

# Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007 No 51

[2007-51]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 November 2007 to 1 November 2007 (accessed 27 December 2024 at 15:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by sec 8 (1) of this Act with effect from 2.11.2007.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 2 November 2007

# Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007 No 51



New South Wales

## Contents

|   |    |
|---|----|
| <b>Long title</b> .....   | 3  |
| 1 Name of Act .....   | 3  |
| 2 Commencement .....  | 3  |
| 3 Amendment of Director of Public Prosecutions Act 1986 No 207 .....          | 3  |
| 4 Amendment of Crown Prosecutors Act 1986 No 208 .....                        | 3  |
| 5 Amendment of Public Defenders Act 1995 No 28 .....                          | 3  |
| 6 Amendment of Solicitor General Act 1969 No 80 .....                         | 3  |
| 7 Amendment of Anti-Discrimination Act 1977 No 48 .....                       | 3  |
| 8 Repeal of Act .....   | 3  |
| <b>Schedule 1 Amendment of Director of Public Prosecutions Act 1986</b> ..... | 4  |
| <b>Schedule 2 Amendment of Crown Prosecutors Act 1986</b> .....               | 6  |
| <b>Schedule 3 Amendment of Public Defenders Act 1995</b> .....                | 12 |
| <b>Schedule 4 Amendment of Solicitor General Act 1969</b> .....               | 16 |
| <b>Schedule 5 Amendment of Anti-Discrimination Act 1977</b> .....             | 20 |

# Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007 No 51



New South Wales

An Act to amend the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986*, the *Public Defenders Act 1995* and the *Solicitor General Act 1969* to make further provision for the term of office of appointees under those Acts; and for other purposes.

## 1 Name of Act

This Act is the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*.

## 2 Commencement

This Act commences on the date of assent to this Act.

## 3 Amendment of *Director of Public Prosecutions Act 1986 No 207*

The *Director of Public Prosecutions Act 1986* is amended as set out in Schedule 1.

## 4 Amendment of *Crown Prosecutors Act 1986 No 208*

The *Crown Prosecutors Act 1986* is amended as set out in Schedule 2.

## 5 Amendment of *Public Defenders Act 1995 No 28*

The *Public Defenders Act 1995* is amended as set out in Schedule 3.

## 6 Amendment of *Solicitor General Act 1969 No 80*

The *Solicitor General Act 1969* is amended as set out in Schedule 4.

## 7 Amendment of *Anti-Discrimination Act 1977 No 48*

The *Anti-Discrimination Act 1977* is amended as set out in Schedule 5.

## 8 Repeal of Act

(1) This Act is repealed on the day following the day on which this Act commences.

(2) The repeal of this Act does not, because of the operation of section 30 of the

*Interpretation Act 1987*, affect any amendment made by this Act.

## **Schedule 1 Amendment of *Director of Public Prosecutions Act 1986***

(Section 3)

### **[1] Section 3A**

Insert before section 4:

#### **3A Guidelines for Senior Officer appointments**

The Attorney General may issue guidelines as to the process for the selection of a person to be proposed for appointment (including reappointment) to any office under this Act. The guidelines are not mandatory and a failure to comply with them does not affect the validity of an appointment.

### **[2] Section 36 Savings and transitional provisions**

Insert after section 36 (3):

- (4) The amendments made to Schedule 1 by the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007* do not apply to a Senior Officer in respect of any office held by the Senior Officer immediately before the commencement of that Act.

### **[3] Schedule 1 Provisions relating to Senior Officers**

Omit “a legal practitioner” from clause 2 wherever occurring.

Insert instead “an Australian lawyer”.

### **[4] Schedule 1, clause 2A**

Insert after clause 2:

#### **2A Term of office**

- (1) The Director 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 72 years.
- (2) A Senior Officer other than the Director is to be appointed by the Governor for a term of 7 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 65 years.

(3) The Director is not eligible for reappointment, including reappointment after the end of the Director's term.

(4) A Senior Officer other than the Director is eligible (if otherwise qualified) for reappointment.

