



AUSTRALIAN CAPITAL TERRITORY

Director of Public Prosecutions Act 1990

No. 22 of 1990

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AUSTRALIAN CAPITAL TERRITORY

Director of Public Prosecutions Act 1990

No. 22 of 1990

An Act to establish an Office of the Director of Public Prosecutions and for related purposes

[Notified in ACT Gazette S32: 25 June 1990]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Director of Public Prosecutions Act 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Attorney-General by notice in the *Gazette*.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“chief police officer” means the police officer who is responsible for the day to day administration and control of police services in the Territory;

“Commonwealth Act” means the *Director of Public Prosecutions Act 1983* of the Commonwealth;

“Commonwealth Director” means the Director of Public Prosecutions appointed under the Commonwealth Act;

“Director” means the Director of Public Prosecutions appointed under subsection 22 (1);

“general proceedings” means a prosecution, proceedings or appeal referred to in paragraph 6 (1) (a), (b), (c), (e), (f) or (g);

“Office” means the Office of the Director of Public Prosecutions established by subsection 4 (1);

“Territory authority” includes a person—

(a) who holds an office or position established by or under an Act; or

(b) who holds an appointment made under an Act.

(2) A reference in this Act to a member of the staff of the Office shall be read as a reference to—

(a) a member of the staff referred to in section 30;

(b) a person engaged under section 31; or

(c) a person whose services are made available to the Director in accordance with section 32.

(3) A provision in this Act that confers on the Director a function or power in relation to a prosecution or proceedings (including civil proceedings) instituted by another person applies in relation to such a prosecution or proceedings whether instituted before or after the commencement of this Act.

PART II—OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Division 1—Establishment and Control

Establishment

4. (1) There is established by this section an office by the name of the Office of the Director of Public Prosecutions.

(2) The Office shall consist of the Director and the members of the staff of the Office.

Control

5. The Director shall control the Office.

Division 2—Functions and Powers of Director

Functions

6. (1) The Director has the following functions:

- (a) in relation to indictable offences—
 - (i) instituting prosecutions on indictment or summarily;
 - (ii) conducting prosecutions on indictment or summarily, whether instituted by the Director or not;
- (b) in relation to the commitment of persons for trial in respect of indictable offences—
 - (i) instituting proceedings;
 - (ii) conducting proceedings, whether instituted by the Director or not;
- (c) in relation to summary offences—
 - (i) instituting prosecutions;
 - (ii) conducting prosecutions, whether instituted by the Director or not;
- (d) assisting a coroner in inquests and inquiries;
- (e) in relation to forfeiture orders or the recovery of pecuniary penalties—
 - (i) instituting proceedings;
 - (ii) conducting proceedings, whether instituted by the Director or not;

- (iii) co-ordinating or supervising the institution or conduct of proceedings;
 - (f) in relation to civil remedies in connection with specified matters—
 - (i) instituting proceedings;
 - (ii) conducting proceedings, whether instituted by the Director or not;
 - (iii) co-ordinating or supervising the institution or conduct of proceedings;on behalf of the Territory or a Territory authority;
 - (g) in relation to appeals in respect of matters referred to in paragraphs (a) to (f) (inclusive)—
 - (i) instituting or responding to appeals;
 - (ii) conducting appeals as appellant or respondent, whether instituted or responded to by the Director or not;
 - (h) functions that are conferred on the Director by or under another Act;
 - (j) such other functions as are prescribed by the regulations.
- (2) In paragraph (1) (f)—
- “specified matter” means—
- (a) the recovery or ensuring the payment of an amount of tax;
 - (b) a prosecution, whether instituted or conducted by the Director or not; or
 - (c) an alleged or suspected offence, whether a prosecution has been instituted or not.

Prosecutions on indictment

7. (1) The Director may prosecute by indictment in his or her official name indictable offences, but nothing in this subsection prevents the Director from prosecuting an offence in any other manner.

