

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable Lionel Bowen,  
Deputy Prime Minister and Attorney-General.)



DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1985

GENERAL OUTLINE

This is a Bill to amend the Director of Public Prosecutions Act 1983 (the Principal Act) so as to confer additional functions on the Director of Public Prosecutions ("DPP").

In particular, the Bill will permit the DPP to pursue, where appropriate, civil remedies on behalf of the Commonwealth and its authorities at the stage when he is considering or proposing to prosecute.

The Bill requires that a matter in respect of which civil remedies are pursued by the DPP be connected with or arise out of prosecutions (actual, proposed, or under consideration) by the DPP or a person other than the DPP and provision is made to include cases where the DPP could exercise his powers to take over or to carry on, prosecutions.

The Bill also removes the need for the DPP to be authorised by instrument from the Attorney-General before pursuing civil remedies for the recovery of any tax, duty, charge or levy.

In addition, the Bill will enable the DPP to co-ordinate or supervise the taking of such civil remedies.

The Bill also provides a Court with a discretion to prohibit or restrict the publication of evidence or other information identifying a party or witness in a civil proceeding before that Court instituted, co-ordinated or supervised by the Director of Public Prosecutions. This discretion is to be exercised in order to prevent prejudice to the administration of justice.

The Bill provides for a report by the DPP after 2 years of operation of its provisions for the purpose of review by government of the new functions.

Additionally the Bill confers on the DPP the function of carrying on, where requested to do so by the Attorney-General, prosecutions instituted by the Attorney-General.

The financial implications of the Bill are that substantial increases in staff and resources for the DPP's Office, the Australian Taxation Office and the Australian Government Solicitor will be needed to enable these extra functions to be carried out (about \$3 million this fiscal year). However, costs should be more than offset by potential gains.

## NOTES ON CLAUSES

### Clause 1 - Short title

Formal

### Clause 2 - Commencement

The legislation will come into operation on a date to be fixed by Proclamation.

### Clause 3 - Functions of DPP

This clause amends section 6 of the Principal Act which states the functions of the DPP.

- . Paragraph 3(1)(a) inserts new paragraph 6(1)(baa) conferring upon the DPP the function of carrying on, where requested to do so in writing by the Attorney-General, prosecutions on indictment for indictable offences against the laws of the Commonwealth that have been instituted by the Attorney-General.
- . Paragraph 3(1)(b) inserts new paragraph 6(1)(fa) enabling the DPP to take, or to co-ordinate or supervise the taking of, civil remedies on behalf of the Commonwealth and its authorities for the recovery of amounts of tax.
- . Paragraph 3(1)(c) amends existing paragraph 6(1)(h) and is consequential upon the part of paragraph 3(1)(c) below defining "relevant matter".
- . Paragraph 3(1)(d) re-writes existing sub-section 6(7) in consequence of paragraph 3(1)(b) above and also inserts new sub-section 6(8) which

- defines "amount of tax" for the purposes of section 6 to include any tax, duty, charge or levy;
- defines "relevant matter" for the purposes of the new civil remedies function conferred by paragraph 3(1)(a) above so that the function is to be exercised in respect of matters connected with or arising out of prosecutions (actual, proposed or under consideration) by the DPP or a person other than the DPP. Provision is made to include cases where the DPP could exercise his powers to take over or to carry on, prosecutions.
- . New sub-section 6(9) is inserted to deem a matter to continue to be a relevant matter whilst the DPP continues to pursue civil remedies in respect thereof, and is thus a consequential provision.
- . Sub-clause 3(2) provides for the DPP to furnish to the Attorney-General after 2 years of operation of the Bill, a report for the purpose of a review of the civil remedy functions in new paragraph 6(1)(fa) as above.
- . Clause 4 - Powers of the DPP - this clause relates to the powers of the DPP and is consequential upon the insertion of new paragraph 6(1)(fa) as above.
- . Clause 5 - Prohibition of publication of evidence etc. in certain civil proceedings - this clause inserts a new section 16A into the Principal Act. This section confers on a Court a discretion to prohibit or restrict the publication of evidence or other information identifying a party or witness in a civil proceeding before that Court instituted, co-ordinated or supervised by the Director of Public Prosecutions. The Court's discretion is to be exercised in order to prevent prejudice to the administration of justice.



