



Director of Public Prosecutions Act 1984

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Queensland

Director of Public Prosecutions Act 1984

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Director of Public Prosecutions Act 1984

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Director of Public Prosecutions Act 1984*.

4 Definitions

In this Act—

Australian lawyer see the *Legal Profession Act 2007*, schedule 2.

criminal proceedings means—

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

director means the Director of Public Prosecutions appointed under this Act.

lawyer means an Australian lawyer who, under the *Legal Profession Act 2007*, may engage in legal practice in this State.

Part 2 Office of Director of Public Prosecutions

Division 1 Director of Public Prosecutions and Office

4A The Director of Public Prosecutions and Office

- (1) There is to be a Director of Public Prosecutions.
- (2) An office called the Office of the Director of Public Prosecutions is established.

Division 1A Provisions about director of public prosecutions

5 Appointment of director

- (1) The Governor in Council may appoint a person to be the director of public prosecutions.
- (1A) The person must be an Australian lawyer who has been admitted to practise for not less than 10 years.
- (2) The director—
 - (a) shall be appointed for such term as the Governor in Council determines and specifies in the instrument of appointment; and
 - (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, determines; and
 - (c) shall be eligible for reappointment upon the expiration of the director's term of appointment.

- (3) The director is to be appointed under this Act, and not under the *Public Service Act 2008*.

6 Termination of director's appointment

- (1) The director may resign office by writing signed by the director 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) the director becomes bankrupt or takes advantage of the laws in force relating to bankruptcy; or
 - (b) the director is absent from duty, except on leave of absence to which the director is entitled under the conditions of the director's employment or granted by the Minister, for 14 consecutive working days, or for 28 working days in any period of 12 months; or
 - (c) the director contravenes section 7.
- (4) Termination of the appointment of director shall be by way of notification in writing signed by the Minister and given to the director personally or by post.

7 Other employment curtailed

The director shall not, without the consent of the Minister—

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

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; and
 - (ii) proceedings in the Court of Appeal; and
 - (iii) proceedings in the High Court of Australia that arise out of criminal proceedings; and
 - (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 Appeal being appeals against convictions before justices or penalties imposed by justices; and
 - (c) shall, upon the direction of the Minister or of the director's own motion—
 - (i) prepare, institute and conduct an examination of witnesses in relation to an indictable offence before justices; and
 - (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; and
 - (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* or the *Coroners Act 2003*; and
 - (e) shall perform such duties as the director may be charged with by or under this Act or any other Act; and
 - (f) shall perform such duties of a legal nature as the Minister may direct.
- (2) If the director, with the Minister's consent, holds an appointment, commission or authority to prosecute offences against the laws of the Commonwealth, the director may, under the terms of the appointment, commission or authority, prepare, institute and conduct—
- (a) criminal proceedings for the offences; and

- (b) proceedings in the Court of Appeal or the High Court of Australia that arise out of the criminal proceedings.
- (3) In the discharge of his or her 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.
- (4) In proceedings with which the director is concerned the director may appear in person or by a lawyer, whether from within the director's own office or in private practice.

10A Guidelines by Attorney-General

- (1) For exercising the director's functions under the *Criminal Proceeds Confiscation Act 2002*, the director is subject to any guidelines the Attorney-General issues in relation to the examination of a person under an examination order under that Act.
- (2) A guideline may not be furnished in relation to a particular case.
- (3) The Attorney-General must gazette the guidelines as soon as practicable after issuing them.
- (4) Also, the Attorney-General must table a copy of the guidelines in the Legislative Assembly within 14 sitting days after the guidelines are gazetted.

11 Powers of director

- (1) The director may, from time to time, do any of the following—
 - (a) furnish guidelines in writing to—
 - (i) crown prosecutors and other persons acting on the director's behalf; or
 - (ii) the commissioner of the police service; or
 - (iii) any other person;
- with respect to prosecutions in respect of offences;

- (b) give directions to the commissioner of the police service 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;
 - (c) give guidelines to a person to whom section 24A(1) applies stating that specified information is confidential information for the purposes of section 24A.
- (1A) The power conferred by subsection (1)(a) does not authorise 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 the director 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 the director under subsection (1) during the period to which the report relates; and
 - (ii) a copy of each guideline or direction furnished or given by the director 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); or
- (b) the director directs that the matter be referred to the director; 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; and
- (e) copies of the statements of all witnesses; and
- (f) copies of all material documents; and
- (g) such other information and material as the director may require.

