



Law Officers Act 1964

Act No. 91 of 1964 as amended

This compilation was prepared on 1 January 2009
taking into account amendments up to Act No. 134 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

1	Short title [<i>see</i> Note 1].....	1
2	Commencement [<i>see</i> Note 1].....	1
4	Interpretation	1
5	Office of Solicitor-General.....	1
6	Appointment of Solicitor-General	1
7	Remuneration and allowances of Solicitor-General	2
7A	Effect of sections 6 and 7—long service leave	2
8	Resignation.....	2
9	Solicitor-General not to undertake other work	2
10	Vacation of office	2
11	Acting Solicitor-General.....	3
12	Functions of Solicitor-General	3
13	Solicitor-General entitled to rights and privileges as a barrister.....	4
14	Commonwealth officer appointed as Solicitor-General.....	4
16	Pension of Solicitor-General.....	5
17	Delegation by Attorney-General.....	9
18	References in laws to Solicitor-General	9
19	Regulations.....	10
	Notes	11

An Act relating to the Law Officers of the Commonwealth

1 Short title *[see Note 1]*

This Act may be cited as the *Law Officers Act 1964*.

2 Commencement *[see Note 1]*

This Act shall come into operation on the day on which it receives the Royal Assent.

4 Interpretation

- (1) In this Act, unless the contrary intention appears, *Solicitor-General* means a person holding office as Solicitor-General of the Commonwealth in pursuance of this Act.
- (2) In sections 7, 8, 12, 13, 15 and 17, *Solicitor-General* includes a person acting in the office of Solicitor-General of the Commonwealth in pursuance of this Act.

5 Office of Solicitor-General

There shall be a Solicitor-General of the Commonwealth, who shall be the second Law Officer of the Commonwealth.

6 Appointment of Solicitor-General

- (1) A person appointed as Solicitor-General shall be appointed by the Governor-General for such period, not exceeding 7 years, as the Governor-General determines, but is eligible for re-appointment.
- (2) A person is not eligible for appointment as Solicitor-General unless he or she is or has been a barrister or solicitor of the High Court or of the Supreme Court of a State of not less than 5 years' standing.
- (3) A person appointed as Solicitor-General holds office, subject to this Act, for the term of his or her appointment, on such terms and conditions as the Governor-General determines.

7 Remuneration and allowances of Solicitor-General

- (1) The Solicitor-General shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) The Solicitor-General shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973* and section 7 of the *Judicial and Statutory Officers (Remuneration and Allowances) Act 1984*.

7A Effect of sections 6 and 7—long service leave

Sections 6 and 7 have effect subject to the *Long Service Leave (Commonwealth Employees) Act 1976*.

8 Resignation

The Solicitor-General may resign the office of Solicitor-General by giving a signed notice of resignation to the Governor-General.

9 Solicitor-General not to undertake other work

- (1) Except in the performance of the duties of his or her office or with the consent of the Attorney-General, the Solicitor-General shall not engage in the practice of a barrister or solicitor or engage in paid employment.
- (2) Where the Attorney-General gives consent to the engaging by the Solicitor-General in the practice of a barrister or solicitor, the Attorney-General is to lay before each House of the Parliament within 15 sitting days of that House after the day on which the consent is given a written statement of the reasons for the giving of the consent.

10 Vacation of office

The Governor-General shall remove the Solicitor-General from office 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.

11 Acting Solicitor-General

- (1) The Governor-General may appoint a person to act as Solicitor-General:
 - (a) during a vacancy in the Office of Solicitor-General whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Solicitor-General is absent from duty or from Australia or is, for any reason, unable to perform the functions of the office.
- (2) A person who is appointed to act in the Office of Solicitor-General must be eligible for appointment to that office.
- (3) The Governor-General may:
 - (a) determine the terms and conditions of appointment of a person acting as Solicitor-General; and
 - (b) at any time terminate such an appointment.
- (4) The validity of anything done by or in relation to a person purporting to act under subsection (1) must not be called into question on the ground that:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there is a defect or irregularity in or in connection with the appointment; or
 - (c) the appointment has ceased to have effect; or
 - (d) the occasion for him or her to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901* for further provisions relating to acting appointments.

12 Functions of Solicitor-General

The functions of the Solicitor-General are:

- (a) to act as counsel for:
 - (i) the Crown in right of the Commonwealth;

- (ii) the Commonwealth;
 - (iii) a person suing or being sued on behalf of the Commonwealth;
 - (iv) a Minister;
 - (v) an officer of the Commonwealth;
 - (vi) a person holding office under an Act or a law of a Territory;
 - (vii) a body established by an Act or a law of a Territory; or
 - (viii) any other person or body for whom the Attorney-General requests him or her to act;
- (b) to furnish his or her opinion to the Attorney-General on questions of law referred to him or her by the Attorney-General; and
- (c) to carry out such other functions ordinarily performed by counsel as the Attorney-General requests.

