

Attorney-General Regulation 2021

Explanatory notes for SL 2021 No. 115

Made under the

Attorney-General Act 1999

General Outline

Short Title

Attorney-General Regulation 2021

Authorising law

Sections 9A and 13 of the *Attorney-General Act 1999*

Policy objectives and the reasons for them

The Attorney-General, as the State's first law officer, has the power to grant fiats to enable entities, that would not otherwise have standing, to start proceedings in the Attorney-General's name to enforce charitable and public trusts and to enforce and protect public rights. This power is stated in section 7(1)(g) of the *Attorney-General Act 1999* (the Act). Under section 9A of the Act, an application for the Attorney-General's fiat under section 7(1)(g) must be made in the way prescribed under a regulation.

The purpose of the *Attorney-General Regulation 2010* is to provide the Attorney-General with sufficient information to make a decision about the merits of an application for a fiat, and to ensure the Attorney-General is fully indemnified for any costs incurred in relation to the proceeding if the fiat is granted.

It prescribes the information and documents that must accompany an application for the Attorney-General's fiat. For example, the application must contain the applicant's contact details and the reasons why the fiat is being sought, and be accompanied by documents such as an opinion from counsel as to the likelihood of success of the proceeding, and an undertaking by the applicant or their solicitor to indemnify the Attorney-General and to pay all of the Attorney-General's costs of the proceeding.

The *Attorney-General Regulation 2010* is due to expire on 31 August 2021 under the *Statutory Instruments Act 1992*.

Achievement of policy objectives

The *Attorney-General Regulation 2021* (the Regulation) replaces the *Attorney-General Regulation 2010* and prescribes the way an application for the Attorney-General's fiat under section 7(1)(g) of the Act must be made.

While the *Attorney-General Regulation 2010* prescribes the requirements for an application for the Attorney-General's fiat for proceedings to enforce and protect public rights, the Regulation also prescribes the same requirements for an application for the Attorney-General's fiat to enforce charitable and public trusts.

The Regulation also omits the application of the prescribed requirements to an application to continue proceedings in the Attorney-General's name as this has been identified as beyond the regulation-making power under the Act. The requirements for such applications will be managed administratively.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The benefits of implementing the Regulation are to provide certainty as to the requirements for an application for the Attorney-General's fiat. There are no costs associated with implementing the Regulation.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation (OBPR) was consulted regarding the requirements under the *Queensland Government Guide to Better Regulation* (Guide). OBPR advised that, as the proposed amendment is administrative in nature and would not significantly add to the burden of regulation, no further regulatory impact analysis is required.