

Queensland



ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE



**No. 95 of 1984**

**An Act to provide for the office of Director of Prosecutions  
and for related purposes**

[ASSENTED TO 6TH DECEMBER, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Director of Prosecutions Act 1984*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), this Act or the provisions thereof specified in the Proclamation shall commence on the date or dates to be fixed by Proclamation.

**3. Arrangement.** This Act is arranged in Parts and Divisions of Parts as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—OFFICE OF DIRECTOR OF PROSECUTIONS (ss. 5-23);

*Division 1—Director of Prosecutions;*

*Division 2—Deputy Director and Crown Prosecutors;*

*Division 3—Other Staff Assisting Director;*

PART III—MISCELLANEOUS PROVISIONS (ss. 24-34).

**4. Interpretation.** In this Act, except where a contrary intention appears—

“criminal proceedings” means—

- (a) proceedings on indictment for an offence defined in *The Criminal Code*;
- (b) other proceedings on indictment;  
and
- (c) proceedings in the Supreme Court commenced by a person charged with an indictable offence in connexion with the offence before the presentation of an indictment that charges the commission of the offence;

“Director” means the Director of Prosecutions appointed under this Act;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act and includes any Minister of the Crown for the time being performing the duties of the Minister;

“Public Service Board” means the Board constituted by that name under the *Public Service Act 1922-1978*;

“Under Secretary” means the Under Secretary, Department of Justice or the Permanent Head (within the meaning of The

Public Service Regulations of 1958, as amended and in force for the time being) of the Department of the Public Service for which the Minister of the Crown for the time being charged with the administration of this Act is responsible.

## PART II—OFFICE OF DIRECTOR OF PROSECUTIONS

### *Division 1—Director of Prosecutions*

**5. Appointment of Director.** (1) The Governor in Council may, from time to time, by notification published in the Gazette, appoint a barrister or solicitor of the Supreme Court of not less than 10 years' standing to be the Director of Prosecutions.

(2) The Director—

- (a) shall be appointed for such term as the Governor in Council determines and specifies in the instrument of appointment;
- (b) shall be paid salary and allowances at such rate and be employed under such conditions of employment, including conditions as to leave entitlements, as the Governor in Council, upon the recommendation of the Minister made after consultation with the Public Service Board, determines;
- (c) shall be eligible for re-appointment upon the expiration of his term of appointment; and
- (d) shall not be subject to the *Public Service Act 1922-1978*.

**6. Termination of Director's appointment.** (1) The Director may resign his office by writing signed by him and delivered to the Minister.

(2) The Governor in Council may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(3) The Governor in Council shall terminate the appointment of the Director if—

- (a) he becomes bankrupt or takes advantage of the laws in force relating to bankruptcy;
- (b) he is absent from duty, except on leave of absence to which he is entitled under the conditions of his employment or granted by the Minister, for 14 consecutive working days, or for 28 working days in any period of 12 months; or
- (c) he contravenes section 7.

**7. Other employment curtailed.** The Director shall not, without the consent of the Minister—

- (a) engage in the practice of his profession except in the exercise of the functions of his office; or
- (b) engage in paid employment outside the duties of his office.

**8. Division of legal profession inapplicable.** For the purposes of this Act, the Director and a barrister or solicitor appointed to assist him shall, in any matter, be entitled to act as both barrister and solicitor.

**9. Acting appointment.** (1) The Governor in Council may appoint a person who is eligible for appointment as Director to be Acting Director of Prosecutions to act during the absence of the Director through illness or other cause or during any vacancy in the office of Director and may at any time revoke that appointment.

(2) The Acting Director while so acting—

- (a) shall have all the powers and duties and may discharge any of the functions of the Director; and
- (b) shall hold office upon such terms and conditions as to salary, allowances and other conditions of employment as the Governor in Council determines.