(2) Where the Director institutes a prosecution on indictment, the indictment shall be signed—

- (a) by the Director; or
- (b) for and on behalf of the Director, by a person authorised in writing by the Director to sign indictments.

(3) The Director may, with the consent of the person concerned, institute a prosecution of a person on indictment for an indictable offence in respect of which the person has not been examined or committed for trial.

(4) Where a person has been committed for trial in respect of an indictable offence, the Director may, whether or not the Director institutes a prosecution on indictment for the offence for which the person was committed for trial—

- (a) institute a prosecution of the person on indictment for an offence for which the person was examined but not committed for trial without the person having been committed for trial in respect of that offence; or
- (b) institute a prosecution of the person on indictment for any other offence founded on facts or evidence disclosed in the course of the committal proceedings without the person having been examined or committed for trial in respect of that offence.

(5) In any other case where the Director considers it appropriate to do so, the Director may institute a prosecution of a person on indictment for an indictable offence in respect of which the person has not been examined or committed for trial.

(6) Where a person is under commitment or has been indicted for an indictable offence, the Attorney-General or the Director may decline to proceed further in the prosecution of the offence and may cause the prosecution to be brought to an end.

(7) Where—

- (a) a person is under commitment but has not been indicted for an indictable offence;
- (b) the Director causes the prosecution for the offence to be brought to an end; and
- (c) the person is in custody;

the Director shall, by warrant signed by the Director, direct the discharge of the person from custody and the person shall be discharged accordingly.

Taking over the conduct of general proceedings

8. (1) The Director may take over the conduct of general proceedings instituted by another person (other than the Attorney-General) whether or not the person consents.

(2) The Director shall not take over the conduct of general proceedings instituted by the Attorney-General unless requested in writing by the Attorney-General to do so.

(3) Where the Director takes over the conduct of general proceedings instituted by another person, the Director may—

- (a) continue to conduct the proceedings in his or her official name; or
- (b) cause the proceedings to be brought to an end.

(4) Nothing in paragraph (3) (a) prevents the Director from continuing to conduct the general proceedings in the name of the person who instituted those proceedings.

Undertakings

9. (1) The Director may give to a person an undertaking that—

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in applicable proceedings;
- (b) the fact that the person discloses or produces a document or other thing in applicable proceedings; or
- (c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in applicable proceedings;

will not be used in evidence against the person.

(2) Where the Director has given to a person an undertaking under subsection (1)—

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the applicable proceedings;
- (b) the fact that the person discloses or produces a document or other thing in the applicable proceedings; or
- (c) any information, document or thing that is obtained as mentioned in paragraph (1) (c);

as the case may be, is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings in respect of the falsity of evidence given by the person.

(3) In subsections (1) and (2)—

“applicable proceedings” means—

- (a) a prosecution for an offence;
- (b) proceedings by way of a coronial inquest or inquiry;
- (c) proceedings in respect of a forfeiture order or the recovery of a pecuniary penalty; or
- (d) proceedings in respect of civil remedies in connection with a specified matter referred to in paragraph 6 (1) (f).

(4) The Director may give to a person an undertaking that—

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in interstate proceedings;
- (b) the fact that the person discloses or produces a document or other thing in interstate proceedings; or
- (c) any information, document or thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in interstate proceedings;

will not be used in evidence against the person in any civil or criminal proceedings.

(5) Where the Director has given to a person an undertaking under subsection (4)—

- (a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the interstate proceedings;
- (b) the fact that the person discloses or produces a document or other thing in the interstate proceedings; or
- (c) any information, document or other thing that is obtained as mentioned in paragraph (4) (c);

as the case may be, is not admissible in any civil or criminal proceedings.

(6) In subsections (4) and (5)—

“interstate proceedings” means—

- (a) a prosecution for an offence against a law of the Commonwealth or of a State or another Territory;

- (b) proceedings in respect of a coronial inquest or inquiry under a law of the Commonwealth or of a State or another Territory;
- (c) proceedings for the recovery of a pecuniary penalty under a law of the Commonwealth or of a State or another Territory; or
- (d) proceedings in respect of a forfeiture order under a law of the Commonwealth or of a State or another Territory.

