



SOLICITOR-GENERAL ACT 1983

No. 13 of 1983

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AN ACT to provide for the appointment of the Solicitor-General and the performance and exercise by the Solicitor-General of certain functions and powers, and to provide for the conditions of service of the Solicitor-General and for related matters.

[Royal Assent 29 June 1983]

BE it enacted by His 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:—

1—This Act may be cited as the *Solicitor-General Act 1983*.

Short title.

Commencement. **2**—This Act shall commence on the day on which it receives the royal assent.

Interpretation. **3**—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“age of retirement” means the age of 65 years;

“barrister” has the meaning assigned to that expression by the *Legal Practitioners Act 1959*;

“commencement day” means the day on which this Act receives the royal assent;

“functions” includes duties;

“Judges Pension Fund” means the Fund established under section 9 of the *Judges' Contributory Pensions Act 1968*;

“practitioner” has the meaning assigned to that expression by the *Legal Practitioners Act 1959*;

“power” includes an authority;

“the regulations” means regulations made and in force under this Act.

(2) In this Act, a reference to the Solicitor-General is a reference to the holder (if any) of the office established by section 4 (1) and includes a reference to any barrister or practitioner appointed to act for the Solicitor-General during his illness or absence.

4—(1) There is established by this Act the office of Solicitor-General of Tasmania.

(2) Subject to this section, the Governor may appoint a person qualified by virtue of subsection (3) to hold the office of Solicitor-General.

(3) A person is qualified for appointment under this section if but only if—

(a) he is a barrister or practitioner of not less than 7 years' standing; or

(b) a barrister or solicitor, or barrister and solicitor, of equivalent standing in the High Court of Australia or in the Supreme Court of a State other than Tasmania or of a Territory of Australia.

(4) Except as provided by subsection (5), the *Public Service Act 1973* does not apply to or in relation to the office of Solicitor-General or to a person holding that office.

(5) If for any reason the person holding office as Solicitor-General is unable to perform the functions of that office or that office is for the time being vacant, the Governor may appoint a person (including an officer of the Public Service) to act in that office until the Solicitor-General is able to resume his duties as such or, as the case may be, until the vacancy is filled.

(6) The person holding the office of Solicitor-General under the *Public Service Act 1973* immediately before the commencement day shall be deemed to have been appointed by the Governor under subsection (2) and on that day his service as an employee within the meaning of the *Superannuation Act 1938* shall be deemed to be terminated for the purposes of that Act.

5—(1) The Solicitor-General is entitled to be paid—

(a) remuneration in accordance with the *Statutory Salaries Act 1979*; and

(b) such travelling and other allowances as the Governor from time to time determines in respect of him and, if there is for the time being no such determination, such travelling and other allowances as are applicable to an officer of the Public Service who is the permanent head of a Government department.

Terms and conditions of service of Solicitor-General.

(2) A Solicitor-General is an employee for the purposes of the *State Employees (Long-Service Leave) Act 1950*.

(3) The terms and conditions of employment of a Solicitor-General (other than those to which subsections (1) and (2) relate) shall be such as the Governor from time to time determines in respect of him and, if there is for the time being no such determination, shall be those applicable to an officer of the Public Service.

6—(1) A person holding the office of Solicitor-General shall be deemed to have vacated that office—

(a) on his attaining the age of retirement;

(b) on his resignation from that office under subsection (2);
or

(c) on his removal from office in accordance with subsection (3).

Vacation of office of Solicitor-General.

(2) A person holding the office of Solicitor-General may at any time resign his office by notice in writing delivered to the Governor.

(3) The Governor may remove from office a person holding the office of Solicitor-General if he receives from both Houses of Parliament resolutions requesting that the person be so removed and not otherwise.

(4) Where the Governor is satisfied that a person holding the office of Solicitor-General—

(a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of that office;

(b) has become bankrupt, applied to take or has taken advantage of any law relating to bankruptcy or insolvent debtors, compounded with his creditors, or made an assignment of his remuneration or his estate for their benefit;

(c) has been convicted in Tasmania of a crime or an offence that is punishable by imprisonment for a period of 12 months or more, or has been convicted of a crime or an offence which would, if committed in Tasmania, be a crime or an offence so punishable; or

(d) has been guilty of misconduct in relation to the performance of his functions,

he may suspend that person from office as Solicitor-General.

(5) Where a person has been suspended from office in accordance with subsection (4), he shall, by virtue of this subsection, be restored to that office unless—

(a) a statement setting out the grounds for the suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and

(b) each House of Parliament, within 30 sitting days after that statement is so laid, passes a resolution requesting the Governor to remove that person from that office.

(6) In subsection (4), the reference to misconduct includes a reference to a contravention of section 10.

7—A person holding the office of Solicitor-General has and shall exercise the following functions:—

- (a) to act as counsel for the Crown in right of Tasmania or for any other person for whom the Attorney-General directs or requests him to act;
- (b) to perform such other duties ordinarily performed by counsel as the Attorney-General directs or requests him to perform; and
- (c) to perform such duties (if any) as are imposed on him by or under any other Act.

