

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

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No. 34 of 1985

An Act to provide in respect of the office of Solicitor-General  
and for related purposes

[ASSENTED TO 17TH APRIL, 1985]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

#### PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Solicitor-General Act 1985*.

2. **Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act shall commence on a date to be fixed by Proclamation.

3. **Arrangement of Act.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—SOLICITOR-GENERAL AND STAFF (ss. 5-10);

PART III—CONDITIONS OF APPOINTMENT (ss. 11-17);

PART IV—MISCELLANEOUS PROVISIONS. (ss. 18-21).

4. **Interpretation.** In this Act, except where a contrary intention appears—

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act and includes any Minister of the Crown for the time being performing the duties of the Minister;

“Under Secretary” means the Under Secretary, Department of Justice or the Permanent Head (within the meaning of the Public Service Regulations of 1958, as amended and in force for the time being) of the Department of the Public Service of Queensland for which the Minister of the Crown for the time being charged with the administration of this Act is responsible.

#### PART II—SOLICITOR-GENERAL AND STAFF

5. **Appointment of Solicitor-General.** (1) The Solicitor-General shall be appointed, from time to time, by Letters Patent issued by or on behalf of Her Majesty, on the recommendation of the Executive Council.

(2) The Solicitor-General—

(a) shall be appointed for a term not exceeding five years determined by the Governor in Council and specified in the instrument of his appointment;

(b) shall, subject to this Act, be eligible for re-appointment upon the expiration of his term of appointment;

(c) shall be appointed and hold office on the conditions prescribed and otherwise as the Governor in Council determines;

and

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(d) shall not be subject to the *Public Service Act 1922-1978*.

(3) A person shall be eligible for appointment to the office of Solicitor-General if—

(a) he is a barrister entitled to practise in the Supreme Court of not less than 10 years' standing;

and

(b) he has not attained the age of 65 years.

(4) Notification of the appointment of a person to the office of Solicitor-General shall be published in the Gazette.

**6. Constitution Act s. 14 not applicable.** Section 14 of the *Constitution Act 1867-1978* does not apply in respect of the appointment to the office of Solicitor-General.

**7. Acting Solicitor-General.** (1) In the event of a vacancy in the office of Solicitor-General or of the illness or absence of the person holding that office the Governor in Council may, upon the recommendation of the Minister, by notification published in the Gazette, appoint a person eligible for appointment to that office to act as Solicitor-General of the State and may at any time revoke that appointment.

(2) A person appointed under subsection (1) shall be entitled to act as Solicitor-General of the State until—

(a) his appointment is revoked;

(b) a person is appointed Solicitor-General under section 5;

or

(c) the person holding the office of Solicitor-General returns to the duties of that office,

whichever event first occurs.

(3) A person appointed to act in the office of Solicitor-General shall hold the appointment on conditions determined by the Governor in Council and specified in the instrument of his appointment.

(4) While a person continues to be entitled to act in the office of Solicitor-General he shall discharge the functions and may exercise the authorities conferred on the Solicitor-General by this Act.

(5) A person appointed to act in the office of Solicitor-General shall not be subject to the *Public Service Act 1922-1978* while he acts in that office unless immediately before his appointment he was subject to that Act, in which case, while he acts in that office, he shall continue to be subject to that Act and shall be an officer of the Public Service of Queensland.

**8. Functions of Solicitor-General.** The functions of the Solicitor-General are—

- (a) to act, upon the request of the Attorney-General, as counsel for—
  - the Crown in right of the State;
  - the State;
  - a person suing or being sued on behalf of the State;
  - a body established by or under an Act;
  - any other person or body where it is to the benefit of the State that he should so act;
- and
- (b) to carry out for the benefit of the Government of the State such other functions ordinarily performed by counsel as the Attorney-General requests.

**9. Authority to delegate.** (1) The Solicitor-General may, from time to time by instrument of delegation under his hand delegate to any person or to the holder from time to time of a specified office (without naming a particular person) any of his functions under this Act or of the duties to be discharged in connexion with those functions.

(2) A delegation may be made subject to such terms, conditions and limitations as the Solicitor-General thinks fit, including a requirement that the delegate report to him upon the discharge of the delegated function or duty, and may be given in relation to a particular matter or a class of matter.

(3) The Solicitor-General may give such and as many delegations of the same function or duty and to such number of persons or holders of office as he thinks fit.

(4) Where a function or duty has been delegated—

- (a) its discharge shall be in accordance with the instrument of delegation;
- (b) any act or thing done or suffered by the delegate in discharge of the function or duty has the same force and effect as if the act or thing had been done or suffered by the Solicitor-General;
- and
- (c) the delegation does not prejudice the discharge of the function or duty by the Solicitor-General.

(5) A delegation is revocable at the will of the Solicitor-General and shall be revoked if the Minister so directs.

**10. Staff.** (1) There may be appointed or assigned to assist the Solicitor-General in the discharge of his functions such number of persons as is necessary for the purpose.

(2) Any person appointed for the purpose referred to in subsection (1) shall be appointed and shall hold his appointment under and subject to the *Public Service Act 1922-1978*.

(3) An officer of the Public Service of Queensland may be assigned for a limited and specified period to perform duties for the purpose referred to in subsection (1) and shall continue to be subject to the *Public Service Act 1922-1978* while he continues to be so assigned.

