

WESTERN AUSTRALIA

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

(No. 12 of 1991)

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WESTERN AUSTRALIA

DIRECTOR OF PUBLIC PROSECUTIONS ACT

No. 12 of 1991

AN ACT to provide for the appointment of an independent Director of Public Prosecutions with functions in respect of the bringing and conduct of proceedings for offences and related matters, and for connected and incidental purposes.

[Assented to 21 June 1991.]

The Parliament of Western Australia enacts as follows:

PART 1 · PRELIMINARY

Short title

1. This Act may be cited as the *Director of Public Prosecutions Act 1991*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation

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

“Deputy Director” means the holder of the office of Deputy Director of Public Prosecutions created by section 4 and, except in clauses 1 (1), 2, 3 and 6 of Schedule 1, a person acting in that office under section 8;

“Director” means the holder of the office of Director of Public Prosecutions created by section 4 and, except in clauses 1 (1), 2, 3 and 6 of Schedule 1, a person acting in that office under section 8;

“legal practitioner” means a person admitted and entitled to practise as a legal practitioner under the *Legal Practitioners Act 1893*;

“offence” means an offence—

- (a) against a law of this State;
- (b) against a law of the Commonwealth but limited to an offence to which particular proceedings relate where the Director is authorized to bring or conduct those proceedings; and
- (c) against a law of the United Kingdom if the offence is triable in this State;

“public service” means the Public Service within the meaning of section 20 of the *Public Service Act 1978*.

PART 2—OFFICE OF DIRECTOR, AND DEPUTY DIRECTOR, OF PUBLIC PROSECUTIONS

Office of Director and Deputy Director

4. (1) There are hereby created an office of Director of Public Prosecutions and an office of Deputy Director of Public Prosecutions.

(2) The offices so created are not offices in the public service.

Appointments

5. (1) The Governor shall appoint a person to the office of Director and may appoint a person to the office of Deputy Director.

(2) A person so appointed must be a legal practitioner who is under 65 years of age, and in the case of the Director must be a practitioner of not less than 8 years' standing and practice.

Deputy Director may perform Director's functions

6. Subject to the direction and control of the Director, the Deputy Director may perform the functions of the Director under this Act.

Director's tenure, salary, etc.

7. (1) Schedule 1 has effect with respect to the tenure, salary and conditions of service of the Director and the Deputy Director and the other matters provided for in that Schedule.

(2) References in Schedule 1 to the Director include references to the Deputy Director.

Acting appointments

8. (1) The Governor may appoint a legal practitioner who is eligible for appointment as Director to act in the office of Director—

(a) during a vacancy in that office; or

(b) during any period or during all periods when the person holding that office, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State.

(2) If an occasion for an appointment under subsection (1) arises but no appointment is made, the Deputy Director (but not an acting Deputy Director) shall act in the office of Director.

(3) An appointment under this section—

- (a) may be made at any time and may be terminated at any time by the Governor;
- (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(4) The Governor may appoint a legal practitioner who is eligible for appointment as Deputy Director to act in the office of Deputy Director during any period or during all periods when the person holding that office, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State.

(5) The Governor may, subject to this Act, determine the terms and conditions of appointment, including salary and other entitlements, of a person acting under this section.

(6) The validity of anything done by or in relation to a person purporting to act under this section shall not be called in question on the ground that—

- (a) the occasion for an appointment under this section had not arisen;
- (b) there is a defect or irregularity in the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Judicial notice of appointment and signature

9. All courts and persons acting judicially shall take judicial notice—

- (a) of the fact that a person holds or held the office of Director or Deputy Director; and
- (b) of the official signature of a person who holds or has held the office of Director or Deputy Director.

PART 3—FUNCTIONS OF DIRECTOR**General principles relating to functions**

10. (1) The functions of the Director—

- (a) are performed on behalf of the Crown but may be performed in the name of the office of the Director;
- (b) do not affect any right that a person has to bring or conduct any proceedings, unless the Director takes over those proceedings under this Part.

