

# NORTHERN TERRITORY OF AUSTRALIA

## LAW OFFICERS ACT 1978

As in force at 1 June 2023

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**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 June 2023

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## LAW OFFICERS ACT 1978

### An Act relating to the Attorney-General, Solicitor-General and to the Solicitor for the Northern Territory

#### **Part 1 Preliminary matters**

##### **1 Short title**

This Act may be cited as the *Law Officers Act 1978*.

##### **2 Commencement**

This Act shall come into operation on 1 July 1978.

#### **Part 2 Attorney-General**

##### **5 Attorney-General for the Northern Territory**

A person who is appointed to a Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, and who is given the designation of "Attorney-General" under section 34 of that Act or another designation as is specified by instrument in writing by the Administrator to be the appropriate designation for the purposes of this section, is the Attorney-General for the Northern Territory for the purposes of this Act.

##### **6 Powers and duties of Attorney-General**

The Attorney-General is to:

- (a) be the official legal adviser to the Territory and to the Executive Council; and
- (b) see to the administration of law and justice for the Territory; and
- (c) advise the Territory on matters concerning Territory legislation including the drafting of legislation; and

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- (d) be responsible for the conduct of litigation on behalf of the Territory and for this purpose may act through the Solicitor for the Northern Territory or another person as the Attorney-General determines; and
  - (e) if the Attorney-General's name is on the local roll kept under the *Legal Profession Act 2006*, be entitled to practise as a legal practitioner as though the Attorney-General was holding an unrestricted practising certificate issued under that Act; and
  - (f) have the powers, duties and prerogatives equivalent to those of the Attorney-General of England, whether by law or usage, as are capable of application to the Territory; and
  - (g) have any other powers, duties and functions as are assigned by the Administrator.

## **7 Reference to Attorney-General**

A reference in an Act of the Territory, or in a regulation, by-law, or other instrument under an Act to the Attorney-General shall, unless the contrary intention appears, be read as a reference to the Attorney-General for the Northern Territory referred to in section 5.

## **Part 3 Solicitor for the Northern Territory**

### **8 Solicitor for the Territory**

- (1) There is hereby established a Solicitor for the Northern Territory.
- (2) The Solicitor for the Northern Territory is a body corporate.
- (3) The Solicitor for the Northern Territory may act as solicitor for the following, and is, for that purpose, entitled to practise as a legal practitioner in any court and entitled to all the rights and privileges of a legal practitioner:
  - (a) the Crown in right of the Territory;
  - (b) the Territory;
  - (c) a person suing or being sued on behalf of the Territory;
  - (d) a minister;
  - (e) a body or authority established by a law of the Territory;

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- (f) an officer of, or a person employed by:
    - (i) the Territory; or
    - (ii) a body or authority established by a law of the Territory;
  - (g) a person holding office under a law of the Territory;
  - (h) the Australian Government Solicitor, by arrangement, as agent on behalf of clients of the Australian Government Solicitor;
  - (j) any other person, body or authority for whom the Attorney-General requests it to act.
- (4) The CEO may do the following:
- (a) act personally in the name of the Solicitor for the Northern Territory;
  - (b) by signed written instrument, authorise an officer of the Agency who is a legal practitioner to act in the name of the Solicitor for the Northern Territory generally or as otherwise provided for in the instrument.
- (5) An act or thing done in the name of the Solicitor for the Northern Territory by, or under the direction or authority of the CEO or a person authorised under subsection (4)(b) is taken to have been done by the Solicitor for the Northern Territory.
- (6) A person who is authorised to act under subsection (4)(b):
- (a) is responsible to the CEO and, through the CEO, to the Attorney-General in relation to anything the person does under the authorisation; and
  - (b) must comply with any directions given by the CEO.
- (7) An act or thing done or omitted to be done by a person in the name of the Solicitor for the Northern Territory under a direction given by the CEO is taken to have been done or omitted to be done, as the case may be, by the CEO personally.
- (8) The CEO is, for the purpose of exercising powers and performing functions under this section, entitled to practise as a legal practitioner as if the CEO were the holder of an unrestricted practising certificate issued under the *Legal Profession Act 2006*.

- (9) Despite subsection (5) but subject to subsection (8), the CEO, or a person authorised by the CEO under subsection (4)(b), is subject to the duties and obligations to which the CEO or person would be subject if the CEO or authorised person were a legal practitioner when:
- (a) the CEO or person does, or omits to do, an act or thing in the name of the Solicitor for the Northern Territory; or
  - (b) another person does, or omits to do, an act or thing in the name of the Solicitor for the Northern Territory under the direction or authority of the CEO or person.
- (10) A copy of every authorization under subsection (4) must be published in the *Gazette*.
- (11) In any Act, instrument of a legislative or administrative character, award or other industrial determination or order, industrial agreement, other order (whether executive, judicial or otherwise), contract, pleading in, or process issued in connection with, a legal or other proceeding, or any other instrument, a reference to the Crown Solicitor is to be construed as including a reference to the Solicitor for the Northern Territory.
- (12) In this section:
- CEO** means the Chief Executive Officer.

