



# **Attorney-General Act 1999**

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Queensland

# Attorney-General Act 1999

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	3
2	Commencement . . . . .	3
<b>Part 2</b>	<b>Establishment of office</b>	
3	The office of Attorney-General . . . . .	3
4	Position of Attorney-General . . . . .	4
<b>Part 3</b>	<b>Attorney-General's functions and powers</b>	
<b>Division 1</b>	<b>Principal functions</b>	
5	Principal functions . . . . .	4
<b>Division 2</b>	<b>Powers</b>	
6	General powers . . . . .	4
7	Specific powers . . . . .	5
<b>Division 3</b>	<b>General</b>	
8	Retention of traditional role . . . . .	6
9	Additional functions and powers . . . . .	6
9A	Relator application . . . . .	6
<b>Part 4</b>	<b>Reporting obligations</b>	
10	Refusal of relator application . . . . .	7
11	Independent exercise of powers about prosecutions . . . . .	7
<b>Part 5</b>	<b>Miscellaneous</b>	
12	Service on Attorney-General . . . . .	8
13	Regulation-making power . . . . .	8



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# Attorney-General Act 1999

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

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Attorney-General Act 1999*.

#### 2 Commencement

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

### Part 2 Establishment of office

#### 3 The office of Attorney-General

- (1) There is to be an Attorney-General for the State.
- (2) The Attorney-General is—
  - (a) the Minister who is designated by the Governor as Attorney-General or Minister for Justice and Attorney-General; or
  - (b) if the Governor does not designate a Minister as Attorney-General or Minister for Justice and Attorney-General—the Minister.

## **4 Position of Attorney-General**

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

# **Part 3 Attorney-General's functions and powers**

## **Division 1 Principal functions**

### **5 Principal functions**

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.

## **Division 2 Powers**

### **6 General powers**

- (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.

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## 7 Specific powers

- (1) The Attorney-General may do the following—
  - (a) present an indictment;
  - (b) enter nolle prosequi on indictments;  
*Note—*  
See the Criminal Code, section 563.
  - (c) grant immunities from prosecution;
  - (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;
  - (e) enforce charitable and public trusts;
  - (f) bring proceedings to enforce and protect public rights;
  - (g) grant fiats to enable entities, that would not otherwise have standing, to start or continue proceedings in the Attorney-General's name—
    - (i) to enforce charitable and public trusts; and
    - (ii) to enforce and protect public rights;
  - (h) challenge the constitutional validity of legislation (including Commonwealth legislation) that affects the public interest in the State;
  - (i) appear before a court to help the court in appropriate cases;
  - (j) advise the Executive Council on judicial appointments;
  - (k) start proceedings for contempt of court in the public interest;
  - (l) apply for judicial review to correct errors by courts and tribunals.
- (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.
- (3) To avoid any doubt, it is declared that—

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- (a) the Attorney-General may not grant immunity from prosecution for a future act or omission; and
- (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).

## **Division 3                    General**

### **8                    Retention of traditional role**

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                    Additional functions and powers**

- (1) The Attorney-General also has functions and powers conferred on the Attorney-General under this Act or another Act.
- (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.

### **9A                  Relator application**

An application for the Attorney-General's fiat under section 7(1)(g) must be made to the Attorney-General in the way prescribed under a regulation.



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## Part 4 Reporting obligations

### 10 Refusal of relator application

- (1) This section applies if—
  - (a) an application is made for the Attorney-General to grant an entity a fiat to start or continue a proceeding in the Attorney-General's name to enforce or protect a public right; and
  - (b) the application is refused or the fiat is not granted within 60 days after the application was made.
- (2) The Attorney-General must—
  - (a) prepare a report outlining—
    - (i) the nature of the application; and
    - (ii) the breach of the public right alleged; and
    - (iii) the reasons for the refusal of the application or failure to grant the fiat; and
  - (b) table the report in the Legislative Assembly within 3 sitting days after—
    - (i) the refusal; or
    - (ii) if the application was not refused but the fiat was not granted within 60 days after the application was made, the end of the 60 days.

### 11 Independent exercise of powers about prosecutions

- (1) This section applies if the Attorney-General—
  - (a) presents an indictment against a person and—
    - (i) the person is acquitted; or
    - (ii) the person is convicted and any period for appealing against the conviction has ended and an appeal against the conviction has not been started; or

- (iii) the person is convicted and the person has appealed against the conviction and the appeal is finally decided or has otherwise ended; or
    - (iv) the prosecution process has otherwise ended; or
  - (b) enters a nolle prosequi on an indictment.
- (2) The Attorney-General must—
  - (a) prepare a report outlining the circumstances and reasons for the Attorney-General's decision to present the indictment or to enter the nolle prosequi; and
  - (b) table the report in the Legislative Assembly within 3 sitting days after the event mentioned in subsection (1) happens.
- (3) In this section—

*convicted* includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

## Part 5 Miscellaneous

### 12 Service on Attorney-General

- (1) This section applies if, under another Act, a document must or may be served on or given to the Attorney-General.
- (2) The service or giving of the document may be carried out by giving the document to the chief executive.

### 13 Regulation-making power

The Governor in Council may make regulations under this Act.