13 Assistance for director

- (1) This section applies if, in relation to a criminal proceeding under consideration or conducted by the director, a matter arises that requires further investigation.
- (2) For conducting the investigation, the director may ask—
 - (a) the commissioner of the police service for the assistance of a police officer; or
 - (b) the chief executive of the department in which the *Animal Care and Protection Act 2001* is administered for the assistance of a person who is appointed as an inspector under that Act, section 114; or
 - (c) the chief executive officer under the *Crime and Corruption Act 2001* for the assistance of a commission officer under that Act.
- (3) A request under subsection (2) must be in writing.
- (4) A person of whom a request is made under subsection (2) must, as far as possible, comply with the request.

15 Judicial notice of director's signature

All courts, judges and persons acting judicially shall take judicial notice of—

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- (a) the signature of any person who is or has been the director of public prosecutions or an acting director of public prosecutions on any document; and
- (b) the fact that that person is or was the director of public prosecutions or the acting director of public prosecutions, as the case may be.

16 Annual report of director

- (1) As soon as practicable after the end of each financial year, but not later than 31 October, the director must give to the Minister a report of the operations of the Office of the Director of Public Prosecutions during the year.
- (4) The Minister shall cause every report furnished to the Minister under subsection (1) to be laid before the Legislative Assembly within 14 sitting days after the Minister receives the report.

Division 2 Deputy directors of prosecutions

17 Appointment of deputy directors of public prosecutions

The Governor in Council may appoint a person who is an Australian lawyer to be a deputy director of public prosecutions.

19 Conditions of appointment

- (1) A deputy director—
 - (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; and
 - (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, from time to time determines; and

- (c) shall be eligible for reappointment upon the expiration of the deputy director's term of appointment or reappointment.
- (2) The deputy director is to be appointed under this Act, and not under the *Public Service Act 2008*.
- (3) 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 reappointments to the office of deputy director should be for the same term or upon the same conditions as to salary or allowances.

20 Termination of appointments

- (1) A deputy director may resign office by writing signed by the deputy director and given to the Minister.
- (2) A person's appointment as deputy director shall terminate upon the taking effect of the person's appointment to any position in which the person is subject to the *Public Service Act 2008*.

21 Suspension and removal from office

- (1) A deputy director is liable to be suspended without payment of salary or allowances (if any) or removed from office, in accordance with this Act, if the deputy director commits a breach of the conditions upon which the deputy director is for the time being employed in that office.
- (2) The Minister may, by notice signed by the Minister and given to the person to whose suspension it relates, suspend without payment of salary or allowances (if any) from office any deputy director who is liable thereto under subsection (1).
- (3) Where the Minister has given a notice of suspension under subsection (2) the Minister shall, within 14 days after the giving of the notice—

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- (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 the person 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 the person 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 the Governor in Council in accordance with section 21(3)(a) 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
 - (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
 - (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—

- (d) in the case referred to in paragraph (a)—direct that the person concerned be removed from the office of deputy director;
 - (e) 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; or
 - (ii) that the person concerned be required to pay a sum specified by the Governor in Council not exceeding \$1000, 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;
 - (f) 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 has been terminated, otherwise than by the person being removed from the office—
- (a) the continuity of the person's 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 the person's salary or allowances, the person shall be entitled to be paid all salary and

allowances (if any) to which the person would have been entitled had the person not been suspended.

- (4) Removal from the office of deputy director under this section shall be by way of notification in writing signed by the Minister and given to the office holder in question personally or by post.

Division 3 Crown prosecutors and other officers assisting director

23 Appointment of officers

- (1) The following officers may be appointed to assist the director in the discharge of the director's functions—
 - (a) so many Australian lawyers as necessary to be crown prosecutors;
 - (b) so many other officers as necessary.
- (2) An officer appointed for a purpose referred to in subsection (1) is to be appointed under the *Public Service Act 2008*.

Part 3 Miscellaneous

23A Delegation by director

The director may delegate the director's functions and powers under this Act or another Act to an appropriately qualified person.

24 Appointees to offices authorised 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 the person holds that office, an

officer appointed by the Governor in Council to present indictments in any court of criminal jurisdiction.

24A Prohibition on disclosure of information

- (1) A person who is or was employed for the purposes of this Act must not disclose confidential information that came to the person's knowledge because of the employment.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information that came to the person's knowledge directly or incidentally because of the employment or because of an opportunity given by the employment.
- (3) However, subsection (1) does not apply to a disclosure by the person of information—
- (a) under this or another Act; or
 - (b) under a requirement of a court or tribunal.

