



CONSTITUTION AMENDMENT (APPOINTMENT OF LIEUTENANT-GOVERNOR AND ADMINISTRATOR) BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Section 9B(2) of the *Constitution Act 1902* (NSW) (**Constitution Act**) provides for the appointment of a person to the office of Lieutenant-Governor by the Sovereign.

The Solicitor General has advised that, as a result of the terms of the *Australia Act 1986* (Cth) (**Australia Act**), the Lieutenant-Governor should be appointed by the Governor of New South Wales and not the Sovereign, unless the Sovereign is in the State at the time of the appointment. The Solicitor General has also advised that subsection 9B(2) of the Constitution Act, providing for appointment by the Sovereign, is inoperative due to its inconsistency with the Australia Act under section 109 of the Commonwealth Constitution.

Section 9B(4) of the Constitution Act provides for the appointment of a person as Administrator by the Sovereign. In line with the Solicitor General's advice, the appointment of the Administrator should also be made by the Governor.

If passed, the Constitution Amendment (Appointment of Lieutenant-Governor and Administrator) Bill 2022 (**Bill**) will amend the Constitution Act to provide that the appointment of persons to the offices of Lieutenant-Governor and Administrator is to be made by the Governor.

The proposal is consistent with steps previously taken by South Australia, Tasmania and Victoria to resolve inconsistencies with the Australia Act. Queensland has not appointed a Lieutenant-Governor since 1949.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to:

- ensure that the Constitution Act reflects the existing legal position under the Australia Act with respect to the appointment of persons to the offices of Lieutenant-Governor and Administrator
- remove legal uncertainty relating to the appointment of persons to the office of Lieutenant-Governor and Administrator.

Options: What alternative policies and mechanisms were considered in advance of the bill?

In light of the Solicitor General's advice, legislative amendment is necessary to ensure that the Constitution Act reflects the legal position under the Australia Act. There are no alternative mechanisms available to achieve this.

Analysis: What were the pros/cons and benefits/costs of each option considered?

As mentioned above, the Bill provides legal clarity and certainty by ensuring that the terms of the Constitution Act reflect the legal position under the Australia Act. The alternative of not amending the Constitution Act would result in its terms being inconsistent with the current legal position.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

If passed, the Bill will commence on assent.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Prior to the passing of Her Late Most Gracious Majesty, Queen Elizabeth the Second, the Premier wrote to the Private Secretary to Her Majesty the Queen indicating that he intended to propose an amendment to the Constitution Act to reflect that the power to appoint a Lieutenant-Governor is to be exercised by the Governor of New South Wales.

The Assistant Private Secretary to Her Majesty the Queen responded to the Premier noting "[the] proposal to bring the provisions of the *Constitution Act 1902* (NSW) in line with the *Australia Act 1986* has been carefully noted, and I am grateful to you for keeping us informed."