



Law Officers Act 1964

No. 91, 1964

Compilation No. 16

Compilation date:	12 August 2023
Includes amendments up to:	Act No. 53, 2023
Registered:	24 August 2023

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Law Officers Act 1964* that shows the text of the law as amended and in force on 12 August 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the Law Officers of the Commonwealth

1 Short title

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

2 Commencement

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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) A person who is appointed to act in the Office of Solicitor-General must be eligible for appointment to that office.

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 of 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 following:
 - (a) the powers and functions of the Attorney-General under the *Australian Security Intelligence Organisation Act 1979* (other than under subsections 34JE(3) and (4));
 - (b) 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 of 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.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

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ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Law Officers Act 1964	91, 1964	5 Nov 1964	5 Nov 1964	
Law Officers Act 1968	152, 1968	10 Dec 1968	10 Dec 1968	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	Sch 1: 31 Dec 1973 (s 2)	s 9(1) and 10
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	Sch 1: 22 Nov 1983 (s 2(9)) Sch 1 and 2: 20 Dec 1983 (s 2(1))	s 2(14), 6(1) and (3)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	Sch 1: 3 July 1985 (s 2(1))	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	s 42, 43: 14 Dec 1988 (s 2(1))	—
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Sch: 10 Oct 1991 (s 2(1))	—
Law and Justice Legislation Amendment Act 1992	22, 1992	13 Apr 1992	Sch: 13 Apr 1992 (s 2(1))	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	Sch: 1 July 1990 (s 2(2))	—

Endnote 3—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Law and Justice Legislation Amendment Act (No. 2) 1994	141, 1994	28 Nov 1994	Sch 1 (item 11) and Sch 2 (items 151–173): 28 Nov 1994 (s 2(1))	s 5
Law Officers Amendment Act 1998	39, 1998	4 June 1998	4 June 1998 (s 2)	—
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003	64, 2003	30 June 2003	Sch 5 (item 2): 1 July 2003 (s 2(1) item 21)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 44, 45): 27 May 2004 (s 2(1) item 11)	—
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Sch 1 (item 21): 13 June 2006 (s 2(1) item 2)	—
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 82–85): 23 June 2008 (s 2(1) item 4)	—
Law Officers Legislation Amendment Act 2008	40, 2008	24 June 2008	Sch 1 (items 1, 2): 25 June 2008 (s 2)	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (item 381): 4 July 2008 (s 2(1) item 64)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	s 4: 4 Dec 2008 (s 2(1) item 1) Sch 2 (items 27, 28): 1 Jan 2009 (s 2(1) item 3A)	s 4 and Sch 2 (item 28)

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Compilation No. 16

Compilation date: 12/08/2023

Registered: 24/08/2023

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Endnote 3—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (items 90, 91): 19 Apr 2011 (s 2(1) item 18)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 752–754) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023	53, 2023	11 Aug 2023	Sch 1 (item 3): 12 Aug 2023 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

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 am. No. 46, 2011
Note to s. 11(1)	ad. No. 46, 2011
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; No. 5, 2011; No. 53, 2023
s. 18	am. No. 216, 1973; No. 5, 2011

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 19	ad. No. 65, 1985