**[5] Schedule 1, clause 4 Vacation of office**

Insert after clause 4 (1) (b):

(c) reaches the age of 72 years (in the case of the Director) or 65 years (in the case of a Deputy Director or the Solicitor), or

**[6] Schedule 1, clause 4 (4)**

Omit "age of 65 years".

Insert instead "age of 72 years (in the case of the Director) or 65 years (in any other case)".

**[7] Schedule 1, clause 7**

Omit the clause. Insert instead:

**7 Public Sector Employment and Management Act 2002**

The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a Senior Officer and a Senior Officer is not, as a Senior Officer, subject to that Act (Chapter 5 included).

**[8] Schedule 1, clause 8 Acting Senior Officers**

Insert after clause 8 (6):

(7) A person may be appointed to act in the office of a Senior Officer (and may act in that office) even if the person is of or above the age at which a holder of the office would vacate the office.

**[9] Schedule 1, clause 10 Pension of Director**

Omit "65 years" from clause 10 (1) (a). Insert instead "72 years".

**[10] Schedule 1, clause 10 (1) (b)**

Omit "and before reaching the age of 65 years,".

**[11] Schedule 1, clause 11 Senior Officer entitled to reappointment to former employment**

**in certain cases**

Omit clause 11 (1) (a). Insert instead:

- (a) ceases to be a Senior Officer by resignation or completes a term of office as Senior Officer and is not reappointed, and

**Schedule 2 Amendment of Crown Prosecutors Act 1986**

(Section 4)

**[1] Section 3 Definitions**

Omit the definition of *legal practitioner* from section 3 (1).

**[2] Section 3A**

Insert before section 4:

**3A Guidelines for appointments**

The Attorney General may issue guidelines as to the process for the selection of a person to be proposed for appointment (including reappointment) to any office under this Act. The guidelines are not mandatory and a failure to comply with them does not affect the validity of an appointment.

**[3] Section 4 Crown Prosecutors**

Omit “a legal practitioner” from section 4 (2).

Insert instead “an Australian lawyer”.

**[4] Section 4 (2A)**

Insert after section 4 (2):

- (2A) A Crown Prosecutor is to be appointed by the Governor for a term of 7 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 65 years. A Crown Prosecutor is eligible (if otherwise qualified) for reappointment.

**[5] Sections 4A and 4B**

Insert after section 4:

#### **4A Senior Crown Prosecutor**

- (1) The Governor may appoint a Senior Crown Prosecutor.
- (2) A person is not eligible to be appointed as Senior Crown Prosecutor unless the person is an Australian lawyer.
- (3) The Senior Crown Prosecutor is to be appointed by the Governor for a term of 7 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 65 years. The Senior Crown Prosecutor is eligible (if otherwise qualified) for reappointment.
- (4) The Senior Crown Prosecutor has such functions in connection with the work of Crown Prosecutors as the Director determines.
- (5) The Senior Crown Prosecutor also has all the functions of a Crown Prosecutor and is taken to be a Crown Prosecutor.
- (6) The Senior Crown Prosecutor is responsible to the Director for the due exercise of the Senior Crown Prosecutor's functions.

#### **4B Deputy Senior Crown Prosecutor**

- (1) The Governor may appoint one or more Deputy Senior Crown Prosecutors.
- (2) A person is not eligible to be appointed as Deputy Senior Crown Prosecutor unless the person is an Australian lawyer.
- (3) A Deputy Senior Crown Prosecutor is to be appointed by the Governor for a term of 7 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 65 years. A Deputy Senior Crown Prosecutor is eligible (if otherwise qualified) for reappointment.
- (4) A Deputy Senior Crown Prosecutor has such functions in connection with the work of Crown Prosecutors as the Director determines.
- (5) A Deputy Senior Crown Prosecutor also has all the functions of a Crown Prosecutor and is taken to be a Crown Prosecutor.
- (6) A Deputy Senior Crown Prosecutor is responsible to the Senior Crown Prosecutor for the due exercise of the Deputy Senior Crown Prosecutor's functions.

#### **[6] Section 9 Vacation of office**

Omit section 9 (1). Insert instead:

- (1) A person holding office as Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor vacates office if the person:
- (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Governor, or
  - (c) reaches the age of 65 years, or
  - (d) ceases to be an Australian lawyer, or
  - (e) is removed from office by the Governor under subsection (2) or (3).