### PART III—CONDITIONS OF APPOINTMENT

**11. Remuneration.** The Solicitor-General shall be entitled to be paid salary at a rate per annum that is 80 per centum of the aggregate rate per annum of salary and allowance payable from time to time to a Puisne Judge of the Supreme Court.

**12. Leave Entitlements.** (1) The Solicitor-General shall have the same recreation leave and sick leave entitlements as an officer of the Public Service of Queensland.

(2) The Solicitor-General shall have the same entitlements to leave on account of long service as a Judge of the Supreme Court.

**13. Pension entitlement.** If the person who holds or has held the office of Solicitor-General is appointed a Judge of the Supreme Court or a Judge of District Courts, then for the purposes of the *Judges' Pensions Act 1957-1984* in its application to him any period of service had by him as Solicitor-General shall be added to and be deemed to be part of his period of service as a Judge except that where he has been paid a lump sum under section 14 any such period of service before he was paid that sum shall be disregarded.

**14. Severance entitlement.** If the appointment of a person as Solicitor-General is terminated—

(a) otherwise than in the circumstances referred to in section 13;

and

(b) otherwise than by his death or removal from office by the Governor in Council on the ground of misbehaviour,

he is entitled to be paid a lump sum accrued at a rate of six per centum per annum of the remuneration payable to the Solicitor-General from time to time throughout the period or periods of his service as Solicitor-General.

**15. Dependents' pension entitlements.** Where the Solicitor-General has died in office leaving a widow or children, the widow or each child shall be entitled to pension benefits in accordance with the *Judges' Pensions Act 1957-1984* as if—

(a) the Solicitor-General had been a Judge and his service as Solicitor-General had been service as a Judge;

and

- (b) in respect of the widow's entitlement, his maximum pension entitlement that, as a Judge, he might have had under that Act would have been had upon his attaining the age of 65 years.

**16. Other employment curtailed.** (1) With the approval of the Governor in Council first had and obtained the Solicitor-General may engage in the practice of his profession as a barrister otherwise than in discharge of his functions:

Provided that, if he does so—

- (a) he shall at all times give priority to the discharge of his functions as Solicitor-General;

- (b) he shall not at any time—

appear for the defence upon a charge brought by the Crown;

act in any case to which the Crown is a party for any party other than the Crown;

or

permit or suffer a conflict of interests to exist between his practice of his profession and the proper discharge of his functions as Solicitor-General.

(2) Except as provided by subsection (1), the Solicitor-General shall not—

- (a) engage in the practice of his profession as a barrister except in the discharge of his functions;

or

- (b) engage in paid employment outside the duties of his office.

(3) An approval under subsection (1) may be—

for the whole of the time that the Solicitor-General in question serves in the office of Solicitor-General;

or

for the whole or any part of the term of an appointment of the Solicitor-General in question.

as expressed in the approval.

**17. Termination of Solicitor-General's appointment.** (1) Upon the Solicitor-General attaining the age of 65 years he shall be taken to have thereby vacated the office of Solicitor-General.

(2) The Solicitor-General may resign his office by writing signed by him and delivered to the Minister.

(3) The Governor in Council may terminate the appointment of the Solicitor-General, by removing him from office, for misbehaviour or physical or mental incapacity.

(4) The Governor in Council shall terminate the appointment of the Solicitor-General for any of the following misbehaviour:—

- (a) if he becomes bankrupt or takes advantage of the law in force relating to bankruptcy;
- (b) if he is absent from duty, except on leave of absence to which he is entitled under the conditions of his appointment or granted by the Minister, for 14 consecutive working days, or for 28 working days in any period of 12 months;
- or
- (c) if he contravenes section 16.

(5) Termination of the appointment of Solicitor-General shall be by way of notification in writing signed by the Minister and given to him personally or by post.

#### PART IV—MISCELLANEOUS PROVISIONS

**18. Suspension of Judges' pension.** If a person in receipt of a pension under the *Judges' Pensions Act 1957-1984* is appointed to the office of Solicitor-General that pension ceases to be payable while he serves in that office.

**19. Rights of public servant appointed as Solicitor-General.** Where the Solicitor-General was, immediately before his appointment to that office, an officer of the Public Service of Queensland—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as Solicitor-General shall be taken into account as if it were service in the Public Service of Queensland;
- and
- (c) sections 12, 13, 14 and 15 do not apply to him, his widow or children.

unless he has duly resigned his appointment as an officer of the Public Service of Queensland and has renounced the rights referred to in paragraph (a).

**20. Administrative and financial control.** (1) The Under Secretary shall be the Permanent Head within the meaning of the Public Service Regulations of 1958, as amended and in force for the time being, in respect of matters of an administrative nature associated with the discharge of the Solicitor-General's functions and in respect of staff assisting the Solicitor-General.

(2) For the purposes of the *Financial Administration and Audit Act 1977-1981* the Under Secretary shall be the accountable officer in respect

of the discharge of the Solicitor-General's functions other than in respect of the acts and conduct of the Solicitor-General himself.

The Solicitor-General shall do all such things as the Under Secretary, in proper performance of his duties as such accountable officer, may require for the purposes of that Act.

**21. Regulations.** The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters necessary or convenient for the administration of this Act or for achieving the objects and purposes of this Act.