

Solicitor General Act 1969 No 80

[1969-80]



New South Wales

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Solicitor General Act 1969 No 80



New South Wales

An Act to provide for the appointment of the Solicitor General and the exercise and discharge by the Solicitor General of certain powers, authorities, duties and functions incident to the office of the Attorney General; and for purposes connected therewith.

1 Name of Act and definition

- (1) This Act may be cited as the *Solicitor General Act 1969*.
- (2) In this Act except in so far as the context or subject matter otherwise indicates or requires:

Solicitor General includes the deputy appointed to act for the Solicitor General during the Solicitor General's illness or absence.

2 Appointment of Solicitor General

- (1) The Governor may appoint as Solicitor General an Australian lawyer of at least 7 years' standing.

In case of the illness or absence of the Solicitor General the Governor may appoint a deputy to act for the Solicitor General during the Solicitor General's illness or absence.

A person may be appointed to act for the Solicitor General (and may so act) even if the person is of or above the age at which the Solicitor General would vacate office.

- (2) The Solicitor General is to be appointed by the Governor for a term of 10 years or for such shorter term as may be necessary to ensure that the person's term of office extends to (but not beyond) the date on which the person reaches the age of 75 years. The Solicitor General is eligible (if otherwise qualified) for reappointment.
- (3) A Solicitor General is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Solicitor General.

- (3A) The leave which may be granted to the Solicitor General shall be as the Minister may from time to time determine in respect of the Solicitor General.
- (4) Any appointment pursuant to subsection (1) may be on such terms and conditions as the Governor determines.
- (5) A Solicitor General shall be deemed to have vacated office:
- (a) if for any cause which appears to the Governor sufficient the Solicitor General is removed from office by the Governor,
 - (b) if the Solicitor General becomes bankrupt, compounds with his or her creditors, or makes any assignment of his or her remuneration or estate for their benefit,
 - (c) if the Solicitor General becomes a mentally ill person, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#),
 - (d) if the Solicitor General resigns office by writing under his or her hand addressed to the Governor, or
 - (e) when the Solicitor General reaches the age of 75 years, or
 - (f) if the Solicitor General engages (whether in New South Wales or elsewhere) during his or her term of office in any paid employment or in any remunerated practice of law outside the duties of his or her office.
- (6) The office of Solicitor General shall not be held by a Minister of the Crown.
- (7) The person holding the office of Solicitor General at the commencement of this Act shall be deemed to have been appointed by the Governor under this Act, and shall, subject to subsection (3) and notwithstanding subsections (4) and (5), continue to hold that office on the terms and conditions on which the person held it immediately before such commencement.
- (8) Anything done or purporting to have been done by the Solicitor General after the Solicitor General has reached the age of 75 years is nevertheless as valid as if the Solicitor General had not reached that age.
- (9) The office of Solicitor General is a statutory office and the [Government Sector Employment Act 2013](#) (including Part 6) does not apply to that office.
- (10) The Attorney General may issue guidelines as to the process for the selection of a person to be proposed for appointment (including reappointment) as Solicitor General. The guidelines are not mandatory and a failure to comply with them does not affect the validity of an appointment.
- (11) Schedule 1 has effect.

3 Powers, authorities etc of Solicitor General

- (1) The Solicitor General may:
 - (a) act as Counsel for Her Majesty and may perform such other duties and functions of Counsel as the Attorney General directs,
 - (b) when the office of Attorney General is vacant, or the Attorney General is absent from the State or is by reason of illness unable to exercise and discharge his or her powers, authorities, duties and functions, exercise and discharge any powers, authorities, duties and functions conferred or imposed on the Attorney General by or under any Act or incident by law to the office of the Attorney General.
- (2) The provisions of subsection (1) shall have effect notwithstanding any delegation made under section 4 in respect of any power, authority, duty or function referred to in paragraph (b) of subsection (1) and any such delegation and any terms of such delegation shall have no operation or effect during any period the Solicitor General may exercise or discharge such power, authority, duty or function pursuant to the said paragraph (b).