**[7] Section 9 (2)**

Omit “If a Crown Prosecutor”.

Insert instead “If a person holding office as Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor”.

**[8] Section 9 (2)**

Omit “the Crown Prosecutor shall be removed from office”.

Insert instead “the person is to be removed from office”.

**[9] Section 9 (3) and (4)**

Omit “a Crown Prosecutor” wherever occurring.

Insert instead “the Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor”.

**[10] Section 9 (3) and (4)**

Omit “the Crown Prosecutor” wherever occurring.

Insert instead “the Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor”.

**[11] Section 10 Other work**

Omit “A Crown Prosecutor” wherever occurring.

Insert instead “The Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor”.

**[12] Sections 11-13**

Omit the sections. Insert instead:



## **11 Public Sector Employment and Management Act 2002**

The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a person as the Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor and a person is not, as Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor, subject to that Act (Chapter 5 included).

## **12 Remuneration and leave**

- (1) The Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor and a Crown Prosecutor are 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 Attorney General may from time to time determine.
- (2) The leave that may be granted to the Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor is to be as the Attorney General may from time to time determine.

## **13 Acting appointments**

- (1) The Attorney General may appoint a person who is eligible for appointment as such to act in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor.
- (2) The Attorney General may:
  - (a) subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor, and
  - (b) terminate such an appointment at any time.
- (3) A person may not act or be appointed to act under this section for a period of more than 12 months at a time.
- (4) While a person is acting in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor, the person has and may exercise all the functions of that office and is taken to be the holder of that office.
- (5) A person may be appointed to act in an office under this section (and may act in that office) even if the person is of or above the age at which a holder of the office would vacate the office.

**[13] Section 14 Savings and transitional provisions**

Insert after section 14 (9):

(10) Schedule 2 has effect.

**[14] Schedule 1 Certain rights of Crown Prosecutors, clause 1 Definitions**

Insert in alphabetical order in clause 1:

**Crown Prosecutor** includes Senior Crown Prosecutor and Deputy Senior Crown Prosecutor.

**[15] Schedule 1, clause 3 (1) (a)**

Omit the paragraph. Insert instead:

(a) ceases to be a Crown Prosecutor by resignation or completes a term of office as Crown Prosecutor and is not reappointed, and

**[16] Schedule 2**

Insert after Schedule 1:

## **Schedule 2 Savings and transitional provisions**

(Section 14 (10))

### **Part 1 General**

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007**

### **2 Definition**

In this Part:

**2007 amending Act** means the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*.

### **3 Amendments not to apply to existing Crown Prosecutors**

The amendments made to this Act by the 2007 amending Act (except the provisions of this Schedule) do not apply to the office of Crown Prosecutor held by a person immediately before the commencement of the 2007 amending Act.

### **4 Existing Senior Crown Prosecutor and Deputy Senior Crown Prosecutors**

The following additional provisions apply in respect of a person who as a Crown Prosecutor held the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor immediately before the commencement of the 2007 amending Act:

- (a) the person continues (subject to this Act) to hold the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor and is taken to have been duly appointed under section 4A or 4B to the office concerned,
- (b) sections 4A (3), 4B (3) and 9 (1) (c) (as inserted by the 2007 amending Act) do not apply to the person as the holder of the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor,
- (c) the person remains a Crown Prosecutor while holding office as Senior Crown Prosecutor or Deputy Senior Crown Prosecutor and (subject to this Act) after ceasing to hold that office.

### **5 Right of reappointment of existing Crown Prosecutors**

- (1) A person who holds office as Crown Prosecutor (whether or not as Senior Crown Prosecutor or Deputy Senior Crown Prosecutor) immediately before the commencement of the 2007 amending Act and who is subsequently appointed

to a Crown law office is, on ceasing to hold the Crown law office as a result of resignation or completion of a term of office, entitled to be reappointed to the office of Crown Prosecutor.

