

TASMANIA

LAW OFFICERS (MISCELLANEOUS AMENDMENTS) BILL 2015

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LAW OFFICERS (MISCELLANEOUS AMENDMENTS) BILL 2015

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
22 September 2015

*(Brought in by the Minister for State Growth, the Honourable
Matthew Guy Groom)*

A BILL FOR

An Act to amend the *Director of Public Prosecutions Act 1973* and the *Solicitor-General Act 1983*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Law Officers (Miscellaneous Amendments) Act 2015*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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Part 2 – Director of Public Prosecutions Act 1973 Amended

**PART 2 – DIRECTOR OF PUBLIC PROSECUTIONS
ACT 1973 AMENDED**

3. Principal Act

In this Part, the *Director of Public Prosecutions Act 1973** is referred to as the Principal Act.

4. Section 4 amended (Appointment of Director)

Section 4(2) of the Principal Act is amended as follows:

- (a) by omitting “as a practitioner.” and substituting “as a practitioner and either –”;
- (b) by inserting the following paragraphs at the end of subsection (2):
 - (a) he or she has not previously been appointed under subsection (1) as Director; or
 - (b) he or she has previously been appointed under subsection (1) as Director and section 5(2) applies in relation to his or her appointment.

*No. 11 of 1973

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5. Section 5 substituted

Section 5 of the Principal Act is repealed and the following section is substituted:

5. Tenure of office and terms and conditions of appointment of Director

- (1) Subject to this Act, a person appointed as Director holds office for a period of 10 years.
- (2) Despite subsection (1), a person who has previously been appointed as Director may be appointed as Director for a further period, of not more than 10 years, that is specified in the instrument of appointment and is to begin immediately after the term of his or her previous appointment ends.
- (3) A person appointed as Director holds office on the terms and conditions, not inconsistent with this Act, that the Governor from time to time determines.

6. Sections 9 and 10 substituted

Sections 9 and 10 of the Principal Act are repealed and the following sections are substituted:

9. Vacation of office of Director

- (1) A person holding the office of Director vacates the office –

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- (a) at the end of the term of his or her appointment; or
 - (b) on his or her resignation from that office under subsection (2); or
 - (c) on the revocation of his or her appointment to the office under section 9F(2)(b).
- (2) A person holding the office of Director may at any time resign his or her office by notice in writing delivered to the Governor.

9A. Suspension from office of Director

- (1) The Governor may suspend from office a person holding the office of Director if the Governor is satisfied the person –
- (a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of that office; or
 - (b) has become bankrupt, applied to take or has taken advantage of any law relating to bankruptcy or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration or estate for their benefit; or

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-
- (c) has been convicted in Tasmania of –
- (i) a crime; or
 - (ii) an offence that is punishable by imprisonment for a term of 12 months or more –
- or has been convicted of a crime, or of an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (2) The Governor may suspend from office a person holding the office of Director if the Governor is satisfied the person has been charged with –
- (a) a crime; or
 - (b) an offence that is punishable by imprisonment for a term of 12 months or more; or
 - (c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (3) The Governor may suspend from office a person holding the office of Director if

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the Governor is satisfied the person has engaged in –

- (a) misconduct in office, including by virtue of contravening section 11; or
- (b) misbehaviour that brings the office into disrepute.

9B. Minister to lay before each House of Parliament statement in relation to suspension

If a person has been suspended from office under section 9A, the Minister must cause a statement setting out the grounds for the suspension to be laid before each House of Parliament during the first 7 sitting-days of that House following the suspension or a longer period allowed by resolution of the House of Parliament before which it is laid.

9C. House of Parliament may confirm or revoke suspension for misconduct or misbehaviour

- (1) If a person has been suspended from office under section 9A(3), a House of Parliament, within 30 sitting-days after a statement has been laid before the House under section 9B or a longer period allowed by resolution of the House of Parliament, may pass a resolution –
 - (a) confirming the suspension; or

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(b) revoking the suspension.

- (2) If both Houses of Parliament pass a resolution under subsection (1)(b) revoking the suspension of a person from the office of Director, the suspension of the person from the office of Director is revoked on and from the day on which the resolution is passed by both the Houses.

