



Australian Capital Territory

Law Officers Act 2011

A2011-30

Republication No 1

Effective: 31 August 2011 – 29 February 2012

Republication date: 31 August 2011

Act not amended

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Law Officers Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 31 August 2011. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Law Officers Act 2011

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Australian Capital Territory

Law Officers Act 2011

An Act about the functions of the Attorney-General, solicitor-general and government solicitor, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Law Officers Act 2011*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*authorised person*—see section 29 (1) (Person authorised by chief solicitor).' means that the term 'authorised person' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Attorney-General

Division 2.1 General

5 Position of Attorney-General

The Attorney-General is the first law officer of the Territory.

6 Attorney-General's functions

The Attorney-General's functions are—

- (a) to be the chief legal representative of—
 - (i) the Crown in right of the Territory; and
 - (ii) the Territory; and
- (b) to be the principal legal adviser to the Territory; and
- (c) to have responsibility for the administration of law and justice in the ACT; and
- (d) to start and conduct litigation on behalf of—
 - (i) the Crown in right of the Territory; or
 - (ii) the Territory; or
 - (iii) a Minister; or
 - (iv) a person suing or being sued on behalf of the Territory; and
- (e) to ensure that litigation mentioned in paragraph (d) is started and conducted in accordance with proper standards; and
- (f) to exercise any function given to the Attorney-General under another Act; and

(g) to exercise any other function prescribed by regulation.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

7 Additional functions of Attorney-General

The Attorney-General also has, in relation to the Territory, the traditional functions, prerogatives and privileges of State Attorneys-General, subject to this Act and any other territory law.

8 Effect of Attorney-General's functions on certain litigation

To remove any doubt, the functions of the Attorney-General, including the traditional functions, prerogatives and privileges of State Attorneys-General, do not prevent, and are taken never to have prevented, a person authorised by the Territory, or under a territory law, from starting or conducting litigation mentioned in section 6 (d) (Attorney-General's functions).

9 Change of Attorney-General

An action, proceeding or matter (whether civil or criminal) by or against the Attorney-General does not end because of, and is not affected by, a change of office-holder.

Division 2.2 Legal services directions

10 Meaning of *territory legal work*—div 2.2

In this division:

territory legal work means—

- (a) any work performed by or on behalf of the government solicitor in the exercise of its functions; or
- (b) any legal work performed by a person for any of the following:
 - (i) the Territory;
 - (ii) a body established by a territory law;
 - (iii) a company or other entity in which the Territory has a controlling interest;
 - (iv) another entity mentioned in section 26 (3), to the extent that the work relates to the entity's exercise of a territory function.

11 Legal services directions—issue

- (1) The Attorney-General may issue directions (*legal services directions*) that are to apply—
 - (a) generally to territory legal work; or
 - (b) to territory legal work being performed, or to be performed, in relation to a particular matter.
- (2) The Attorney-General must issue a legal services direction setting out guidelines (the *model litigant guidelines*) to ensure that proper standards in litigation apply to territory legal work.
- (3) A legal services direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

12 Legal services directions—compliance etc

- (1) Anyone performing territory legal work must comply with a legal services direction.
- (2) A legal services direction may be enforced only by, or on the application of, the Attorney-General.
- (3) The issue of non-compliance with a legal services direction may not be raised in a proceeding (whether in a court, tribunal or other body) except by or on behalf of the Territory.
- (4) The Attorney-General is not civilly or criminally liable for anything done or omitted to be done in compliance, or purported compliance, with a legal services direction.

13 Legal services directions—client legal privilege

- (1) If a legal services direction requires a person to give information or produce a document to someone else, the person must not refuse to comply with the direction on the ground of client legal privilege (also known as legal professional privilege) or any other duty of confidence.
- (2) A person performing territory legal work may give information or produce a document relating to the work to the Attorney-General or a person authorised by the Attorney-General.
- (3) A person is taken not to have breached client legal privilege or any other duty of confidence in giving information or producing a document under subsection (2).
- (4) If a communication that is the subject of client legal privilege is disclosed under subsection (1) or (2), then, despite the disclosure, privilege is taken not to have been waived in relation to the communication.
- (5) The Legislation Act, s 171 (Client legal privilege) does not apply to this section.

