

TASMANIA

**LAW OFFICERS (MISCELLANEOUS
AMENDMENTS) BILL 2015**

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**LAW OFFICERS (MISCELLANEOUS
AMENDMENTS) BILL 2015**

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

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 by inserting “and he or she has not been previously appointed as Director” after “practitioner”.

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Section 5 of the Principal Act is repealed and the following section is substituted: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

Subject to this Act, a person appointed as Director holds office for a period of 10 years on the terms and conditions, not inconsistent with this Act, that the Governor determines.

*No. 11 of 1973

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6. Sections 9 and 10 substituted

Sections 9 and 10 of the Principal Act are repealed and the following sections are substituted:

9. Suspension from, and vacation of, office of Director

- (1) A person holding the office of Director 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
 - (c) on the revocation of his or her appointment to the office under subsection (11)(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.
- (3) 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

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- (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
 - (ii) an offence that is punishable by imprisonment for a period 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 period of 12 months or more.
- (4) 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 period of 12 months or more; or

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- (c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a period of 12 months or more.
- (5) The Governor may suspend from office a person holding the office of Director if 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.
- (6) If a person has been suspended from office under this section, the Minister is to 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 the House of Parliament before which it is laid.
- (7) If a person has been suspended from office under subsection (5), a House of Parliament, within 30 sitting-days after that statement is so laid 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; or
 - (c) to revoke the appointment of the person to the office of Director.
- (8) If both Houses of Parliament pass a resolution –
- (a) under subsection (7)(b) revoking the suspension of a person from the office of Director under subsection (7)(b), the suspension of the person from the office of Director is revoked; or
 - (b) under subsection (7)(c) revoking the appointment of the person to the office of Director, the appointment of the person to the office of Director is revoked –

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

- (9) 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 Director on the grounds for suspension, referred to in subsection (3) or (5), that are specified in the statement, if –
- (a) the Governor is satisfied that the person may be suspended from the office of Director on the grounds, referred to in

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- subsection (3) or (5), specified in the statement; and
- (b) the Governor has suspended the person from office under this section on any grounds referred to in subsection (3), (4) or (5), whether or not they are the same grounds as the grounds to which the statement relates; and
 - (c) the statement required by subsection (6) to be laid before both Houses of Parliament in relation to the suspension of the person from the office of the Director has been laid before each House; and
 - (d) if the person has been suspended from the office under subsection (5) – the suspension has been confirmed under subsection (7)(a).
- (10) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after a statement has been laid before a the House under subsection (9), may resolve –
- (a) to refuse the request and revoke the suspension of the person from the office of Director; or
 - (b) to revoke the appointment of the person to the office of Director.

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(11) If both Houses have resolved –

- (a) under subsection (10)(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 (10)(b) to revoke the appointment of the person to the office of Director, the appointment of the person to the office of Director is revoked –

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

10. Payment of person suspended from office

- (1) If a person is suspended from office as Director under section 9, 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 office as Director under section 9, 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, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension.

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- (3) Despite subsection (2), if the suspension of a person from office for a period under section 9 is revoked under section 9(11)(b), 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 guidelines, in relation to prosecutions in respect of offences, to prosecutors, persons acting on the Director's behalf, the Commissioner of Police and any persons or Agencies who conduct prosecutions; and
- (eb) to grant indemnities from prosecution, whether on indictment or otherwise; and
- (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
- (ed) to give directions to the Commissioner of Police, and other persons, in respect of the offences, or classes of offences, that are to be referred to the Director for the

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institution and conduct of proceedings;
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 exercise the powers of the Director and receive a salary at

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the same rate as that payable to the Director.

- (4) Any act or thing done by the Deputy Director, while acting as the 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 in the office of the 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.
- (6) The Deputy Director, when acting in the office of 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 amending 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) However, after the amendment day, the person, if any, who held the office of Director immediately before the amendment day may not be re-appointed to the office of Director.

(4) 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 –

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

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Part 3 – Solicitor-General Act 1983 Amended

**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 inserting in subsection (3) “and he or she has not been previously appointed to the office of Solicitor-General” after “practitioner”;
- (b) by inserting the following subsection after subsection (3):
 - (3A) Subject to this Act, a person appointed as Solicitor-General holds office for a period of 10 years.

12. Section 6 substituted

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

*No. 13 of 1983

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
 - (c) on the revocation of his or her appointment to the office under subsection (11)(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.
- (3) 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

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remuneration or estate for their benefit; or

(c) has been convicted in Tasmania of –

(i) a crime; or

(ii) an offence that is punishable by imprisonment for a period 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 period of 12 months or more.

(4) 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 period 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 period of 12 months or more.

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- (5) 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
 - (b) misbehaviour that brings the office into disrepute.
- (6) If a person has been suspended from office under this section, the Minister is to 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 the House of Parliament before which it is laid.
- (7) If a person has been suspended from office under subsection (5), a House of Parliament, within 30 sitting-days after that statement is so laid 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; or
 - (c) to revoke the appointment of the person to the office of Solicitor-General.

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Part 3 – Solicitor-General Act 1983 Amended

(8) If both Houses of Parliament pass a resolution –

(a) under subsection (7)(b) revoking the suspension of a person from the office of Solicitor-General under subsection (7)(b), the suspension of the person from the office of Solicitor-General is revoked; or

(b) under subsection (7)(c) revoking the appointment of the 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 the Houses.

(9) 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 subsection (3) or (5), that are specified in the statement, if –

(a) the Governor is satisfied that the person may be suspended from the office of Solicitor-General on the grounds, referred to in subsection (3) or (5), specified in the statement; and

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- (b) the Governor has suspended the person from office under this section on any grounds referred to in subsection (3), (4) or (5), whether or not they are the same grounds as the grounds to which the statement relates; and
 - (c) the statement required by subsection (6) to be laid before both Houses of Parliament in relation to the suspension of the person from the office of the Solicitor-General has been laid before each House; and
 - (d) if the person has been suspended from the office under subsection (5) – the suspension has been confirmed under subsection (7)(a).
- (10) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after a statement has been laid before a the House under subsection (9), may resolve –
- (a) to refuse the request and revoke the suspension of the person from the office of Solicitor-General; or
 - (b) to revoke the appointment of the person to the office of Solicitor-General.
- (11) If both Houses have resolved –

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- (a) under subsection (10)(a) to revoke the suspension of a person from the office of Solicitor-General, the suspension of the person from the office of Solicitor-General is revoked; or
- (b) under subsection (10)(b) to revoke the appointment of the 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.

6A. Payment of person suspended from office

- (1) If a person is suspended from office as the Solicitor-General under section 6, 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 office as Solicitor-General under section 6, 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, the person would be entitled under this Act, than the

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proportion of that salary that is specified in the instrument of suspension.

- (3) Despite subsection (2), if the suspension of a person from office for a period under section 6 is revoked under section 6(11)(b), 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 amending 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) However, after the amendment day, the person who held the office of Solicitor-General immediately before the amendment day may not be re-appointed to the office of Solicitor-General.
- (4) 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.

15. Schedule 1 amended (Pension Rights, &c.)

Schedule 1 to the Principal Act is amended by omitting paragraphs (b) and (c) from clause 2(1) of Part 1.

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Part 4 – Concluding Provision

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PART 4 – CONCLUDING PROVISION

16. Repeal of Act

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