(2) Where any aspect of the investigation and prosecution of an offence is the subject of a national co-operative scheme or of an inter-government arrangement, the Director shall have regard to and seek to give effect to that scheme or arrangement, its objectives and the policies being pursued under it, in the performance of the functions of the Director.

Prosecutions on indictment

11. (1) It is a function of the Director—

- (a) to bring and conduct prosecutions on indictment for offences;
and
- (b) to take over a prosecution on indictment for an offence brought by another person.

(2) The function referred to in subsection (1) includes the bringing and conduct of committal proceedings or a preliminary hearing under the *Justices Act 1902* relating to an offence.

Summary prosecutions

12. It is a function of the Director—

- (a) to bring and conduct prosecutions, not on indictment, for indictable offences, including the summary trial of indictable offences; and
- (b) to take over a prosecution, not on indictment, for an indictable offence brought by another person, including the summary trial of an indictable offence, or with the consent of that person to act as solicitor or counsel for that person in respect of that prosecution,

and a function under this section may be performed by the Director notwithstanding any other written law.

Appeals

13. It is a function of the Director—

- (a) to bring and conduct, or to conduct as respondent, any appeal or further appeal relating to a prosecution referred to in section 11 (1) or 12, or to request and conduct a reference under section 693A of *The Criminal Code*; and
- (b) where a prosecution has been brought by another person and an appeal or further appeal relating to that prosecution has been brought—
 - (i) to take over the appeal from that person, whether as appellant or respondent; or
 - (ii) with the consent of that person, to act as solicitor or counsel for that person in respect of that appeal.

Extradition

14. It is a function of the Director to take steps to secure the extradition to Western Australia of any person required to answer any charge of an offence or to serve a sentence imposed in Western Australia.

Inquests

15. It is a function of the Director—

(a) to participate in proceedings under the *Coroners Act 1920*;

and

(b) with the concurrence of a coroner, to assist a coroner,

if the Director considers that in a particular case such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of that case.

Recovery of penalty, etc.

16. (1) Where the Director has conducted a prosecution or appeal and as a result of the proceedings a person becomes subject to a pecuniary penalty or forfeiture or other order, it is a function of the Director to take any further proceedings that may be required to recover the penalty or enforce the forfeiture or order.

(2) It is a function of the Director—

(a) to administer any scheme directed to the recovery or forfeiture of the proceeds of crime or of benefits arising from crime; and

(b) without limiting paragraph (a), to be the officer principally assisting the Minister to whom the administration of the *Crimes (Confiscation of Profits) Act 1988* is committed in the administration of that Act.

Assistance to officers of other jurisdictions

17. (1) It is a function of the Director to provide assistance in this State in respect of a corresponding function of a corresponding public officer.

(2) In subsection (1)—

“corresponding function” means a function similar to any function of the Director; and

“corresponding public officer” means a public officer having corresponding functions in the jurisdiction of the Commonwealth, another State or a Territory or of another country.

Additional and related functions

18. (1) It is a function of the Director to do anything that is prescribed.

(2) It is a function of the Director—

(a) to bring, intervene in, and conduct any proceedings that are connected with or arise out of a function of the Director; or

(b) otherwise to do anything that is incidental or conducive to the performance of a function of the Director.

(3) In subsection (1) “prescribed” means prescribed by regulations.

Further provisions as to taking over of matters

19. (1) For the purposes of sections 11 (1) (b), 12 and 13 (b) the Director takes over a prosecution or appeal by giving notice in writing that the Director has taken over the matter—

- (a) to the person who would otherwise be responsible for the matter as complainant, informant, appellant or respondent, as the case may be; and
- (b) if the prosecution or appeal has been initiated in a court, to the clerk or registrar of that court,

and on compliance with this subsection, the Director becomes the prosecutor, appellant or respondent, as the case may be.

(2) An irregularity or defect in a notice under subsection (1) does not affect its validity.

(3) Nothing in this Part shall be read as preventing the exercise by the Director of any power or discretion to discontinue or terminate a prosecution or appeal that has been taken over under this Part.

