**Second Reading**

**The Hon. JOHN HATZISTERGOS** (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [11.51 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

This bill is being introduced to remove any legal doubts that might otherwise have arisen concerning acts done by Lieutenant-Governors who were appointed in New South Wales after 1986.

As Members will be aware, the New South Wales *Constitution Act* provides for the appointment of a Lieutenant-Governor who acts when the Governor is not available.

The *Constitution Act* provides that the appointment of both the Governor and the Lieutenant-Governor is to be made by the Queen. In New South Wales, this has always been the case.

In the last few years, however, South Australia, Victoria and Tasmania have changed their practices so that their Lieutenant-Governors are now appointed by their Governors rather than by the Queen.

Those States have formed the view that the *Australia Act*, which came into force in March 1986, requires the Lieutenant-Governor to be appointed by the Governor and prevents appointments being made by the Queen unless Her Majesty is personally present in the jurisdiction.

Those States have taken this view despite the fact that in all of them Lieutenant-Governors were still being appointed by the Queen long after the Australia Act commenced.

They also take the view that the *Australia Act* being a Commonwealth statute overrides any inconsistent State Constitution Act.

If those States are correct, then any Lieutenant-Governor appointed by the Queen in any State since March 1986 was invalidly appointed.

I should emphasise at this point that the New South Wales Government does not necessarily agree with the view that has been taken in those other States.

The application of the *Australia Act* to the appointment of Lieutenant-Governors is not entirely clear.

While the view taken in other States is arguable, the contrary view is also arguable.

The only way to resolve the ambiguity would be to amend the Australia Act to clarify the required appointment process.

The *Australia Act* can, however, only be amended with the consent of all States.

For some years now, the New South Wales Government has been discussing with other States the possibility of approaching the Commonwealth Government with a proposal to amend the *Australia Act* to remove all uncertainty.

Although most States have also endorsed that approach, unanimous agreement has not been achieved.

Pending any possible clarifying amendments being made to the *Australia Act*, it is prudent to enact this bill to remove the immediate legal uncertainty.

I note that Tasmania last week introduced similar validating legislation, and Victoria is introducing legislation this week.

In New South Wales, the longstanding practice is for the Chief Justice of the Supreme Court to be appointed as Lieutenant-Governor. This is, of course, currently the case.

Under the *Constitution Act*, if no Lieutenant-Governor is appointed then the Chief Justice is automatically taken to be the Administrator and is authorised to act for the Governor when the Governor is unavailable.

Accordingly, even if the appointment of the Chief Justice as Lieutenant-Governor were invalid, the Chief Justice would nevertheless clearly be authorised to act as Administrator.

The bill makes this explicit by providing that, if for any reason the appointment of the Chief Justice as Lieutenant-Governor was not legally effective, then the Chief Justice will be taken to have been acting as Administrator.

In this way, there can be no possible legal doubt about the past or future acts of any New South Wales Lieutenant-Governor.

Provided any acts were within the powers of a Lieutenant-Governor, then those acts will also have been within the

power of an Administrator.

Accordingly, this bill ensures that the debate concerning the *Australia Act* is, for New South Wales at least, of purely academic interest only.

Whichever interpretation of the Act one might take, this bill will ensure that there can be no adverse legal consequences for anything that has or will be done in this State.

I commend the bill to the House.