14 Legal services directions—performing territory legal work

- (1) A person performing territory legal work is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in complying with a legal services direction; or
 - (b) in the reasonable belief that the act or omission complied with a legal services direction.
- (2) Any civil liability that would, apart from this section, attach to a person attaches instead to the Territory.

15 Legal services directions—reporting

- (1) Each report prepared by the director-general under the *Annual Reports (Government Agencies) Act 2004* must—
 - (a) describe the measures taken by the administrative unit during the financial year to ensure compliance with a legal services direction; and
 - (b) provide information concerning any breaches of a legal services direction during the financial year.
- (2) Each director-general (other than the stated director-general) must—
 - (a) prepare a report setting out the matters mentioned in subsection (1) (a) and (b) for the administrative unit; and
 - (b) give the report to the stated director-general not later than 21 days after the end of the financial year.
- (3) The report prepared by the stated director-general under subsection (1) must include a summary of each report given to the director-general under subsection (2) for the relevant financial year.
- (4) In this section:

stated director-general means the director-general of the administrative unit responsible for this Act.

Part 3 Solicitor-general

16 Appointment of Solicitor-General

- (1) The Executive may appoint a person to be the Solicitor-General for the Territory.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) However, the Executive must not appoint a person as solicitor-general unless the person is a legal practitioner and has been for not less than 5 years.
- (3) The solicitor-general must be appointed for not longer than 7 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the solicitor-general are the conditions agreed between the Executive and the solicitor-general that are stated in the appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.
- (5) The appointment of the solicitor-general is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

17 Solicitor-general's functions and entitlements

- (1) The solicitor-general's functions are—
 - (a) to act, at the request of the Attorney-General, as counsel for—
 - (i) the Crown in right of the Territory; or
 - (ii) the Territory; or
 - (iii) any other entity; and

- (b) to exercise other functions of counsel as the Attorney-General directs; and
- (c) to exercise the chief solicitor's functions if the Attorney-General directs the solicitor-general to exercise those functions; and
- (d) to exercise any function given to the solicitor-general under this Act, another territory law or a law of the Commonwealth.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) A direction under subsection (1) (c) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (3) If a direction under subsection (1) (c) is in force, the solicitor-general is taken to be the chief solicitor for all purposes.
- (4) The solicitor-general is entitled to the following when exercising the solicitor-general's functions:
 - (a) to practise as a legal practitioner in any court;
 - (b) to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.

18 Leave of absence

The Attorney-General may grant leave of absence to the solicitor-general on the conditions about remuneration and otherwise that the Attorney-General decides.

19 Solicitor-general must not do other work

- (1) The solicitor-general must not, without the Attorney-General's consent, do either of the following except when exercising the solicitor-general's functions:
 - (a) practice as a legal practitioner;
 - (b) have paid employment.
- (2) However, if a direction under section 17 (1) (c) (Solicitor-general's functions and entitlements) is in force, subsection (1) does not apply in relation to the exercise of the chief solicitor's functions.

20 Disclosure of interests

The solicitor-general must give written notice to the Attorney-General of all direct or indirect financial interests that the solicitor-general has or acquires—

- (a) in a business, whether in the ACT or elsewhere; or
- (b) in a corporation carrying on a business mentioned in paragraph (a).

21 Ending appointment

- (1) The Executive may end the appointment of a person as solicitor-general for—
 - (a) misbehaviour; or
 - (b) physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
 - (c) failing to comply with section 19 (Solicitor-general must not do other work).

(2) The Executive must end the person's appointment if the person—

(a) becomes bankrupt or personally insolvent; or

Note **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.

(b) is absent, other than on leave granted under section 18 (Leave of absence), for 14 consecutive days or for 28 days in any 12-month period; or

(c) fails, without reasonable excuse, to comply with the person's obligations under section 20 (Disclosure of interests).

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

22 Staff

(1) This section applies if a direction under section 17 (1) (c) (Solicitor-general's functions and entitlements) is in force.

(2) The staff assisting the solicitor-general must be employed under the *Public Sector Management Act 1994*.

(3) The solicitor-general has the powers mentioned in the *Public Sector Management Act 1994*, section 25 (3) (Powers of certain statutory office-holders) in relation to the staff of the government solicitor.