4 Delegation of powers

- (1) The Attorney General may, by instrument in writing, delegate to the Solicitor General the exercise or discharge of such of the powers (other than this power of delegation), authorities, duties and functions which may be exercised or discharged by the Attorney General as may be specified in the instrument of delegation and may in like manner revoke wholly or in part any such delegation.
- (1A) This section extends to any power, authority, duty or function of the Attorney General to intervene in any proceedings before a court or tribunal, whether personally or by agent, including a power, authority, duty or function conferred on the Attorney General as the Minister administering an Act.
- (2) Any power, authority, duty or function, the exercise or discharge of which has been delegated under this section may, subject to subsection (2) of section 3 and while the delegation remains unrevoked, be exercised or discharged from time to time in accordance with the terms of the delegation by the Solicitor General.
- (3) A delegation made under this section may be made subject to such conditions or such limitations as to the exercise or discharge of any of the specified powers, authorities, duties or functions delegated or as to time or circumstances as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation made under this section the Attorney General may continue to exercise or discharge all or any of the powers, authorities, duties or functions delegated.

5 Exercise of powers, authorities etc under sections 3 and 4

- (1) Any act or thing done or suffered by the Solicitor General pursuant to section 3, or when acting in the exercise of a delegation under section 4 and within the terms of the delegation, shall have the like force and effect as if the act or thing had been done or suffered by the Attorney General.
- (2) Where any power, authority, duty or function is performed or discharged by the Solicitor General pursuant to section 3, or pursuant to a delegation under section 4, and its exercise or discharge depends upon the opinion, belief or state of mind of the Attorney General, that power, authority, duty or function may be exercised or discharged by the Solicitor General upon the opinion, belief or state of mind of the Solicitor General.
- (3) No person shall be concerned to see or inquire whether any act, matter or thing done or performed by the Solicitor General when purporting to act in pursuance of section 3, or in pursuance of a delegation under section 4, is or is not authorised by that section or by that delegation, as the case may be.
- (4) The provisions of section 3 are supplemental to and not in derogation of any other law relating to the exercise or discharge by the Solicitor General of any of the powers, authorities, duties and functions of the Attorney General, or incident to the office of the Attorney General.

6 Pension of Solicitor General

- (1) Subject to this section, the *Judges' Pensions Act 1953* applies to and in respect of a person who holds or held the office of Solicitor General in the same way as it applies to and in respect of a judge or a retired or deceased judge.
- (2) For the purposes of subsection (1):
 - (a) a reference in the *Judges' Pensions Act 1953* (section 2 (1) excepted) to a judge includes a reference to a person holding the office of Solicitor General,
 - (b) a reference in that Act to a judicial office includes a reference to the office of Solicitor General,
 - (c) a reference in that Act to the retirement of a judge includes a reference to the vacation of office of the Solicitor General,
 - (d) a reference in section 3 of that Act to a retired judge to whom that section applies includes a reference to a person who held the office of Solicitor General and who vacated office pursuant to section 2 (5) (e) of this Act, after serving as Solicitor General for not less than 5 years,
 - (e) a reference in section 5 of that Act to a retired judge to whom that section applies includes a reference to a person who held the office of Solicitor General and who

vacated office pursuant to section 2 (5) (c) of this Act or, where that vacation from office was certified by the Health Commission of New South Wales to have been due to permanent disability or infirmity, pursuant to section 2 (5) (d) of this Act,

- (f) a reference in that Act (sections 2 (1), 3 and 5 excepted) to a retired judge includes a reference to a person who held office as Solicitor General and who vacated office as referred to in paragraph (d) or (e) of this subsection or as referred to in section 4 of that Act, and
 - (g) section 4 of that Act applies as follows:
 - (i) for a person appointed Solicitor General before the increased retirement age day—section 4 (1) applies to the person if the person vacates office pursuant to section 2 (5) (d) of this Act after having reaching the age of 60 years and serving as Solicitor General for not less than 10 years as if a reference in section 4 (1) of that Act to retiring at the mandatory judicial retirement age were a reference to having vacated office under section 2 (5) (e) of this Act,
 - (ii) for a person appointed Solicitor General on or after the increased retirement age day—section 4 (2) applies to the person if the person vacates office pursuant to section 2 (5) (d) of this Act after having attained the age of 65 years and serving as Solicitor General for not less than 10 years as if a reference in section 4 (2) of that Act to retiring at the mandatory judicial retirement age were a reference to having vacated office under section 2 (5) (e) of this Act.
- (3) Where a person who holds or held the office of Solicitor General becomes a judge within the meaning of the *Judges' Pensions Act 1953*:
- (a) any period served by that person in the office of Solicitor General shall, for the purposes of that Act, be computed as portion of his or her service as a judge in the judicial office which he or she held immediately before his or her retirement as a judge or his or her death before retirement, as the case may be, and
 - (b) the right to any pension which that person is receiving, or is entitled to receive, under that Act as applied by this section shall cease.
- (4) Subsections (1) and (3) do not apply to or in respect of:
- (a) a person appointed as Solicitor General before the date of assent to the *Solicitor General (Amendment) Act 1979*,
 - (b) a person who elects, pursuant to section 3 (4B) of the *Superannuation Act 1916*, to continue to contribute to the State Superannuation Fund, or
 - (c) a deputy appointed to act for the Solicitor General during the Solicitor General's illness or absence.