(7) The Director may give to a person an undertaking that the person will not be prosecuted—

- (a) for a specified offence; or
- (b) in respect of specified acts or omissions that constitute or may constitute an offence.

(8) Where the Director has given an undertaking under subsection (7), no criminal proceedings shall be instituted in respect of the offence or the acts or omissions, as the case may be.

(9) An undertaking under subsection (7) may be given subject to such conditions (if any) as the Director considers appropriate.

Appeals

10. (1) The Director may, in respect of a prosecution or proceedings conducted by the Director, exercise such rights of appeal (if any)—

- (a) as are exercisable by the Attorney-General; or
- (b) in the case of a prosecution or proceedings the conduct of which the Director has taken over from a person other than the Attorney-General—as would have been exercisable by that person if the Director had not taken over the conduct of the prosecution or proceedings.

(2) The rights of appeal conferred on the Director under subsection (1) are in addition to such rights of appeal (if any) as are exercisable by the Director otherwise than under that subsection.

(3) In this section—

“right of appeal” includes—

- (a) a right to apply for a review or rehearing; and
- (b) a right to institute proceedings in the nature of an appeal or of an application for a review or rehearing.

Representation of Territory and Territory authorities

11. (1) For the purposes of the performance of the function referred to in paragraph 6 (1) (e), the Director may institute proceedings in the name of the Territory or a Territory authority.

(2) For the purposes of the performance of a function referred to in paragraph 6 (1) (f), the Director may take civil remedies in the name of the Territory or a Territory authority.

(3) Where a Territory authority is a party to a proceeding in respect of a matter—

- (a) that has arisen out of or is connected with the performance of a function of the Director; or
- (b) that may result in the performance by the Director of such a function;

the Director, or a person who is entitled to represent the Director under section 16, may act as counsel or solicitor for the authority.

Directions and guidelines by Director

12. (1) The Director may, by instrument, give directions or furnish guidelines in relation to prosecutions or proceedings to—

- (a) the chief police officer;
- (b) a person authorised under subsection 5 (4) of the *Government Solicitor Act 1989*; or
- (c) any other person—
 - (i) who conducts investigations in relation to offences;
 - (ii) who institutes or conducts prosecutions for offences;
 - (iii) who institutes or conducts proceedings for the recovery of pecuniary penalties; or
 - (iv) who institutes or conducts proceedings for civil remedies in connection with a specified matter referred to in paragraph 6 (1) (f).

(2) Without limiting the generality of subsection (1), the Director may specify in a direction or guideline an offence or class of offences which is to be referred to the Director for the purpose of instituting or conducting a prosecution.

(3) A direction or guideline may be of a general nature or in respect of a particular case.

(4) The Director—

- (a) shall give to the Attorney-General a copy of each direction given or guideline furnished; and
- (b) shall include in a report pursuant to subsection 34 (1)—
 - (i) a copy of each direction given or guideline furnished during the period to which the report relates; and
 - (ii) a copy of each direction given or guideline furnished in force at the end of that period.

Provision of information to Director

13. Where general proceedings have been instituted by a person other than the Director and—

- (a) the Director informs the person that the Director is considering taking over the conduct of the proceedings;
- (b) the Director takes over the conduct of the proceedings; or
- (c) the person requests the Director to take over the conduct of the proceedings;

the person shall furnish to the Director—

- (d) a full report of the circumstances of the matter;
- (e) a copy of the statements of the witnesses (if any);
- (f) the material documents (if any) in the possession of the person; and
- (g) such other information as the Director requires.