Powers of Director

20. (1) The Director has power to do all things that are necessary or convenient to be done for the purpose of performing the functions of the Director.

(2) Without limiting subsection (1), the Director may for the purpose referred to in that subsection—

- (a) exercise any power, authority or discretion relating to the investigation and prosecution of offences that is vested in the Attorney General, whether by a written law or otherwise;
- (b) where under a written law the consent of the Attorney General is required to a prosecution for an offence, give that consent;

- (c) grant an indemnity from prosecution, whether on indictment or otherwise;
- (d) give an undertaking to a person that an answer given or a statement or disclosure made by that person will not be used in evidence against that person.

(3) The provisions of this Act do not derogate from any function of the Attorney General.

Appearance by Director

21. In any proceedings to which he is a party or in respect of which he otherwise has a function under this Part, the Director may appear in person or be represented—

- (a) by a legal practitioner; or
- (b) where the proceedings are in a court of petty sessions or the Children's Court, by a legal practitioner or a police officer.

Director may request information

22. (1) The Director may in accordance with subsection (2) make a request in writing to an official, including the Commissioner of Police and a member of the police force, whose functions include prosecuting for or investigating offences.

(2) Where the Director has brought or taken over, or is considering whether to bring or take over, a prosecution or appeal in relation to an offence or suspected offence a request may be made—

- (a) for any specified information, document or material or any specified kind of information, document or material or for all relevant information, documents and material to be furnished to the Director; or
- (b) for the provision of assistance including the carrying out of an investigation or further investigation of any matter,

in relation to that offence or suspected offence.

(3) An official to whom a request is made under this section shall comply with it so far as it is practicable to do so, and notwithstanding any other written law.

(4) In subsection (2) "document" includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored.

Director may limit powers of other officials

23. (1) The Director may give directions in writing to an official referred to in section 22 (1) directing—

- (a) that a prosecution for a specified offence or class of offences shall not be brought by that official; and
- (b) that all matters relating to any such offence shall be referred to the Director,

and an official to whom a direction is so given shall comply with the direction.

(2) A direction under subsection (1)—

- (a) may only be given in respect of an indictable offence, including an indictable offence triable summarily; and
- (b) may at any time be amended or revoked by the Director.

(3) The Director may recommend to an official referred to in section 22 (1) that proceedings be instituted in respect of an offence.

Director may issue guidelines

24. (1) The Director may—

- (a) issue a statement of guidelines intended to be followed in the performance of the Director's functions;
- (b) at any time issue a further statement amending, replacing, or revoking a statement under paragraph (a).

(2) A statement issued under subsection (1) shall be published in the *Gazette*.

(3) An act or omission of the Director or a person acting on the Director's behalf shall not be called in question or held to be invalid on the grounds of a failure to comply with any statement issued under this section.

PART 4—RELATIONSHIP WITH ATTORNEY GENERAL**General freedom from direction**

25. Except as provided in this Part, the Director is not subject to direction by the Attorney General or any other person in the performance of the Director's functions.

Consultation

26. (1) The Director shall, if requested to do so by the Attorney General, consult with the Attorney General with respect to matters concerning the performance of the Director's functions.

(2) The Attorney General shall, if requested to do so by the Director, consult with the Director with respect to matters concerning the performance of the Director's functions.

Directions by Attorney General

27. (1) The Attorney General may, after consultation with the Director, issue to the Director directions as to the general policy to be followed in the performance of any function of the Director.

(2) A direction may not be issued under subsection (1) in respect of a particular case.

(3) The Director may—

- (a) in respect of any function, request the Attorney General to issue directions under subsection (1) concerning that function;
- (b) in respect of a particular case, request the Attorney General to issue directions to the Director as to the performance of the Director's functions in that case;
- (c) if the Director considers that the interests of justice require that the Director should not perform a function in a particular case, request the Attorney General to perform the corresponding function of the Attorney General in that case,

and the Attorney General may comply with a request under this subsection.