8—(1) Subject to this section, the Attorney-General may, by instrument in writing, delegate to the Solicitor-General responsibility for the performance or exercise of such of the functions and powers (other than this power of delegation) which may be performed or exercised by the Attorney-General under the laws of Tasmania as may be specified in the instrument of delegation and may, by similar instrument, revoke any such delegation either wholly or in part.

Delegation of functions, &c., by Attorney-General.

(2) Any function or power, the performance or exercise of which is delegated under subsection (1), may, while the delegation remains unrevoked, be performed or exercised from time to time by the Solicitor-General in accordance with the terms of the delegation.

(3) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the performance or exercise of any of the specified functions or powers delegated or as to time or circumstance as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under subsection (1), the Attorney-General may continue to perform or exercise all or any of the functions or powers that are delegated.

(5) Subsection (1) does not authorize the delegation of a function or power where another enactment provides or contemplates that the function or power may be delegated to the holder of an office other than that of Solicitor-General.

(6) Any act or thing done by or to the Solicitor-General when acting in the exercise of a delegation under this section and within the terms of the delegation shall have the same effect as if the act or thing had been done by or to the Attorney-General.

(7) Where any function or power is performed or exercised by the Solicitor-General in accordance with a delegation under this section, and its performance or exercise depends on the opinion,

belief, or state of mind of the Attorney-General, that function or power may be performed or exercised by the Solicitor-General on his own opinion, belief, or state of mind.

(8) No person shall be concerned to see or to inquire whether any act, matter, or thing done or performed by the Solicitor-General when purporting to act in accordance with a delegation under this section is or is not authorized by that delegation.

Pension rights of Solicitor-General and widow of former Solicitor-General.

9—The provisions of Schedule 1 have effect.

Solicitor-General not to engage in private practice.

10—(1) Subject to subsection (2), a person holding the office of Solicitor-General shall not engage in the practice of his profession as a barrister or practitioner or in any other employment otherwise than in the course of performing the duties or exercising the powers of his office.

(2) Subsection (1) does not preclude a person referred to in that subsection from—

- (a) holding an office that, by or under a law of Tasmania, is to be held by the holder of the office of Solicitor-General; or
- (b) holding an office or engaging in employment where he is expressly authorized by the Attorney-General in writing to do so.

Annual report.

11—(1) The Solicitor-General shall, within 3 months after the relevant day, prepare and submit to the Attorney-General a report with respect to the performance and exercise by him, and by any previous holder of the office of Solicitor-General, of the functions and powers of the holder of that office during the relevant period.

(2) In subsection (1)—

“relevant day” means—

- (a) the 30th June next but one after the commencement day; and
- (b) each subsequent 30th June;

“relevant period” means—

- (a) the period beginning with the commencement day and ending with the 30th June next but one after that day; and

(b) the period of 12 months ending on each subsequent 30th June.

(3) The Attorney-General shall cause a copy of a report submitted to him under subsection (1) to be laid on the table of each House of Parliament within the first 10 sitting days after he receives the report.

12—(1) Subject to subsection (2), where a person who is appointed as Solicitor-General was—

Accruing and accrued rights of public servants, &c., who is appointed as Solicitor-General.

(a) except in the case of a person referred to in paragraph (b)—immediately before his appointment under section 4 (2); or

(b) in the case of a person to whom section 4 (6) applies—immediately before the commencement day,

a person to whom this section applies, he shall retain any rights accrued or accruing to him as such an officer or person and shall be entitled to receive any long-service leave or payment in lieu of long-service leave as if he had continued to be such an officer or person, and his service as Solicitor-General shall be deemed to be service as such an officer or person for the purposes of any law by which those rights are, or that entitlement is, conferred or determined.

(2) Subsection (1) does not apply to or in relation to rights accrued or accruing under a superannuation scheme.

(3) Subject to subsection (4), where a person to whom this section applies is appointed as Solicitor-General and was, immediately before his appointment under section 4 (2), a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such a contributor; and

(b) may continue to contribute to the scheme,

as if he had continued to be such person, and his service as Solicitor-General shall be deemed to be service as such person for the purpose of any law under which he continues to contribute.

(4) Where a person appointed as Solicitor-General under section 4 (2)—

(a) would, but for this subsection, be entitled to continue to contribute to a superannuation scheme; and

(b) becomes a contributor under Schedule 1, he ceases to be so entitled.

(5) For the purposes of this section—

“ a person to whom this section applies ” means a person who was at the relevant time—

- (a) an officer of the Public Service;
- (b) an officer or employee of a State authority;
- (c) an officer (not being an officer referred to in paragraph (b)) who holds an office under an Act other than this Act or the *Public Service Act 1973*; or
- (d) a person in respect of whom provision is or was made by an Act that he retain any rights accrued or accruing to him as an officer or employee or in any other official capacity;

“ State authority ” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which, the governing authority, wholly or partly, comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department within the meaning of the *Public Service Act 1973*;

“ superannuation scheme ” means a scheme, fund, or arrangement which is established under an Act and under which any pension or retirement benefits is or are provided.