Police assistance

14. (1) Where the Director—

- (a) is considering instituting or taking over, or has instituted or taken over, the conduct of a prosecution for an offence; and
- (b) is of the opinion that a matter connected with or arising out of the offence requires further investigation;

the Director may in writing request the chief police officer for the assistance of police officers in the investigation of that matter.

(2) The chief police officer shall, as far as practicable, comply with a request under subsection (1).

Obligation to inform court

15. (1) Where the Director takes over the conduct of general proceedings instituted by another person, the Director shall, as soon as practicable—

- (a) by notice in writing, inform the registrar or other proper officer of the court in which the proceedings are to be heard; or
- (b) if the proceedings are being heard—in such manner as the Director thinks appropriate, inform the judge or magistrate;

that the Director has taken over the conduct of the proceedings.

(2) A failure by the Director to comply with subsection (1) does not affect the Director's powers in relation to the proceedings.

Appearances by Director

16. Where, for the purposes of the performance of his or her functions, the Director is required to appear before a court, the Director may appear in person or may be represented by—

- (a) a member of the staff of the Office—
 - (i) who is a barrister and solicitor within the meaning of the *Legal Practitioners Act 1970*; or
 - (ii) who is entitled to practise in that court by virtue of section 16 of the Commonwealth Act;
- (b) a person who is authorised under subsection 5 (4) of the *Government Solicitors Act 1989*; or
- (c) any other person who is entitled to practise in that court.

Delegation

17. The Director may by instrument delegate the performance or exercise of a function or power of the office of Director to a member of the staff of the Office.

Additional powers

18. The Director has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

Division 3—Attorney-General**Consultation**

19. (1) The Director shall, if requested to do so by the Attorney-General, consult with the Attorney-General with respect to matters relating to the performance or exercise by the Director of his or her functions or powers.

(2) The Attorney-General shall, if requested to do so by the Director, consult with the Director with respect to matters relating to the performance or exercise by the Director of his or her functions or powers.

Directions and guidelines by Attorney-General

20. (1) The Attorney-General may by instrument give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of his or her functions or powers.

(2) Without limiting the generality of subsection (1), a direction or guideline may relate to—

- (a)** the circumstances in which the Director should institute or conduct prosecutions for offences; or
- (b)** the circumstances in which undertakings should be given under section 9.

(3) A direction or guideline shall be of a general nature and shall not refer to a particular case.

(4) The Attorney-General shall not give a direction or furnish a guideline unless he or she has consulted with the Director.

(5) Where the Attorney-General gives a direction or furnishes a guideline, the Attorney-General shall—

- (a)** as soon as practicable after giving the direction or furnishing the guideline, cause a copy of the direction or guideline to be published in the *Gazette*; and
- (b)** within 15 sitting days after the direction or guideline has been published in the *Gazette*, cause a copy of the direction or guideline to be laid before the Legislative Assembly.

Preservation of functions and powers

21. Nothing in this Act shall be taken to affect the performance or exercise by the Attorney-General of a function or power conferred on the Attorney-General by or under a law of the Territory.

PART III—DIRECTOR AND MEMBERS OF THE STAFF OF THE OFFICE

Division 1—Director

Appointment

22. (1) The Executive may by instrument appoint a person to be the Director.

(2) Subject to this Act, the Director shall be appointed for the period (not exceeding 7 years) specified in the instrument of appointment but is eligible for re-appointment.

(3) Subject to this Act, the Director holds office on such terms and conditions as are—

- (a)** determined by the Executive; and
- (b)** specified in the instrument of appointment.
- (4)** A person shall not be appointed as the Director unless—
 - (a)** the person is a barrister and solicitor within the meaning of the *Legal Practitioners Act 1970* and has been for not less than 5 years; or
 - (b)** the person is admitted as a legal practitioner in a State or another Territory and has been for not less than 5 years.
- (5)** A person shall not be appointed as the Director—
 - (a)** if the person has attained the age of 65 years; or
 - (b)** for a period that extends beyond the date on which the person will attain the age of 65 years.