**10. Functions of Director.** (1) The Director—

- (a) shall prepare, institute and conduct on behalf of and in the name of Her Majesty—
  - (i) criminal proceedings;
  - (ii) proceedings in the Court of Criminal Appeal;
  - (iii) proceedings in the High Court of Australia or before the Judicial Committee of the Privy Council that arise out of criminal proceedings;
- (b) shall prepare, institute and conduct on behalf of and in the name of Her Majesty or on behalf of and in the name of a complainant proceedings in the Court of Criminal Appeal being appeals against convictions before justices or penalties imposed by justices;
- (c) shall, upon the direction of the Minister or of his own motion—
  - (i) prepare, institute and conduct an examination of witnesses in relation to an indictable offence before justices;
  - (ii) take over and conduct proceedings in respect of a simple offence or in respect of an indictable offence being taken in a summary manner;
- (d) shall, upon the direction of the Minister, assist on behalf of the Crown a coroner or instruct counsel assisting a coroner in an inquest under the *Coroners Act 1958-1982*;
- (e) shall perform such duties as he may be charged with by or under this Act or any other Act;
- (f) shall perform such duties of a legal nature as the Minister may direct.

(2) In the discharge of his functions the Director shall be responsible to the Minister but nothing in this section shall derogate from or limit the authority of the Director in respect of the preparation, institution and conduct of proceedings.

(3) In proceedings with which he is concerned the Director may appear in person or by counsel or solicitor, whether from within his own office or in private practice.

**11. Powers of Director.** (1) The Director, from time to time—

(a) may furnish guidelines in writing to—

Crown Prosecutors and other persons acting on his behalf;

the Commissioner of Police; or

any other person,

with respect to prosecutions in respect of offences;

(b) may give directions to the Commissioner of Police and other persons with respect to the offences or classes of offences that are to be referred to the Director for the institution and conduct of proceedings.

The power conferred by this subsection in paragraph (a) does not authorize the Director to furnish guidelines of a description referred to therein in relation to a particular case.

(2) The Director—

(a) shall give to the Minister a copy of each guideline or direction furnished or given by him under subsection (1); and

(b) shall include in a report furnished under section 16—

(i) a copy of each guideline or direction furnished or given by him under subsection (1) during the period to which the report relates; and

(ii) a copy of each guideline or direction furnished or given by him under subsection (1) as in force at the end of the period to which the report relates.

(3) A guideline furnished under subsection (1) shall not prevent or hinder the discharge of any function or the exercise of any power by a Crown Prosecutor pursuant to *The Criminal Code*.

**12. Referral of charge to Director.** Where a person has been charged with an offence and—

(a) the offence is one in respect of which a direction has been given under section 11 (1);

(b) the Director directs that the matter be referred to him; or

(c) the complainant or person bringing the charge considers that the matter should be referred to the Director—

the complainant or person bringing the charge shall provide to the Director—

(d) a full report of the circumstances of the offence;

(e) copies of the statements of all witnesses;

(f) copies of all material documents; and

- (g) such other information and material as the Director may require.

**13. Police assistance for Director.** (1) Where, in relation to any criminal proceedings under consideration or conducted by the Director, a matter arises which requires further investigation, the Director may, in writing, request the Commissioner of Police for the assistance of members of the Police Force in the conduct of that investigation.

(2) The Commissioner of Police shall, as far as possible, comply with any request made to him under subsection (1).

**14. Director is a Crown Law Officer.** On and from the commencement of this section the Director shall be a Crown Law Officer within the meaning of *The Criminal Code* in place of the Solicitor-General whose powers and authorities thereunder shall thereupon terminate but without prejudice to the continued validity and effect of anything duly done by him in exercise of any of those powers and authorities before such termination.

**15. Judicial notice of Director's signature.** All Courts, Judges and persons acting judicially shall take judicial notice of—

- (a) the signature of any person who is or has been the Director of Prosecutions or Acting Director of Prosecutions on any document;  
and  
(b) the fact that that person is or was the Director of Prosecutions or the Acting Director of Prosecutions, as the case may be.

