

CLAUSE NOTES

Constitution (Doubts Removal) Bill 2009

CLAUSE 1 – SHORT TITLE

This clause provides the short title to be used when citing the proposed Act for any legal purpose.

CLAUSE 2 – COMMENCEMENT

The proposed Act commences on the day it receives Royal Assent.

CLAUSE 3 – INTERPRETATION

This clause defines key terms used in the proposed Act, including ‘Administrator’, ‘Deputy Administrator’, ‘Deputy Lieutenant-Governor’ and ‘Lieutenant-Governor’.

It also defines ‘relevant action’ and ‘relevant time’ for the purposes of the Act:

- ‘relevant action’ means any act or omission of an administrative or legislative nature (ie part of the official duties of any of the roles listed above), done or omitted since the commencement of the *Australia Act 1986* (Cth);
- ‘relevant time’ means from the commencement of the *Australia Act 1986* (Cth) (5.00 a.m. GMT on 3 March 1986) to the day the Act receives Royal Assent.

CLAUSE 4 – ACT TO BIND THE CROWN

This clause provides that the proposed Act binds the Crown in right of Tasmania.

CLAUSE 5 – EFFECT OF RELEVANT ACTIONS

This clause provides that relevant actions are deemed to have effect, as if they had been done or omitted to be done at the relevant time by a person validly holding the office of Governor.

This has the effect of removing any doubt that all official acts or omissions performed by an Administrator, Deputy Administrator, Deputy Lieutenant-Governor or Lieutenant-Governor since the commencement of the *Australia Act 1986* (Cth) are valid, as if they had been correctly appointed.

CLAUSE 6 – ACT NOT TO GIVE RISE TO LIABILITY OF THE STATE

Clause 6(1) provides that the State is not liable for any action, liability, claim or demand arising from the proposed Act.

Clause 6(2) states that no proceedings lie against the State, except to the extent that they would lie had the relevant action or omission be done by a person validly holding the office of Governor. This essentially means that acts or omissions done by an Administrator, Deputy Administrator, Deputy Lieutenant-Governor or Lieutenant-Governor since the commencement of the *Australia Act 1986* (Cth) that may have been outside the scope of, or contrary to, their

official functions, may still result in a liability for the State (for example a claim of negligence).

Clause 6(3) defines key terms used in clause 6, including ‘proceedings’ and ‘the State’.

CLAUSE 7 – ADMINISTRATION OF ACT

This clause provides that until provision is made in the *Administrative Arrangements Act 1990*:

- the administration of the Act will be assigned to the Premier; and
- the responsible department is the Department of Premier and Cabinet.

CLAUSE 8 – CONSEQUENTIAL AMENDMENTS

This clause indicates that there is a consequential amendment to the *Constitution Act 1934* (Tas).

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Clause 1 of schedule 1 clause specifies the consequential amendment to the *Constitution Act 1934* (Tas), which removes the words “under Royal Sign Manual and Signet”. This has the effect of clarifying that Lieutenant-Governors and Administrators (or their deputies) are not appointed by the Queen.