13 Solicitor-General entitled to rights and privileges as a barrister

The Solicitor-General, in his or her official capacity:

- (a) is entitled to practise as a barrister:
 - (i) in a federal court or in a court of a State or Territory; or
 - (ii) in a tribunal of the Commonwealth, a State or a Territory; and
- (b) is entitled to all the rights and privileges of a barrister in that court or tribunal;

whether or not he or she would, but for this section, be entitled to practise in that court or tribunal.

14 Commonwealth officer appointed as Solicitor-General

- (1) The *Judges' Pensions Act 1968* does not apply in relation to the Solicitor-General if:
- (a) immediately before being appointed as the Solicitor-General, he or she was:
 - (i) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (ii) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or

- (iii) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) he or she does not make an election under subsection (2).
- (2) The Solicitor-General may elect to cease to be:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*.
- (2A) The election must be made:
 - (a) within 3 months of the Solicitor-General's appointment; and
 - (b) by notice in writing to the Minister.
- (2B) If the Solicitor-General makes the election:
 - (a) the *Judges' Pensions Act 1968* applies in relation to him or her and is taken to have so applied immediately after he or she was appointed as the Solicitor-General; and
 - (b) he or she is taken to have ceased to be:
 - (i) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (ii) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (iii) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; immediately before being appointed as the Solicitor-General.

16 Pension of Solicitor-General

- (1AA) This section does not apply in relation to a person appointed as Solicitor-General after 31 December 1997.
- (1) Subject to this section, the provisions of the *Judges' Pensions Act 1968* other than subsection 4(2) (including the provisions relating to spouses and children) apply to and in relation to a person who is or has been a Solicitor-General as though the Solicitor-General were or had been a Judge and as though his or her service (whether

in continuous periods or not) as Solicitor-General were service as a Judge.

- (2) If a person becomes a Judge and, at any time before his or her appointment as a Judge, he or she held office as Solicitor-General, the period of his or her service as Solicitor-General shall, for the purposes of sections 6 and 7 of the *Judges' Pensions Act 1968*, be added to, and be deemed to be part of, his or her period of service as a Judge and:
 - (a) if, at the time of so becoming a Judge, he or she is in receipt of a pension by virtue of subsection (1)—that pension ceases to be payable; or
 - (b) if, at that time, he or she is not so in receipt of a pension—no pension becomes payable by virtue of that subsection by reason of his or her having held office as Solicitor-General.
- (3) If a person is appointed as Solicitor-General and, at the time of his or her appointment, he or she is in receipt of a pension under the *Judges' Pensions Act 1968* by virtue of subsection (1), that pension ceases to be payable.
- (4) Where:
 - (a) a person has at any time, whether before or after the commencement of this subsection, served in the office of Solicitor-General for a period of at least 7 years, whether continuous or not; and
 - (b) the person ceases to hold that office after that commencement, otherwise than under paragraph 10(b); and
 - (c) the person is not entitled to payment of a pension under subsection (1);subsections (5) to (9), inclusive, apply in relation to the person.
- (4A) If a person is appointed as Solicitor-General and, at the time of the appointment, is receiving a pension because of the application of subsection (8), that pension ceases to be payable.
- (5) For the purpose of the application of subsections (6), (7) and (8) in relation to the person, a reference to the relevant discounted rate of pension is a reference to whichever is the lesser of:
 - (a) 0.5% of the appropriate current salary for each completed month of the person's actual service as Solicitor-General; or

- (b) 60% of the appropriate current salary;
reduced by 2.5% for each whole year between:
 - (c) in the case of the application of subsection (6)—the date on which the person actually ceased to hold office as Solicitor-General and the date that the Attorney-General certified under that subsection was the date on which the person became permanently disabled or permanently infirm;
 - (d) in the case of the application of subsection (7)—the date on which the person actually ceased to hold office as Solicitor-General and the date on which the person died; or
 - (e) in the case of the application of subsection (8)—the date on which the person actually ceased to hold office as Solicitor-General and the date on which the person attained the age of 60 years.
- (6) If the Attorney-General certifies that the person became, at a particular date before attaining the age of 60 years, permanently disabled or permanently infirm, the relevant provisions of the *Judges' Pensions Act 1968* apply in relation to the person as if the person had held office as Solicitor-General at that date and the certificate were given under subsection 6(2) of that Act, but the rate of the pension payable to the person is the relevant discounted rate of pension.
- (7) If the person dies before attaining the age of 60 years and was not entitled to a pension under subsection (6) immediately before his or her death, the relevant provisions of the *Judges' Pensions Act 1968* apply in relation to the person as if the person had held office as Solicitor-General at the time of his or her death, but a reference in any of those provisions as so applying to the relevant pension is a reference to pension at a rate equal to the relevant discounted rate of pension.
- (8) If the person attains the age of 60 years and was not entitled to a pension under subsection (6) immediately before attaining that age, the relevant provisions of the *Judges' Pensions Act 1968* apply in relation to the person as if the person's period of appointment as Solicitor-General had expired upon his or her attaining that age after having served for not less than 10 years, but the rate of the pension payable to the person is the relevant discounted rate of pension.