**16. Annual report of Director.** (1) As soon as is practicable in each year but not later than 30th April the Director shall cause to be prepared and furnished to the Minister a report of the operations of his office during the year ending on the preceding 31st December.

(2) The Minister shall cause every report furnished to him under subsection (1) to be laid before the Legislative Assembly within 14 sitting days after he receives the report.

*Division 2—Deputy Director and Crown Prosecutors*

**17. Appointment of Deputy Directors.** The Governor in Council, upon the recommendation of the Minister may, from time to time, by notification published in the Gazette, appoint to the office of Deputy Director of Prosecutions so many barristers or solicitors of the Supreme Court as he considers necessary to assist the Director.

**18. Appointment of Crown Prosecutors.** The Governor in Council, upon the recommendation of the Minister, may, from time to time, by notification published in the Gazette, appoint to the office of Crown Prosecutor so many barristers and solicitors of the Supreme Court as he considers necessary to assist the Director.

**19. Conditions of appointment.** (1) A Deputy Director or Crown Prosecutor—

- (a) shall, subject to subsection (2), be appointed for such term, not exceeding 5 years, as the Governor in Council determines and specifies in the instrument of appointment;
- (b) shall, subject to subsection (2), be paid salary and allowances at such rate and be employed upon such conditions, including conditions as to leave entitlements, as the Governor in Council, upon the recommendation of the Minister, made after consultation with the Public Service Board, from time to time determines;
- (c) shall be eligible for re-appointment upon the expiration of his term of appointment or re-appointment;  
and
- (d) shall not be subject to the *Public Service Act 1922-1978*.

(2) In the exercise of the powers and authorities of the Governor in Council referred to in subsection (1) it shall not be mandatory that all appointments or re-appointments to the office of Deputy Director or Crown Prosecutor should be for the same term or upon the same conditions as to salary or allowances.

**20. Termination of appointments.** (1) A Deputy Director or Crown Prosecutor may resign his office by writing signed by him and given to the Minister.

(2) A person's appointment as Deputy Director or Crown Prosecutor shall terminate upon the taking effect of his appointment to any position in which he is subject to the *Public Service Act 1922-1978*.

**21. Suspension and removal from office.** (1) A Deputy Director or Crown Prosecutor is liable to be suspended without payment of salary or allowances (if any) or removed from office, in accordance with this Act, if he commits a breach of the conditions upon which he is for the time being employed in that office.

(2) The Minister may, by notice signed by him and given to the person to whose suspension it relates, suspend without payment of salary or allowances (if any) from his office any Deputy Director or Crown Prosecutor who is liable thereto under subsection (1).

(3) Where the Minister has given a notice of suspension under subsection (2) he shall, within 14 days after the giving of the notice—

- (a) furnish to the Governor in Council notification of the suspension and a statement setting out clearly and fully the grounds for the suspension; and
- (b) cause a copy of the statement referred to in paragraph (a) to be given to the person who has been suspended from office and invite that person to show cause in writing to the Minister (in accordance with subsection (4)) why he should

not be removed from office or otherwise dealt with in accordance with section 22.

(4) The person suspended from office is entitled to show cause as referred to in subsection (3) within 14 days after he has received the copy statement referred to in that subsection or within such longer period as the Minister may allow in a particular case.

