

AUSTRALIAN CAPITAL TERRITORY

Government Solicitor Ordinance 1989

No. 36 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to establish a Government Solicitor for the Australian Capital Territory and for related purposes

Short title

1. This Ordinance may be cited as the *Government Solicitor Ordinance 1989*.¹

Commencement

2. (1) Section 1 and this section commence on the day on which this Ordinance is notified in the *Gazette*.

(Ord. 34/89)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

(2) The remaining provisions commence on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988*.

Interpretation

3. In this Ordinance, unless the contrary intention appears—

“Chief Solicitor” means the person for the time being occupying, or performing the duties of, the office of Chief Solicitor in the Public Service;

“enactment” means—

- (a) a law (however described or entitled) made by the Legislative Assembly under the *Australian Capital Territory (Self-Government) Act 1988*;
- (b) a law, or part of a law, that is to be taken to be an enactment by virtue of section 34 of that Act; or
- (c) a law, or part of a law, that is to be taken to be an enactment by virtue of subsection 10 (3) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*;

“Government Law Office” means the unit of the Public Service designated by that title;

“transitional Territory staff” has the same meaning as in the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

Ordinance binds Crown

4. This Ordinance binds the Crown.

Government Solicitor

5. (1) There is hereby established a Government Solicitor for the Australian Capital Territory.

(2) The Government Solicitor is a body corporate.

(3) The Government Solicitor may act as solicitor for—

- (a) the Crown in right of the Territory;
- (b) the Territory;
- (c) a person suing or being sued on behalf of the Territory;
- (d) a Minister;

- (e) a body established by or under an enactment;
- (f) a person who is—
 - (i) a member of the transitional staff;
 - (ii) an officer of the Public Service;
 - (iii) employed by the Territory; or
 - (iv) employed by an authority established by or under an enactment;
- (g) a person holding office under an enactment or a law of the Territory;
- (h) the Australian Government Solicitor, by arrangement, as agent on behalf of clients of the Australian Government Solicitor; or
- (i) any other person, or body, for whom the Minister requests the Government Solicitor to act;

and is, for the purposes of so acting, entitled to practise as a barrister and solicitor in any court and entitled to all the rights and privileges of a barrister and solicitor of the Supreme Court of the Australian Capital Territory who holds a current unrestricted practising certificate issued under the *Legal Practitioners Ordinance 1978*.

(4) The Chief Solicitor may act personally in the name of the Government Solicitor and may also, either generally or otherwise as provided by the instrument of authorisation, by writing signed by him or her, authorise a qualified officer of the Government Law Office to act in the name of the Government Solicitor.

(5) Any act or thing done in the name of the Government Solicitor by, or under the direction or authority of—

- (a) the Chief Solicitor; or
- (b) a person authorised under subsection (4);

shall be deemed to have been done by the Government Solicitor.

(6) In or in respect of the doing by a person of any act or thing pursuant to an authorisation under subsection (4), the person is responsible to the Chief Solicitor and, through the Chief Solicitor, to the Minister, and shall comply with such directions, if any, as are given to him or her by the Chief Solicitor.

(7) An act or thing done or omitted to be done by a person in the name of the Government Solicitor pursuant to a direction given by the Chief Solicitor shall be deemed to have been done or omitted to be done, as the case may be, by the Chief Solicitor personally.

(8) 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.

(9) Notwithstanding subsection (5), but subject to subsection (8)—

- (a) the Chief Solicitor; or
- (b) a person authorised pursuant to subsection (4);

is, in respect of any act or thing done or omitted to be done by him or her, or by any person at his or her direction or under his or her authority, in the name of the Government Solicitor, 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.

(10) A copy of every authorisation under subsection (4) shall be published in the *Gazette*.

(11) In this section, “qualified officer” means an officer who is a barrister and solicitor of the Supreme Court.

Judicial notice of signatures

6. All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive or examine evidence, 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.

Certain references to be deemed to include a reference to the Government Solicitor

7. In—

- (a) any instrument under an Act of a legislative or administrative character;
- (b) any award or other determination or order or any industrial agreement;
- (c) any other order (whether executive, judicial or otherwise);

- (d) any contract, agreement or arrangement;
- (e) any pleading in, or process issued in connection with, any legal or other proceedings; or
- (f) any other instrument;

relating to the Territory, the government of the Territory or any asset, right, liability or obligation of the Territory, 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 shall be construed as including a reference to the Government Solicitor.

Amendments of other Ordinances

8. The Ordinances specified in the Schedule are amended as specified in the Schedule.

SCHEDULE

Section 8

AMENDMENTS OF ORDINANCES

Australian Capital Territory Gaming and Liquor Authority Ordinance 1987

Section 3—

Insert the following definition:

“ ‘Government Law Office’ means the unit of the Public Service designated by that title;”.

Section 32—

- (a) Omit “Australian” (wherever occurring).
- (b) Omit “Attorney-General’s Department”, substitute “Government Law Office”.

Electricity and Water Ordinance 1988

Subsection 3 (1)—

Insert the following definition:

“ ‘Government Law Office’ means the unit of the Public Service designated by that title;”.

Section 91—

- (a) Omit “Australian” (wherever occurring).
- (b) Omit “Attorney-General’s Department”, substitute “Government Law Office”.

Legal Practitioners Ordinance 1970

Section 5—

Insert the following definition:

“ ‘Government Law Office’ means the unit of the Public Service designated by that title;”.

SCHEDULE—continued**Subparagraph 15E (1) (a) (iii)—**

After “Attorney-General’s Department,” insert “as an officer of the Government Law Office,”.

Subsection 123 (3)—

Omit paragraphs (a) and (b) of the definition of “public officer”, substitute the following paragraphs:

- “(a) a person who is a public servant within the meaning of the *Interpretation Act 1967* of the Territory;
- (b) a person employed under an Act of the Territory or an Act of the Commonwealth; and
- (c) a member of the Defence Force.”.

Subsection 124 (2)—

- (a) Omit from the end of paragraph (b) “or”.
- (b) Omit paragraph (c), substitute the following paragraphs:
 - “(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)—**

Insert the following definition:

- “ ‘Chief Solicitor’ means the person for the time being occupying, or performing the duties of, the office of Chief Solicitor in the Public Service;”.

Before paragraph 83 (1) (aa)—

Insert the following paragraph:

- “(aaa) the Territory;”.

Before paragraph 83 (2) (a)—

Insert the following paragraph:

- “(aa) in the case of a bond given by the Territory—be under the hand of the Chief Solicitor or a person authorised under subsection 5 (4) of the *Government Solicitor Act 1989* of the Territory to act in the name of the Government Solicitor;”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.