- (9) The person may, at any time before attaining the age of 60 years, apply to the Attorney-General for a certificate under subsection (6) and, upon receipt of the application, the Attorney-General shall:
- (a) if satisfied that the person became, at a particular time before attaining the age of 60 years, permanently disabled or permanently infirm—so certify under subsection (6); or
 - (b) otherwise—refuse to certify under that subsection.
- (10) In the application of the relevant provisions of the *Judges' Pensions Act 1968* by virtue of this section, a reference in section 6 of that Act to a Judge retiring includes a reference to a Solicitor-General not being re-appointed.
- (11) An application may be made to the Administrative Appeals Tribunal for review of a refusal of the Attorney-General, on application under subsection (9), to give a certificate under subsection (6).
- (11A) For the purposes of this section, the ***appropriate current salary*** in relation to a person at a particular time (the ***calculation time***) is calculated as follows:

$$\text{Solicitor-General's 1997 salary} \times \frac{\text{Judge's salary at the calculation time}}{\text{Judge's 1997 salary}}$$

For the purposes of the calculation:

Judge's 1997 salary means salary at the rate that was payable on 31 December 1997 to a Judge (other than the Chief Justice) of the Federal Court of Australia.

Judge's salary at the calculation time means salary at the rate that is payable at the calculation time to a Judge (other than the Chief Justice) of the Federal Court of Australia.

Solicitor-General's 1997 salary means salary at the rate that was payable on 31 December 1997 to the Solicitor-General.

- (12) In this section:

Judge means a Judge within the meaning of the *Judges' Pensions Act 1968*.

relevant provisions of the Judges' Pensions Act 1968 means the provisions of that Act referred to in subsection (1).

- (13) Pensions under or by virtue of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

17 Delegation by Attorney-General

- (1) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his or her hand, delegate to the Solicitor-General all or any of his or her powers and functions under all or any of the laws of the Commonwealth or of a Territory, except this power of delegation.
- (2) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his or her hand, delegate to the Secretary to the Attorney-General's Department or to the person for the time being holding or performing the duties of the office specified in the instrument of delegation all or any of his or her powers and functions under all or any of the laws of the Commonwealth or of a Territory, except this power of delegation.
- (3) A power or function delegated under either subsection (1) or subsection (2) may be exercised or performed by the delegate in accordance with the instrument of delegation.
- (4) A delegation may be given under subsection (1) or subsection (2) notwithstanding that a delegation is in force under the other of those subsections.
- (5) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Attorney-General.
- (6) This section does not apply to the powers and functions of the Attorney-General under the *Telecommunications (Interception and Access) Act 1979*.

18 References in laws to Solicitor-General

A reference in a law of the Commonwealth other than this Act, or in a law of a Territory, as in force at the commencement of this Act, to the Solicitor-General of the Commonwealth or to the Solicitor-General shall be read as a reference to the Secretary to the Attorney-General's Department.

19 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Law Officers Act 1964*****Note 1**