**22. Authority of Governor in Council to remove etc.** (1) If, having regard to the statement of grounds furnished to him in accordance with paragraph (a) of section 21 (3) and the cause (if any) shown in accordance with section 21 (4), the Governor in Council is satisfied—

- (a) that all or any of the grounds have or has been established and are or is such that the person suspended from office should be removed from the office of Deputy Director or, as the case may be, Crown Prosecutor;
- (b) that all or any of the grounds have or has been established and are or is such that the person suspended from office should be penalised but should not be removed from the office of Deputy Director or, as the case may be, Crown Prosecutor; or
- (c) that none of the grounds has been established, or that all or any of the grounds have or has been established but are or is such that no further action should be taken in respect of the matter,

the Governor in Council shall—

in the case referred to in paragraph (a), direct that the person concerned be removed from the office of Deputy Director or, as the case may be, Crown Prosecutor;

in the case referred to in paragraph (b), direct that the suspension in question be terminated and further direct—

- (i) that the salary of the person concerned be reduced from a date and to a rate specified by the Governor in Council but so that, where a minimum rate of salary is payable to the holder of the office in question, the rate specified shall be not less than that minimum rate;
- (ii) that the person concerned be required to pay a sum specified by the Governor in Council not exceeding \$1 000, by way of deduction from that person's salary or in such other way as that person nominates; or
- (iii) that the person concerned be reprimanded or cautioned;

in the case referred to in paragraph (c), direct that the suspension in question be terminated.

(2) A direction given by the Governor in Council under subsection (1) shall be given effect as soon as is practicable and in accordance with



law and the Minister shall take or cause to be taken all such steps as are appropriate for that purpose.

(3) Where a suspension of a person from the office of Deputy Director or Crown Prosecutor has been terminated, otherwise than by his being removed from the office—

- (a) the continuity of his service in that office shall be taken to have not been broken by reason of the suspension; and
- (b) subject to giving effect to any direction of the Governor in Council that affects his salary or allowances, he shall be entitled to be paid all salary and allowances (if any) to which he would have been entitled had he not been suspended.

*Division 3—Other Staff Assisting Director*

**23. Appointment of staff.** (1) There may be appointed or assigned to assist the Director in the discharge of his functions such number of persons as is necessary for the purpose.

(2) A person appointed for the purpose referred to in subsection (1) shall be appointed and shall hold his appointment under and subject to the *Public Service Act 1922-1978*.

(3) An officer of the Public Service of Queensland may be assigned to perform duties for the purpose referred to in subsection (1) and shall continue to be subject to the *Public Service Act 1922-1978* while he continues to be so assigned.

PART III—MISCELLANEOUS

**24. Appointees to offices authorized to present indictments.** A person appointed to the office of Director, Deputy Director or Crown Prosecutor shall be taken to be, by virtue of that appointment and for so long as he holds that office, an officer appointed by the Governor in Council to present indictments in any court of criminal jurisdiction.

**25. Protection of persons executing Act.** No act or thing done or omission made by the Minister, the Director or any person assisting the Director for the purpose of giving effect to this Act or discharging, exercising or performing any function, power, authority or duty under this Act shall subject the Crown, the Minister, the Director or any person to liability at law in respect thereof.

**26. Assumption of responsibility by Director.** On and from the commencement of this section—

- (a) the Director shall take over from the Crown Solicitor the conduct of all criminal proceedings in being immediately before such commencement;
- (b) all acts and things done or omissions made by, on behalf of or in the name of the Crown Solicitor in connexion with

criminal proceedings referred to in paragraph (a) shall be deemed to have been done or made by, on behalf of or in the name of the Director;

- (c) a reference to the Minister, Solicitor-General or Crown Solicitor in any order or document made in relation to criminal proceedings referred to in paragraph (a) shall, unless it be inconsistent with the context or subject matter, be deemed to be a reference to the Director;
- (d) all documents served on or on behalf of or in the name of the Attorney-General, Solicitor-General or Crown Solicitor in connexion with criminal proceedings referred to in paragraph (a) shall be deemed to have been served on, on behalf of or in the name of the Director.

**27. Director's professional involvement no bar.** (1) Subject to subsection (2), the Director shall not be prevented from or limited in discharging his functions under this Act by reason that before his appointment to the office of Director took effect he had been involved, in the practice of his profession, in a matter that at the time his appointment took effect had not been finally determined.

