

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Constitution Act 1902 in relation to the appointment of the Chief Justice of the Supreme Court as the Lieutenant-Governor. The Constitution Act 1902 provides for the appointment of a Lieutenant-Governor who may act when the Governor is not available and, if there is no Lieutenant-Governor appointed or the Lieutenant-Governor is not available, for the Chief Justice to act as Administrator.

The long-standing practice in NSW is that the Chief Justice is appointed as Lieutenant-Governor (which is currently the case).

Under Part 2A of the Constitution Act 1902, the appointment of the Governor and the Lieutenant-Governor is made by "Commission under Her Majesty's Sign Manual" (namely, by the Queen in accordance with constitutional practice for the Colony and then the State of NSW).

The appointment of the Governor and the Lieutenant-Governor (or Administrator) of a State is now governed by the Australia Acts of the Commonwealth and of the United Kingdom. In some States the view has been taken that the Lieutenant-Governor should be appointed by the Governor instead of by the Queen (as a result of debate about the interpretation of relevant provisions of the Australia Explanatory note page 2

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Act). Amendment of the Australia Acts requires the consent of all the States. In order to avoid any doubt about the exercise of the Governor's functions in NSW (pending any clarifying changes made to the Australia Acts), the Bill deems the Chief Justice to be acting as Administrator (which is clearly authorised by the Constitution Act 1902) if for any reason it is subsequently determined that the appointment as Lieutenant-Governor was not legally effective.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 amends section 9B of the Constitution Act 1902 to give effect to the object outlined above.