



New South Wales

Constitution Amendment (Governor) Act 2006 No 32

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Constitution Amendment (Governor) Act 2006 No 32

Act No 32, 2006

An Act to amend the *Constitution Act 1902* with respect to the administration of the government of the State during the unavailability of the Governor or the Lieutenant-Governor. [Assented to 31 May 2006]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Constitution Amendment (Governor) Act 2006*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Constitution Act 1902 No 32

The *Constitution Act 1902* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 9

Insert before section 9A:

9 Meaning of “unavailable”

For the purposes of this Part, the Governor or any other officer is *unavailable* if the Governor or other officer:

- (a) has assumed the administration of the government of the Commonwealth, or
- (b) is absent from the State, or
- (c) is physically or mentally incapacitated, or
- (d) is otherwise unavailable to exercise and perform his or her powers and functions.

[2] Section 9B Appointment of Lieutenant-Governor and Administrator

Omit section 9B (3) (b). Insert instead:

- (b) if the Chief Justice is the Lieutenant-Governor or if there is a vacancy in the office of Chief Justice or the Chief Justice is unavailable—the next most senior Judge of the Supreme Court who is for the time being available,

[3] Section 9B (4)

Omit “and is not absent from the State or incapacitated”.

Insert instead “and is available”.

[4] Section 9C Administration of government by Lieutenant-Governor or Administrator

Omit section 9C (1)–(4). Insert instead:

- (1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State if:
 - (a) there is a vacancy in the office of Governor, or
 - (b) the Governor is unavailable.
- (2) The Governor shall not, for the purposes of this section, be regarded as being unavailable at any time when there is a subsisting appointment of a deputy under section 9D and the deputy is available.

- (3) The Administrator shall not assume the administration of the government of the State unless there is a vacancy in the office of Lieutenant-Governor or the Lieutenant-Governor is unavailable.
- (4) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify:
 - (a) the Premier, or
 - (b) in the event that the Premier is not able to be contacted to give the notification—the next most senior Minister of the Crown (if any) who is able to be contacted.

Notification is not required if concurrence is required under subsection (4A) for the assumption of administration.

- (4A) The Lieutenant-Governor or Administrator shall not assume the administration of the government of the State because of any unavailability referred to in section 9 (d) unless:
 - (a) the Premier has concurred in the assumption of administration, or
 - (b) in the event that the Premier is not able to be contacted to obtain concurrence—the next most senior Minister of the Crown (if any) who is able to be contacted has concurred in the assumption of administration, or
 - (c) neither the Premier nor any other Minister of the Crown is able to be contacted to obtain concurrence, and the Lieutenant-Governor or Administrator is of the opinion that the assumption of administration is authorised by subsection (4B).

The Premier or other Minister is not to give concurrence unless of the opinion that the assumption of administration is authorised by subsection (4B).

- (4B) An assumption of administration because of any unavailability referred to in section 9 (d) is authorised if:
 - (a) the powers or functions of the Governor are required to be exercised or performed during that unavailability, or
 - (b) the duration of that unavailability cannot be determined, and the special circumstances require the assumption of administration.

[5] Section 9C (6)

Omit section 9C (6) (b) and (c). Insert at the end of section 9C (6) (a):

or

- (b) the Governor ceases to be unavailable,

[6] Section 9C (7)

Omit section 9C (7) (b) and (c). Insert at the end of section 9C (7) (a):

or

- (b) the Governor or Lieutenant-Governor ceases to be unavailable,

[7] Section 9D Deputy for Governor during short illness or absence

Omit “except in the event of a vacancy in the office of Lieutenant-Governor or the absence from the State or the incapacity of the Lieutenant-Governor” from section 9D (2).

Insert instead “unless there is a vacancy in the office of Lieutenant-Governor or the Lieutenant-Governor is unavailable”.

[8] Section 9D (3)

Omit the subsection. Insert instead:

- (3) The Governor shall not appoint a deputy under this section unless:
- (a) the Premier has concurred in the appointment of the deputy, or
 - (b) in the event that the Premier is not able to be contacted to obtain concurrence—the next most senior Minister of the Crown (if any) who is able to be contacted has concurred in the appointment of the deputy, or
 - (c) neither the Premier nor any other Minister of the Crown is able to be contacted to obtain concurrence.

[Second reading speech made in—

Legislative Assembly on 10 May 2006

Legislative Council on 24 May 2006]

BY AUTHORITY