Regulations.

13—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations under that subsection may be made for or with respect to—

- (a) prescribing the conditions and requirements to be fulfilled before a person may become a contributor under Schedule 1;
- (b) providing for the making of supplementary contributions under Schedule 1 and prescribing the circumstances in which such contributions are required to be made; and

(c) providing for the transfer to the Judges Pension Fund of contributions that may have been made under a superannuation scheme by a person appointed to be Solicitor-General under this Act.

(3) Where any regulation under this section imposes any new or additional liability or obligation on a person appointed to the office of Solicitor-General, that regulation shall not apply to or in relation to any person appointed to that office before the date on which the regulation was made or the date on which the regulation took effect, whichever date is the later.

(4) For the purposes of subsection (1) (c), "superannuation scheme" has the meaning assigned to that expression by section 12 (5).

SCHEDULE 1

Section 9

PENSION RIGHTS, &c.

Contributions.

1—(1) A person holding the office of Solicitor-General may, within 1 month after being appointed to that office, elect to become a contributor for the purposes of this Schedule, and, where he so elects and complies with such conditions and requirements (if any) as may be prescribed in the regulations, he shall thereafter pay contributions of amounts equal to 5 per cent of his salary and, where so prescribed, such supplementary contributions of such amounts (if any) as may be prescribed in, or determined in accordance with, the regulations.

(2) Contributions to be paid under subsection (1) shall be paid to the Treasurer in such manner and at such times as the Treasurer determines.

(3) Contributions paid under this clause shall be credited to the Judges Pension Fund.

Pension to Solicitor-General, &c., on retirement.

2—(1) Where a person holding the office of Solicitor-General has paid contributions (including any supplementary contributions) in accordance with clause 1, he becomes entitled to the pension referred to in subclause (2)—

- (a) on vacating office as referred to in section 6 (1) (a) after having served as Solicitor-General for not less than 10 years;
- (b) on resigning his office before reaching the age of retirement after having served as Solicitor-General for not less than 15 years; or
- (c) on resigning his office before reaching the age of retirement or being removed from office under section 6 (3) after having served as Solicitor-General for a period less than 15 years where the Minister certifies in writing that the resignation or removal was due to disability or infirmity.

(2) The pension to which a person becomes entitled under subsection (1) is a pension at the rate of one-half of the salary for the time being payable to a puisne judge.

(3) In subclause (1), a reference to a person having served as Solicitor-General includes a reference to having served as Solicitor-General before the commencement day.

Pension payable to widow.

3—(1) When a person holding the office of Solicitor-General dies after having paid contributions (including any supplementary contributions) in accordance with clause 1, his widow (if any) becomes entitled to the pension referred to in subclause (3).

(2) On the death of a person who has become entitled to a pension under clause 2, his widow (if any), if she was married to him at the time when he became so entitled, becomes entitled to the pension referred to in subclause (3).

(3) The pension to which a widow becomes entitled under subclause (1) or (2) is a pension at the rate of one-third of the salary referred to in clause 2 (2).

4—(1) Where under this Schedule a person becomes entitled to a pension at the rate of a specified proportion of the salary of a puisne judge, the Treasurer shall pay to that person a pension at a rate that is equivalent to that proportion of what is for the time being the rate of that salary.

Calculation of rates of pension.

(2) A pension referred to in subclause (1) accrues from day to day and is payable monthly or in such other manner as the Treasurer, with the agreement of the person concerned, may determine.

5—(1) Where a person who vacates the office of Solicitor-General does not become entitled to a pension under this Act, the Treasurer shall pay to him a sum equivalent to the amount of the contributions (including any supplementary contributions) paid by him under this Schedule.

Return of contributions.

(2) Where a person dies while holding the office of Solicitor-General and no person becomes entitled on his death to a pension under clause 3, the Treasurer shall pay to his legal personal representatives a sum equivalent to the amount of the contributions (including any supplementary contributions) paid by the first-mentioned person under this Schedule.

6—A pension or sum required to be paid under this Schedule by the Treasurer is a charge on the Consolidated Revenue Fund and shall be so paid without further appropriation than this clause.

Pensions, &c., to be charge on Consolidated Revenue Fund.

7—If a person who holds or has held office as Solicitor-General becomes a judge—

Effect on pension rights of appointment of Solicitor-General as judge.

(a) the period during which he held office as Solicitor-General shall, for the purposes of section 5 of the *Judges' Contributory Pensions Act 1968*, be added to, and be deemed part of, his period of service as a judge; and

(b) if, at any time when he becomes a judge he is in receipt of a pension under this Schedule by virtue of this Act, that pension ceases to be payable, but if at any such time he is not so in receipt of a pension under this Schedule, a pension does not become payable to him or his widow by virtue of the operation of this Schedule.