(6) Notwithstanding subsection (4), the Executive may appoint the Commonwealth Director as the Director.

Remuneration and allowances

23. (1) The Director shall be paid such remuneration and allowances as are prescribed.

- (2)** Subsection (1) does not apply in relation to—
 - (a)** remuneration if there is in force a determination relating to the remuneration to be paid to the Director; or
 - (b)** an allowance of a particular kind if there is in force a determination relating to an allowance of that kind to be paid to the Director.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal.

(4) This section does not apply if the Commonwealth Director holds the office of Director.

Leave of absence

24. (1) The Attorney-General may grant leave of absence to the Director on such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

(2) Where—

- (a) the Commonwealth Director holds the office of Director; and
- (b) the Commonwealth Director is granted leave of absence under the Commonwealth Act;

the Director shall be taken to have been granted leave of absence under subsection (1) for the same period.

Preclusion from other employment

25. (1) The Director—

- (a) shall not engage in practice as a legal practitioner; and
- (b) shall not, without the consent of the Attorney-General, engage in paid employment;

other than in performance of the functions of the office of Director.

(2) Subsection (1) does not apply where—

- (a) the Commonwealth Director holds the office of Director; and
- (b) the Director is engaged in the performance of the functions of the office of Commonwealth Director.

Disclosure of interests

26. The Director shall give notice in writing to the Attorney-General of all direct or indirect pecuniary interests that he or she has or acquires—

- (a) in a business, whether in the Territory or elsewhere; or
- (b) in a body corporate carrying on such a business.

Resignation

27. The Director may resign his or her office by writing signed by the Director and delivered to the Attorney-General.

Termination of appointment

28. (1) The Attorney-General may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(2) The Attorney-General shall terminate the appointment of the Director if the Director—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment for their benefit;
- (b) is absent, without leave under section 24, for 14 consecutive days or for 28 days in any 12 months;
- (c) engages in practice as a legal practitioner other than in performance of the functions of the office of Director;
- (d) engages in paid employment without the consent of the Attorney-General other than in performance of the functions of the office of Director; or
- (e) fails, without reasonable excuse, to comply with his or her obligations under section 26.

(3) This section does not apply if the Commonwealth Director holds the office of Director.

Acting Director

29. (1) The Attorney-General may appoint a person to act as Director—

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the Director is absent from duty or from the Territory or is for any other reason unable to perform the functions of the office of Director;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person shall not be appointed under subsection (1) unless the person is eligible for appointment under section 22.

(3) Subsections (1) and (2) do not apply if—

- (a) the Commonwealth Director holds the office of Director; and

- (b) a person is appointed under the Commonwealth Act to act in the office of Commonwealth Director during an absence or unavailability of the Commonwealth Director;

but a person so appointed may act in the office of Director during that absence or unavailability.

(4) Anything done by or in relation to a person purporting to act under subsection (1) or (3) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Division 2—Members of the Staff

Staff

30. The staff of the Office shall be—

- (a) public servants; or
- (b) if the Commonwealth Director holds the office of Director—public servants, members of the staff of the Commonwealth Office and persons employed under subsection 27 (3) of the Commonwealth Act.

Consultants etc.

31. (1) The Director may, on behalf of the Territory, engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Director.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are as the Director, with the approval of the Attorney-General, in writing determines.

Other staffing arrangements

32. The Director may make an arrangement with an administrative head or other appropriate person for the use of the services of the staff or facilities of an administrative unit of the Public Service or of a Territory authority.

PART IV—MISCELLANEOUS

Preservation of rights

33. Nothing in this Act shall be taken to affect the right of a person to institute general proceedings.

Annual report

34. (1) The Director shall, as soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report with respect to the operations of the Office during the year that ended on that date.

(2) The Attorney-General shall cause a copy of a report furnished to him or her to be laid before the Legislative Assembly within 15 sitting days after the report is received by him or her.

Regulations

35. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Presentation speech made in Assembly on 31 May 1990.]