

DRAFT SECOND READING SPEECH

HON. MATTHEW GROOM MP

Law Officers (Miscellaneous Amendments) Bill 2015

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Madam Speaker, the *Law Officers (Miscellaneous Amendments) Bill 2015* provides for amendments to the *Director of Public Prosecutions Act 1973* and the *Solicitor-General Act 1983* that will –

- introduce a fixed term appointment for 10 years for these offices;
- provide for eligibility for reappointment to office for up to 10 years
- change and standardise the provisions relating to appointment, suspension and removal from office;
- provide new grounds for suspension and removal from office of misconduct and misbehaviour that brings the office into disrepute;
- provide for suspension from office on full, part or no pay;
- amend the provisions relating to temporary vacancy of office;
- update the functions of the Director of Public Prosecutions relating to issuing guidelines; and
- provide for the position of a Deputy Director of Public Prosecutions.

The offices of the Director of Public Prosecutions and Solicitor-General are statutory offices established by the *Director of Public Prosecutions Act 1973* and the *Solicitor-General Act 1983* respectively.

The *Director of Public Prosecutions Act 1973* provides for the appointment, remuneration, conditions of service and functions of the Director of Public Prosecutions.

Under the Act the Director of Public Prosecutions prosecutes criminal matters on behalf of the Crown, that is, on behalf of the Tasmanian community.

The Director of Public Prosecutions is responsible to the Attorney-General for the due exercise of his or her functions of the office, but acts independently of the government of the day and political and other sectional influences.

Currently, a Director of Public Prosecutions may be removed from office by the Governor for reasons set out in section 10 of the *Director of Public Prosecutions Act*

1973. These reasons include incapacity, bankruptcy and misbehaviour. There is no parliamentary oversight of a decision to remove a Director of Public Prosecutions.

The role of the Solicitor-General is established by the *Solicitor-General Act 1983*. The Solicitor-General provides definitive legal advice to Ministers, agencies and instrumentalities of the Crown. The Solicitor-General also represents the State of Tasmania in any constitutional litigation.

The *Solicitor-General Act 1983* provides that a Solicitor-General can only be removed from office if each House of Parliament passes a resolution requesting the Governor to do so.

The Commonwealth, States and Territories all have legislation establishing the office of Director of Public Prosecutions and Solicitor-General. The Acts deal with appointment, tenure, removal and remuneration. Over time those Acts have been subject to review and amendment, in particular in relation to tenure of office.

The Government has decided to review the Tasmanian legislative framework for these officers and make changes to ensure the Acts reflect a more contemporary approach to appointment and removal from office.

Currently, qualification for appointment to the office of Director of Public Prosecutions or Solicitor-General is largely similar across jurisdictions and substantially mirrors that for appointment to a superior court. The majority of jurisdictions, including Tasmania, require the appointee to have a minimum of 7 years' experience as a legal practitioner. This Bill does not change or alter the eligibility requirements for appointment. Essentially, a sufficient level of legal practice and experience is required.

In the Commonwealth, Australian Capital Territory, New South Wales, Queensland and Western Australia the term of appointment of the Solicitor-General is limited, ranging from 5 to 10 years. All of those jurisdictions, except New South Wales, permit re-appointment for another term. In South Australia, Victoria, Northern Territory and Tasmania, the appointment may be unlimited, although there is a mandatory retirement age of 72 years.

In relation to tenure of a Director of Public Prosecutions, all jurisdictions have slightly different approaches. In Tasmania, there is no fixed term specified but section 5 of the *Director of Public Prosecutions Act 1973* provides that a person appointed holds office during good behaviour on such terms and conditions as the Governor determines. The Act currently provides that the office must not be held by a person who is 72 years of age or older.

The Northern Territory and Queensland also do not specifically limit the term of appointment. Queensland, like Tasmania, may stipulate the term of appointment in the instrument of appointment and specifically provides that a person holding the office is eligible for re-appointment.

In the Australian Capital Territory, the term is limited to a maximum of 7 years. In New South Wales, the appointment period is a maximum of 10 years with no prospect of re-appointment, while Victoria provides for a 10 year term or longer not exceeding 20 years. The Commonwealth and South Australia provide for a 7 year terms with

eligibility to apply for re-appointment. Western Australia provides for a 5 year term, with eligibility for re-appointment.

The Government considered various statutory approaches and consulted with a wide range of stakeholders particularly in the legal community. The Government decided to amend both Acts to provide for a fixed term appointment of 10 years and provide for the ability to re-appoint for a further term of up to 10 years for both officers.

Many jurisdictions have reviewed tenure and introduced a fixed term appointment instead of life tenure. The terms used in other jurisdictions range from 5 to 10 years.

This provides for refreshment of skills and is reflective of contemporary recruitment and knowledge management practices.

