

Queensland



ATTORNEY-GENERAL BILL 1998

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1998

A BILL

FOR

**An Act relating to the functions and powers of the Attorney-General,
and for related purposes**

The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Short title 3

1. This Act may be cited as the *Attorney-General Act 1998*. 4

Commencement 5

2. This Act commences on a day to be fixed by proclamation. 6

PART 2—ESTABLISHMENT OF OFFICE 7

The office of Attorney-General 8

3.(1) There is to be an Attorney-General for the State. 9

(2) The Attorney-General is— 10

(a) the Minister who is designated by the Governor as Attorney-General or Minister for Justice and Attorney-General; 11
or 12
13

(b) if the Governor does not designate a Minister as Attorney-General or Minister for Justice and Attorney-General—the Minister. 14
15
16

Position of Attorney-General 17

4. The Attorney-General is the first law officer of the State. 18

**PART 3—ATTORNEY-GENERAL’S FUNCTIONS
AND POWERS**

Division 1—Principal functions

Principal functions

5. The Attorney-General’s principal functions are—

- (a) to be the State’s chief legal representative; and
- (b) to give legal advice to the State; and
- (c) to be the Minister responsible to the Parliament for the administration of law and justice in the State.¹

Division 2—Powers

General powers

6.(1) The Attorney-General has power to do all things necessary or convenient to be done for the Attorney-General’s functions.

(2) The Attorney-General may start and conduct litigation for the following—

- (a) the State;
- (b) the Governor;
- (c) a Minister;
- (d) a person suing or being sued on behalf of the State.

Specific powers

7.(1) The Attorney-General may do the following—

¹ See also section 8 (Retention of traditional role) and section 9 (Additional functions and powers).

Attorney-General

- | | |
|--|------------------|
| (a) present an indictment; ² | 1 |
| (b) enter nolle prosequi on indictments; ³ | 2 |
| (c) grant immunities from prosecution; | 3 |
| (d) undertake to a person not to use, or make derivative use of, information or a thing against the person in a proceeding, other than in relation to the falsity of evidence given by the person in a proceeding; | 4
5
6
7 |
| (e) enforce charitable and public trusts; | 8 |
| (f) bring proceedings to enforce and protect public rights; | 9 |
| (g) grant fiats to enable entities, that would not otherwise have standing, to start proceedings in the Attorney-General's name— | 10
11 |
| (i) to enforce charitable and public trusts; and | 12 |
| (ii) to enforce and protect public rights; | 13 |
| (h) challenge the constitutional validity of legislation (including Commonwealth legislation) that affects the public interest in the State; | 14
15
16 |
| (i) appear before a court to help the court in appropriate cases; | 17 |
| (j) advise the Executive Council on judicial appointments; | 18 |
| (k) start proceedings for contempt of court in the public interest; | 19 |
| (l) apply for judicial review to correct errors by courts and tribunals. ⁴ | 20 |
| (2) Despite subsection (1)(a) or (b), the Attorney-General may not direct or instruct the Director of Public Prosecutions to present an indictment or enter a nolle prosequi. | 21
22
23 |
| (3) To avoid any doubt, it is declared that— | 24 |

² See the Criminal Code, sections 560 and 561.

³ This refers to the Attorney-General's power to inform a court in writing that the State will not further proceed on an indictment or in relation to any charge contained in the indictment. See the Criminal Code, section 563 (Nolle prosequi).

⁴ See also the *Judicial Review Act 1991*, section 51 (Intervention by Attorney-General).

Attorney-General

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- (a) the Attorney-General may not grant immunity from prosecution for a future act or omission; and 1
2
- (b) a decision or proposed decision to exercise a power for a matter listed under subsection (1) is not a decision of an administrative character under an enactment merely because the matter is listed under subsection (1). 3
4
5
6

Division 3—General 7**Retention of traditional role** 8

8. The Attorney-General has the functions, powers, prerogatives and privileges of the Attorney-General for the State under the common law or equity or by tradition or usage. 9
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Additional functions and powers 12

9.(1) The Attorney-General also has functions and powers conferred on the Attorney-General under this Act or another Act. 13
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(2) A function or power conferred on the Attorney-General under this Act or another Act does not limit another function or power of the Attorney-General. 15
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PART 4—REPORTING OBLIGATIONS 18**Refusal of relator application** 19

- 10.(1) This section applies if— 20
- (a) an application is made for the Attorney-General to grant an entity a fiat to start a proceeding in the Attorney-General's name to enforce or protect a public right; and 21
22
23
- (b) the application is refused or the fiat is not granted within 60 days after the application was made. 24
25

-
- (2) The Attorney-General must— 1
- (a) prepare a report outlining— 2
- (i) the nature of the application; and 3
- (ii) the breach of the public right alleged; and 4
- (iii) the reasons for the refusal of the application or failure to 5
grant the fiat; and 6
- (b) table the report in the Legislative Assembly within 3 sitting days 7
after— 8
- (i) the refusal; or 9
- (ii) if the application was not refused but the fiat was not granted 10
within 60 days after the application was made, the end of the 11
60 days. 12

Independent exercise of powers about prosecutions 13

- 11.(1)** This section applies if the Attorney-General— 14
- (a) presents an indictment against a person and— 15
- (i) the person is acquitted; or 16
- (ii) the person is convicted and any period for appealing against 17
the conviction has ended and an appeal against the conviction 18
has not been started; or 19
- (iii) the person is convicted and the person has appealed against 20
the conviction and the appeal is finally decided or has 21
otherwise ended; or 22
- (iv) the prosecution process has otherwise ended; or 23
- (b) enters a nolle prosequi on an indictment. 24
- (2) The Attorney-General must— 25
- (a) prepare a report outlining the circumstances and reasons for the 26
Attorney-General's decision to present the indictment or to enter 27
the nolle prosequi; and 28
- (b) table the report in the Legislative Assembly within 3 sitting days 29
after the event mentioned in subsection (1) happens. 30

- (3) In this section— 1
 “**convicted**” includes being found guilty, and the acceptance of a plea of 2
 guilty, by a court, whether or not a conviction is recorded. 3

PART 5—MISCELLANEOUS 4

Service on Attorney-General 5

12.(1) This section applies if, under another Act, a document must or 6
 may be served on or given to the Attorney-General. 7

(2) The service or giving of the document may be carried out by giving 8
 the document to the chief executive. 9

Regulation-making power 10

13. The Governor in Council may make regulations under this Act. 11

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