

**2011**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**LAW OFFICERS BILL 2011**

**EXPLANATORY STATEMENT**

Presented by  
Mr Simon Corbell MLA  
Attorney General

## LAW OFFICERS BILL 2011

### Overview of Bill

The Law Officers Bill 2011 (the Bill) will create the *Law Officers Act 2011* to establish the separate offices of the Attorney-General, the solicitor-general and the government solicitor.

The separate offices of the Attorney-General and the government solicitor have already been established under the *Law Officer Act 1992* and the *Government Solicitor Act 1989*. The Bill transfers the existing provisions in these Acts to the *Law Officers Act 2011* and subsequently repeals these Acts.

The office of solicitor-general is a new position that will be established in the Territory by the Bill. The new position has been created as it is increasingly apparent that the ACT's position in the national arena would be enhanced by clear recognition of a role of solicitor-general, a role that exists in every Australian jurisdiction except the ACT.

In most Australian jurisdictions an independent statutory solicitor-general is appointed to provide written and oral advice on matters of significance to the jurisdiction's government and appear as counsel in cases of constitutional significance, international cases, and other cases of special government interest

The Bill establishes a separate statutory position of solicitor-general for the ACT and makes a number of amendments to existing legislation in the ACT statute book as a consequence.

In establishing the new position, consideration was given to the nature of the services to be required and the size of the jurisdiction. On this basis, it was determined that the position of the solicitor-general may not require a separate dedicated full-time officer. The functions and duties of the role could be appropriately carried out by the person who is fulfilling the position of chief solicitor, head of the government solicitor office. Therefore, the two positions may not require two separate full-time officers to perform the functions and duties of these roles.

Accordingly, the Bill provides that one of the functions of the solicitor-general would be to perform the role of chief solicitor as determined by the Attorney-General. This also provides flexibility for the position to be filled by a separate dedicated full-time or part-time legal officer.

Additionally, the Bill confers on the Attorney General the power to issue legal services directions relating to the performance of Territory legal work.

The directions will provide a framework for the conduct of the ACT's legal affairs, but leave prime responsibility for the effective and efficient use of legal services with agencies.

The power to issue legal services directions is intended to enable the Attorney-General to protect the legal interests of the ACT in relation to the delivery of legal services.

The Bill specifically provides that the Attorney-General must issue a legal services direction setting out guidelines to ensure that proper standards in litigation apply to territory legal work. This legal services direction will be known as the 'Model Litigant Guidelines'.

Since the commencement of the *Law Officer Amendment Act 2008* the Attorney-General has had the power to issue model litigant guidelines and this power will continue in the form of a legal services direction in the *Law Officers Act 2011*. The substance of the model litigant guidelines provisions as they currently apply in the *Law Officer Act 1992* are transferred without change.

## Clause Notes

### Part 1 – Preliminary

**Clause 1 Name of Act** – states the title of the Act as the *Law Officers Act 2011*.

**Clause 2 Commencement** – provides that the Act will commence on the date decided by the Minister and notified on the Legislation Register. If the Minister has not fixed a date within six months after the day of notification of the Act, the Act will commence on the first day after this period.

Providing for the Minister to determine commencement allows sufficient flexibility in the timing of the commencement of the Act to ensure a smooth transition in the establishment of the *Law Officers Act 2011* and the repeal of the *Government Solicitor Act 1989* and the *Law Officer Act 1992*. Flexibility in timing will ensure that any relevant instruments under these repealed Acts can be appropriately remade.

**Clause 3 Dictionary** – provides that the dictionary at the end of the Act is part of the substantive provisions of the Act.

**Clause 4 Notes** – provides that a note included in the Act is explanatory and not part of the substantive provisions of the Act.

### Part 2 – Attorney-General

#### Division 2.1 - General

**Clause 5 Position of Attorney-General** – provides that the Attorney-General is the first law officer of the Territory. This replicates existing section 3 of the *Law Officer Act 1992*.

**Clause 6 Attorney-General's functions** – provides the Attorney-General's functions of being the Territory's and its officers' legal advisor and representative. This replicates existing section 4 of the *Law Officer Act 1992*.

**Clause 7 Additional functions of Attorney-General** – provides that the Attorney-General has the traditional functions, prerogatives and privileges of the Attorneys-General of the States.