## **Part 4            Solicitor-General**

### **Division 1        General matters**

#### **13            Office of Solicitor-General**

- (1) The Administrator may, by instrument in writing, appoint a person:
- (a) who has not attained the age of 72 years; and
  - (b) who has been enrolled as a legal practitioner of the High Court, or of the Supreme Court of a State or Territory of the Commonwealth, for not less than 5 years,

to hold the office of Solicitor-General of the Northern Territory, for is the period specified in the instrument of appointment, or without limitation on the period of office, and, subject to Division 2, on the terms and conditions as the Administrator determines.

- (3) The *Public Sector Employment and Management Act 1993* does not apply to or in relation to the office of Solicitor-General or a person holding that office.
- (4) The Minister may appoint a qualified person (including an employee as defined in the *Public Sector Employment and Management Act 1993*) to act from time to time as the Solicitor-General during the absence from duty of the Solicitor-General or a vacancy in that office.
- (8) A Solicitor-General may resign office by writing signed by the Solicitor-General and delivered to the Administrator.
- (9) Despite anything in the terms and conditions of appointment, a Solicitor-General retires from office on the day on which the Solicitor-General attains the age of 72 years, and the office of Solicitor-General then becomes vacant.

#### **14            Functions of Solicitor-General**

The Solicitor-General:

- (a) may act as counsel for the Crown in right of the Northern Territory of Australia and for any other person for whom the Attorney-General requests the Solicitor-General to act; and
- (b) may perform such other duties of counsel as the Attorney-General directs; and
- (c) may exercise powers and perform functions conferred on the Solicitor-General by any law of the Territory or the Commonwealth; and
- (d) is, for the purpose of exercising powers or performing functions under this Act, entitled to practice as a legal practitioner as if the Solicitor-General were holding an unrestricted practising certificate issued under the *Legal Profession Act 2006*; and
- (e) except with the consent of the Attorney-General, must not engage:
  - (i) in any other practice as a legal practitioner; or
  - (ii) in any other paid employment.

## **15 Removal of Solicitor-General from office**

The Administrator shall remove the Solicitor-General from office if, and only if, the Solicitor-General:

- (a) except by reason of temporary illness, becomes incapable of performing the duties of the office; or
- (b) is guilty of misbehaviour; or
- (c) becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.

## **Division 2 Long service leave and superannuation entitlements of Solicitor-General**

### **15A Meaning of *ordinary remuneration***

- (1) Subject to subsection (2), for this Division the Solicitor-General's ***ordinary remuneration*** is the remuneration the Solicitor-General is entitled to receive for service as the Solicitor-General.
- (2) If the Solicitor-General has worked in a part-time capacity at any time during a period of service to which an entitlement to long service leave relates, the Solicitor-General's ordinary remuneration is to be determined on a pro rata basis, based on the hours for which the Solicitor-General was remunerated during the period of service.

### **15B Entitlement to long service leave**

- (1) The Solicitor-General is entitled to 3 calendar months of long service leave after completing 10 years of service.
- (2) After completing 10 years of service, the Solicitor-General is entitled to 9 calendar days of long service leave for each subsequent year of completed service.
- (3) The Solicitor-General may accrue service in a full-time or part-time capacity or in a combination of those capacities.
- (4) The Solicitor-General does not accrue service when the Solicitor-General is:
  - (a) on leave without pay; or



- (b) absent from work because of an injury for which the Solicitor-General is receiving workers' compensation payments.

### **15C Grants of long service leave**

- (1) The Solicitor-General may take long service leave with the approval of the Attorney-General.
- (2) The Solicitor-General may, in respect of an entitlement to long service leave, be granted a period of long service leave that is:
  - (a) equal to the period of the entitlement and paid the Solicitor-General's ordinary remuneration during the period of leave; or
  - (b) twice as long as the period of the entitlement and paid the Solicitor-General's ordinary remuneration at half pay during the period of leave; or
  - (c) at least half as long as the period of the entitlement and paid:
    - (i) during the period of leave – the Solicitor-General's ordinary remuneration; and
    - (ii) in respect of the remainder of the entitlement – a lump sum that is equal to the Solicitor-General's ordinary remuneration that would have been paid to the Solicitor-General if the entitlement had been taken as leave.