9D. Governor may revoke or vary suspension of person from office of Director

- (1) The Governor may revoke or vary a suspension imposed under section 9A.
- (2) If the Governor has, under subsection (1), revoked or varied a suspension, the Minister must cause a statement setting out the grounds for the revocation or variation to be laid before each House of Parliament during the first 7 sitting-days of that House following the revocation or variation or a longer period allowed by resolution of the House of Parliament before which it is laid.
- (3) If a suspension has been revoked or varied under subsection (1), a House of Parliament, within 30 sitting-days after the day on which a statement has been laid before the House under subsection (2) or a longer period allowed by resolution of the House of Parliament, may pass a resolution –

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- (a) confirming the revocation or variation of the suspension; or
 - (b) revoking the revocation or variation of the suspension.
- (4) If both Houses of Parliament pass a resolution under subsection (3) confirming the revocation or variation of a suspension, the suspension is revoked or varied, respectively, on and from the day on which the resolution is passed by both the Houses.

9E. Request for revocation of appointment

The Governor may cause to be laid before both Houses of Parliament a statement requesting the Houses of Parliament to revoke the appointment of a person as Director on the grounds for suspension, referred to in section 9A(1) or (3), that are specified in the statement, if –

- (a) the Governor is satisfied the person may be suspended from the office of Director on the grounds, referred to in section 9A(1) or (3), specified in the statement; and
- (b) the Governor has suspended the person from office under section 9A on any grounds referred to in that section, whether or not they are the same

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grounds as the grounds to which
the statement relates; and

- (c) the statement required by
section 9B to be laid before both
Houses of Parliament in relation
to the suspension of the person
from the office of Director has
been laid before each House; and
- (d) where the person has been
suspended from office under
section 9A(3) – the suspension
has been confirmed under
section 9C(1)(a).

**9F. House of Parliament may revoke
appointment or suspension**

- (1) A House of Parliament, after 10 sitting-
days, or a longer period allowed by
resolution of the House, after the day on
which a statement in relation to a person
has been laid before the House under
section 9E, may resolve –
 - (a) to refuse the request specified in
the statement and, if the
suspension of the person from
office has not been revoked, to
revoke the suspension; or
 - (b) to revoke the appointment of the
person as Director.
- (2) If both Houses have resolved –

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- (a) under subsection (1)(a) to revoke the suspension of a person from the office of Director, the suspension of the person from the office of Director is revoked; or
- (b) under subsection (1)(b) to revoke the appointment of a person as Director, the appointment of the person as Director is revoked –

on and from the day on which the resolution is passed by both Houses.

9G. Payment of person suspended from office

- (1) If a person is suspended from the office of Director under section 9A, the Governor is to specify in the instrument of suspension the proportion (which may be all, none or part) of the salary of the Director to which the person is to be entitled in respect of the period of suspension.
- (2) If a person is suspended from the office of Director under section 9A, the person is not entitled, in respect of the period of suspension, to any more of the salary of the Director, to which, but for the suspension, or any variation of the suspension, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension, as so varied, if at all.

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- (3) Despite subsection (2), if the suspension of a person from the office of Director for a period under section 9A is revoked under section 9C(2), section 9D(1) or section 9F(2)(a), the person is entitled to the amount of the salary in respect of the period to which, but for the suspension of the person from the office, the person would be entitled under this Act.

7. Section 12 amended (Functions of Director)

Section 12(1) of the Principal Act is amended by inserting after paragraph (e) the following paragraphs:

(ea) to issue to –

- (i) prosecutors; and
- (ii) persons acting on the Director's behalf; and
- (iii) the Commissioner of Police; and
- (iv) any persons or Agencies who conduct prosecutions –

guidelines in relation to prosecutions, including in respect of the offences, or classes of offences, that are to be referred to the Director for the institution and conduct of proceedings; and

(eb) to grant indemnities from prosecution, whether on indictment or otherwise; and

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- (ec) to give undertakings to persons that answers given, or statements or disclosures made, by those persons will not be used in evidence against those persons; and

8. Section 13A inserted

After section 13 of the Principal Act, the following section is inserted:

13A. Deputy Director

- (1) Subject to and in accordance with the *State Service Act 2000*, a person who is an Australian lawyer of not less than 7 years' standing as a practitioner is to be appointed or employed as Deputy Director.
- (2) The Deputy Director is to perform the functions that the Director directs the Deputy Director to perform.
- (3) In addition to the functions that the Deputy Director is directed under subsection (2) to perform, the Deputy Director –
 - (a) is to act as Director during any illness, suspension or absence of the Director and during any vacancy in that office; and
 - (b) while acting as Director, is to perform the functions and

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exercise the powers of the Director and receive a salary at the same rate as that payable to the Director.