23 Consultants

(1) The solicitor-general may, for the Territory, engage consultants to, or to perform services for, the solicitor-general.

(2) Consultants are to be engaged on written terms decided by the solicitor-general that are approved by the Attorney-General.

(3) However, this section does not give the solicitor-general a power to enter into a contract of employment.

24 Other staffing arrangements

The solicitor-general may make arrangements with a director-general for the use of the services of public servants, or the use of facilities, in the administrative unit under the director-general's control.

25 Delegation by solicitor-general

The solicitor-general may delegate the solicitor-general's functions under a territory law to an authorised person.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Part 4 Government solicitor

26 Government solicitor

- (1) The Government Solicitor for the Territory is established.

Note *Established* includes continued in existence (see Legislation Act, dict, pt 1, def *establish*).

- (2) The government solicitor is a body corporate.
- (3) The government solicitor may act as legal practitioner for—
- (a) the Crown in right of the Territory; or
 - (b) the Territory; or
 - (c) a person suing or being sued on behalf of the Territory; or
 - (d) a Minister; or
 - (e) a body established under an enactment; or
 - (f) a company or other entity in which the Territory or a territory entity has a controlling interest; or
 - (g) a person if the person—
 - (i) is a public employee; or
 - (ii) was a public employee; or
 - (iii) is or was an officer or employee of a company, joint venture or trust in which the Territory or a territory entity has a controlling interest; or
 - (h) a person holding office under an enactment; or
 - (i) a person who is or was a trustee, director or board member of a company, joint venture or trust in which the Territory or a territory entity has a controlling interest; or
 - (j) the government solicitor (however described) of the Commonwealth, a State, another Territory or a foreign country,

by arrangement, as agent on behalf of clients of that solicitor;
or

- (k) any other entity for whom the Minister requests the government solicitor to act.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (4) The government solicitor is entitled to the following when acting as mentioned in subsection (3):
- (a) to practise as a legal practitioner in any court;
 - (b) to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.
- (5) Subsection (3) (f), (g) (ii) and (iii) and (i) apply to a matter only if the chief solicitor decides that the Territory has an interest in the outcome of the matter.
- (6) In this section:
territory entity—see the *Auditor-General Act 1996*, dictionary.

27 Government solicitor may act for more than 1 party

The government solicitor may act in a matter for 2 or more parties who have conflicting interests in the matter if it has been approved by the Attorney-General—

- (a) in relation to the particular matter; or
- (b) by written arrangements covering the circumstances in which the government solicitor may act for 2 or more parties.

28 Chief solicitor

- (1) The chief solicitor may act personally in the government solicitor's name.

- (2) The chief solicitor is entitled to the following when acting in the government solicitor's name:
- (a) to practise as a legal practitioner in any court;
 - (b) to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

29 Person authorised by chief solicitor

- (1) The chief solicitor may authorise a qualified officer of the relevant administrative unit to act in the government solicitor's name (an *authorised person*), either generally or as stated in the authorisation.
- (2) An authorisation is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (3) An authorised person is responsible to the chief solicitor and, through the chief solicitor, to the Attorney-General.
- (4) An authorised person must comply with a direction (if any) given to the person by the chief solicitor.
- (5) Anything done or omitted to be done by an authorised person under a direction given to the person by the chief solicitor is taken to have been done or omitted to be done by the chief solicitor personally.
- (6) In this section:

qualified officer means an officer who is a legal practitioner.

30 Acting in government solicitor's name

- (1) Anything done in the government solicitor's name under the direction or authority of the chief solicitor or an authorised person is taken to have been done by the government solicitor.

(2) However, the chief solicitor or an authorised person has, in relation to a relevant thing, the duties and obligations that the chief solicitor or person would have if the thing had been done or omitted to be done in the course of practise by the chief solicitor or person as a legal practitioner.

(3) In this section:

relevant thing, in relation to a person, means anything done or omitted to be done by the person, or by anyone at the person's direction or under the person's authority, in the government solicitor's name.

31 Certain references taken to include reference to government solicitor

(1) In a relevant instrument, a reference to *the* Crown Solicitor for the Commonwealth, a Deputy Crown Solicitor for the Commonwealth, the Australian Government Solicitor or a director of legal services for the Commonwealth includes a reference to the government solicitor.

