



# **Solicitor-General Act 1985**

**Reprinted as in force on 25 November 2008**

**Reprint No. 1B**

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Warning—This reprint is not an authorised copy**

# Information about this reprint

This Act is reprinted as at 25 November 2008. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

**Replacement reprint date** If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



## Queensland

# Solicitor-General Act 1985

## 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>Solicitor-General and staff</b>                               |      |
| 5               | Appointment of Solicitor-General . . . . .                       | 3    |
| 6               | Constitution Act s 14 not applicable . . . . .                   | 4    |
| 7               | Acting Solicitor-General . . . . .                               | 4    |
| 8               | Functions of Solicitor-General . . . . .                         | 5    |
| 9               | Authority to delegate . . . . .                                  | 6    |
| 10              | Staff . . . . .  | 6    |
| <b>Part 3</b>   | <b>Conditions of appointment</b>                                 |      |
| 11              | Remuneration . . . . .   | 7    |
| 12              | Leave entitlements . . . . .                                     | 7    |
| 13              | Pension entitlement . . . . .                                    | 7    |
| 14              | Severance entitlement . . . . .                                  | 8    |
| 15              | Dependants' pension entitlements . . . . .                       | 8    |
| 16              | Other employment curtailed . . . . .                             | 9    |
| 17              | Termination of Solicitor-General's appointment . . . . .         | 10   |
| <b>Part 4</b>   | <b>Miscellaneous provisions</b>                                  |      |
| 18              | Suspension of Judges' pension . . . . .                          | 10   |
| 19              | Rights of public servant appointed as Solicitor-General. . . . . | 11   |
| 20              | Administrative and financial control . . . . .                   | 11   |
| 21              | Regulations . . . . .  | 11   |
| <b>Endnotes</b> |  |      |
| 1               | Index to endnotes . . . . .                                      | 13   |
| 2               | Date to which amendments incorporated. . . . .                   | 13   |

Contents

---

|   |                                      |    |
|---|--------------------------------------|----|
| 3 | Key . . . . .                        | 14 |
| 4 | Table of reprints . . . . .          | 14 |
| 5 | Tables in earlier reprints . . . . . | 15 |
| 6 | List of legislation . . . . .        | 15 |
| 7 | List of annotations . . . . .        | 15 |

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# Solicitor-General Act 1985

[as amended by all amendments that commenced on or before 25 November 2008]

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

### Part 1 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.

### Part 2 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 recommendation of the Executive Council.
- (2) The Solicitor-General—

[s 6]

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- (a) shall be appointed for a term not exceeding 5 years determined by the Governor in Council and specified in the instrument of his or her appointment; and
  - (b) shall, subject to this Act, be eligible for reappointment upon the expiration of his or her term of appointment; and
  - (c) shall be appointed and hold office on the conditions prescribed and otherwise as the Governor in Council determines.
- (3) A person shall be eligible for appointment to the office of Solicitor-General if the person is a barrister entitled to practise in the Supreme Court of not less than 10 years standing.
- (4) Notification of the appointment of a person to the office of Solicitor-General shall be published in the Gazette.
- (5) The solicitor-general is to be appointed under this Act, and not under the *Public Service Act 1996*.

## **6 Constitution Act s 14 not applicable**

Section 14 of the *Constitution Act 1967* 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 and may at any time revoke that appointment.
- (2) A person appointed under subsection (1) shall be entitled to act as Solicitor-General until—
- (a) the appointment is revoked; or
  - (b) a person is appointed Solicitor-General under section 5; or

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- (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 appointment.
- (4) While a person continues to be entitled to act in the office of Solicitor-General the person 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 1996* while the person acts in that office unless immediately before the appointment the person was subject to that Act, in which case, while the person acts in that office, the person shall continue to be subject to that Act and shall be an officer of the public service.

## **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—
- (i) the Crown in right of the State;
  - (ii) the State;
  - (iii) a person suing or being sued on behalf of the State;
  - (iv) a body established by or under an Act;
  - (v) any other person or body where it is to the benefit of the State that the Solicitor-General 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.

