

**DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT (DISCLOSURES) BILL
2011**

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Bill introduced, and read a first time, and ordered to be printed on motion by the Hon. David Clarke.

Question—That the bill be considered an urgent bill—put and resolved in the affirmative.

Declaration of urgency agreed to.

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [3.36 p.m.]: I move:
That this bill be now read a second time.

The Government is pleased to introduce the Director of Public Prosecutions Amendment (Disclosures) Bill 2011. The purpose of the bill is to amend the Director of Public Prosecutions Act 1986 to clarify the obligations of police officers in relation to disclosing material to the Director of Public Prosecutions where that material is subject to a claim of privilege, public interest immunity or statutory immunity. This amendment is needed urgently to address a decision of the Court of Criminal Appeal handed down last week which has thrown into doubt the disclosure practices currently operating between New South Wales police and the Director of Public Prosecutions.

Section 15A of the Director of Public Prosecutions Act 1986 presently provides that police officers investigating alleged indictable offences have a duty to disclose to the director all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person. Material subject to a claim of privilege or immunity is often highly sensitive. In some cases the information may relate to covert police operations and could include the identity of informer witnesses or undercover police officers. Police may make a claim of public interest immunity when they are of the view that the disclosure of material may jeopardise an investigation or endanger the life of a witness.

For many years it has been the practice in this State that in order to comply with their requirements pursuant to section 15A in relation to material subject of a claim of privilege or immunity police have advised the Director of Public Prosecutions of the existence of this material but have not been required to produce it to the Director of Public Prosecutions. The Police Disclosure Certificate prescribed by the Director of Public Prosecutions Regulation 2010, which police are obliged to serve on the Director of Public Prosecutions as part of their disclosure obligations, is drafted in accordance with this practice.

The legislative amendment is needed following the decision of the Court of Criminal Appeal in the matter of *The Queen v Richard Lipton* handed down last week. In that matter the Court of Criminal Appeal said that in order to comply with their duty of disclosure police are obliged to produce all relevant material to the Director of Public Prosecutions even where that material is subject to a claim of public interest immunity. This clearly differs from the present practice whereby police are only obliged to advise the Director of Public Prosecutions of the existence of such material. In order to comply with the obligation outlined by the court there would need to be a significant change in the current practices of both police and the

Director of Public Prosecutions. For example, police would be obliged to disclose sensitive material to the Director of Public Prosecutions as a matter of course.

Further, it would likely add to the workload of the Office of the Director of Public Prosecutions as all sensitive material held by police in relation to Director of Public Prosecutions prosecutions would need to be examined and an assessment made as to its relevance. Under the current practices the director's office does not have to engage in this process. I am advised by the Director of Public Prosecutions that if this change in practices is required it would impact on a number of pending prosecutions and would likely result in matters having to be adjourned while the Director of Public Prosecutions implemented the new procedures. It is for this reason that urgent legislative amendment is necessary to preserve the currently existing disclosure practices of both police and the Office of the Director of Public Prosecutions.

I now turn to the main detail of the bill. Item [1] of schedule 1 to the bill amends section 15A of the Director of Public Prosecutions Act to provide that where police are in possession of relevant material that is the subject of a claim of privilege, public interest immunity or statutory immunity the police are not obliged to disclose that material to the Director of Public Prosecutions. Rather, the police are obliged to inform the Director of Public Prosecutions that such material has been obtained. The amendments proposed by item [1] also provide that these amendments will lapse on 1 January 2013. It is the intention that these amendments will suspend the decision in the Lipton case and allow existing practices to continue for a transitional period. This will provide the Director of Public Prosecutions and Police with time in which existing disclosure practices can be reviewed and adjusted.

Item [2] of schedule 1 to the bill inserts savings and transitional provisions which ensure that the legislation has retrospective effect to ensure the integrity of all prosecutions presently on foot and those which took place before the bill came into effect. As I have said, the bill simply brings the legislation into line with the practices that have been in operation in this State for many years. The transitional provisions will ensure that things done by the prosecution as if these amendments had been in place will be taken to have been validly done. I commend the bill to the House.