This clause replicates existing section 5 of the *Law Officer Act 1992*. Section 5 was introduced in response to a concern that the powers traditionally exercisable by Attorneys-General of the States may not be exercisable by the ACT Attorney-General because of the different arrangement for the appointment.

In the ACT, the Self-Government Act provides for there to be an ACT Executive which consists of a Chief Minister, elected by the Assembly, and up to four other Ministers appointed by the Chief Minister. In allocating the

Executive's responsibilities amongst the Ministers, the Chief Minister has adopted the practice of designating one of the Ministers as 'Attorney-General'. In other states and territories the Attorney-General is appointed by the Governor or Administrator, a representative of the Crown.

The concern is based on the view that the traditional or common law powers of the Attorneys-General of the states are vested in them by virtue of their appointment by the Crown or the Crown representative.

Section 5 of the *Law Officer Act 1992* was introduced to remove any doubts over the matter.

Some of these functions, prerogatives and privileges are dealt with in the preceding clauses, the remainder are generally accepted as being:

- the Attorney-General is primarily responsible for providing legal advice to the Government and the Assembly;
- the Attorney-General is head of the bar and has precedence over all Queen's Counsel; and
- the Attorney-General may:
  - file a criminal information or indictment ex officio;
  - enter a nolle prosequi on any indictment (a nolle prosequi brings a prosecution to an end, but does not prevent a fresh prosecution from being brought);
  - grant immunities from prosecution;
  - enforce charitable or public trusts;
  - bring proceedings to enforce and protect public rights;
  - grant a fiat to enable a private citizen who would not otherwise have standing to bring proceedings to enforce a charitable or public trust or to bring proceedings to enforce and protect public rights;
  - challenge the constitutional validity of any Commonwealth or State legislation which affects the public interest in the ACT;
  - appear as amicus curiae (friend of the court) in appropriate cases. When the Attorney-General appears amicus curiae he or she appears to assist the court in a non-partisan way;
  - advise the Executive on judicial appointments;
  - institute proceedings for contempt when it is in the public interest to do so; and
  - apply for judicial review to correct an error by a court or Tribunal.

**Clause 8 Effect of Attorney-General's functions on certain litigation –** clarifies that the functions of the Attorney-General under the Act do not grant the Attorney-General the exclusive right to institute or to conduct litigation on behalf of the Territory. In other words, the functions of the Attorney-General under the Act do not prevent any other person authorised by the Territory, or by a law of the Territory, from instituting or conducting litigation of a type referred to in clause 6 of this Bill.

This replicates existing section 5A of the *Law Officer Act 1992*.

**Clause 9 Change of Attorney-General** – provides that an action, proceeding or matter by or against the Attorney-General is not affected by a change in the office of the Attorney-General.

This replicates existing section 5B(3) of the *Law Officer Act 1992*.

Subsection (1) of existing section 5B has been replicated in clause 33 of the Bill below. Subsection (2) of existing section 5B has not been replicated as it is now redundant.

## **Division 2.2 – Legal services directions**

**Clause 10 Meaning of *territory legal work* – div 2.2** – defines the phrase ***territory legal work*** for the purpose of division 2.2 of the *Law Officers Act 2011*.

**Clause 11 Legal services directions - issue** – provides that the Attorney-General may issue legal services directions applicable to Territory legal work, whether it is undertaken by the Government Solicitor, private legal firms, or in-house legal units.

The legal services directions will provide a framework for the conduct of the ACT's legal affairs, but leave prime responsibility for the effective and efficient use of legal services with agencies.

The power to issue legal services directions is intended to enable the Attorney-General to protect the legal interests of the ACT in relation to the delivery of legal services.

The clause also provides that the Attorney-General must issue a legal services direction setting out guidelines to ensure that proper standards in litigation apply to territory legal work. This legal services direction will be known as the 'Model Litigant Guidelines'.

Since the commencement of the *Law Officer Amendment Act 2008* the Attorney-General has had the power to issue model litigant guidelines and this power will continue in the form of a legal services direction in the *Law Officers Act 2011*. The substance of the provisions concerning the model litigant guidelines in the *Law Officer Act 1992* have been transferred to the *Law Officers Act 2011* without change.

This part of the clause replicates existing section 5AA(1) and (2) of the *Law Officer Act 1992*.