Example of a disclosure under this Act—

a witness' statement disclosed for the purposes of a trial

- (4) The offence is committed even if—
- (a) the person knew the information before it came to his or her knowledge because of employment for the purposes of this Act; or
 - (b) the information later stops being confidential.
- (5) In this section—

confidential information, for a person to whom subsection (1) applies, includes information stated to be confidential information for the purposes of this section under a guideline given to the person under section 11(1)(c).

employed includes—

- (a) appointed; and
- (b) engaged; and
- (c) requested to assist under section 13.

24B Criminal history checks

- (1) The director may ask the commissioner of the police service to give the director a written report about the criminal history of a person employed in, or applying for employment in, the Office of the Director of Public Prosecutions.
- (2) The commissioner must comply with the request.
- (3) Subsection (1) applies to the criminal history in the commissioner's possession or to which the commissioner has access.
- (4) In this section—

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

24C Disclosures by police officers

- (1) This section applies if the director is—
 - (a) deciding whether to institute a proceeding; or
 - (b) deciding whether to consent to the institution of a proceeding; or
 - (c) is conducting a proceeding.
- (2) Police officers investigating alleged offences have a duty to disclose to the director all relevant information, documents or other things obtained during the investigation that might tend to help the case for the prosecution or the case for the accused person.
- (3) The duty of disclosure under subsection (2) continues until 1 of the following happens—
 - (a) the director decides the accused person will not be prosecuted for the alleged offence;
 - (b) the prosecution ends, whether by the accused person being discharged, acquitted or convicted, or in another way.

- (4) Any police officer has a duty to disclose to the director an exculpatory thing until 1 of the following happens—
- (a) the accused person is discharged or acquitted; or
 - (b) the accused person dies.
- (5) In this section—

exculpatory thing, in relation to an accused person, means reliable evidence of a nature to cause a jury to entertain a reasonable doubt as to the guilt of the accused person.

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.

27 Director's professional involvement no bar

- (1) Subject to subsection (2), the director shall not be prevented from or limited in discharging the director's functions under this Act by reason that before the director's appointment to the office of director took effect the director had been involved, in the practice of the director's profession, in a matter that at the time the director's appointment took effect had not been finally determined.
- (2) The director—
- (a) shall not disclose information that came to the director's knowledge before the director's appointment to the office of director took effect, in the practice of the director's profession, concerning a matter that at the time the director's appointment took effect had not been finally determined to any person except—

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- (i) the person for whom the director was acting in the matter in the practice of the director's profession;
or
 - (ii) a legal representative of that person; or
 - (iii) a person duly authorised by the person or legal representative referred to in subparagraph (i) or (ii) to receive the information; and
- (b) shall not act personally in respect of any matter in which the director had been involved in the practice of the director's profession before the director's appointment to the office of director took effect and that had not been finally determined at the time the director's 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 is appointed to an office provided for by this Act the officer shall, subject to subsection (2), retain the officer's entitlement to rights that have accrued to the officer as such an officer at the time the officer's appointment takes effect and to other rights including rights in respect of long service leave that would have accrued to the officer had the officer remained such an officer.
- (1A) The rights to which a person retains the person's entitlement pursuant to subsection (1) includes the right to apply for and to be appointed to any office within the public service as if the person were then an officer within the public service, if since the person's first appointment to an office provided for by this Act the person has been in continuous employment in an office that is a prescribed office or in offices each of which is a prescribed office.
- (1B) A person who applies for an office within the public service pursuant to subsection (1A) shall for that purpose be deemed

to have seniority in the public service as if, in respect of any period of continuous service in an office or offices provided for by this Act, the person were employed for that period in the position (with such variation (if any) in classification or maximum salary as may from time to time be applicable to a similar position) to which the person was permanently appointed and which the person held within the public service immediately prior to the commencement of that period of service.

- (2) An officer of the public service who is appointed to an office provided for by this Act may, within 6 months after the officer's appointment takes effect, elect in writing given to the Minister to be paid the cash equivalent of all or part of the officer's entitlements to annual recreation leave that have accrued to the officer at the time the officer's appointment takes effect whereupon the officer shall no longer retain the officer's entitlements to such leave to the extent to which the officer has so elected but—
- (a) if the officer does not so elect; or
 - (b) if the officer so elects in respect of part only of the officer's entitlements to such leave;

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

- (3) Where a person who immediately before the person's appointment to an office provided for by this Act was an officer of the public service again becomes such an officer, if the person has been in continuous employment in a prescribed office or in offices each of which is a prescribed office since the person's first appointment to an office provided for by this Act, the person's service in an office provided for by this Act shall be treated as service in a permanent capacity in the public service for the purpose of determining the person's rights as an officer of the public service and, subject to subsection (4), the person's seniority in the public service.

