

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Director of Public Prosecutions Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Honourable Gareth Evans,
Attorney-General)

OUTLINE

The purpose of this Bill is to establish an office of Director of Public Prosecutions to take over the functions of the Crown Solicitor's Office in regard to prosecution of Commonwealth offences, but a considerable degree of flexibility will be given to the Director as to how and when this will be done.

The Director will also take over some of the functions of the Attorney-General in relation to prosecutions but the Director will be made subject, in the performance of his functions, to directions and guidelines of the Attorney-General.

The Bill will not affect the operation of the Special Prosecutors Act 1982 or the existing provisions of the Judiciary Act 1903 providing for the appointment of persons in relation to the conduct of prosecutions on indictment.

The Director would be a statutory officer assisted by a staff of public service officers, by consultants and by officers seconded from other authorities. He will be able to call on the Australian Federal Police for assistance as appropriate.

NOTES ON CLAUSES

- Clause 1 - This states the title of the Bill.
- Clause 2 - The date of operation is dealt with.
- Clause 3 - Interpretation.
- Clause 4 - Extension of the Act to all external Territories.
- Clause 5 - Establishment of the Office of the Director of Public Prosecutions consisting of the Director of Public Prosecutions and staff.
- Clause 6 - This clause states the functions of the Director as follows:
to institute or carry on prosecutions on indictment, committal proceedings, prosecutions for summary offences;
to assist a coroner appointed under Commonwealth law;
to conduct or supervise proceedings for recovery of pecuniary penalties in matters specified;
to take or supervise the taking of civil remedies in matters specified;
to consent to prosecutions in matters specified;
to appear in extradition proceedings;
to conduct prosecutions for State offences where, with the consent of the Attorney-General, the Director holds an appointment to do so;
to perform such other functions as may be conferred by law or prescribed.
- Clause 7 - The Director is required to consult with the Attorney-General as requested and vice versa.
- Clause 8 - The Director is subject to directions and guidelines as to his functions and powers given by the Attorney-General after consultation. Such guidelines are to be gazetted and may deal with particular cases.
- Clause 9 - This clause states the powers of the Director:
to prosecute by indictment in his official name signed by himself or a person authorized by him;
to take over prosecutions on indictment other than prosecutions by the Attorney-General or a Special Prosecutor;
to decline to proceed with a prosecution;
to take over committal proceedings and prosecutions for summary offences;
to give undertakings that answers or disclosures given in proceedings taken by the Director will not be used in evidence against the person giving them;
to institute proceedings in the name of the Commonwealth or any of its authorities for the recovery of pecuniary penalties;
to take, in the name of the Commonwealth or any of its authorities, civil remedies in respect of matters connected with or arising out of prosecutions conducted by the Director.

- Clause 10 - This clause preserves certain powers of the Attorney-General, Special Prosecutors and persons appointed by the Governor-General in relation to indictable offences, and the rights of persons to institute or carry on committal proceedings or prosecutions for summary offences, or proceedings for the recovery of pecuniary penalties or to take civil remedies for the Commonwealth.
- Clause 11 - This clause enables the Director to give written directions and guidelines to the Australian Federal Police Commissioner, the Crown Solicitor and his Deputies and other persons investigating or prosecuting Commonwealth offences. These directions or guidelines may deal with matters such as offences or classes of offence which are to be referred to the Director for the conduct of prosecutions. They may also deal with particular cases.
- Clause 12 - This clause requires persons prosecuting to furnish relevant material and information to the Director when the Director takes over or is considering taking over the prosecution, or where the person considers that the Director should take over or carry on the prosecution.
- Clause 13 - This clause provides that the Director may request the assistance of the Australian Federal Police Commissioner in relation to the investigation of matters related to prosecutions instituted, taken over or being carried on by the Director or where the Director is considering so acting.
- Clause 14 - This clause provides for the Director to inform the relevant Court by written notice or otherwise, where he takes over, or decides to carry on a prosecution or proceeding.
- Clause 15 - This clause permits the Director to appear personally or to be represented by legal practitioners in proceedings or inquests.
- Clause 16 - This clause provides for rights of practise, in Federal, State and Territory Courts for the Director and legal practitioners on his staff, in their official capacities.
- Clause 17 - This clause provides for members of the Director's staff, with the Attorney-General's consent, to hold appointments under State law to prosecute State offences.

- Clause 18 - This clause provides for the appointment of the Director by the Governor-General, for a period not exceeding 7 years.
- Clause 19 - Remuneration and allowances of the Director are dealt with.
- Clause 20 - Granting of leave of absence by the Attorney-General to the Director is dealt with.
- Clause 21 - Resignation of the Director is dealt with.
- Clause 22 - This clause prohibits the Director from engaging in outside legal practice or (without the Attorney-General's consent) other paid employment.
- Clause 23 - Termination of the Director's appointment is dealt with.
- Clause 24 - Disclosure by the Director of direct and indirect pecuniary interests in any businesses is dealt with.
- Clause 25 - This clause requires the Director to make an oath or affirmation of office before performing his duties.
- Clause 26 - Appointment of an Acting Director in certain circumstances is provided for.
- Clause 27 - Provides that the staff of the Director's Office are to be appointed or employed under the Public Service Act 1922 and gives the Director the powers of a Public Service Permanent Head in that regard.
- Clause 28 - Engagement of consultants and others is dealt with.
- Clause 29 - Provides for the secondment to assist the Director of Commonwealth officers and employees, and State personnel by arrangement.
- Clause 30 - Provides for the making of arrangements between the Attorney-General and the appropriate State Minister to make available State personnel to perform services for the Director.
- Clause 31 - This clause enables the Director to delegate most of his powers under the Act to members of the staff of his Office by instrument in writing, but without preventing exercise of those powers by the Director himself.
- Clause 32 - This clause provides for the making of arrangements between the Director and the Crown Solicitor or any of his Deputies to perform or exercise in a State or Territory the Director's functions and powers under the Act. Such arrangements are to be gazetted.

Clause 33 - Provides for the making of an Annual Report by the Director to the Attorney-General for presentation to Parliament.

Clause 34 - This provides for the making of necessary regulations.