**Clause 12 Legal services directions – compliance etc** – provides that anyone performing territory legal work must comply with a legal services direction issued under clause 11 of the Bill.

The clause also expressly prohibits anyone other than the Attorney-General enforcing compliance with a legal services direction. Therefore, it will not be possible for a party other than the Attorney-General or the Territory to assert non-compliance as the basis of any claim or defence in legal proceedings. In particular, it is not intended that litigants opposed to the Territory should be able to rely on a legal services direction to challenge ACT actions.

The prohibition on raising non-compliance with a legal services direction in proceedings would only extend to instituting separate proceedings to enforce compliance. Parties to an existing proceeding would still be able to complain in court about the conduct of other parties in those proceedings, including the Territory. Courts would still be able to consider failure to comply with a legal services direction in exercising discretion, for example, to award costs or in deciding whether to adjourn proceedings.

This replicates existing section 5AA(3) to (5) of the *Law Officer Act 1992* in relation to model litigant guidelines and will apply more generally in relation to a legal services direction.

**Clause 13 Legal services directions – client legal privilege** – provides that client legal privilege cannot be claimed in relation to information, documents or records requested under a legal services direction.

For the Attorney-General to discharge the functions of first law officer (particularly in ensuring Commonwealth legal work is consistent and coordinated), it may be necessary to require, in a legal services direction, the production of information, documents, or records that relate to the provision of legal advice or to legal proceedings.

The need to rely on this power could arise in respect of a Territory agency which is a legal entity distinct from the Territory. It may also be appropriate for Government officers advising on or drafting legislation, to have access to relevant documents (including legal advices).

Where information, documents or records are provided under a legal services direction, client legal privilege will not be breached and any privilege which exists will be taken not to have been waived by the disclosure. A person performing Territory legal work will also be able to provide information, documents or records relating to their work to the Attorney-General or a person authorised by the Attorney-General, without breaching client legal privilege even if this is not required under a legal services direction.

**Clause 14 Legal services directions – performing territory legal work** – provides protection for individuals who honestly and without recklessness carry out or believe they are carrying out Territory legal work in accordance with a legal services direction. It also provides that any civil action arising attaches to the Territory, not the individual.

This replicates existing section 5AB of the *Law Officer Act 1992* in relation to model litigant guidelines and will apply more generally in relation to a legal services direction.

**Clause 15 Legal services - reporting on model litigant guidelines** – requires that all directors-general provide a compliance report to the stated director-general (director-general of administrative unit responsible for the *Law Officers Act 2011*) within 21 days of the end of the financial year. The stated director-general is to be required to compile a whole-of-government report on compliance matters and publish it in the annual report of the director-general' administrative unit.

This replicates existing section 5AC of the *Law Officer Act 1992*.

### Part 3 – Solicitor-General

**Clause 16 Appointment of Solicitor-General** – provides that the Executive may appoint a person to be the Solicitor-General for the Territory. The person appointed must be a legal practitioner of five years or more and cannot be appointed for more than seven years.

The conditions of appointment are stated in the appointment, subject to any determination under the *Remuneration Tribunal Act 1995*, and the appointment is a notifiable instrument.

Section 10(1)(b) of the *Remuneration Tribunal Act 1995* provides that the tribunal must inquire into, and determine, the remuneration, allowances and other entitlements of the holders of any position or appointment notified in writing to the tribunal by the Chief Minister.

If a determination is in force under the Act in relation to the appointment of the solicitor-general, the determination prevails over any conditions determined in the instrument of appointment.

**Clause 17 Solicitor-general's functions and entitlements** – provides for the functions of the solicitor-general.

The solicitor-general's functions are:

- to act as counsel, at the request of the Attorney-General, for the Crown in right of the Territory, the Territory, or any other entity;
- to exercise other functions as counsel as Attorney-General directs;
- to exercise the chief solicitor's functions if the Attorney-General directs the solicitor-general to exercise those functions;
- to exercise any function given to the solicitor-general under this Act, another territory law, or a law of the Commonwealth.

When exercising the solicitor-general's functions, the solicitor-general is entitled to practise as a legal practitioner in any court, and is entitled to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.

**Clause 18 Leave of absence** – gives the Attorney-General a discretion to grant leave of absence to the solicitor-general.

