



Australian Capital Territory

Law Officers Act 2011

A2011-30

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Australian Capital Territory

Law Officers Act 2011

A2011-30

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Law Officers Act 2011*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

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
 - (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.

34 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

35 Legislation repealed

The following legislation is repealed:

- *Government Solicitor Act 1989* (A1989-36)
- *Law Officer Act 1992* (A1992-54).

Note Legislative instruments in force under the legislation mentioned in s 35 are taken to be made under this Act and continue in force (see s 36 and s 37).

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.

Schedule 1 Consequential amendments

(see s 34)

Part 1.1 Director of Public Prosecutions Act 1990

[1.1] Sections 12 (1) (b) and 16 (b)

substitute

- (b) a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor); or

Part 1.2 Freedom of Information Regulation 1991

[1.2] Schedule 2, items 2 and 3

substitute

- 2 The government solicitor, in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under the *Law Officers Act 2011*.
- 3 The Justice and Community Safety Directorate, in relation to documents of the government solicitor mentioned in item 2.
- 4 The solicitor-general—
 - (a) in relation to documents of the solicitor-general that relate to the solicitor-general's functions as counsel under the *Law Officers Act 2011*; and

(b) if exercising the chief solicitor's functions—in relation to documents of the government solicitor that relate to the government solicitor acting as legal practitioner under that Act.

Note Under the *Law Officers Act 2011*, s 17 (1) (c), the Attorney-General may direct the solicitor-general to exercise the chief solicitor's functions.

5 The Justice and Community Safety Directorate, in relation to documents of the solicitor-general mentioned in item 4.

Part 1.3 **Lands Acquisition Act 1994**

[1.3] Sections 45 (2) (e) (ii) and 54 (1) (b) (ii)

omit

or a person authorised under the *Government Solicitor Act 1989*, section 5 (4)

substitute

, the solicitor-general, the chief solicitor or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)

[1.4] Section 72 (1) (d) (i)

omit

or a person authorised under the *Government Solicitor Act 1989*, section 5 (4),

substitute

the solicitor-general, the chief solicitor or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)

[1.5] Section 72 (1) (d) (ii)

substitute

- (ii) executed the documents that a person mentioned in subparagraph (i) reasonably requires;

[1.6] Section 72 (2) (a)

omit

or a person authorised under the *Government Solicitor Act 1989*, section 5 (4)

substitute

the solicitor-general, the chief solicitor or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)

[1.7] Section 96A (c) to (f)

substitute

- (c) in section 45 (2) (e) (ii) ‘or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)’ were omitted and ‘, a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor) or a utility’ were substituted; and
- (d) in section 54 (1) (b) (ii) ‘or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)’ were omitted and ‘, a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor) or a utility’ were substituted; and
- (e) in section 72 (1) (d) (i) ‘or a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor)’ were omitted and ‘, a person authorised under the *Law Officers Act 2011*, section 29 (1) (Person authorised by chief solicitor) or a utility’ were substituted; and

(f) in section 72 (1) (d) (ii) ‘or a utility’ were added before ‘reasonably’; and

Part 1.4 Legislation Act 2001

[1.8] Dictionary, part 1, definition of *chief solicitor*

omit

Government Solicitor Act 1989

substitute

Law Officers Act 2011

[1.9] Dictionary, part 1, definition of *government solicitor*

substitute

government solicitor means the Government Solicitor for the Territory under the *Law Officers Act 2011*.

[1.10] Dictionary, part 1, new definition of *solicitor-general*

insert

solicitor-general means the Solicitor-General for the Territory under the *Law Officers Act 2011*.

Part 1.5 Magistrates Court Act 1930

[1.11] Section 219AB (2)

after

Attorney-General

insert

, solicitor-general

Part 1.6 Supreme Court Act 1933

[1.12] Section 37S (2)

after

Attorney-General

insert

, solicitor-general

Part 1.7 Territory Records Regulation 2009

[1.13] Schedule 1, item 9

substitute

9	Government Solicitor	chief solicitor
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[1.14] Schedule 1, new item 20A

insert

20A	Solicitor-General	solicitor-general
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[1.15] Dictionary, note 2

insert

- government solicitor
- solicitor-general

[1.16] Dictionary, definition of *Government Solicitor for the Australian Capital Territory*

omit

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 Presentation speech

Presentation speech made in the Legislative Assembly on 23 June 2011.

2 Notification

Notified under the Legislation Act on 29 August 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Law Officers Bill 2011, which was passed by the Legislative Assembly on 23 August 2011.

Clerk of the Legislative Assembly

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