



New South Wales

Constitution Amendment (Lieutenant-Governor) Bill 2009

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

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.

First print



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New South Wales

Constitution Amendment (Lieutenant-Governor) Bill 2009

No. , 2009

A Bill for

An Act to amend the *Constitution Act 1902* in relation to the appointment of the Chief Justice as the Lieutenant-Governor.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Constitution Amendment (Lieutenant-Governor) Act 2009</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Constitution Act 1902 No 32	7
Section 9B Appointment of Lieutenant-Governor and Administrator	8
Insert after section 9B (5):	9
(6) Any act, matter or thing done or omitted by the Chief Justice of the Supreme Court (before or after the commencement of this subsection) in the capacity of Lieutenant-Governor is taken to have been done or omitted, and always to have been done or omitted, in the capacity of Administrator if for any reason the Chief Justice was not holding office as Lieutenant-Governor at the relevant time. This subsection extends to any act, matter or thing done or omitted as the Governor's deputy under section 9D.	10 11 12 13 14 15 16 17 18 19