**Clause 19 Solicitor-general must not do other work** – prohibits the solicitor-general from practising his or her profession outside the duties of the office and also from engaging in paid employment outside the duties of the office without the prior consent of the Attorney-General.

**Clause 20 Disclosure of interests** – obliges the solicitor-general to give the Attorney-General written notice of any direct or indirect financial interests he or she might have, or subsequently obtain, in a business or a corporation carrying on a business.

**Clause 21 Ending appointment** – sets out the grounds on which the Attorney-General may dismiss the solicitor-general. Because the solicitor-general is an independent statutory office, the incumbent may only be dismissed by showing cause.

Clause 23(1) provides that the Attorney-General has a discretion to dismiss the solicitor-general for misbehaviour, for mental or physical incapacity (where the incapacity affects the exercise of functions), and for failing to comply with section 21 (solicitor-general must not do other work).

Clause 23(2) specified that the Attorney-General must dismiss the solicitor-general in any of the following circumstances:

- the solicitor-general becomes bankrupt or personally insolvent;
- is absent without leave for 14 consecutive days or for 28 days in any 12 months;
- fails, without reasonable excuse, to comply with the person's obligations under section 22 (disclosure of interests).

**Clause 22 Staff** – provides that where the Attorney-General directs the solicitor-general to exercise the chief solicitor's functions, the staff assisting the solicitor-general are ACT public servants.

The clause also provides that where the Attorney-General directs the solicitor-general to exercise the chief solicitor's functions, the solicitor-general has all the powers of a chief executive in relation to the staff of the government solicitor as if the staff were employed in an administrative unit under the control of the solicitor-general.

**Clause 23 Consultants** – authorises the solicitor-general to engage suitably qualified people to perform particular services as and when required, on terms and conditions which the solicitor-general, with the approval of the Attorney-General, decides.

**Clause 24 Other staffing arrangements** – allows the solicitor-general to enter into an arrangement for the use of the staff or facilities of a unit of the Public Service or a Territory authority. This clause will give the solicitor-

general access to the resources of the Public Service to help with the discharge of the functions of the office.

**Clause 25 Delegation by solicitor-general** – provides that the solicitor-general may delegate the functions of the solicitor-general under a territory law to an authorised person.

#### **Part 4 – Government solicitor**

**Clause 26 Government solicitor** – establishes the Government Solicitor for the Territory.

Clause 26(2) provides that the government solicitor is a body corporate.

Clause 26(3) provides that the government solicitor may act as solicitor for:

- the Crown in right of the Territory;
- the Territory;
- a person suing or being sued on behalf of the Territory;
- a Minister;
- a body established under an enactment;
- a company, joint venture or trust in which the Territory or a territory entity has a controlling interest;
- a person if the person:
  - is a public employee;
  - was a public employee;
  - 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;
  - a person holding office under an enactment;
  - 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;
  - 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;
  - any other entity for whom the Minister requests the government solicitor to act.

Clause 26(4) provides that, for the purposes of so acting, the government solicitor is entitled to practice as a legal practitioner in any court and is entitled to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.

Clause 26 replicates existing section 5(1) to (4) and (12) of the *Government Solicitor Act 1989*.

**Clause 27 Government solicitor may act for more than 1 party** – provides that the government solicitor will be able to act in a matter for two or more parties with conflicting interests, if this is approved by the Attorney-General or if it comes within arrangements approved by the Attorney-General.

For example, this provision could facilitate the government-solicitor giving advice to two or more parties on legislation administered by the Department. A similar power exists in the Commonwealth.

**Clause 28 Chief solicitor** – provides that the chief solicitor may act personally in the government solicitor’s name.

The clause also provides that when acting in the government solicitor’s name, the chief solicitor is entitled to practise as a legal practitioner in any court, and is entitled to all the rights and privileges of a legal practitioner who holds a current unrestricted practising certificate under the *Legal Profession Act 2006*.

This clause replicates existing section 5(5) and (10) of the *Government Solicitor Act 1989*.

**Clause 29 Person authorised by chief solicitor** – provides that the chief solicitor may authorise an officer who is a legal practitioner to act personally in the name of the government solicitor.

The clause provides that 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.

This clause replicates existing section 5(5), (6), (8), (9) and (12) of the *Government Solicitor Act 1989*.

**Clause 30 Acting in government solicitor’s name** – provides that 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.

