20 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. However, the validity of those appointments made between 3 March 1986 and 21 November 2005, and the official actions of the Lieutenant-Governors acting pursuant to them, is now in question.

The actions of Deputy Lieutenant-Governors, Administrators and Deputy Administrators may also be open to challenge in some instances.

The Solicitors-General of the affected states recommended that this problem be fixed by amending the *Australia Act* to specify that the Governor 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.

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 issues identified above, during the week commencing 10 November 2009.

The Tasmanian Solicitor-General has advised that given Victoria's intentions it would be prudent for Tasmania to pass similar legislation at the same time.

Enacting specific doubts removal legislation applicable only to Tasmania will remove any doubt that all official actions performed by Lieutenant-Governors since the commencement of the *Australia Act 1986* are valid, as if they had been correctly appointed and ensure that legislation is in train by the time Victoria tables its legislation.

To avoid doubt the Bill also validates official actions of Deputy Lieutenant-Governors, Administrators and Deputy Administrators.

The Bill makes a consequential amendment to the *Constitution Act 1934 (Tas)* to clarify that the appointments in question are not made by the Queen.