

**NORTHERN TERRITORY OF AUSTRALIA**

**LAW OFFICERS ACT 1978**

As in force at 23 February 2019

**Table of provisions**

1	Short title .....	1
2	Commencement .....	1
5	Attorney-General for the Northern Territory .....	1
6	Powers and duties of Attorney-General .....	1
7	Reference to Attorney-General .....	2
8	Solicitor for the Territory .....	2
12	Judicial notice to be taken of signatures .....	4
13	Office of Solicitor-General.....	4
14	Functions of Solicitor-General .....	5
15	Removal of Solicitor-General from office .....	6
16	Transitional matters for <i>Justice Legislation Amendment Act 2019</i> .....	6

**ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at February 2019

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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

#### 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.

#### 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" pursuant to section 34 of that Act or such other 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 shall:

- (a) be the official legal adviser to the Territory and to the Executive Council;
- (b) see to the administration of law and justice for the Territory;
- (c) advise the Territory on matters concerning Territory legislation including the drafting of legislation;
- (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 such other person as he or she determines;

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- (e) if his or her name is on the local roll kept under the *Legal Profession Act 2006*, be entitled to practise as a legal practitioner as though he or she was holding an unrestricted practising certificate issued under that Act;
  - (f) have such 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 such 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.

## **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:
  - (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;
  - (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; or
  - (j) any other person, body or authority for whom the Attorney-General requests it to act,

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and is, for the purpose of so acting, entitled to practise as a legal practitioner in any court and entitled to all the rights and privileges of a legal practitioner.

(4) The Secretary may act personally in the name of the Solicitor for the Northern Territory and may also, either generally, or otherwise as provided by the instrument of authorization, by writing signed by the Secretary, authorize an officer of the Department who is a legal practitioner to act in the name of the Solicitor for the Northern Territory.

(5) An act or thing done in the name of the Solicitor for the Northern Territory by, or under the direction or authority of:

(a) the Secretary; or

(b) a person authorized under subsection (4),

shall be deemed to have been done by the Solicitor for the Northern Territory.

(6) In or in respect of the doing by a person of an act or thing in pursuance of an authorization under subsection (4), the person is responsible to the Secretary and, through the Secretary, to the Attorney-General, and shall comply with such directions, if any, as are given by the Secretary.

(7) An act or thing done or omitted to be done by a person in the name of the Solicitor for the Northern Territory pursuant to a direction given by the Secretary shall be deemed to have been done or omitted to be done, as the case may be, by the Secretary personally.

(8) The Secretary is, for the purpose of exercising his or her powers and performing his or her functions under this section, entitled to practise as a legal practitioner as if he or she were the holder of an unrestricted practising certificate issued under the *Legal Profession Act 2006*.

(9) Notwithstanding subsection (5) but subject to subsection (8):

(a) the Secretary; or

(b) a person authorized under subsection (4),

is, in respect of any act or thing done or omitted to be done by him or her, or by a person at his or her direction or under his or her authority, in the name of the Solicitor for the Northern Territory, subject to the duties and obligations to which he or she would be subject if that act or thing had been done or omitted to be done in

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the course of practice by him or her as a legal practitioner.

- (10) A copy of every authorization under subsection (4) shall 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 shall be construed as including a reference to the Solicitor for the Northern Territory.
- (12) In this section:

**Department** means the department primarily responsible to the Attorney-General for matters arising under this Act.

**Secretary** means the Chief Executive Officer, as defined in the *Public Sector Employment and Management Act 1993*, of the Department.

## **12 Judicial notice to be taken of signatures**

Judicial notice shall 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.

## **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 such period as is specified in the instrument of appointment, or without limitation on the period of office, and on such 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.

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- (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.
  - (5) Notwithstanding anything to the contrary in subsection (1), the *Supreme Court (Judges Pensions) Act 1980* applies to and in respect of a person appointed to the office of Solicitor-General in the same way and to the same extent as if the person had been appointed to be a Judge (within the meaning of that Act) who is to cease to hold office upon attaining the age of 72 years.
  - (6) A pension or other money payable by virtue of subsection (5) is to be payable from the public moneys of the Territory and the appropriation for that purpose is established or increased to the extent necessary.
  - (7) If a person who holds or has held office as a Solicitor-General appointed under subsection (1) becomes a Judge the period during which he or she held office shall, for the purposes of the *Supreme Court (Judges Pensions) Act 1980*, be deemed to be prior judicial service within the meaning of that Act.
  - (8) A Solicitor-General may resign his or her office by writing signed by the Solicitor-General and delivered to the Administrator.
  - (9) Notwithstanding anything in the terms and conditions of his or her employment, a Solicitor-General shall retire from office on the day on which he or she 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;
- (b) may perform such other duties of counsel as the Attorney-General directs;
- (c) may exercise powers and perform functions conferred on the Solicitor-General by any law of the Territory or the Commonwealth;

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- (d) shall, for the purpose of exercising his or her powers or performing his or her functions, be entitled to practice as a legal practitioner as if he or she were holding an unrestricted practising certificate issued under the *Legal Profession Act 2006*; and
  - (e) except with the consent of the Attorney-General, shall 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 his or her office;
- (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 his or her creditors or makes an assignment of his or her remuneration for their benefit.

**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.



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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)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

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

**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.

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**5 LIST OF AMENDMENTS**

It	amd No. 54, 1982, s 2; No. 48, 1986, s 4
ss 1 – 2	amd No. 54, 1982, s 2
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
s 6	amd No. 117, 1978, s 4; No. 54, 1982, s 2; No. 48, 1986, s 6; No. 7, 2007, s 16
s 7	amd No. 117, 1978, s 3; No. 1, 1980, s 4; No. 54, 1982, s 2; No. 44, 2005, s 35
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
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
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
ss 14 – 15	ins No. 5, 1986, s 6 amd No. 7, 2007, s 16
s 16	ins No. 1, 2019, s 8