

CLAUSE NOTES

Law Officers (Miscellaneous Amendments) Bill 2015

Clause 1: Short title

This clause provides that the Bill will be cited as the *Law Officers (Miscellaneous Amendments) Bill 2015*.

Clause 2: Commencement

This clause provides for the Bill to commence on the day on which it receives the Royal Assent.

Clause 3: Principal Act Director of Public Prosecutions Act 1973 Amended

This clause provides that in relation to the clauses contained in Part 2 of the Bill the Principal Act to which the amendments apply is the *Director of Public Prosecutions Act 1973*.

Clause 4: Section 4 amended Appointment of Director

This clause amends the provisions in relation to appointment to the office of Director of Public Prosecutions by providing that a person of not less than seven years standing may be appointed for a term of 10 years and reappointed immediately after the term for a term up to 10 years and precluding any further appointment. Therefore, a person cannot be reappointed to the office of Director of Public Prosecutions once the 10 year term and any additional term beginning immediately after the term of the first appointment ends.

The clause operates in conjunction with clause 5.

Clause 5: Section 5 substituted Section 5 Tenure of office and terms and conditions of appointment as Director

This clause repeals section 5 of the Principal Act and substitutes a new section 5.

The substituted new section 5 provides for appointment of a Director for a period of 10 years on such terms and conditions as determined by the Governor.

The new section 5 also provides that a Director of Public Prosecutions may be appointed for another period of up to 10 years to commence immediately after the end of the term of his or her previous appointment.

Clause 6: Section 9 and 10 substituted

This clause repeals sections 9 and 10 of the Principal Act.

New section 9 - Vacation of office of Director

The clause inserts new section 9 to provide for vacation of office of the Director of Public Prosecutions.

Under the new section 9(1) a Director of Public Prosecutions vacates the office at the end of his or her term of appointment; upon resignation; or revocation of his or her appointment under the new section 9F(2)(b) by resolution of both Houses of Parliament.

The new section 9(2) provides that the resignation of a Director of Public Prosecutions must be by notice in writing to the Governor.

New section 9A - Suspension from office

The clause inserts new section 9A to provide for suspension from office of the Director of Public Prosecutions.

Under the new section 9A, the Governor may suspend a Director of Public Prosecutions if he or she is –

- by reason of disability or infirmity, incapable of performing the functions of the office (except if illness is temporary) (new section 9A(1)(a));
- bankrupt (new section 9A(1)(b));
- convicted in Tasmania of a crime or an offence punishable by 12 months imprisonment or more (new section 9A(1)(c));
- 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 (new section 9A(1)(c));
- charged in Tasmania with a crime or an offence punishable by 12 months imprisonment or more (new section 9A(2)(a) and (b));
- 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 (new section 9A(2)(c));
- engaged in misconduct in office, including by engaging in private practice (new section 9A(3)(a));
- engaged in misbehaviour that brings the office into disrepute (new section 9A(3)(b));

New section 9B - Minister to lay statement in relation to suspension to be laid before each House of Parliament

The clause inserts new section 9B to provide for the Minister to lay a statement in relation to suspension under the new section 9A before each House of Parliament.

The new section 9B requires a statement setting out the grounds of the suspension to be laid by the Minister before both Houses of Parliament within 7 sitting-days of the suspension of the Director of Public Prosecutions.

New Section 9C - House of Parliament may confirm or revoke suspension for misconduct or misbehaviour

The clause inserts new section 9C to provide that a House of Parliament may confirm or revoke suspension for misconduct or misbehaviour.

The new section 9C provides that if a person has been suspended for misconduct or misbehaviour (under the new section 9A(3)) a House of Parliament may pass a resolution confirming or revoking the suspension. If a resolution is passed by both Houses of Parliament revoking a suspension of the Director of Public Prosecutions, that suspension is revoked from the day the resolution is passed by both Houses of Parliament (new section 9C(2)).

New section 9D Governor may revoke or vary suspension of Director from office

The clause inserts new section 9D to provide that the Governor may revoke or vary suspension of a Director of Public Prosecutions from office.

The new section 9D(1) provides that the Governor may revoke or vary a suspension imposed under new section 9A.

the new section 9D(2) provides that where the Governor has revoked or varied a suspension of the Director of Public Prosecutions, the Minister must lay a statement before each House of Parliament setting out the grounds of revocation or variation within 7 sittings days.

Under new section 9D(3) a House of Parliament may pass a resolution either confirming or revoking the suspension or variation of suspension of the Director of Public Prosecutions. If such a resolution is passed by both Houses of Parliament the suspension is revoked or varied from the day the resolution is passed (new section 9D(4)).