(2) The Director—

- (a) shall not disclose information that came to his knowledge before his appointment to the office of Director took effect, in the practice of his profession, concerning a matter that at the time his appointment took effect had not been finally determined to any person except—
  - (i) the person for whom he was acting in the matter in the practice of his profession;
  - (ii) a legal representative of that person; or
  - (iii) a person duly authorized by the person or legal representative referred to in paragraph (i) or (ii) to receive the information;
- (b) shall not act personally in respect of any matter in which he had been involved in the practice of his profession before his appointment to the office of Director took effect and that had not been finally determined at the time his appointment took effect.

(3) Where the Director is by this Act precluded from acting personally in respect of any matter a Deputy Director shall discharge the functions of the Director in respect of that matter.

**28. Retention of rights as public servant.** (1) Where an officer of the Public Service of Queensland is appointed to an office provided for by this Act he shall, subject to subsection (2), retain his entitlement to rights that have accrued to him as such an officer at the time his appointment takes effect and to rights in respect of long service leave that would have accrued to him had he remained such an officer.

The rights to which a person retains his entitlement pursuant to this subsection includes the right to apply for and to be appointed to

any office within the Public Service of Queensland as if he were then an officer within the Public Service of Queensland, if since his first appointment to an office provided for by this Act he has been in continuous employment in an office that is a prescribed office or in offices each of which is a prescribed office.

(2) An officer of the Public Service of Queensland who is appointed to an office provided for by this Act may, within 6 months after his appointment takes effect, elect in writing given to the Minister to be paid the cash equivalent of all or part of his entitlements to annual recreation leave that have accrued to him at the time his appointment takes effect whereupon he shall no longer retain his entitlements to such leave to the extent to which he has so elected but—

if he does not so elect; or

if he so elects in respect of part only of his entitlements to such leave,

he shall exercise his entitlements to annual recreation leave or, as the case may be, the balance thereof in accordance with the conditions of employment upon which he holds the office provided for by this Act.

(3) Where a person who immediately before his appointment to an office provided for by this Act was an officer of the Public Service of Queensland again becomes such an officer, if he has been in continuous employment in a prescribed office or in offices each of which is a prescribed office since his first appointment to an office provided for by this Act, his service in an office provided for by this Act shall be treated as service in a permanent capacity in the Public Service of Queensland for the purpose of determining his rights as an officer of the Public Service of Queensland.

#### **29. Entitlement of certain persons to appointment under Crown. (1)**

Where in respect of a person who, immediately before his appointment to an office provided for by this Act, was an officer of the Public Service of Queensland and who has been in continuous employment in a prescribed office or in offices each of which is a prescribed office since his first appointment to an office provided for by this Act—

his tenure of an office provided for by this Act that is held by him has been terminated by his resignation;

or

his tenure of an office provided for by this Act that is held by him has been terminated by the expiration of the term of his appointment or re-appointment to the office,

then, subject to subsection (2), if before the termination of his tenure of the office he has informed the Under Secretary in writing of his desire to exercise forthwith upon such termination the entitlement conferred by this subsection, he is entitled to be appointed to an office in the employment of or under the Crown with a rate of salary and, if that office is within the Public Service of Queensland, a classification that are equivalent to the rate of salary and classification to which, in the opinion of the Public Service Board, he would have attained in the

ordinary course as an officer of the Public Service of Queensland if he had not been appointed to an office provided for by this Act, and in any case with a rate of salary and, if that office is within the Public Service of Queensland, a classification that are at least equivalent to the rate of salary and classification of the office he held in the Public Service of Queensland before his appointment to an office under this Act or, if there be more than one such appointment, his last such appointment.