(4) The Director shall comply with any direction of the Attorney General under this section.

(5) The Attorney General may amend, replace or revoke any direction given under this section.

(6) Every direction under this section shall be in writing and the text of the direction shall be included in the annual report of the Director under section 32.

Consistency between Attorney General and Director

28. (1) Where in a particular case the Attorney General has performed a function that is vested in both the Attorney General and

the Director, the Director shall not, without the consent of the Attorney General, perform that function inconsistently with the action of the Attorney General.

(2) If in any case the operation of subsection (1) precludes the Director from taking any action he would otherwise have taken, the Director shall refer to that occurrence in the annual report of the Director under section 32.

Information to be furnished to Attorney General

29. The Director shall so far as the interests of justice allow furnish the Attorney General with such information relating to the functions of the Director as the Attorney General requires—

- (a) for the proper conduct of the Attorney General's public business;
- (b) to enable Parliament to be informed and questions asked in Parliament to be answered concerning the functions of the Director or the operation of this Act.

PART 5—MISCELLANEOUS

Staff

30. The staff necessary for the performance of the functions of the Director shall be appointed or made available under the *Public Service Act 1978*.

Delegation

31. The Director may by instrument in writing, either generally or as otherwise provided by the instrument, delegate to an officer referred to in section 30 the performance, on behalf of and subject to the direction and control of the Director, of any of the functions of the Director under this Act, but not including the power to delegate under this section.

Annual report of Director

32. (1) The Director shall, as soon as is practicable in each year but not later than 30 September, prepare and deliver to the Attorney General a report on the performance of the Director's functions during the year that ended on the preceding 30 June.

(2) The Attorney General shall cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after such receipt.

(3) The Director may at any time report to the Attorney General on any matter relating to the operation of this Act.

Protection from liability

33. The Director, the Deputy Director or any other person acting under this Act—

(a) is not liable for anything that in good faith he or she does or refrains from doing for the purpose of carrying out this Act;

and

(b) without limiting paragraph (a), is entitled to be indemnified by the State for any liability incurred in any proceedings related to the carrying out of this Act.

Regulations

34. The Governor may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for giving effect to this Act.

Savings and transitional

35. (1) The application of this Act to offences, prosecutions, appeals, references and proceedings extends to offences committed and prosecutions, appeals, references and proceedings brought or commenced before the commencement of this Act.

(2) On the commencement of this Act where the Attorney General is performing a function of a kind that is vested in the Director by Part 3, the Director may continue the performance of that function in place of the Attorney General and if in any case the Director does so—

- (a) all acts, matters and things made or done by or on behalf of or in the name of the Attorney General in relation to any such function in that case shall be taken to have been made or done also by or on behalf of or in the name of the Director;
- (b) a reference to the Attorney General or to a person acting on his behalf in any order or document arising from or relating to any such function is, unless inconsistent with the context or subject-matter, deemed to include a reference to the Director; and
- (c) all documents served on or by or on behalf of or in the name of the Attorney General in connection with any such function shall be taken to have been served also on or by or on behalf of or in the name of the Director.

(3) A reference in a written law to the Crown Prosecutor is, unless inconsistent with the context or subject-matter, deemed to be a reference to the Director and the Deputy Director.

Consequential amendment

36. *The Constitution Acts Amendment Act 1899** is amended in Schedule V, in Division 3 of Part I by inserting, after the item relating to the Commissioner of Police, the following—

- “ Director of Public Prosecutions and Deputy Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*. ”.

[*Reprinted as at 16 March 1989 and amended by Acts Nos. 75 of 1988, 19 and 28 of 1989 and 6, 10, 16, 27, 38, 39, 73 and 104 of 1990.]

SCHEDULE 1

(section 7)

*Tenure, salary, conditions of service, etc., of Director***Tenure of office**

1. (1) Subject to this Act, the Director—

- (a) shall hold office for the prescribed term; and
- (b) if he or she is under 65 years of age, is eligible for re-appointment once or more than once for the prescribed term.