(2) In this section:

relevant instrument means an instrument relating to the Territory, the government of the Territory or any asset, right, liability or obligation of the Territory, and includes—

- (a) a statutory instrument; and
- (b) an award, other determination or order or an industrial agreement; and
- (c) any other order (whether executive, judicial or otherwise); and
- (d) a contract, agreement or arrangement; and
- (e) a pleading in, or process issued in connection with, a legal or other proceeding.

Part 5 Miscellaneous

32 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

33 Signatures

- (1) If a document purports to have been signed by an office-holder in the office-holder's official capacity, it is presumed, unless the contrary is proved, that—

- (a) the document was signed by the office-holder acting in that capacity; and
- (b) the office-holder held the relevant office when the document was signed.

- (2) This section does not apply in relation to a proceeding in an ACT court.

Note The *Evidence Act 2011*, s 150 (3) (Seals and signatures) applies to proceedings in ACT courts (see that Act, s 4).

- (3) In this section:

ACT court—see the *Evidence Act 2011*, dictionary.

Note **ACT court** means the Supreme Court or Magistrates Court, and includes an entity that, in exercising a function under a territory law, is required to apply the laws of evidence.

office-holder means—

- (a) the Attorney-General; or
- (b) the solicitor-general; or
- (c) the chief solicitor; or
- (d) an authorised person.

- (4) This section expires on the later of the following:
- (a) the commencement of the *Evidence Act 2011*, section 3;
 - (b) the commencement of this section.

Part 6 Transitional

36 Model litigant guidelines

The *Law Officer (Model Litigant) Guidelines 2010 (No 1)* (NI2010-88) is taken to be model litigant guidelines under this Act, section 11 (2) (Legal services directions—issue).

37 Authorisations under Government Solicitor Act

An instrument of authorisation under the *Government Solicitor Act 1989*, section 5 (Government solicitor) that is in force immediately before the commencement of section 35 (Legislation repealed) is taken to be an authorisation under this Act, section 29 (Person authorised by chief solicitor).

38 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

39 Expiry—pt 6

This part (other than section 38) expires 3 years after the day it commences.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative unit
- Attorney-General
- Chief Minister
- corporation
- director-general (see s 163)
- document
- entity
- exercise
- function
- instrument (see s 14)
- legal practitioner
- Minister (see s 162)
- person (see s 160)
- public service
- statutory instrument (see s 13)
- territory law
- the Territory.

Attorney-General includes, if no Minister is designated Attorney-General by the Chief Minister, the Minister for the time being administering this Act.

authorised person—see section 29 (1) (Person authorised by chief solicitor).

chief solicitor means the person performing the duties of Chief Solicitor in the public service.

enactment means an Act or subordinate law.

government solicitor means the Government Solicitor for the Territory established under section 26.

legal services directions—see section 11 (1) (Legal services directions—issue).

model litigant guidelines—see section 11 (2) (Legal services directions—issue).

relevant administrative unit means the administrative unit to which the Chief Minister has, under the *Public Sector Management Act 1994*, section 14 (1) (b) allocated responsibility for this Act.

solicitor-general means the Solicitor-General for the Territory appointed under section 16.

territory legal work, for division 2.2 (Legal services directions)—see section 10.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Law Officers Act 2011 A2011-30

notified LR 29 August 2011

s 1, s 2 commenced 29 August 2011 (LA s 75 (1))

remainder commenced 31 August 2011 (s 2 and CN2011-9)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Signatures

s 33 exp on the commencement of Evidence Act 2011 s 3 (s 33 (4) (a))

Legislation amended—sch 1

s 34 om LA s 89 (3)

Legislation repealed

s 35 om LA s 89 (3)

Transitional

pt 6 hdg exp 31 August 2014 (s 39)

Model litigant guidelines

s 36 exp 31 August 2014 (s 39)

Authorisations under Government Solicitor Act

s 37 exp 31 August 2014 (s 39)

Transitional regulations

s 38 exp 31 August 2013 (s 38 (4))

Expiry—pt 6

s 39 exp 31 August 2014 (s 39)

Consequential amendments

sch 1 om LA s 89 (3)

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