

No. 11 of 2013.

Attorney-General (Amendment) Act 2013.

Certified on : 31 OCT 2013



No. of 2013.

Attorney-General (Amendment) Act 2013.

ARRANGEMENT OF SECTIONS.

1. Amendment of the Long Title.
2. Interpretation (Amendment of Section 1).
3. Duties, Functions and Responsibilities of Attorney General (Amendment of Section 7).
4. Legal Advice and Opinion (Amendment of Section 8).
5. New Section 8A.
6. New Sections 13A to 13E.



No. of 2013.

AN ACT

entitled

Attorney-General (Amendment) Act 2013.

Being a law to amend the *Attorney-General Act 1989* to provide for –

- (a) the establishment of the Office of the State Solicitor and its powers, functions and responsibilities; and
 - (b) the provision of the appointment process of the State Solicitor,
- and for related purposes,

Made by the National Parliament.

1. AMENDMENT OF THE LONG TITLE.

The Long Title of the Principal Act is amended by adding a new paragraph after Paragraph (b) as follows:

“(ba) to establish the Office of the State Solicitor and provide for the functions and responsibilities of the Office; and”.

2. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended by inserting the following new definitions in their alphabetical order as follows:

““State” in relation to the functions and powers of the State Solicitor, means government Departments, Provincial and Local level Governments and an arm, department, agency or instrumentality of the National Government or a Provincial Government and includes a body set up by statute or administrative act for government or official purposes;

“State Solicitor” means the person appointed as State Solicitor under Section 13A.”.

3. DUTIES, FUNCTIONS AND RESPONSIBILITIES OF ATTORNEY GENERAL (AMENDMENT OF SECTION 7).

Section 7 of the Principal Act is amended by inserting a new paragraph after Paragraph (e) as follows:

“(ea) in accordance with Section 13D, to appoint a lawyer to be the State Solicitor; and”.

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4. LEGAL ADVICE AND OPINION (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended by repealing Subsection (4) and replacing it with the following:

“(4) Where legal issues arise or might arise, legal advice must be provided by the Attorney-General to Ministers and the National Executive Council, either in his capacity as principal legal adviser to the National Executive Council or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.

“(5) Where the State Solicitor provides legal advice to a Minister upon request by that Minister, the State Solicitor must do so in consultation with the Attorney-General.”.

5. NEW SECTION 8A.

The Principal Act is amended by inserting a new section after Section 8 as follows:

“8A. LEGAL SERVICE INSTRUCTIONS.”

“(1) The Attorney-General may, at any time, issue instructions, not inconsistent with this or any other Act, in relation to the acquisition by the State, its agents and instrumentalities, of legal services of the type provided by the State Solicitor.

(2) All officers and employees of the State, its agents and instrumentalities must comply with instructions issued under Subsection (1).

(3) A person who refuses or fails to comply with instructions issued under Subsection (1) commits a disciplinary offence in accordance with the terms and conditions of his employment.”.

6. NEW SECTIONS 13A TO 13E.

The Principal Act is amended by inserting the following new sections after Section 13 as follows:

“13A. ESTABLISHMENT OF THE OFFICE OF STATE SOLICITOR.”

“(1) There is established within the National Public Service, the Office of the State Solicitor.

- (2) The Office of the State Solicitor consists of –
- (a) the State Solicitor; and
 - (b) such numbers of Deputy State Solicitors, not exceeding three, who are appointed under the *Public Services (Management) Act 1995*; and
 - (c) other officers and staff who must be officers or employees of the National Public Service.”

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“13B. FUNCTIONS OF THE STATE SOLICITOR.”

- “(1) The primary functions of the State Solicitor are –
- (a) to provide legal advice and opinion to the State and its agencies and instrumentalities in all matters affecting the State; and
 - (b) to be the legal representative of the State in all matters affecting the State including negotiations entered into by the State; and
 - (c) to provide legal clearance on all matters in which the State is a party, in so far as it relates to –
 - (i) contracts of employment for appointments made by the Head of State; and
 - (ii) consultancy agreements; and
 - (iii) commercial agreements; and
 - (iv) international treaties, conventions and agreements which are bilateral or multilateral or any other public international instruments; and
 - (v) lease agreements; and
 - (vi) memorandums of agreement; and
 - (vii) memorandums of understanding; and
 - (viii) any other documents that seek to legally bind the State; and
 - (d) to consider and provide legal clearance on the necessity of –
 - (i) proposed legislation; and
 - (ii) proposed amendments to existing legislation; and
 - (iii) proposed regulations; and
 - (iv) proposed amendments to existing regulations,before submission to the National Executive Council for its approval; and
 - (e) to make appearance on behalf of the State before tribunals outside of the National Judicial System; and
 - (f) to perform any other functions consistent with his advisory functions.

(2) In the exercise of his functions, the State Solicitor may only accept instructions from the State, its agencies and its instrumentalities, the Attorney-General and such other entities as may be prescribed by regulation.

- (3) The State Solicitor may, at any time, for the purpose of the performance of his functions under this Act or any other law –
- (a) require, where necessary, any person to provide information relative to his functions; and
 - (b) require, where necessary, any person to produce documents within his possession or subject to his control where such

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documents are relevant to the functions of the State Solicitor; and

- (c) make and retain copies of any document produced under Paragraph (b).

(4) All officers and employees of the State, its agents or instrumentalities must –

(a) co-operate with; and

(b) comply with any instructions issued by,

the State Solicitor when the State Solicitor is performing the functions or exercising the powers of his or her office under this Act or any other Act.

(5) A person who fails or refuses to comply with Subsection (4) commits a disciplinary offence and must be dealt with in accordance with the terms and conditions of his employment.”

“13C. DELEGATION BY THE STATE SOLICITOR.”

“(1) The State Solicitor may, in writing, delegate all or any of his powers and functions, except this power of delegation, under this Act or any other Act, to a Deputy State Solicitor.

(2) Any delegation under Subsection (1) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the State Solicitor.”

“13D. APPOINTMENT OF STATE SOLICITOR.”


“(1) The State Solicitor is appointed by the Attorney General following the appointment process under the *Public Services (Management) Act 1995* and holds office in accordance with the terms and conditions of a contract of employment with the State.

(2) The State Solicitor is appointed for a term of five years and is eligible for reappointment.”

“13E. LEADERSHIP CODE.”

Pursuant to Section 26(3) of the *Constitution (Application of Division 2)*, the Office of the State Solicitor is declared to be an office to and in relation to which *Division III.2 (Leadership Code)* of the *Constitution* applies.”.

I hereby certify that the above is a fair print of the *Attorney-General (Amendment) Act 2013* which has been made by the National Parliament.


Clerk of the National Parliament.

Attorney-General

I hereby certify that the *Attorney-General (Amendment) Act 2013* was made by the National Parliament on 18th July, 2013 by an absolute majority in accordance with the *Constitution*.



Speaker of the National Parliament.

31 OCT 2013