



New South Wales

Constitution Amendment (Governor) Bill 2006

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* with respect to the administration of the government of the State during the unavailability of the Governor or the Lieutenant-Governor.

The amendments generally provide for an assumption of administration of the government of the State by the Lieutenant-Governor or Administrator when the Governor is unavailable to carry out his or her duties otherwise than in the circumstances in which an assumption of administration is currently authorised (namely, in the event of the assumption of the administration of the government of the Commonwealth, absence from the State or physical or mental incapacity). An assumption of administration in the proposed extended circumstances will require the concurrence of the Premier or another senior Minister who is able to be contacted. That concurrence (or assumption of administration without concurrence in the absence of relevant Ministers) will only be 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.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Constitution Act 1902* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 9 into the Principal Act to define *unavailability* to include the current grounds of unavailability (transferred from section 9C) and the proposed ground of being otherwise unavailable to exercise and perform relevant powers and functions. **Schedule 1 [4]** amends section 9C to re-state the circumstances in which the Lieutenant-Governor or Administrator may assume the administration of government during a vacancy in the office of the Governor or Lieutenant-Governor or the unavailability (as defined) of the Governor or Lieutenant-Governor. Assumption of administration on the proposed new ground of being “otherwise unavailable” is subject to the restrictions outlined in the Overview of the Bill. **Schedule 1 [2], [3], [5], [6], [7] and [8]** make consequential amendments.

First print



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New South Wales

Constitution Amendment (Governor) Bill 2006

No. , 2006

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Constitution Amendment (Governor) Act 2006</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Constitution Act 1902 No 32	6
The <i>Constitution Act 1902</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 9	3
	Insert before section 9A:	4
	9 Meaning of “unavailable”	5
	For the purposes of this Part, the Governor or any other officer is <i>unavailable</i> if the Governor or other officer:	6
	(a) has assumed the administration of the government of the Commonwealth, or	7
	(b) is absent from the State, or	8
	(c) is physically or mentally incapacitated, or	9
	(d) is otherwise unavailable to exercise and perform his or her powers and functions.	10
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[2]	Section 9B Appointment of Lieutenant-Governor and Administrator	14
	Omit section 9B (3) (b). Insert instead:	15
	(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,	16
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[3]	Section 9B (4)	20
	Omit “and is not absent from the State or incapacitated”.	21
	Insert instead “and is available”.	22
[4]	Section 9C Administration of government by Lieutenant-Governor or Administrator	23
	Omit section 9C (1)–(4). Insert instead:	24
	(1) The Lieutenant-Governor or Administrator shall, subject to this section, assume the administration of the government of the State if:	25
	(a) there is a vacancy in the office of Governor, or	26
	(b) the Governor is unavailable.	27
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	(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.	29
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Schedule 1 Amendments

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- (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. 1
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- (4) The Lieutenant-Governor or Administrator shall, upon assuming the administration of the government of the State, notify: 4
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- (a) the Premier, or 6
- (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. 7
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- Notification is not required if concurrence is required under subsection (4A) for the assumption of administration. 10
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- (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: 12
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- (a) the Premier has concurred in the assumption of administration, or 15
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- (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 17
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- (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). 21
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- The Premier or other Minister is not to give concurrence unless of the opinion that the assumption of administration is authorised by subsection (4B). 26
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- (4B) An assumption of administration because of any unavailability referred to in section 9 (d) is authorised if: 29
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- (a) the powers or functions of the Governor are required to be exercised or performed during that unavailability, or 31
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- (b) the duration of that unavailability cannot be determined, and the special circumstances require the assumption of administration. 33
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[5] Section 9C (6)	1
Omit section 9C (6) (b) and (c). Insert at the end of section 9C (6) (a):	2
or	3
(b) the Governor ceases to be unavailable,	4
[6] Section 9C (7)	5
Omit section 9C (7) (b) and (c). Insert at the end of section 9C (7) (a):	6
or	7
(b) the Governor or Lieutenant-Governor ceases to be unavailable,	8 9
[7] Section 9D Deputy for Governor during short illness or absence	10
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).	11 12 13
Insert instead “unless there is a vacancy in the office of Lieutenant-Governor or the Lieutenant-Governor is unavailable”.	14 15
[8] Section 9D (3)	16
Omit the subsection. Insert instead:	17
(3) The Governor shall not appoint a deputy under this section unless:	18 19
(a) the Premier has concurred in the appointment of the deputy, or	20 21
(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	22 23 24 25
(c) neither the Premier nor any other Minister of the Crown is able to be contacted to obtain concurrence.	26 27