The clause also provides that a person who acts in the name of the government solicitor is subject to the duties and obligations to which or she would be subject if that act or thing had been done or omitted to be done in the course of practice by him or her as a legal practitioner.

This clause replicates existing section 5(7) and (11) of the *Government Solicitor Act 1989*.

**Clause 31 Certain references taken to include reference to government solicitor** – replicates existing section 7 of the *Government Solicitor Act 1989* to maintain transitional provisions concerning the establishment of the Government solicitor.

## Part 5 - Miscellaneous

**Clause 32 Regulation-making power** – permits the Executive to make regulations for the Act. Regulations made under this clause must be notified

on the Legislation Register (<http://www.legislation.act.gov.au>), and presented to the Legislation Assembly.

**Clause 33 Signatures** – preserves the operation of existing provisions which provide a presumption as to the reliability of signatures for the offices of the Attorney-General, the chief solicitor, and an authorised person. The clause also extends the operation of the provision to the office of solicitor-general established by this Bill.

Section 150 of the new *Evidence Act 2011* provides an equivalent provision in relation to proceedings in an ACT court, defined to mean the Supreme Court or Magistrates Court, and any entity which is required to apply the laws of evidence. Therefore the scope of the clause applies in proceedings falling outside of this definition.

It is intended that an equivalent provision will be inserted into the *Evidence (Miscellaneous Provisions) Act 1991*, as part of the ACT evidence reforms, which covers all types of office-holders under existing law for which there is a presumption as to the reliability of signatures. When these reforms commence, there will no longer be a need to have a separate provision in the *Law Officers Act 2011*, therefore the clause provides that the section will expire at this time.

**Clause 34 Legislation amended – sch 1** – provides that the *Law Officers Act 2011* amends the following legislation mentioned in schedule 1:

- *Director of Public Prosecutions Act 1990*;
- *Freedom of Information Regulation 1991*;
- *Lands Acquisition Act 1994*;
- *Legislation Act 2001*;
- *Magistrates Court Act 1930*;
- *Supreme Court Act 1933*;
- *Territory Records Regulation 2009*.

**Clause 35 Legislation repealed** – repeals the *Government Solicitor Act 1989* and the *Law Officer Act 1992* which will become redundant on the commencement of the *Law Officers Act 2011*. The substance of these two Acts has been incorporated into the *Law Officers Act 2011* by this Bill.

## Part 6 – Transitional

**Clause 36 Transitional – model litigant guidelines** – preserves the operation of the Law Officer (Model Litigant) Guidelines 2010 (No 1) (NI2010-88) made under the *Law Officer Act 1992* which is being repealed by clause 35 of this Bill.

**Clause 37 Transitional – authorisations under Government Solicitor Act** – preserves the operation of authorisations made under section 5 of the *Government Solicitor Act 1989* which is being repealed by clause 35 of this Bill.

**Clause 38 Transitional regulations** – provides the Executive, in combination with clause 32 above, with a transitional regulation making power. This power will enable the Executive to deal quickly with unanticipated issues that arise as a consequence of establishing the office of solicitor-general. When an issue is identified, the Executive may make a transitional regulation if the Executive considers that the issue is not, or is not adequately or appropriately, dealt with in part 6. The transitional regulation making power will expire 2 years after the day it commences.

**Clause 39 Expiry – pt 6** – provides that part 6 of the Act (other than section 38) expires 3 years after commencement. Clause 38 provides that section 38 expires 2 years after the day it commences.

## **Schedule 1 Consequential amendments**

### **Part 1.1 – Director of Public Prosecutions Act 1990**

**Clause 1.1 Sections 12(1)(b) and 16(b)** – substitutes existing sections 12(1)(b) and 16(b) with new sections 12(1)(b) and 16(b) in the *Director of Public Prosecutions Act 1990*.

The new sections update the references to the *Government Solicitor Act 1989* with references to the *Law Officers Act 2011*. The *Government Solicitor Act 1989* is repealed by clause 35 of the Bill. The substance of section 5(4) of the *Government Solicitor Act* is now replicated in section 29(1) of the *Law Officers Act 2011*.

### **Part 1.2 – Freedom of Information Regulation 1991**

**Clause 1.2 Schedule 2, items 2 and 3** – substitutes new items 2 to 5 into schedule 2 of the *Freedom of Information Regulation 1991*.