New section 9E Request for Revocation of appointment

The clause inserts new section 9E to provide that the Governor may request the revocation of appointment of a Director of Public Prosecutions.

The new section 9E provides that the Governor may cause a statement to be laid before both Houses of Parliament requesting the revocation of appointment of a Director of Public Prosecutions on the same grounds laid for suspension if the Governor is satisfied that –

- a Director of Public Prosecutions may be suspended on the grounds in new section 9A(1) or (3); and
- the Governor has suspended the person from office under any grounds in new section 9A whether or not they are the same as the statement; and
- the statement required by new section 9B has been laid before each House of Parliament; and

- where the Director of Public Prosecutions has been suspended for misconduct in office or misbehaviour (new section 9A(3)) that suspension has been confirmed under new section 9C(1)(a)).

New Section 9F House of Parliament may revoke appointment or suspension

The clause inserts new section 9F to provide a House of Parliament may revoke appointment or suspension.

The new section 9F provides a House of Parliament may resolve to refuse a request to revoke appointment of a Director of Public Prosecutions and revoke any suspension from office if that suspension has not already been revoked or may resolve to revoke the appointment of a Director of Public Prosecutions.

The new section 9F(2) provides that if both Houses of Parliament resolve to revoke the suspension of a Director of Public Prosecutions then the suspension is revoked on and from the day the resolution is passed by both Houses.

The new section also provides that if both Houses of Parliament resolve to revoke the appointment of a Director of Public Prosecutions the appointment is revoked on and from the day that the resolution is passed in both Houses of Parliament.

New section 9G Payment of person suspended from office

The clause inserts new section 9G to provide for the instrument of suspension to specify the proportion of payment of a salary of a person suspended from office.

The new section 9G provides that the Governor specifies in the instrument of suspension the proportion of salary, if any, the Director of Public Prosecutions receives during the period of suspension. This allows for no, full or part payment of salary during the period of suspension from office.

Clause 7: Section 12 amended Functions of Director

This clause provides that the Director of Public Prosecutions has additional functions which include –

- to issue guidelines to prosecutors, the Commissioner of Police and others in relation to the conduct and referral of prosecutions (new section 12(1)(ea));
- to grant indemnities from prosecution (new section 12(1)(eb));
- to give undertakings in relation to use of disclosures (new section 12(1)(ec))

Clause 8: Section 13A inserted Deputy Director of Public Prosecutions

This clause creates the position of Deputy Director of Public Prosecutions and provides criteria for eligibility for appointment (new section 13A(1)).

This clause provides that the Deputy Director of Public Prosecutions is to perform such functions as directed by the Director of Public Prosecutions (new section 13A(2)).

The clause also provides that the Deputy Director of Public Prosecutions acts as Director of Public Prosecutions with all the powers, immunities and independence of that office during any period of illness, suspension, absence or vacancy (new section 13A(3), (4) and (5)).

Clause 9: Section 21 inserted
Application of amendments made by Law Officers (Miscellaneous Amendments) Act 2015

This clause provides that the amendments to the Principal Act do not apply to a person who held the office of Director of Public Prosecutions prior to the date of commencement of the *Law Officers (Miscellaneous Amendments) Act 2015*.

Clause 10: Principal Act
Solicitor-General Act 1983 Amended

This clause provides that in relation to the clauses contained in Part 3 of the Bill the Principal Act to which the amendments apply is the *Solicitor-General Act 1983*.

Clause 11: Section 4 amended
Office of the Solicitor-General; appointment of Solicitor-General

This clause amends the provisions in relation to appointment to the office of Solicitor-General by providing that a person of not less than seven years standing may be appointed for a term of 10 years and reappointed immediately after the term for a term up to 10 years and precludes any further appointment. Therefore, a person cannot be reappointed to the office of Solicitor-General once the 10 year term and any additional term beginning immediately after the term of the first appointment ends.

Clause 12: Section 6 substituted

This clause repeals section 6 of the Principal Act and substitutes a new section 6 to provide for the vacation of office of the Solicitor-General.

New section 6 – Vacation of office of Solicitor General

Under the new section 6(1) a Solicitor-General vacates the office at the end of his or her term; upon resignation; or revocation of his or her appointment by resolution of both Houses of Parliament.

New section 6A to provide for the suspension of office of the Solicitor-General.

The Governor may suspend a Solicitor-General if he or she is –

- by reason of disability or infirmity, incapable of performing the functions of the office (except if illness is temporary) (new section 6A(1)(a));

- bankrupt (new section 6A(1)(b));
- convicted in Tasmania of a crime or an offence punishable by 12 months imprisonment or more (new section 6A(1)(c));
- 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 (new section 6A(1)(c));
- charged in Tasmania with a crime or an offence punishable by 12 months imprisonment or more (new section 6A(2)(a) and (b));
- 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 (new section 6A(2)(c));
- engaged in misconduct in office, including by engaging in private practice (new section 6A(3)(a));
- engaged in misbehaviour that brings the office into disrepute (new section 6A(3)(b)).