[s 9]

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## **9 Authority to delegate**

- (1) The Solicitor-General may, from time to time by signed instrument of delegation delegate to any person or to the holder from time to time of a specified office (without naming a particular person) any of the Solicitor-General's functions under this Act or of the duties to be discharged in connection 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 the Solicitor-General 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 the Solicitor-General thinks fit.
- (4) Where a function or duty has been delegated—
  - (a) its discharge shall be in accordance with the instrument of delegation; and
  - (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 employed or assigned to assist the Solicitor-General in the discharge of the Solicitor-General's functions such number of persons as is necessary for the purpose.
- (2) The staff of the solicitor-general are to be employed under the *Public Service Act 1996*.

- (3) An officer of the public service 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 1996* while the officer continues to be so assigned.

## **Part 3**                      **Conditions of appointment**

### **11**        **Remuneration**

The Solicitor-General shall be entitled to be paid salary at a rate per annum that is 80% 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.
- (2) The *Judges (Pensions and Long Leave) Act 1957*, section 15, applies to the Solicitor-General as if a reference to a judge included a reference to the Solicitor-General.
- (3) However, for the purpose of applying section 15 of that Act for leave of absence of the Solicitor-General, the prescribed authority is—
  - (a) the Governor in Council, if the leave of absence is more than 1 month; or
  - (b) the Minister, if the leave of absence is 1 month or less.

### **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

[s 14]

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*Judges (Pensions and Long Leave) Act 1957* in its application to the person any period of service had by the person as Solicitor-General shall be added to and be deemed to be part of the period of service as a Judge except that where the person has been paid a lump sum under section 14 any such period of service before the person 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 death or removal from office by the Governor in Council on the ground of misbehaviour;

the person is entitled to be paid a lump sum accrued at a rate of 6% per annum of the remuneration payable to the Solicitor-General from time to time throughout the period or periods of his or her service as Solicitor-General.

#### **15 Dependants' pension entitlements**

Where the Solicitor-General has died in office leaving a spouse or children, the spouse or each child shall be entitled to pension benefits in accordance with the *Judges (Pensions and Long Leave) Act 1957* as if—

- (a) the Solicitor-General had been a Judge and the Solicitor-General's service as Solicitor-General had been service as a Judge; and
- (b) in respect of the spouse's entitlement—the maximum pension entitlement that, as a Judge, the Solicitor-General might have had under that Act would have been had upon attaining the age of 65 years.

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**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 or her profession as a barrister otherwise than in discharge of the Solicitor-General's functions.

(1A) However, if the Solicitor-General does so—

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

(b) the Solicitor-General shall not at any time—

(i) appear for the defence upon a charge brought by the Crown; or

(ii) act in any case to which the Crown is a party for any party other than the Crown; or

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

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

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

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

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

(a) for the whole of the time that the Solicitor-General in question serves in the office of Solicitor-General; or

(b) for the whole or any part of the term of an appointment of the Solicitor-General in question;

as expressed in the approval.

[s 17]

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## **17 Termination of Solicitor-General's appointment**

- (2) The Solicitor-General may resign office by signed writing delivered to the Minister.
- (3) The Governor in Council may terminate the appointment of the Solicitor-General, by removing the Solicitor-General 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 the Solicitor-General becomes bankrupt or takes advantage of the law in force relating to bankruptcy;
  - (b) if the Solicitor-General is absent from duty, except on leave of absence to which the Solicitor-General is entitled under conditions of his or her appointment or granted by the Minister, for 14 consecutive working days, or for 28 working days in any period of 12 months;
  - (c) if the Solicitor-General 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 the Solicitor-General personally or by post.

## **Part 4 Miscellaneous provisions**

### **18 Suspension of Judges' pension**

If a person in receipt of a pension under the *Judges (Pensions and Long Leave) Act 1957* is appointed to the office of Solicitor-General that pension ceases to be payable while the person serves in that office.

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## 19 Rights of public servant appointed as Solicitor-General

Where the Solicitor-General was, immediately before appointment to that office, an officer of the public service—

- (a) the Solicitor-General retains his or her existing and accruing rights; and
- (b) for the purpose of determining those rights, service as Solicitor-General shall be taken into account as if it were service in the public service; and
- (c) sections 12, 13, 14 and 15 do not apply to the Solicitor-General, or the Solicitor-General's spouse or children;

unless the Solicitor-General has duly resigned his or her appointment as an officer of the public service and has renounced the rights referred to in paragraph (a).