(2) If, at the time when tenure of an office provided for by this Act is terminated in a manner referred to in subsection (1) in respect of a person such as is referred to in that subsection, the person is under suspension from office and the Governor in Council has not decided with respect to the person as is prescribed by section 22, then notwithstanding that the tenure of office has been terminated the Governor in Council shall proceed as required by that section and—

- (a) if the Governor in Council directs that the person ought to have been removed from office, the person shall not have the entitlement prescribed by subsection (1);
- (b) if the Governor in Council directs as in the case referred to in paragraph (b) or (c) of section 22 (1), the person shall be entitled as prescribed by subsection (1) subject, if the direction is made as in the case referred to in paragraph (b) of section 22 (1), to the direction of the Governor in Council, which shall be given effect as if the person had been restored to the office provided for by this Act and previously held by him.

**30. Meaning of expression “prescribed office”.** In sections 28 and 29 the expression “prescribed office” means an office within the application of the *Public Service Act 1922-1978* or an office provided for by this Act.

**31. Provisions concerning superannuation.** (1) A person who immediately before his appointment to an office provided for by this Act was an officer within the meaning of the *State Service Superannuation Act 1972-1984* shall, while he continues in an appointment to an office provided for by this Act, be deemed to be employed by or under the Crown in a permanent capacity for the purposes of that Act and the *Public Service Superannuation Act 1958-1984*.

(2) Where—

- (a) a person who while he held an office provided for by this Act was a contributor within the meaning of the *State Service Superannuation Act 1972-1984*;
  - (b) the tenure of the office of that person has been terminated by reason of his resignation from the office or the expiration of the term of his appointment or re-appointment to the office;
- and

- (c) that person is entitled to be such a contributor by reason that he has duly exercised his entitlement conferred by section 29 (1),

the termination of his tenure of office shall not be taken to be a resignation or dismissal referred to in section 35 of the *State Service Superannuation Act 1972-1984*, he shall not be taken to have ceased to be a contributor for the purposes of the *Public Service Superannuation Act 1958-1984* by reason of that termination and he shall be deemed to have continued to be an officer within the meaning of those Acts at all times since that termination.

(3) A person who holds an office provided for by this Act and who, immediately before his appointment to the office, was not an officer within the meaning of the *State Service Superannuation Act 1972-1984* may elect to be a contributor to a superannuation scheme determined by the Governor in Council.

**32. Administrative and financial control.** (1) The Under Secretary shall be the Permanent Head within the meaning of the Public Service Regulations of 1958, as amended and in force for the time being, in respect of matters of an administrative nature associated with the discharge of the Director's functions and in respect of the control of staff assisting the Director who are subject to the *Public Service Act 1922-1978*.

(2) For the purposes of the *Financial Administration and Audit Act 1977-1981* the Under Secretary shall be the accountable officer in respect of the discharge of the Director's functions.

The Director shall do all such things as the Under Secretary, in the proper performance of his duties as such accountable officer, may require for the purposes of that Act.

**33. Regulations.** The Governor in Council may make regulations not inconsistent with this Act for and with respect to all matters necessary or convenient for the administration of this Act or for achieving the objects and purposes of this Act.

**34. Amendment and construction of other Acts.** (1) The *Legal Practitioners Act 1968-1977* is amended by—

- (a) in section 7, adding at the end of paragraph (a) of subsection (2) the following words:—

“(x) the office of the Director of Prosecutions;”;

- (b) in section 8, adding at the end of paragraph (a) of subsection (1), before the word “or”, the following words:—

“(vii) the office of the Director of Prosecutions;”.

- (2) *The Legal Practitioners Act 1968-1977* as amended by subsection (1) may be cited as the *Legal Practitioners Act 1968-1984*.

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(3) *The Criminal Code* is amended by, in section 1, omitting from the definition "Crown Law Officer" the words "Solicitor-General" and substituting the words "Director of Prosecutions".

(4) A reference in the *Bail Act 1980-1982* to the Crown Solicitor shall, where it relates to the Crown Solicitor for Queensland, be read as a reference to the Director of Prosecutions.