- (4) Any act or thing done by the Deputy Director, while acting as Director, in the performance of the functions, and the exercise of the powers, of the Director has the same effect as if it were done by the Director.
- (5) Any act or thing that is required under a written law to be done to, by reference to, or in relation to, the Director is taken to be effectually done if, respectively, the act or thing is done to, by reference to, or in relation to, the Deputy Director when the Deputy Director is acting as Director.
- (6) Subsection (5) applies to an act or thing done by the Deputy Director in good faith in the belief that the Director was absent from office on grounds referred to in subsection (3) or that there was a vacancy in the office.
- (7) The Deputy Director, when acting as Director, has the same immunities and independence as the Director.

9. Section 21 inserted

After section 20 of the Principal Act, the following section is inserted:

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21. Application of amendments made by *Law Officers (Miscellaneous Amendments) Act 2015*

(1) In this section –

amendment Act means the *Law Officers (Miscellaneous Amendments) Act 2015*;

amendment day means the day on which the amendment Act commenced.

(2) Apart from this section, the amendments to this Act made by the amendment Act do not apply in relation to the person who, immediately before the amendment day, held the office of Director.

(3) Nothing in this Act is to be taken to prevent a person, by reason only that the person –

(a) has held, or holds, the office of Deputy Director; or

(b) has acted, or is acting, as Director –

from holding, or from being appointed to, the office of Director.

**PART 3 – SOLICITOR-GENERAL ACT 1983
AMENDED**

10. Principal Act

In this Part, the *Solicitor-General Act 1983** is referred to as the Principal Act.

11. Section 4 amended (Office of Solicitor-General; appointment of Solicitor-General)

Section 4 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “as a practitioner.” and substituting “as a practitioner and either –”;
- (b) by inserting the following paragraphs at the end of subsection (3):
 - (a) he or she has not previously been appointed under subsection (2) to hold the office of Solicitor-General; or
 - (b) he or she has previously been appointed under subsection (2) to hold the office of Solicitor-General and subsection (3B) applies in relation to his or her appointment.

*No. 13 of 1983

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(c) by inserting the following subsections after subsection (3):

(3A) Subject to this Act, a person appointed to hold the office of Solicitor-General holds office for a period of 10 years.

(3B) Despite subsection (3A), a person who has previously been appointed to hold the office of Solicitor-General may be appointed to hold that office for a further period, of not more than 10 years, that is specified in the instrument of appointment and is to begin immediately after the term of his or her previous appointment ends.

12. Section 6 substituted

Section 6 of the Principal Act is repealed and the following sections are substituted:

6. Vacation of office of Solicitor-General

(1) A person holding the office of Solicitor-General vacates the office –

(a) at the end of the term of his or her appointment; or

(b) on his or her resignation from that office under subsection (2); or

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- (c) on the revocation of his or her appointment to the office under section 6F(2)(b).
- (2) A person holding the office of Solicitor-General may at any time resign his or her office by notice in writing delivered to the Governor.

6A. Suspension from office of Solicitor-General

- (1) The Governor may suspend from office a person holding the office of Solicitor-General if the Governor is satisfied the person –
 - (a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of that office; or
 - (b) has become bankrupt, applied to take or has taken advantage of any law relating to bankruptcy or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration or estate for their benefit; or
 - (c) has been convicted in Tasmania of –
 - (i) a crime; or

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- (ii) an offence that is punishable by imprisonment for a term of 12 months or more –

or has been convicted of a crime, or of an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.

- (2) The Governor may suspend from office a person holding the office of Solicitor-General if the Governor is satisfied the person has been charged with –
 - (a) a crime; or
 - (b) an offence that is punishable by imprisonment for a term of 12 months or more; or
 - (c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (3) The Governor may suspend from office a person holding the office of Solicitor-General if the Governor is satisfied the person has engaged in –
 - (a) misconduct in office, including by virtue of contravening section 10; or

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- (b) misbehaviour that brings the office into disrepute.

6B. Minister to lay before each House of Parliament statement in relation to suspension

If a person has been suspended from office under section 6A, the Minister must cause a statement setting out the grounds for the suspension to be laid before each House of Parliament during the first 7 sitting-days of that House following the suspension or a longer period allowed by resolution of the House of Parliament before which it is laid.

6C. House of Parliament may confirm or revoke suspension for misconduct or misbehaviour

- (1) If a person has been suspended from office under section 6A(3), a House of Parliament, within 30 sitting-days after a statement has been laid before the House under section 6B or a longer period allowed by resolution of the House of Parliament, may pass a resolution –
 - (a) confirming the suspension; or
 - (b) revoking the suspension.
- (2) If both Houses of Parliament pass a resolution under subsection (1)(b) revoking the suspension of a person from the office of Solicitor-General, the

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suspension of the person from the office of Solicitor-General is revoked on and from the day on which the resolution is passed by both the Houses.