- (2) This clause ceases to apply to a person if the person does not take up that reappointment within 3 months of ceasing to hold the Crown law office unless, within that 3-month period, the person is reappointed to that Crown law office or appointed to another Crown law office.
- (3) Sections 4 (2A) and 9 (1) (c) (as inserted by the 2007 amending Act) do not apply to the office of Crown Prosecutor to which a person is reappointed under this clause, and the person continues to hold that office until the person vacates the office under this Act.
- (4) This clause is capable of operation in relation to the same person on more than one occasion.
- (5) In this clause, **Crown law office** means the office of Director of Public Prosecutions, Deputy Director of Public Prosecutions, Solicitor for Public Prosecutions, Senior Crown Prosecutor, Deputy Senior Crown Prosecutor, Public Defender, Senior Public Defender, Deputy Senior Public Defender or Solicitor General.

## 6 Existing acting appointments

The substitution of section 13 (Acting appointments) by the 2007 amending Act does not affect the continuity of any appointment in force under that section immediately before its substitution.

## Schedule 3 Amendment of **Public Defenders Act 1995**

(Section 5)

### [1] Section 3 Definitions

Omit the definition of **legal practitioner**.

### [2] Section 3A

Insert before section 4:

#### **3A Guidelines for appointments**

The Attorney General may issue guidelines as to the process for the selection of a person to be proposed for appointment (including reappointment) to any office under this Part. The guidelines are not mandatory and a failure to comply with them does not affect the validity of an appointment.

**[3] Section 7 Acting appointments**

Insert after section 7 (4):

- (5) A person may be appointed to act in an office under this section (and may act in that office) even if the person is of or above the age at which a holder of the office would vacate the office.

**[4] Schedule 1 Provisions relating to Public Defenders**

Omit “a legal practitioner” from clause 2 wherever occurring.

Insert instead “an Australian lawyer”.

**[5] Schedule 1, clause 3**

Omit the clause. Insert instead:

**3 Term of office**

An Officer is to be appointed by the Governor for a term of 7 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 65 years. An Officer is eligible (if otherwise qualified) for reappointment.

**[6] Schedule 1, clause 5 (1) (b1)**

Insert after clause 5 (1) (b):

- (b1) reaches the age of 65 years, or

**[7] Schedule 1, clause 5 (1) (c)**

Omit the paragraph. Insert instead:

- (c) ceases to be an Australian lawyer, or

**[8] Schedule 1, clause 5 (3)**

Insert after clause 5 (2):

- (3) Anything done or purporting to have been done by an Officer after the Officer has reached the age of 65 years is nevertheless as valid as if the Officer had not reached that age.

**[9] Schedule 1, clause 7**

Omit the clause. Insert instead:

**7 Public Sector Employment and Management Act 2002**

The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an Officer and an Officer is not, as an Officer, subject to that Act (Chapter 5 included).

**[10] Schedule 1, clause 9 Special arrangements for Crown Prosecutors appointed as Public Defenders**

Omit the clause. Insert instead:

**9 Entitlement to reappointment to former employment in certain cases**

(1) A person who:

- (a) ceases to be an Officer by resignation or who completes a term of office as an Officer and is not reappointed, and
- (b) was, immediately before being appointed as an Officer:
  - (i) an officer of the Government Service, the Teaching Service or the NSW Health Service, or
  - (ii) an officer or employee of a statutory body,

is entitled to be appointed to some position in the Government Service, the Teaching Service or the NSW Health Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as an Officer.

(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 officer or employee referred to in subclause (1) (b), and
- (b) is after that appointment appointed as an Officer,

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

**[11] Schedule 3 Savings, transitional and other provisions**

Insert at the end of the Schedule:

**Part 4 Provisions consequent on enactment of Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007**

**7 Definitions**

In this Part:

**2007 amending Act** means the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*.

**Senior Officer** has the same meaning as in Schedule 1.

**8 Transitional arrangements for existing Officers**

- (1) This clause applies to the following persons (**transitional office holders**):
  - (a) a Public Defender who held office as a Public Defender immediately before the commencement of the 2007 amending Act,
  - (b) a Senior Officer holding office immediately before the commencement of the 2007 amending Act who was a Public Defender or Crown Prosecutor immediately before being appointed as a Senior Officer,
  - (c) a Senior Officer appointed after the commencement of the 2007 amending Act who held office as a Public Defender or Crown Prosecutor since before that commencement and until the person's appointment as a Senior Officer.
- (2) A transitional office holder holds office as a Public Defender while continuing to be a transitional office holder and, subject to this Act, after ceasing to be a transitional office holder.
- (3) A person who holds office as a Public Defender pursuant to this clause holds that office until the Public Defender vacates the office under this Act as in force immediately before the commencement of the 2007 amending Act.
- (4) The amendments made to Schedule 1 by the 2007 amending Act do not apply to the office held by a person as a transitional office holder.

