

LAW OFFICERS.

No. 91 of 1964.

An Act relating to the Law Officers of the Commonwealth.

[Assented to 5th November, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Law Officers Act 1964*. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
3. The *Solicitor-General Act 1916* is repealed. Repeal.
- 4.—(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. Interpretation.
- (2) In sections seven, eight, twelve, thirteen, fifteen and seventeen of this Act, "Solicitor-General" includes a person acting in the office of Solicitor-General of the Commonwealth in pursuance of this Act.

**Office of
Solicitor-
General.**

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

**Appointment
of Solicitor-
General.**

6.—(1.) A person appointed as Solicitor-General shall be appointed by the Governor-General for such period, not exceeding seven 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 is or has been a barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing.

(3.) A person appointed as Solicitor-General holds office, subject to this Act, for the term of his appointment, on such terms and conditions as the Governor-General determines.

**Remuneration
and allowances.**

7. The Solicitor-General shall be paid such remuneration and allowances (if any) as the Governor-General determines.

Resignation.

8. The Solicitor-General may resign his office by writing signed by him and delivered to the Governor-General.

**Solicitor-
General not to
undertake
other work.**

9. Except in the performance of the duties of his 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.

**Vacation of
office.**

10. 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 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 creditors or makes an assignment of his remuneration for their benefit.

**Acting
Solicitor-
General.**

11.—(1.) In the event of a vacancy occurring in the office of Solicitor-General, or of the illness or absence of the person holding that office, the Governor-General may appoint a person who is eligible for appointment to that office to act as Solicitor-General of the Commonwealth and may at any time revoke the appointment.

(2.) A person so appointed holds office, subject to this Act, until—

- (a) his appointment is revoked; or

(b) a person is appointed Solicitor-General under section six of this Act or the person holding office as Solicitor-General ceases to be ill or absent, whichever first happens, on such terms and conditions as the Governor-General determines.

12. The functions of the Solicitor-General are—

Functions of
Solicitor-
General.

- (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 of the Commonwealth;
 - (vii) a body established by an Act or a law of a Territory of the Commonwealth; or
 - (viii) any other person or body for whom the Attorney-General requests him to act;
- (b) to furnish his opinion to the Attorney-General on questions of law referred to him by the Attorney-General; and
- (c) to carry out such other functions ordinarily performed by counsel as the Attorney-General requests.

13. The Solicitor-General is, in his official capacity, entitled to practise as a barrister in any federal court or court exercising federal jurisdiction and in any court of a Territory of the Commonwealth and is entitled to all the rights and privileges of a barrister in every such court whether or not he would, but for this section, be entitled to practise in that court.

Solicitor-
General entitled
to rights and
privileges as
barrister.

14. Where the Solicitor-General was, immediately before his appointment, an officer of the Public Service of the Commonwealth—

Rights of
public servant
appointed as
Solicitor-
General.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as Solicitor-General shall be taken into account as if it were service in the Public Service of the Commonwealth;
- (c) the *Officers' Rights Declaration Act 1928-1959* applies as if this Act and this section had been specified in the Schedule to that Act; and

(d) section sixteen of this Act does not apply to or in relation to him, or his widow or children, unless he elects as provided by the first proviso to sub-section (1.) of section five of the *Officers' Rights Declaration Act* 1928-1959.

Commonwealth
Employees'
Compensation
Act.

15. The *Commonwealth Employees' Compensation Act* 1930-1962 applies to the Solicitor-General as if he were an employee within the meaning of that Act.

Pension of
Solicitor-
General.

16.—(1.) Subject to this section, the *Judges' Pensions Act* 1948-1961 (other than section twelve) applies to and in relation to a Solicitor-General, and to and in relation to the widow and children of a deceased Solicitor-General, as though the Solicitor-General were, or had been, a Judge to whom that Act applied and as though his service (whether in continuous periods or not) as Solicitor-General were service as such a Judge.

(2.) If a person becomes a Judge to whom the *Judges' Pensions Act* 1948-1961 applies and, at any time before his appointment as Judge, he held office as Solicitor-General—

(a) the period of his appointment as Solicitor-General shall, for the purposes of sections six and seven of that Act, be added to, and be deemed to be part of, his period of service as a Judge: and

(b) if, at the time of his so becoming a Judge—

(i) he is in receipt of a pension under that Act by virtue of sub-section (1.) of this section, that pension ceases to be payable; or

(ii) he is not so in receipt of a pension, a pension does not become payable to him or to his widow, and an allowance does not become payable in respect of his children, under that Act by virtue of that sub-section.

(3.) If a person is appointed as Solicitor-General and, at the time of his appointment, he is in receipt of a pension under the *Judges' Pensions Act* 1948-1961 by virtue of sub-section (1.) of this section, that pension ceases to be payable.

(4.) If the term of appointment of a person who has served in the office of Solicitor-General for at least seven years has expired and—

(a) he is not re-appointed;

(b) he is not entitled to payment of a pension by virtue of sub-section (1.) of this section; and

(c) he has not previously been paid an amount under this sub-section,

he shall be paid an amount equal to twice the amount of his annual salary as at the expiration of the term of his appointment.

(5.) The last preceding sub-section does not apply if, at the expiration of the term of appointment of the person concerned, he is offered, but does not accept, a further appointment as Solicitor-General—

- (a) for a period of at least five years; or
- (b) for such a period that, at the expiration of that period, he would be qualified to receive a pension by virtue of this section.

(6.) In the application of the *Judges' Pensions Act* 1948–1961 by virtue of sub-section (1.) of this section, the reference in section six of that Act to a Judge retiring shall be read as including a reference to a Solicitor-General who is not re-appointed.

(7.) For the purposes of the *Judges' Pensions Act* 1948–1961 as applied by sub-section (1.) of this section, and for the purposes of sub-section (2.) of this section, any period of service in the office of Solicitor-General before the person concerned was paid an amount under sub-section (4.) of this section shall be disregarded.

(8.) Sub-sections (4.) and (5.) of section four of the *Superannuation Act* 1922–1963 do not apply in relation to a person appointed as Solicitor-General.

(9.) Pensions, allowances and other payments under or by virtue of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

17.—(1.) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand, delegate to the Solicitor-General all or any of his powers and functions under all or any of the laws of the Commonwealth or of a Territory of the Commonwealth, except this power of delegation.

Delegation by
Attorney-
General.

(2.) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand, delegate to the Secretary to the Attorney-General's Department all or any of his powers and functions under all or any of the laws of the Commonwealth or of a Territory of the Commonwealth, except this power of delegation.

(3.) A power or function delegated under either of the last two preceding sub-sections may be exercised or performed by the delegate in accordance with the instrument of delegation.

(4.) A delegation may be given under sub-section (1.) or sub-section (2.) of this section notwithstanding that a delegation is in force under the other of those sub-sections.

(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 *Telephonic Communications (Interception) Act 1960*.

References in
laws to
Solicitor-
General.

18. A reference in a law of the Commonwealth other than this Act, or in a law of a Territory of the Commonwealth, 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.
