

**EXPLANATORY STATEMENT**

**AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT SOLICITOR ORDINANCE 1989**

**ORDINANCE NO. 36 OF 1989**

The Ordinance establishes the Government Solicitor for the Territory.

Section 32 of the A.C.T. Self-Government (Consequential Provisions) Act amends the Judiciary Act 1903 to provide that the Australian Government Solicitor will not act as a matter of course as solicitor for the Territory. This Ordinance becomes a Territory law on its commencement on Self-Government Day which can be amended or repealed by the Territory Legislative Assembly.

The Attachment contains details of the individual provisions of the Ordinance.

**ISSUED UNDER THE AUTHORITY  
OF THE MINISTER FOR THE ARTS  
AND TERRITORIES**

GOVERNMENT SOLICITOR ORDINANCE 1989

Section 1 cites the short title of the Ordinance as the Government Solicitor Ordinance 1989.

Section 2 provides that the formal parts of the Ordinance commence on gazettal and that the remaining parts of the Ordinance commence on the day section 22 of the Australian Capital Territory (Self-Government) Act commences.

Section 3 defines terms used in the Ordinance. It provides that the Chief Solicitor is that person who occupies or performs the duties of, the office of Chief Solicitor.

Section 4 provides that the Ordinance binds the Crown.

Subsection 5(1) establishes the Government Solicitor.

Subsection 5(2) provides that the Government Solicitor is body corporate.

Subsection 5(3) provides that the Government Solicitor may act as solicitor for -

- . the Territory;
- . a person suing or being sued on behalf of the Territory;
- . a Territory Minister;
- . a Territory authority (including the Government Solicitor);
- . a person who is employed by the Territory or a Territory authority;
- . a member of the Commonwealth Public Service working for the Territory;
- . a person holding a statutory Territory office;
- . clients of the Australian Government Solicitor by arrangement, with that Solicitor; and
- . any other person, or body, for whom the Minister requests the Government Solicitor to act.

For the purposes of so acting, the Government Solicitor is entitled to practice as a barrister and solicitor in any court and shall be regarded by the Court as an Officer of the Court.

Subsection 5(4) provides that the Chief Solicitor may act personally in the name of the Government Solicitor. The Chief Solicitor may authorise an officer of the Government Law Office who is admitted to practice as a Barrister and Solicitor of the ACT Supreme Court to act personally in the name of the Government Solicitor. An authorisation may be for limited purposes. When acting personally in the name of the Government Solicitor, a

person shall be regarded by the Court as the Government Solicitor.

Subsection 5(5) proceeds on the assumption that the Government Solicitor will act by the Chief Solicitor, a person authorised under subsection 5(4) to act for the Chief Solicitor, a practitioner (whether a member of the Government Law Office or otherwise) or another person. Where an act or thing is done by one of these persons in the name of the Government Solicitor the thing shall be deemed to have been done by the Government Solicitor. This provision does not permit a non-practitioner to act in the name of the Government Solicitor where such an act would constitute an offence under the provisions of the Legal Practitioners Ordinance.

Subsection 5(6) provides that when a person is doing an act or thing pursuant to an authorisation, the person is responsible to the Chief Solicitor, whether or not that person is responsible to the Chief Solicitor at other times. When responsible to the Chief Solicitor, a person shall comply with such directions, if any, as are given to him or her by the Chief Solicitor and shall disregard any other requests or demands by other persons which are contrary to such direction.

Subsection 5(7) provides that where a person does an act in the name of the Government Solicitor pursuant to a direction of the Chief Solicitor, that action is deemed to be that of the Chief Solicitor personally.

Subsection 5(8) declares that the Chief Solicitor is, for the purposes of acting in the name of the Government Solicitor, entitled to do all things necessary or convenient and entitled to all the rights and privileges of a barrister and solicitor whether or not he or she is entitled to practise as a barrister and solicitor.

Subsection 5(9) declares that, notwithstanding this Act, a barrister and solicitor who acts in the name of the Government Solicitor is subject to the duties and obligations to which he or she would be subject if that act or thing had been done or omitted to be done in the course of practise by him or her as a barrister and solicitor.

Subsection 5(10) provides for the publication of authorisations under subsection (4) in the Territory Gazette.

Section 6 provides that all courts and tribunals, shall take judicial notice of the signature of a person who holds, or has held, the office of Chief Solicitor or who is, or has been, authorised pursuant to subsection 5(4) to act in the name of the Government Solicitor.

Section 7 makes transitional provision concerning the establishment of the Government Solicitor.

Section 8 amends the other Ordinances specified in the Schedule in the following manner:

**Australian Capital Territory Gaming and Liquor Authority Ordinance 1987**

Section 3 is amended to insert a formal definition of "Government Law Office".

Section 32 is amended to replace definitions of "Australian Government Solicitor" and "Attorney-General's Department" with "Government Solicitor" and "Government Law Office" respectively.

**Electricity and Water Ordinance 1988**

Section 3 is amended to insert a formal definition of "Government Law Office".

Section 91 is amended to replace definitions of "Australian Government Solicitor" and "Attorney-General's Department" with "Government Solicitor" and "Government Law Office" respectively.

**Legal Practitioners Ordinance 1970**

Section 5 is amended to insert a formal definition of "Government Law Office". The Government Law Office is to mean the unit of the Territory Public Service designated by that title.

Subparagraph 15E(1)(a)(iii) is amended to put an officer of the Government Law Office in the same position as an officer of the Attorney-General's Department for the purposes of this Ordinance.

Subsection 123(3) is amended to include a member of the Territory public service as a public officer.

Subsection 124(2) is amended to include in that subsection:

(c) an officer of the Government Law Office acting in the course of his or her employment as such an officer; or

(d) a corporation that is a trustee company within the meaning of the Trustee Companies Ordinance 1947 or a person employed by such a corporation acting in the course of his or her employment."

**Magistrates Court (Civil Jurisdiction) Ordinance 1982**

Subsection 3(1) is amended to include a definition of the Chief Solicitor.

Subsection 83(1) is amended to include the Territory.  
Subsection 83(2) is amended to make provision for a bond to be given by the Chief Solicitor.