Section 3 of the Regulation allows for agencies identified in schedule 2 to be exempt from the operation of the *Freedom of Information Act 1989* in relation to the documents mentioned in the schedule in relation to the agency.

Item 2 of schedule 2 exempts the government solicitor from the operation of the *Freedom of Information Act* in relation to documents of the government solicitor that relate to the government solicitor acting as a legal practitioner under the *Government Solicitor Act 1989*.

Item 2 has been revised to update the reference to the *Government Solicitor Act* with a reference to the *Law Officers Act 2011*.

Item 3 of schedule 2 exempts the Department of Justice and Community Safety in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Government Solicitor Act 1989*.

Item 3 has been revised to update the reference to the Government Solicitor Act with a reference to the *Law Officers Act 2011*. It also updates the reference to the Department of Justice and Community Safety with a reference to the Justice and Community Safety Directorate in accordance with the one ACT public service reforms.

New item 4 has been inserted to exempt the solicitor-general from the operation of the Freedom of Information Act in relation to documents of the solicitor-general that relate to the solicitor-general's functions as counsel under the *Law Officers Act 2011*.

The public interest in access to documents is still maintained because, despite the exemption of the solicitor-general from the operation of the FOI Act, the public can still seek to obtain the documents from the solicitor-general's clients and the clients can then determine whether or not to claim legal professional privilege. The exemption places the solicitor-general in a better position to discharge its functions in providing efficient, timely and effective legal services to the Territory.

New item 5 has been inserted to exempt the Justice and Community Safety Directorate in relation to documents of the solicitor-general mentioned in item 4.

New item 5 has been inserted because if the solicitor-general alone is exempted, then FOI applicants could apply to the Justice and Community Safety Directorate for access to the documents of the solicitor-general.

### **Part 1.3 – Lands Acquisition Act 1994**

**Clause 1.3 Sections 45(2)(e)(ii) and 54(1)(b)(ii)** – replaces the references to the *Government Solicitor Act 1989* with references to the *Law Officers Act 2011* in sections 45(2)(e)(ii) and 54(1)(b)(ii) of the *Lands Acquisition Act 1994*.

The *Government Solicitor Act 1989* is repealed by clause 35 of the Bill. The substance of section 5(4) of the *Government Solicitor Act* is now replicated in section 29(1) of the *Law Officers Act 2011*.

**Clause 1.4 Section 72(1)(d)(i)** – replaces the references to the *Government Solicitor Act 1989* with references to the *Law Officers Act 2011* in section 72(1)(d)(i) of the *Lands Acquisition Act 1994*.

The *Government Solicitor Act 1989* is repealed by clause 35 of the Bill. The substance of section 5(4) of the *Government Solicitor Act* is now replicated in section 29(1) of the *Law Officers Act 2011*.

**Clause 1.5 Section 72(1)(d)(ii)** – substitutes a new subparagraph (ii) to update the drafting in accordance with current ACT drafting practice.

**Clause 1.6 Section 72(2)(a)** – replaces the references to the *Government Solicitor Act 1989* with references to the *Law Officers Act 2011* in section 72(2)(a) of the *Lands Acquisition Act 1994*.

The *Government Solicitor Act 1989* is repealed by clause 35 of the Bill. The substance of section 5(4) of the *Government Solicitor Act* is now replicated in section 29(1) of the *Law Officers Act 2011*.

**Clause 1.7 Section 96A(c) to (f)** – substitutes new subsections (c) to (f) as a consequence of the changes made this Bill in clauses 1.3 – 1.6 above.

#### **Part 1.4 – Legislation Act 2001**

**Clause 1.8 Dictionary, part 1, definition of *chief solicitor*** – replaces the reference to the *Government Solicitor Act 1989* with a reference to the *Law Officers Act 2011* in the definition of *chief solicitor* in the dictionary of the *Legislation Act 2001*.

The *Government Solicitor Act 1989* is repealed by clause 35 of the Bill. The definition of *chief solicitor* that was contained in the *Government Solicitor Act* is now replicated in the dictionary of the *Law Officers Act 2011* by this Bill.

**Clause 1.9 Dictionary, part 1, definition of *government solicitor*** – replaces the definition of *government solicitor* in the dictionary of the *Legislation Act 2001*.