(2) In subclause (1) “the prescribed term” means 5 years or a term expiring when the Director attains 65 years of age, whichever is the lesser.

(3) The Director may resign his or her office by writing signed and delivered to the Governor.

Salary and entitlements

2. The Director—

- (a) shall be paid salary and allowances at such rates per annum as are determined by the Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*; and
- (b) has the same annual leave, sick leave and long service leave entitlements as an officer of the public service.

Superannuation

3. (1) Where a person immediately before being appointed as Director was a contributor within the meaning of the *Superannuation and Family Benefits Acts 1938* or the *Government Employees Superannuation Act 1987*, the person may continue to be a contributor under that Act, notwithstanding his appointment.

(2) The Treasurer may, by instrument in writing, determine the particular person or department that is to be treated as the employer of the Director for the purposes of the *Government Employees Superannuation Act 1987* and subclause (4).

(3) If the Director is a contributor within the meaning of the *Government Employees Superannuation Act 1987* the Director is to be treated as an employee of an employer listed in Part A of Schedule 1 to that Act.

(4) Contributions that would otherwise be payable by the Director under an enactment referred to in subclause (1) shall be paid by the employer determined under subclause (2) at the maximum rate at which the Director would be entitled to contribute and amounts so paid shall be treated as if they had been contributions made by the Director.

(5) Where subclause (1) does not apply, it shall be a term of the Director's appointment that on the termination of the appointment, other than under clause 6, the Director will be entitled, if he is not reappointed, to a lump sum calculated as specified in the instrument of appointment.

(6) If on termination of the Director's appointment the Director is appointed to a pensionable office within the meaning in section 2 (4) of the *Judges' Salaries and Pensions Act 1950*, service as Director shall be regarded, subject to subclause (7), as a period of pensionable service for the purposes of that Act.

(7) Subclause (6) does not apply unless the Director has elected to surrender and forgo all entitlements relating to the period of service as Director, whether actual, contingent or expected, that have accrued or may accrue to the Director or any other person under the enactments referred to in subclause (1) or under the term of his appointment referred to in subclause (5).

(8) An election referred to in subclause (7) shall be in such form as the Minister may determine, shall be made in writing within one month after the termination of appointment, shall be irrevocable and shall have effect notwithstanding anything in this clause or in any enactment referred to in subclause (1).

Appointment of public service officer

4. (1) Where a person, immediately before being appointed to the office of Director occupied an office in the public service, the person—

- (a) retains existing and accruing entitlements in respect of annual leave, sick leave and long service leave as if service as Director were a continuation of service in that office in the public service;
- (b) is entitled to be appointed to an office in the public service, not lower in classification and salary than the office which the person occupied if—
 - (i) termination of office as Director is brought about by resignation; and
 - (ii) at that time the person is under 65 years of age.

(2) A person appointed to an office as mentioned in subclause (1) (b) retains existing and accruing entitlements in respect of annual leave, sick leave and long service leave as if service in that office were a continuation of service as Director.

Certain requirements to be observed

5. The Director—

- (a) shall not practise as a legal practitioner or engage in any other paid employment except—
 - (i) in accordance with this Act; or
 - (ii) with the prior approval of the Governor; and
- (b) shall give written notice to the Attorney General of all direct or indirect pecuniary interests that he or she has or acquires in any business whether in Australia or elsewhere or in any body corporate carrying on any such business.

Removal from office

6. (1) The Governor may remove the Director from office—

- (a) for—
 - (i) misbehaviour or incompetence; or
 - (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Director's functions;
- (b) if the Director becomes a bankrupt or 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 salary for their benefit.

(2) In subclause (1) (a) (i) "misbehaviour" includes—

- (a) conduct that renders the Director unfit to hold office as Director notwithstanding that the conduct does not relate to any function of the office;
- or
- (b) a failure to comply with clause 5.

Other conditions of service

7. Subject to this Schedule, the Governor may determine other terms and conditions of service (if any) that apply to the Director.