



Law Officers Legislation Amendment Bill 2008

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Law and Bills Digest Section

Contents

Purpose.	2
Background.	2
Current situation	2
Statute Law (Miscellaneous Provisions) (No.2) Act No. 91 1983	3
Law Officers Amendment Act 1997	3
Financial implications	4
Main provisions.	4
Schedule 1 - Amendments	4
Law Officers Act 1964	4
Long Service Leave (Commonwealth Employees) Act 1976	4
Concluding comments	5

Law Officers Legislation Amendment Bill 2008

Date introduced: 28 May 2008

House: Representatives

Portfolio: Attorney-General

Commencement: The day after Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Law Officers Act 1964* and the *Long Service Leave (Commonwealth Employees) Act 1976* to provide the Solicitor-General with long leave entitlements in accordance with other senior members of the Australian Public Service.

Background

Current situation

In accordance with section 7 of the *Law Officers Act 1964*, the Remuneration Tribunal determines the remuneration and allowances of holders of full-time public office in Determination 2007/13 which includes the full-time office of Solicitor-General. Other determinations which affect the terms and conditions of employment of the Solicitor-General are:

- Determination 2004/03 Official Travel by Office Holders;
- Determination 2007/09 Recreation leave for full-time holders of relevant offices;
- Determination 2007/07 Compensation for Loss of Office for Holders of Public Office.

Currently section 16A of the *Law Officers Act 1964* which formerly enabled a payment to the Solicitor-General in lieu of long service leave¹ does not apply to a person appointed as Solicitor-General after 31 December 1997. This change was made by the *Law Officers Amendment Act 1998*.

1. The terms 'long leave' and 'long service leave' are used interchangeably. The term 'long leave' appears to have been used in relation to judges' long leave entitlements.

Warning:

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Statute Law (Miscellaneous Provisions) (No.2) Act No. 91 1983

Section 16A was introduced to the *Law Officers Act 1964* in 1983 by the *Statute Law (Miscellaneous Provisions) Act (No.2) 1983*. The Deputy Prime Minister at the time, Mr Lionel Bowen when introducing the *Statute Law (Miscellaneous Provisions) Bill (No.2) 1983* summarised the history of the provision in the following terms:

The Law Officers Act is being amended to include a provision, section 16A, enabling the Solicitor-General to be paid in lieu of long leave. Commonwealth employees have had entitlement to long service leave since 1943 and the legislation provides for payment in lieu of taking long service leave. The provisions were revised in the Long Service Leave (Commonwealth Employees) Act 1976. Section 10(3) of that Act excludes from the operation of the Act holders of judicial office and the Solicitor-General. Since the 1960's judges have had, by administrative arrangement, entitlement to long leave and to payment in lieu where that leave was not taken. In 1979 payment in lieu of long leave was put on a statutory basis for High Court justices and judges of federal courts. Unfortunately, at that time a similar provision for the Solicitor-General was not addressed, which only became apparent earlier this year when the Solicitor-General informed the Attorney-General of his intention to retire later this year.

Under the 1968 amendments of the Law Officers Act 1964 the Solicitor-General has been entitled since that time to payment of pension in respect of his period of service on an equivalent basis to the entitlement for judges of federal courts. In 1980 the Solicitor-General's salary and allowances were increased to the same level as was paid to judges of the Federal Court of Australia. These movements in the Solicitor-General's entitlements demonstrate a clear intention to equate the Solicitor-General with the status of a judge of the Federal Court and the proposed amendment will give effect to that position in relation to payment in lieu of long leave.²

Law Officers Amendment Act 1997

In 1997 the *Law Officers Amendment Bill 1997* was introduced by the then Attorney-General, Mr Daryl Williams. Prior to 1997 according to the second reading speech, the terms and conditions of service for the Solicitor-General were similar to those of a judge of the Federal Court of Australia as set out above, and included eligibility for a judge's pension and payment in lieu of unused long service leave on the same basis as for a judge. Section 16 applied the *Judges' Pension Act 1968* to the Solicitor-General as if the office of Solicitor-General were a judge and section 16A provided payment in lieu of unused long service leave. The Attorney-General stated in the second reading speech that 'the government did not consider it appropriate that these arrangements should apply to the office of the Solicitor-General.' He also stated that 'the Solicitor-General should receive superannuation and leave entitlements similar to those applying to a senior member of the

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2. Hon Lionel Bowen MP, Deputy Prime Minister and Minister for Trade, 'Second reading speech: Statute Law (Miscellaneous Provisions) Bill (No.2) 1983'.

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Australian Public Service, rather than those applying to a judge.’ These statements clearly indicate that the Government’s intention was to include all leave entitlements for the office of Solicitor-General. However, the *Law Officers Amendment Act 1998* amended only the *Law Officers Act 1964* and did not remove the bar in the *Long Service Leave (Commonwealth Employees) Act 1976* excluding the office of Solicitor-General from the operation of the Act. This oversight is being addressed in this Bill.

The Remuneration Tribunal has determined the remuneration and allowances of the Solicitor-General since 1985. Since 1997 section 16A has not applied to the office holder of Solicitor-General and according to the Explanatory Memorandum, there is no longer any person to whom section 16A applies.³ It is therefore a spent provision and able to be repealed by this bill. The bill removes the bar in subsections 10(3) and (4) in the *Long Service Leave (Commonwealth Employees) Act 1976* to enable the office of Solicitor-General to be subject to the operation of that Act and for the office to receive long service leave entitlements which will apply as from 31 December 1997.

Financial implications

According to the Explanatory Memorandum, the amendments will have no significant financial impact.

Main provisions

Schedule 1 - Amendments

Law Officers Act 1964

Item 1, proposed section 7A provides that section 6 and 7 will operate subject to the provisions of the *Long Service Leave (Commonwealth Employees) Act 1976* which will allow the office holder of Solicitor-General to accrue long service leave and to receive payment in lieu for unused long service leave in line with the terms and conditions of other senior members of the Australian Public Service.

Item 2 repeals section 16A as it is a spent section and no longer has any application.

Long Service Leave (Commonwealth Employees) Act 1976

Items 3 and 4 amends subsections 10(3) and (4) by removing references to the Solicitor-General.

3. The current incumbent, Mr David Bennett QC was appointed as Solicitor-General commencing on 13 August 1998, Hon Daryl Williams, (Attorney-General), *New Commonwealth Solicitor-General*, media release, Parliament House, Canberra, 30 June 1998.

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Item 5 provides retrospective application, that is the provisions as amended by the *Law Officers Legislation Amendment Bill 2008* will apply to a person holding the office of Solicitor-General appointed after 31 December 1997.

Concluding comments

The current bill corrects an anomaly that occurred when amendments were made in 1997 to the *Law Officers Act 1964* to align the terms and conditions of the office of Solicitor-General with those of senior members of the Australian Public Service so as to ensure that long service leave entitlements will apply as from 31 December 1997.

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