#### *Example for subsection (2)(c)*

*A Solicitor-General entitled to 3 months of long service leave may elect to take 2 calendar months of long service leave and be paid a lump sum in lieu of taking the third month of the entitlement as long service leave. The Solicitor-General is paid the Solicitor-General's ordinary remuneration during the 2 month period of leave and a lump sum that is equal to the remuneration the Solicitor-General would have been paid during a third month of long service leave.*

- (3) During a period of leave mentioned in subsection (2)(b), the Solicitor-General accrues service and service-based entitlements at half of the ordinary rate of accrual.

#### *Note for subsection (3)*

*A service-based entitlement may include an entitlement to leave, including recreation or long service leave.*

- (4) Long service leave may be granted in months and tenths of a month but may not be granted for a period of leave that is less than 7 days.

- (5) Weekends, public holidays and other days on which the Solicitor-General would not have ordinarily been required to work are part of long service leave and do not extend the period of leave.
- (6) The Solicitor-General may not be granted periods of long service leave that are separated by a Saturday, Sunday or public holiday.

#### **15D Payment in lieu**

- (1) The Solicitor-General is entitled to payment in lieu of long service leave on cessation of employment as follows:
  - (a) if the Solicitor-General has completed 10 or more years of service – payment in lieu of the Solicitor-General's unused entitlement to long service leave at the date of cessation;
  - (b) if the Solicitor-General has completed a total of 9 years of service – payment for 67.5 calendar days of long service leave;
  - (c) if the Solicitor-General has completed a total of 8 years of service – payment for 45 calendar days of long service leave;
  - (d) if the Solicitor-General has completed a total of 7 years of service – payment for 22.5 calendar days of long service leave.
- (2) The Solicitor-General is not entitled to payment in lieu under subsection (1)(b) to (d) if the Solicitor-General is removed from office under section 15(b).
- (3) If the Solicitor-General dies, the Solicitor-General's personal representative is entitled to be paid any amount that would have been payable to the Solicitor-General under this section.
- (4) Payment of an entitlement under this section is to be based on the Solicitor-General's ordinary remuneration.

#### **15E Superannuation contributions**

- (1) The Territory must, in respect of each quarter in a year, make a contribution for the benefit of the Solicitor-General to a complying superannuation fund, complying superannuation scheme or an RSA that is equal to the minimum amount necessary to avoid an individual superannuation guarantee shortfall within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

(2) The contributions must be made in compliance with the choice of fund requirements in Part 3A of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

(3) In this section:

**complying superannuation fund**, see section 7 of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**complying superannuation scheme**, see section 7 of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**quarter** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

**RSA**, see section 8 of the *Retirement Savings Accounts Act 1997* (Cth).

## Part 5 Signatures

### 15F Judicial notice to be taken of signatures

Judicial notice is to be taken in all courts of the signatures of the Attorney-General, the Solicitor-General and a person signing in the name of the Solicitor for the Northern Territory.

## Part 6 Transitional matters

### 16 Transitional matters for *Justice Legislation Amendment Act 2019*

If the person who held office as Solicitor-General immediately before the commencement of section 6 of the *Justice Legislation Amendment Act 2019* resigns office on or after the day the person turns 70 years old and before the day the person turns 72 years old, the reference to the age of 72 years in section 13(5) is taken to be a reference to the exact age of the person on the day the resignation takes effect.

### 17 Transitional matters for *Judicial and Other Officers' Entitlements Legislation Amendment Act 2023*

(1) An authorisation under section 8(4) that is in effect immediately before the commencement is taken to be an authorisation made under section 8(4)(b) as in force after the commencement.

- (2) Despite their repeal, section 13(5) to (7), as in force immediately before the commencement, continue to apply to and in relation to a person who was appointed to be the Solicitor-General before the commencement.
- (3) For section 13(5), as saved by subsection (2), the Solicitor-General is taken to have been appointed as a Supreme Court Judge under section 32(1)(c) or (d) of the *Supreme Court Act 1979* on the day the Solicitor-General was appointed to be the Solicitor-General.
- (4) Part 4, Division 2, as inserted by the amending Act, does not apply to a person who was appointed to be the Solicitor-General before the commencement.
- (5) In this section:

**amending Act** means the *Judicial and Other Officers' Entitlements Legislation Amendment Act 2023*.

**commencement** means the day on which section 30 of the amending Act commences.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2****LIST OF LEGISLATION*****Law Officers Ordinance 1978 (Act No. 61, 1978)***