## 20 Administrative and financial control

- (1) The chief executive shall be the chief executive within the meaning of the *Public Service Act 1996* 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* the chief executive 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 or herself.
- (3) The Solicitor-General shall do all such things as the chief executive in proper performance of the chief executive's 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

[s 21]

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necessary or convenient for the administration of this Act or for achieving the objects and purposes of this Act.

## Endnotes

### 1 Index to endnotes

|   | Page |
|---|------|
| 2 Date to which amendments incorporated . . . . . | 13   |
| 3 Key . . . . .                                   | 14   |
| 4 Table of reprints . . . . .                     | 14   |
| 5 Tables in earlier reprints . . . . .            | 15   |
| 6 List of legislation . . . . .                   | 15   |
| 7 List of annotations . . . . .                   | 15   |

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 25 November 2008. Future amendments of the Solicitor-General Act 1985 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|---|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No. [X]                       |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| num    | = numbered                     | s       | = section                               |
| o in c | = order in council             | sch     | = schedule                              |
| om     | = omitted                      | sdiv    | = subdivision                           |
| orig   | = original                     | SIA     | = Statutory Instruments Act 1992        |
| p      | = page                         | SIR     | = Statutory Instruments Regulation 2002 |
| para   | = paragraph                    | SL      | = subordinate legislation               |
| prec   | = preceding                    | sub     | = substituted                           |
| pres   | = present                      | unnum   | = unnumbered                            |
| prev   | = previous                     |         |   |

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to   | Effective       | Reprint date    |
|-------------|-----------------|-----------------|-----------------|
| 1           | 1994 Act No. 29 | 1 July 1994     | 16 January 1995 |
| 1A          | 1996 Act No. 37 | 1 December 1996 | 9 January 1997  |

| Reprint No. | Amendments included | Effective        | Notes |
|-------------|---------------------|------------------|-------|
| 1B          | 2008 Act No. 59     | 25 November 2008 |       |

## 5 Tables in earlier reprints

| Name of table                     | Reprint No. |
|-----------------------------------|-------------|
| Changed citations and remade laws | 1           |
| Changed names and titles          | 1           |
| Obsolete and redundant provisions | 1           |
| Renumbered provisions             | 1           |

## 6 List of legislation

### **Solicitor-General Act 1985 No. 34**

date of assent 17 April 1985

ss 1–2 commenced on date of assent

remaining provisions commenced 16 December 1991 (1991 SL No. 172)

amending legislation—

### **Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 1**

date of assent 14 November 1990

commenced on date of assent

### **Anti-Discrimination Amendment Act 1994 No. 29 s 3 sch**

date of assent 28 June 1994

commenced 1 July 1994 (see s 2)

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Justice and Other Legislation Amendment Act 2008 No. 59 s 1, pt 28**

date of assent 25 November 2008

commenced on date of assent

## 7 List of annotations

### **Arrangement of Act**

s 3 om R1 (see RA s 36)

### **Interpretation**

s 4 om R1 (see RA s 7(1)(k))

def “**Director-General**” ins 1990 No. 80 s 3 sch 1

om R1 (see RA s 39)

def “**Minister**” sub 1990 No. 80 s 3 sch 1

om R1 (see RA s 39)

def “**Under Secretary**” om 1990 No. 80 s 3 sch 1

**Appointment of Solicitor-General**

s 5            amd 1994 No. 29 s 3 sch; 1996 No. 37 s 147 sch 2

**Acting Solicitor-General**

s 7            amd 1996 No. 37 s 147 sch 2

**Staff**

s 10          amd 1996 No. 37 s 147 sch 2

**Leave entitlements**

s 12          amd 2008 No. 59 s 129

**Termination of Solicitor-General's appointment**

s 17          amd 1994 No. 29 s 3 sch

**Administrative and financial control**

s 20          amd 1990 No. 80 s 3 sch 1; 1996 No. 37 s 147 sch 2