New section 6B - Minister to lay statement in relation to suspension to be laid before each House of Parliament

The clause inserts new section 6B to provide for the Minister to lay a statement in relation to suspension of a Solicitor-General before each House of Parliament.

New section 6B requires a statement setting out the grounds of the suspension to be laid by the Minister before both Houses of Parliament within 7 sitting-days of the suspension of a Solicitor-General.

New section 6C – House of Parliament may confirm or revoke suspension for misconduct or misbehaviour

The clause inserts new section 6C to provide that a House of Parliament may confirm or revoke suspension for misconduct or misbehaviour.

The new section 6C provides that if a Solicitor-General has been suspended for misconduct or misbehaviour (new section 6A(3)) a House of Parliament may pass a resolution confirming or revoking the suspension. If a resolution is passed by both Houses of Parliament revoking a suspension of a Solicitor-General, that suspension is revoked from the day the resolution is passed by both Houses of Parliament (new section 6C(2)).

New section 6D – Governor may revoke or vary suspension of Solicitor-General from office

The clause inserts new section 6D to provide that the Governor may revoke or vary suspension of a Solicitor-General from office.

The new section 6D(1) provides that the Governor may revoke or vary a suspension imposed under the new section 6A.

The new sub-section 6D(2) provides that where the Governor has revoked or varied a suspension of a Solicitor-General, the Minister must lay a statement before each House of Parliament setting out the grounds of revocation or variation within 7 sittings-days.

Under new sub-section 6D(3) a House of Parliament may pass a resolution either confirming or revoking the suspension or variation of suspension of a Solicitor-General. If such a resolution is passed by both Houses of Parliament the suspension is revoked or varied from the day the resolution is passed (new section 6D(4)).

New section 6E - Request of revocation of appointment

The clause inserts new section 6E to provide that the Governor may request the revocation of appointment of a Solicitor-General.

The new section 6E provides that the Governor may cause a statement to be laid before both Houses of Parliament requesting the revocation of appointment of a Solicitor-General on the grounds for suspension in section 6A(1) or (3) laid for suspension if the Governor is satisfied that –

- a Solicitor-General may be suspended on the grounds in new section 6A(1) or (3); and
- the Governor has suspended the person from office under any grounds in new section 6A whether or not they are the same as the statement; and
- the statement required by new section 6B has been laid before each House of Parliament; and
- where the Solicitor-General has been suspended for misconduct in office or misbehaviour (new section 6A(3)) that suspension has been confirmed under new section 6C(1)(a)).

New section 6F – House of Parliament may revoke appointment or suspension

The clause inserts new section 6F to provide a House of Parliament may revoke appointment or suspension.

The new section 6F provides a House of Parliament may resolve to refuse a request to revoke appointment of a Solicitor-General and revoke any suspension from office if that suspension has not already been revoked or may resolve to revoke the appointment of a Solicitor-General.

The new section 6F(2) provides that if both Houses of Parliament resolve to revoke the suspension of the Solicitor-General then the suspension is revoked on and from the day the resolution of passed by both Houses.

The new section 6F(2) also provides that if both Houses of Parliament resolve to revoke the appointment of the Solicitor-General the appointment is revoked on and from the day that the resolution is passed in both Houses of Parliament.

New section 6G – Payment of person suspended from office

The clause inserts new section 6G to provide for the payment of a person suspended from office.

The new section 6G provides that the Governor specifies in the instrument of suspension the proportion of salary, if any, the Solicitor-General receives during the period of suspension. This allows for no, full or part payment of salary during the period of suspension from office.

Clause 13: Section 7 amended Functions of Solicitor-General

This clause removes references to “counsel” and substitutes “legal practitioners” in section 7 of the Principal Act. Note the term legal practitioner is defined in the *Legal Profession Act 2007*.

Clause 14: Section 14 inserted

This clause inserts a new section 14 in the Solicitor-General Act 1983

New section 14 – Application of amendments made by the Law Officers (miscellaneous Amendments) Act 2015

The new section 14 provides that the amendments to the Principal Act do not apply to the person who immediately before the commencement of the *Law Officers (Miscellaneous Amendments) Act 2015* held the office of Solicitor-General.

Clause 15: Repeal of Act

This clause provides for the repeal of this amending Act after the amendments have been incorporated into the Principal Acts.