Assent date	1 July 1978
Commenced	1 July 1978

***Law Officers Act (No. 2) 1978 (Act No. 117, 1978)***

Assent date	9 November 1978
Commenced	9 November 1978

***Transfer of Powers (Law) Act 1978 (Act No. 1, 1980)***

Assent date	7 January 1980 (s 3)
Commenced	7 January 1980

**Amending Legislation*****Transfer of Powers (Law) Act 1979 (Act No. 2, 1980)***

Assent date	7 January 1980
Commenced	7 January 1980

***Law Officers Amendment Act 1981 (Act No. 24, 1981)***

Assent date	25 March 1981
Commenced	25 March 1981

***Statute Law Revision Act (No. 2) 1982 (Act No. 54, 1982)***

Assent date	8 October 1982
Commenced	8 October 1982

***Statute Law Revision Act 1985 (Act No. 49, 1985)***

Assent date	1 October 1985
Commenced	1 October 1985

***Law Officers Amendment Act 1986 (Act No. 5, 1986)***

Assent date	30 April 1986
Commenced	3 May 1986 (Gaz S20, 30 April 1986)

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***Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)***

Assent date 10 December 1986  
 Commenced 19 December 1986 (*Gaz S87*, 17 December 1986)

***Law Officers Amendment Act 1988 (Act No. 6, 1988)***

Assent date 21 March 1988  
 Commenced 21 March 1988

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date 30 June 1993  
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date 18 June 1999  
 Commenced 18 June 1999

***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date 14 December 2005  
 Commenced 14 December 2005

***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date 17 May 2007  
 Commenced s 10: 1 July 2007 (*Gaz G26*, 27 June 2007, p 3);  
 rem: 17 May 2007 (s 2(2))

***Financial Management Amendment Act 2009 (Act No. 15, 2009)***

Assent date 18 June 2009  
 Commenced 18 June 2009

***Justice Legislation Amendment (Age of Retirement) Act 2013 (Act No. 5, 2013)***

Assent date 14 March 2013  
 Commenced 2 April 2013 (*Gaz S14*, 2 April 2013)

***Justice Legislation Amendment Act 2019 (Act No. 1, 2019)***

Assent date 22 February 2019  
 Commenced 23 February 2019(s 2)

***Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)***

Assent date 6 November 2019  
 Commenced pts 2 and 3: 11 December 2019 (*Gaz G50*,  
 11 December 2019, p 2); rem: 7 November 2019 (s 2)

***Judicial and Other Officers' Entitlements Legislation Amendment Act 2023 (Act No. 14, 2023)***

Assent date 31 May 2023  
 Commenced 1 June 2023 (s 2)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 7 *Law Officers Amendment Act 1986* (Act No. 5, 1986)

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## 4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 6, 8, 13 and 14.

## 5 LIST OF AMENDMENTS

lt	amd No. 54, 1982, s 2; No. 48, 1986, s 4
pt 1 hdg	ins No. 14, 2023, s 31
ss 1 – 2	amd No. 54, 1982, s 2
pt 2 hdg	ins No. 14, 2023, s 32
s 3	rep No. 48, 1986, s 5
s 4	amd No. 54, 1982, s 2 rep No. 48, 1986, s 5
s 5	amd No. 54, 1982, s 2; No. 14, 2023, s 40
s 6	amd No. 117, 1978, s 4; No. 54, 1982, s 2; No. 48, 1986, s 6; No. 7, 2007, s 16; No. 14, 2023, s 40
s 7	amd No. 117, 1978, s 3; No. 1, 1980, s 4; No. 54, 1982, s 2; No. 44, 2005, s 35
pt 3 hdg	ins No. 14, 2023, s 33
s 8	amd No. 24, 1981, s 2; No. 54, 1982, s 2 sub No. 5, 1986, s 4; No. 48, 1986, s 7 amd No. 28, 1993, s 3; No. 27, 1999, s 15; No. 7, 2007, s 16; No. 14, 2023, s 34
s 9	amd No. 49, 1985, s 4 rep No. 48, 1986, s 7
s 10	amd No. 54, 1982, s 2 rep No. 5, 1986, s 5
s 11	amd No. 54, 1982, s 2 rep No. 48, 1986, s 7
s 12	amd No. 48, 1986, s 8 rep No. 14, 2023, s 35
pt 4 hdg	ins No. 14, 2023, s 36
pt 4	
div 1 hdg	ins No. 14, 2023, s 36
s 13	ins No. 5, 1986, s 6 amd No. 6, 1988, s 2; No. 28, 1993, s 3; No. 27, 1999, s 15; No. 7, 2007, s 16; No. 15, 2009, s 16; No. 5, 2013, s 6; No. 1, 2019, s 7; No. 33, 2019, s 49; No. 14, 2023, s 37
ss 14 – 15	ins No. 5, 1986, s 6 amd No. 7, 2007, s 16; No. 14, 2023, s 40
pt 4	
div 2 hdg	ins No. 14, 2023, s 38
ss 15A – 15E	ins No. 14, 2023, s 38
pt 5 hdg	ins No. 14, 2023, s 38
s 15F	ins No. 14, 2023, s 38
pt 6 hdg	ins No. 14, 2023, s 38
s 16	ins No. 1, 2019, s 8
s 17	ins No. 14, 2023, s 39