6D. Governor may revoke or vary suspension of person from office of Solicitor-General

- (1) The Governor may revoke or vary a suspension imposed under section 6A.
- (2) If the Governor has, under subsection (1), revoked or varied a suspension, the Minister must cause a statement setting out the grounds for the revocation or variation to be laid before each House of Parliament during the first 7 sitting-days of that House following the revocation or variation or a longer period allowed by resolution of the House of Parliament before which it is laid.
- (3) If a suspension has been revoked or varied under subsection (1), a House of Parliament, within 30 sitting-days after the day on which a statement has been laid before the House under subsection (2) or a longer period allowed by resolution of the House of Parliament, may pass a resolution –
 - (a) confirming the revocation or variation of the suspension; or
 - (b) revoking the revocation or variation of the suspension.

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- (4) If both Houses of Parliament pass a resolution under subsection (3) confirming the revocation or variation of a suspension, the suspension is revoked or varied, respectively, on and from the day on which the resolution is passed by both the Houses.

6E. Request for revocation of appointment

The Governor may cause to be laid before both Houses of Parliament a statement requesting the Houses of Parliament to revoke the appointment of a person to the office of Solicitor-General on the grounds for suspension, referred to in section 6A(1) or (3), that are specified in the statement, if –

- (a) the Governor is satisfied the person may be suspended from the office of Solicitor-General on the grounds, referred to in section 6A(1) or (3), specified in the statement; and
- (b) the Governor has suspended the person from office under section 6A on any grounds referred to in that section, whether or not they are the same grounds as the grounds to which the statement relates; and
- (c) the statement required by section 6B to be laid before both

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Houses of Parliament in relation to the suspension of the person from the office of Solicitor-General has been laid before each House; and

- (d) where the person has been suspended from office under section 6A(3) – the suspension has been confirmed under section 6C(1)(a).

6F. House of Parliament may revoke appointment or suspension

- (1) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after the day on which a statement in relation to a person has been laid before the House under section 6E, may resolve –
 - (a) to refuse the request specified in the statement and, if the suspension of the person from office has not been revoked, to revoke the suspension; or
 - (b) to revoke the appointment of the person to the office of Solicitor-General.
- (2) If both Houses have resolved –
 - (a) under subsection (1)(a) to revoke the suspension of a person from the office of Solicitor-General,

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the suspension of the person from the office of Solicitor-General is revoked; or

- (b) under subsection (1)(b) to revoke the appointment of a person to the office of Solicitor-General, the appointment of the person to the office of Solicitor-General is revoked –

on and from the day on which the resolution is passed by both Houses.

6G. Payment of person suspended from office

- (1) If a person is suspended from the office of Solicitor-General under section 6A, the Governor is to specify in the instrument of suspension the proportion (which may be all, none or part) of the salary of the Solicitor-General to which the person is to be entitled in respect of the period of suspension.
- (2) If a person is suspended from the office of Solicitor-General under section 6A, the person is not entitled, in respect of the period of suspension, to any more of the salary of the Solicitor-General, to which, but for the suspension, or any variation of the suspension, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension, as so varied, if at all.

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- (3) Despite subsection (2), if the suspension of a person from the office of Solicitor-General for a period under section 6A is revoked under section 6C(2), 6D(1) or 6F(2)(a), the person is entitled to the amount of the salary in respect of the period to which, but for the suspension of the person from the office, the person would be entitled under this Act.

13. Section 7 amended (Functions of Solicitor-General)

Section 7(b) of the Principal Act is amended by omitting “counsel” and substituting “legal practitioners”.

14. Section 14 inserted

After section 13 of the Principal Act, the following section is inserted:

14. Application of amendments made by *Law Officers (Miscellaneous Amendments) Act 2015*

- (1) In this section –

amendment Act means the *Law Officers (Miscellaneous Amendments) Act 2015*;

amendment day means the day on which the amendment Act commenced.

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- (2) Apart from this section, the amendments to this Act made by the amendment Act do not apply in relation to the person who, immediately before the amendment day, held the office of Solicitor-General.
 - (3) Nothing in this Act is to be taken to prevent a person, by reason only that the person has acted, or is acting, as Solicitor-General, from holding, or from being appointed to, the office of Solicitor-General.

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Part 4 – Concluding Provision

PART 4 – CONCLUDING PROVISION

15. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.