The *Law Officers Act 1964* as shown in this compilation comprises Act No. 91, 1964 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 4 December 2008 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law Officers Act 1964</i>	91, 1964	5 Nov 1964	5 Nov 1964	—
<i>Law Officers Act 1968</i>	152, 1968	10 Dec 1968	10 Dec 1968	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1983</i>	91, 1983	22 Nov 1983	Ss. 3 and 4 (a)	Ss. 2(14) and 6(1), (3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (b)	—
<i>Law and Justice Legislation Amendment Act 1988</i>	120, 1988	14 Dec 1988	Part XIV (ss. 42, 43): Royal Assent (c)	—
<i>Law and Justice Legislation Amendment Act 1991</i>	136, 1991	12 Sept 1991	Schedule: 10 Oct 1991 (d)	—
<i>Law and Justice Legislation Amendment Act 1992</i>	22, 1992	13 Apr 1992	S. 3: Royal Assent (e)	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Law and Justice Legislation Amendment Act (No. 2) 1994</i>	141, 1994	28 Nov 1994	S. 3 (item 11) and s. 4 (items 151–173): Royal Assent (f)	S. 5
<i>Law Officers Amendment Act 1998</i>	39, 1998	4 June 1998	4 June 1998	—
<i>Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003</i>	64, 2003	30 June 2003	1 July 2003	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Law and Justice Legislation Amendment Act 2004</i>	62, 2004	26 May 2004	Schedule 1 (items 44, 45): 27 May 2004	—
<i>Telecommunications (Interception) Amendment Act 2006</i>	40, 2006	3 May 2006	Schedule 1 (item 21): 13 June 2006 (see F2006L01623)	—
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 82–85): Royal Assent	—
<i>Law Officers Legislation Amendment Act 2008</i>	40, 2008	24 June 2008	Schedule 1 (items 1, 2): 25 June 2008	—
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (item 381): 4 July 2008	—
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008</i>	134, 2008	4 Dec 2008	S. 4: Royal Assent Schedule 2 (items 27, 28): 1 Jan 2009 (see F2008L04609)	S. 4 and Sch. 2 (item 28) [see Table A]

Act Notes

- (a) The *Law Officers Act 1964* was amended by sections 3 and 4 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsections 2(1) and (9) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
 - (9) Section 16A of the *Law Officers Act 1964*, as inserted by this Act, shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *Law Officers Act 1964* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (c) The *Law Officers Act 1964* was amended by Part XIV (sections 42 and 43) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Law Officers Act 1964* was amended by the Schedule only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (e) The *Law Officers Act 1964* was amended by section 3 only of the *Law and Justice Legislation Amendment Act 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Law Officers Act 1964* was amended by section 3 (item 11) and section 4 (items 151-173) only of the *Law and Justice Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3.....	rep. No. 216, 1973
S. 4.....	am. No. 91, 1983
S. 6.....	am. No. 91, 1983; No. 141, 1994
S. 7.....	rs. No. 65, 1985 am. No. 141, 1994
S. 7A	ad. No. 40, 2008
S. 8.....	rs. No. 141, 1994
S. 9.....	am. No. 22, 1992; No. 141, 1994
S. 10.....	am. No. 141, 1994
S. 11.....	am. No. 91, 1983; No. 141, 1994 rs. No. 141, 1994
S. 12.....	am. No. 216, 1973; No. 141, 1994
S. 13.....	am. No. 216, 1973; No. 141, 1994 rs. No. 62, 2004
S. 14.....	am. No. 216, 1973; No. 91, 1983 rs. No. 65, 1985 am. No. 94, 1992; No. 64, 2003; No. 26, 2008
S. 15.....	rep. No. 216, 1973
S. 16.....	am. No. 152, 1968; No. 91, 1983; No. 65, 1985; No. 120, 1988; No. 136, 1991; No. 141, 1994; No. 39, 1998; Nos. 73 and 134, 2008
S. 16A	ad. No. 91, 1983 am. No. 141, 1994; No. 39, 1998 rep. No. 40, 2008
S. 17.....	am. No. 216, 1973; No. 91, 1983; No. 141, 1994; No. 62, 2004; No. 40, 2006
S. 18.....	am. No. 216, 1973
S. 19.....	ad. No. 65, 1985

Table A

Table A

Application, saving or transitional provisions

*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—
Superannuation) Act 2008* (No. 134, 2008)

4 Entitlements from 1 July 2008

(1) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under an Act that is amended by Schedule 1, 2, 3 or 5 to this Act if the relevant Schedule had commenced on 1 July 2008; and
- (b) because the Schedule did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(2) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Military Superannuation and Benefits Act 1991* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

Table A

- (3) If:
- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Superannuation Act 1990* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
 - (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
 - (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;
- the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.
- (4) A determination by the Finance Minister under this subsection must:
- (a) be in writing; and
 - (b) set out:
 - (i) the amount and timing of the replacement payments; or
 - (ii) the method of determining the amount and timing of the replacement payments.
- (5) An application must be in writing in the form approved by the Finance Minister.
- (6) To avoid doubt, a determination of the Finance Minister that a person is entitled to one or more replacement payments does not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to this Act, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.
- (7) Replacement payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (8) A determination made under this section is not a legislative instrument.
- (9) In this section:
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.
-

Table A

Schedule 2

28 Application of amendments of the *Law Officers Act 1964*

The amendments of the *Law Officers Act 1964* made by this Schedule apply in relation to any pension payable under section 16 of that Act because of the application of the *Judges' Pensions Act 1968* in respect of a person who:

- (a) was appointed as Solicitor-General before 1 January 1998;
and
- (b) dies on or after the commencement of this Schedule.