The new definition replaces the reference to the *Government Solicitor Act 1989* with a reference to the *Law Officers Act 2011*. This amendment is a consequence of the amendment made in clause 35 of this Bill which repeals the *Government Solicitor Act 1989*. As explained above, the substance of the *Government Solicitor Act 1989* has been replicated into the *Law Officers Act 2011* by this Bill.

**Clause 1.10 Dictionary, part 1, new definition of *solicitor-general*** – inserts a new definition of *solicitor-general* in the dictionary of the *Legislation Act 2001*.

The amendment is a consequence of the amendments made by this Bill which establish the new position of *solicitor-general*. The new definition refers to the *Law Officers Act 2011*.

#### **Part 1.5 – Magistrates Court Act 1930**

**Clause 1.11 Section 219AB(2)** – inserts the phrase ‘, *solicitor-general*’ after ‘*Attorney-General*’ in section 219AB(2) of the *Magistrates Court Act 1930*.

Section 219AB of the *Magistrates Court Act 1930* provides that the *Attorney-General* or the *Director of Public Prosecutions* can apply to the *Supreme Court* to hear a question of law that arose where a person, tried on indictment,

has been acquitted. The decision of the Supreme Court does not alter the verdict or decision given at trial.

Clause 1.11 amends section 219AB of the Act to provide that the new position of solicitor-general, established by this Bill, is another entity that may apply to the Supreme Court for a reference appeal.

### **Part 1.6 – Supreme Court Act 1933**

**Clause 1.12 Section 37S(2)** – inserts the phrase ‘, solicitor-general’ after ‘Attorney-General’ in section 37S(2) of the *Supreme Court Act 1933*.

Section 37S of the Act provides that the Attorney-General or the Director of Public Prosecutions may apply to the Supreme Court to hear a question of law that arose where a person, tried on indictment, has been acquitted. The decision of the Court of Appeal does not alter the verdict or decision given at trial.

Clause 1.12 amends section 37S of the Act to provide that the new position of solicitor-general, established by this Bill, is another entity that may apply to the Supreme Court for a reference appeal.

### **Part 1.7 – Territory Records Regulation 2009**

**Clause 1.13 Schedule 1, item 9** – replaces the existing item 9 with a new item 9 in schedule 1 of the Territory Records Regulation 2009.

The Territory Records Regulation is made under section 57 of the *Territory Records Act 2002* for the purposes of section 8(i). The Regulation sets out each agency within the Department of Justice and Community Safety and the Principal Officer responsible for records management within that agency in order to clarify responsibilities for records management under the *Territory Records Act 2002*.

The existing item 9 declares the chief solicitor to be the principal officer for the Government Solicitor for the Australian Capital Territory.

New item 9 updates the reference to Government Solicitor for the Australian Capital Territory with a reference to Government Solicitor. The amendment does not change the substance and effect of item 9. Therefore, the person occupying the position of chief solicitor will remain responsible for the approval of the records management program for the Government Solicitor.

**Clause 1.14 Schedule 1, new item 20A** – inserts new item 20A into schedule 1 of the Territory Records Regulation 2009.

New item 20A declares the solicitor-general to be the principal officer responsible for records management for the Solicitor-General. This arrangement is similar to that of the public advocate, the public trustee and the victims of crime commissioner.

The amendment is a consequence of the amendments made by this Bill which establish the new position of solicitor-general.

**Clause 1.15 Dictionary, note 2** – inserts the terms ‘government solicitor’ and ‘solicitor-general’ into the list of definitions in note 2 in the dictionary of the Territory Records Regulation 2009.

Note 2 contains a number of terms, relevant to the Regulation, which are defined in the *Legislation Act 2001* and therefore do not need to be separately defined in the Act.

These two terms have been inserted into Schedule 1 of the Regulation by clauses [1.13] and [1.14] of this Bill.

**Clause 1.16 Dictionary, definition of *Government Solicitor for the Australian Capital Territory*** – removes the definition of ***Government Solicitor for the Australian Capital Territory*** from the dictionary of the Territory Records Regulation 2009.

This definition has the same meaning as the definition of ***government solicitor*** in the *Legislation Act 2001*. Accordingly, a separate definition in the Regulation is not required.

### Dictionary

The dictionary defines various words and expressions used in the Act.