- (4) For the purpose of determining the seniority in the public service of a person referred to in subsection (3), the person shall be deemed to have held during any period of continuous service in an office or offices provided for by this Act the position (with such variations (if any) in classification or maximum salary as may from time to time be applicable to a similar position) to which the person was permanently appointed and which the person held in the public service immediately prior to the commencement of that period of service.

29 Entitlement of certain persons to appointment under Crown

- (1) Where in respect of a person who, immediately before the person's appointment to an office provided for by this Act, was an officer of the public service and who has been in continuous employment in a prescribed office or in offices each of which is a prescribed office since the person's first appointment to an office provided for by this Act—
- (a) the person's tenure of an office provided for by this Act that is held by the person has been terminated by the person's resignation; or
 - (b) the person's tenure of an office provided for by this Act that is held by the person has been terminated by the expiration of the term of the person's appointment or reappointment to the office;

then, subject to subsection (2), if before the termination of the person's tenure of the office the person has informed the chief executive in writing of the person's desire to exercise forthwith upon such termination the entitlement conferred by this subsection, or if within 7 days after such termination the person has informed the chief executive in writing of the person's desire to exercise forthwith the entitlement conferred by this subsection, the person 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, a classification that are equivalent to the rate of salary and

classification to which, in the opinion of the chief executive, the person would have attained in the ordinary course as an officer of the public service if the person 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, a classification that are at least equivalent to the rate of salary and classification of the office the person held in the public service before the person's appointment to an office under this Act or, if there be more than 1 such appointment, the person's 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); or
 - (b) if the Governor in Council directs as in the case referred to in section 22(1)(b) or (c)—the person shall be entitled as prescribed by subsection (1) subject, if the direction is made as in the case referred to in section 22(1)(b), 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 the person.
- (3) Where a person is appointed as an officer within the public service pursuant to this section, for the purposes of this Act, the person's continuous employment in a prescribed office or in offices each of which is a prescribed office shall not be taken to be broken by reason only that the person's employment as an officer of the public service pursuant to an appointment under this section did not commence immediately upon the termination of the person's tenure of an office provided for by this Act.

30 Meaning of expression *prescribed office*

In sections 28 and 29—

prescribed office means an office within the application of the *Public Service Act 2008* or an office provided for by this Act.

31 Provisions concerning superannuation

(1) A person who immediately before the person's appointment to an office provided for by this Act was an officer within the meaning of the *State Service Superannuation Act 1972* shall, while the person 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*.

(2) Where—

- (a) a person who while the person held an office provided for by this Act was a contributor within the meaning of the *State Service Superannuation Act 1972*; and
- (b) the tenure of the office of that person has been terminated by reason of the person's resignation from the office or the expiration of the term of the person's appointment or reappointment to the office; and
- (c) that person is entitled to be such a contributor by reason that the person has duly exercised the person's entitlement conferred by section 29(1);

the termination of the person's 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*, the person shall not be taken to have ceased to be a contributor for the purposes of the *Public Service Superannuation Act 1958* by reason of that termination and the person shall be deemed to have continued to be an officer within the meaning of those Acts at all times since that termination.

32 Administrative and financial control

- (1) The chief executive is to be the chief executive within the meaning of the *Public Service Act 2008* for matters of an administrative nature associated with the discharge of the director's functions and in respect of officers appointed under section 23.
- (2) For the purposes of the *Financial Accountability Act 2009* the chief executive shall be the accountable officer in respect of the discharge of the director's functions.
- (3) The director shall do all such things as the chief executive, in the proper performance of the chief executive's duties as such accountable officer, may require for the purposes of that Act.

33 Regulation-making power

The Governor in Council may make regulations under this Act.

34 Director of prosecutions references etc.

A reference in an Act or document to the office or holder of the office of—

- (a) director of prosecutions is taken to be a reference to the office or holder of the office of director of public prosecutions; and
- (b) acting director of prosecutions is taken to be a reference to the acting director of public prosecutions; and
- (c) deputy director of prosecutions is taken to be a reference to the office or holder of the office of deputy director of public prosecutions.

35 Director of Prosecutions Act 1984 references

In an Act or document, a reference to the *Director of Prosecutions Act 1984* is a reference to this Act.