(5) In this section:

increased retirement age day means the day on which the amendments made to section 44 (Retirement of judicial officers) of the *Judicial Officers Act 1986* by the *Justice Legislation Amendment Act (No 3) 2018* commenced.

Schedule 1 Certain rights of Solicitor General

(Section 2 (11))

1 Definition

In this Schedule:

statutory body means any body declared under clause 4 to be a statutory body for the purposes of this Schedule.

2 Preservation of rights of Solicitor General previously public servant etc

(1) This clause applies to the Solicitor General if the Solicitor General, immediately before being appointed as Solicitor General, was:

- (a) a person employed in the Public Service, the Teaching Service or the NSW Health Service, or
- (b) a contributor to a superannuation scheme, or
- (c) a member of staff of a statutory body, or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an employee or member of staff.

(2) Subject to the terms of his or her appointment, the Solicitor General:

- (a) is to retain any rights accrued or accruing to him or her as such an employee, contributor or member of staff, and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Solicitor General, and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the Solicitor General had continued to be such an employee, contributor or member of staff during his or her service as Solicitor General.

(3) Service as Solicitor General is to be regarded as service as an employee or member of staff for the purpose of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

- (4) For the purposes of the superannuation scheme to which the Solicitor General is entitled to contribute under this clause, the Solicitor General is to be regarded as an employee or member of staff and the Government of New South Wales is to be regarded as the employer.
- (5) If the Solicitor General would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
 - (a) he or she is not so entitled on becoming (whether on appointment as Solicitor General or at any later time while holding office as Solicitor General) a contributor to any other superannuation scheme, and
 - (b) the provisions of subclause (4) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.
- (6) Subclause (5) does not prevent the payment to the Solicitor General (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an employee or member of staff for the purposes of the scheme.
- (7) The Solicitor General is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.
- (8) In this clause:

superannuation scheme means a scheme, fund or arrangement established by or under an Act under which any superannuation or retirement benefits are provided.

3 Solicitor General entitled to reappointment to former employment in certain cases

- (1) A person who:
 - (a) ceases to be Solicitor General by resignation or who completes a term of office as Solicitor General and is not reappointed, and
 - (b) was, immediately before being appointed as Solicitor General:
 - (i) a person employed in the Public Service, the Teaching Service or the NSW Health Service, or
 - (ii) a member of staff of a statutory body,

is entitled to be employed in the Public Service, the Teaching Service or the NSW Health Service or as a member of staff of that statutory body, as the case requires, at a work level and salary not lower than the level at which the person was employed immediately before being appointed as Solicitor General.

(2) Where subclause (1) does not apply to a person who:

(a) was, immediately before being appointed to a full-time office constituted by an Act, an employee or member of staff referred to in subclause (1) (b), and

(b) is after that appointment appointed as Solicitor General,

the person is to have such rights, if any, to appointment as such an employee or member of staff, in the event of ceasing to be Solicitor General, as are specified in the instrument of appointment as Solicitor General or as are agreed on by the person and by or on behalf of the Government.

4 Declaration of statutory bodies

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

5 Rights of existing office holder

(1) The amendments made to this Act by the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007* do not apply in respect of the person holding the office of Solicitor General immediately before the commencement of those amendments.

(1A) The amendments made to section 2 by the *Justice Legislation Amendment Act (No 3) 2018* do not apply in respect of the person holding the office of Solicitor General immediately before the commencement of those amendments.

(2) In the application of section 6 of this Act to a person referred to in subclause (1) or (1A), a reference to vacation of office pursuant to section 2 (5) (e) is to be read as a reference to vacation of office pursuant to section 2 (5) (d) (and taken to be retirement from office in accordance with law).