In Tasmania, we are proud of the standard of our legal profession, but a smaller jurisdiction provides limited opportunity to gain relevant skills and experience through litigation than other larger jurisdictions. As a result, the number of suitably experienced candidates for these statutory offices can be limited. It is therefore considered appropriate to set a fixed term of appointment of 10 years. It is also considered desirable to allow for a level of flexibility and provide for a person to be re-appointed for a further term of up to 10 years. This may allow an officer to continue with a complex matter or case at the end of the 10 year appointment, and is flexible enough to provide for a short extension such as 2 years.

In terms of suspension and removal from office, these have been amended to –

- a) achieve consistency between the offices of Director of Public Prosecutions and Solicitor-General;
- b) strengthen the role of Parliament in overseeing decisions regarding suspension and removal from office; and
- c) reflect community expectations and standards.

Currently, the Director of Public Prosecutions may be removed from office by the Governor for reasons including incapacity, bankruptcy and misbehaviour. However, the Solicitor-General may only be removed from office if each House of Parliament passes a resolution requesting the Governor to do so.

The Bill provides for additional grounds and standardisation of the provisions in relation to suspension and removal for both officers.

The amendments provide that a Director of Public Prosecutions or Solicitor-General may be suspended from office where either officer is

- by reason of disability or infirmity, incapable of performing the functions of the office (except if the illness is of a temporary nature);
- bankrupt;
- convicted in Tasmania of a crime or an offence punishable by 12 months imprisonment or more;

- convicted elsewhere of a crime or offence that if committed in Tasmania would be a crime or an offence punishable by imprisonment for 12 months or more;
- charged in Tasmania with a crime or an offence punishable by 12 months imprisonment or more;
- charged elsewhere with a crime or offence that if committed in Tasmania would be a crime or an offence punishable by imprisonment for 12 months or more;
- engaged in misconduct in office including by engaging in private practice; and
- engaged in misbehaviour that brings the office into disrepute.

The Bill further provides that if a Director of Public Prosecutions or Solicitor-General is suspended from office, this may be on full, part or, no pay. The Governor is to specify in the instrument of suspension the proportion of salary either officer receives during the period of suspension. This has been included to ensure that there is power to suspend pay which may be appropriate in some circumstances.

Importantly, the Bill provides for parliamentary oversight of any suspension and requires the Minister to lay a statement setting out the grounds of suspension before both Houses of Parliament. In terms of a suspension, the Parliament may then pass a resolution either confirming or revoking the suspension.

The Bill also provides for revocation of suspension or variation of the terms of suspension. Again, the Bill provides for parliamentary oversight of a decision to revoke a suspension or vary the terms of a suspension.

The dismissal of a Solicitor-General is currently the subject of parliamentary oversight. Other examples of independent officers that may only be removed by the Parliament include Supreme Court Judges and the Ombudsman.

Parliamentary oversight of decisions to suspend or remove a person from office ensure these decision are transparent and at arms-length from the Government of the day.

This amendment removes the existing inconsistency in relation to the mechanisms for removal from office of a Director of Public Prosecutions and a Solicitor-General. Under the new provisions only the Tasmanian Parliament can remove a Director of Public Prosecutions or Solicitor-General from office.

These amendments will only apply to new appointments and therefore not to the current Solicitor-General who was appointed in September 2014. These amendments will apply to the future appointment of a Director of Public Prosecutions.

The Bill also updates the list of functions of the Director of Public Prosecutions to include the issuing of prosecutorial guidelines, the taking over of summary prosecutions and the granting of indemnity from prosecution. These changes were made at the request of the Acting Director of Public Prosecutions.

From time to time it is appropriate for the Director of Public Prosecutions to give guidance to law enforcement authorities, take over the conduct of prosecutions

ordinarily conducted by other agencies and in some cases grant indemnities from prosecution. It is appropriate to provide a statutory basis for these guidelines.

The Director of Public Prosecutions has a number of statutory duties that cannot be delegated to other legal practitioners in his office. For example, only the Director of Public Prosecutions can authorise the prosecution of some serious crimes, such as maintaining a sexual relationship with a young person, and undertaking particular actions under the *Crimes (Confiscation of Profits) Act 1993* in relation to unexplained wealth proceedings.

The Bill provides for a position of Deputy Director of Public Prosecutions to ensure that the statutory duties of a Director of Public Prosecutions can be carried out efficiently if the incumbent is temporarily absent.

Madam Speaker, the eligibility, mode and terms of appointment, and the removal of these statutory officers from office have been topics of lively discussion and debate. In the past, the discussions have been heavily influenced by the importance of securing independence in the offices of the Director of Public Prosecutions and the Solicitor-General.

I believe that this Bill strikes the right balance between independence by maintaining the rule of law, and the community's expectations in relation to accountability of those that occupy important offices in Tasmania.

The Government has listened to various views and we have incorporated those views into the Bill.

I commend the Bill to the House.