

# Crown Advocate Act 1979 No 59

[1979-59]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Crown Advocate Act 1979 No 59



New South Wales

An Act to provide for the appointment of a Crown Advocate and to define the duties and functions of the Crown Advocate.

## 1 Name of Act

This Act may be cited as the *Crown Advocate Act 1979*.

## 2 Definition

In this Act, except in so far as the context or subject-matter otherwise indicates or requires, **Crown Advocate** includes the deputy appointed to act for the Crown Advocate during the Crown Advocate's illness or absence from office.

## 3 Appointment of Crown Advocate

- (1) The Governor may appoint as Crown Advocate an Australian legal practitioner of at least 7 years' standing.
- (2) Any appointment pursuant to subsection (1) may be on such terms and conditions as the Governor determines.
- (3) (Repealed)
- (4) The office of Crown Advocate shall not be held by a Minister of the Crown.

## 4 Government Sector Employment Act 2013 not to apply

The office of Crown Advocate is a statutory office and the *Government Sector Employment Act 2013* does not apply to that office.

## 5 Term of office

- (1) Subject to this Act, the Crown Advocate shall hold office for such term, not exceeding 7 years, as is specified in the instrument of his or her appointment.
- (2) The Crown Advocate shall, if otherwise qualified, be eligible for re-appointment from time to time for such term, not exceeding 7 years, as is specified in the instrument of his or her re-appointment.

## **6 Vacation of office**

- (1) The Crown Advocate shall be deemed to have vacated the office of Crown Advocate:
  - (a) if the Crown Advocate is removed from office by the Governor pursuant to subsection (2),
  - (b) if the Crown Advocate becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration, allowances or estate for their benefit,
  - (c) if the Crown Advocate becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,
  - (d) if the Crown Advocate resigns the office by instrument in writing addressed to the Governor, or
  - (e) (Repealed)
  - (f) if the Crown Advocate engages (whether in New South Wales or elsewhere) during the Crown Advocate's term of office in any paid employment or in any remunerated practice of law outside the duties of the office.
  - (g) (Repealed)
- (2) The Governor may, for any cause which appears to the Governor to be sufficient, remove the Crown Advocate from office.
- (3) (Repealed)

## **7 Remuneration and leave**

- (1) The Crown Advocate is entitled to be paid:
  - (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Crown Advocate.
- (2) The leave which may be granted to the Crown Advocate shall be as the Minister may from time to time determine in respect of the Crown Advocate.

## **8 Deputy of Crown Advocate during Crown Advocate's illness or absence**

- (1) In the case of the illness or absence from office of the Crown Advocate, the Governor may appoint a deputy to act for the Crown Advocate during the Crown Advocate's

illness or absence.

- (2) Without affecting the generality of subsection (1), the Crown Advocate is, for the purposes of that subsection, absent from the office of Crown Advocate during any period that the Crown Advocate is appointed to act for the Solicitor General under section 2 (1) of the *Solicitor General Act 1969*.

## **9 Duties and functions of Crown Advocate**

The duties and functions of the Crown Advocate are:

- (a) to assist the Solicitor General in respect of the exercise or discharge by the Solicitor General of any powers, authorities, duties or functions delegated by the Attorney General under section 4 of the *Solicitor General Act 1969*, and
- (b) to advise and conduct proceedings on behalf of the Director of Public Prosecutions, with the consent of the Attorney General and at the request of the Director, and
- (c) whenever directed by the Attorney General, to act as counsel for the Crown in right of the State, for the Attorney General or for any other person in any criminal or civil proceedings or in any inquiry or commission, and
- (d) to advise the Attorney General in respect of any matter referred to the Crown Advocate by the Attorney General, and
- (e) to carry out such other duties and functions of counsel as the Attorney General directs, and
- (f) to carry out other duties and functions conferred or imposed on the Crown Advocate by or under this or any other Act.

## **10 Delegation of functions by Attorney General**

- (1) The Attorney General may, by instrument in writing, delegate to the Crown Advocate the exercise or discharge of such of the powers (other than this power of delegation), authorities, duties and functions that may be exercised or discharged by the Attorney General and as may be specified in the instrument of delegation, and may in like manner revoke wholly or in part any such delegation.
- (2) A delegation made under this section may be made subject to such conditions or such limitations as to the exercise or discharge of any of the specified powers, authorities, duties or functions delegated or as to time or circumstances as may be specified in the instrument of delegation.
- (3) Notwithstanding any delegation made under this section, the Attorney General may continue to exercise or discharge all or any of the powers, authorities, duties or functions delegated.

## **11 Exercise of delegated functions**

- (1) Any power, authority, duty or function, the exercise or discharge of which has been delegated under section 10, may, while the delegation remains unrevoked, be exercised or discharged in accordance with the terms of the delegation by the Crown Advocate.
- (2) Any act or thing done or suffered by the Crown Advocate, when acting in the exercise of a delegation made under section 10 and within the terms of the delegation, has the like force and effect as if the act or thing had been done or suffered by the Attorney General.
- (3) Where any power, authority, duty or function is exercised or discharged under a delegation made under section 10, and its exercise or discharge depends on the opinion, belief or state of mind of the Attorney General, that power, authority, duty or function may be exercised or discharged by the Crown Advocate on the opinion, belief or state of mind of the Crown Advocate.
- (4) No person is to be concerned to see or inquire into whether any act, matter or thing done or performed by the Crown Advocate when purporting to act under a delegation made under section 10 is or is not authorised by that delegation.