**9 Right of reappointment of existing Public Defenders**

- (1) A person who holds office as a Public Defender immediately before the commencement of the 2007 amending Act and who is subsequently appointed

to a Crown law office is, on ceasing to hold the Crown law office as a result of resignation or completion of a term of office, entitled to be reappointed to the office of Public Defender.

- (2) This clause ceases to apply to a person if the person does not take up that reappointment within 3 months of ceasing to hold the Crown law office unless, within that 3-month period, the person is reappointed to that Crown law office or appointed to another Crown law office.
- (3) Clause 3 of Schedule 1 (as substituted by the 2007 amending Act) and clause 5 (1) (b1) of Schedule 1 (as inserted by the 2007 amending Act) do not apply to the office of Public Defender to which a person is reappointed under this clause, and a person continues to hold that office until the person vacates the office under this Act.
- (4) This clause is capable of operation in relation to the same person on more than one occasion.
- (5) In this clause, **Crown law office** means the office of Director of Public Prosecutions, Deputy Director of Public Prosecutions, Solicitor for Public Prosecutions, Crown Prosecutor, Senior Crown Prosecutor, Deputy Senior Crown Prosecutor, Senior Public Defender, Deputy Senior Public Defender or Solicitor General.

## Schedule 4 Amendment of **Solicitor General Act 1969**

(Section 6)

### [1] Section 2 Appointment of Solicitor General

Omit “a legal practitioner” from section 2 (1).

Insert instead “an Australian lawyer”.

### [2] Section 2 (1)

Insert at the end of the subsection:

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.

### [3] Section 2 (2)

Insert after section 2 (1):

- (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 72 years. The Solicitor General is eligible (if otherwise qualified) for reappointment.

**[4] Section 2 (5) (e)**

Insert after section 2 (5) (d):

(e) when the Solicitor General reaches the age of 72 years, or

**[5] Section 2 (8)-(11)**

Insert after section 2 (7):

- (8) Anything done or purporting to have been done by the Solicitor General after the Solicitor General has reached the age of 72 years is nevertheless as valid as if the Solicitor General had not reached that age.
- (9) The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of the Solicitor General and the Solicitor General is not, as Solicitor General, subject to that Act (Chapter 5 included).
- (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.

**[6] Section 6 Pension of Solicitor General**

Omit “70 years” from section 6 (2) (g). Insert instead “72 years”.

**[7] Schedule 1**

Insert after section 6:

## **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) an officer of the Government Service, the Teaching Service or the NSW Health Service, or
  - (b) a contributor to a superannuation scheme, or
  - (c) an officer employed by 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 officer or employee.
- (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 officer, contributor or person, 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 officer, contributor or person during his or her service as Solicitor General.
- (3) Service as Solicitor General is to be regarded as service as an officer or employee 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 officer or employee 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 officer or employee 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) an officer of the Government Service, the Teaching Service or the NSW Health Service, or
  - (ii) an officer or employee of a statutory body,

is entitled to be appointed to some position in the Government Service, the Teaching Service or the NSW Health Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held 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 officer or employee 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 officer or employee, 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**

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.

### **Schedule 5 Amendment of [Anti-Discrimination Act 1977](#)**

(Section 7)

#### **Section 49ZX Exceptions to this Part**

Insert after section 49ZX (a):

- (b) Director of Public Prosecutions, Deputy Director of Public Prosecutions, Solicitor for Public Prosecutions, Crown Prosecutor, Senior Crown Prosecutor, Deputy Senior Crown Prosecutor, Public Defender, Senior Public Defender, Deputy Senior Public Defender, Solicitor General,