



New South Wales

Director of Public Prosecutions Amendment (Disclosures) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Director of Public Prosecutions Act 1986 (the Act)* as follows:

- (a) to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the Director of Public Prosecutions (*the DPP*) all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person, in the same way as the police,
- (b) to clarify an exception from the duty of disclosure that applies in respect of material that is the subject of a claim of privilege, public interest immunity or statutory immunity, and to remove a sunset provision that applies in relation to that exception,
- (c) to allow law enforcement officers to withhold providing to the DPP any material obtained during an investigation that is the subject of a statutory publication restriction.

The Bill also amends the *Director of Public Prosecutions Regulation 2010* as a consequence of the above amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Director of Public Prosecutions Act 1986 No 207

Schedule 1 [1] (and **Schedule 1 [3]**, to the extent that it defines *law enforcement officer*) extends existing disclosure requirements, that currently apply to police officers, so as to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the DPP all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Schedule 1 [2] makes it clear that the duty of disclosure arises if the DPP exercises any function under the Act with respect to the prosecution of the offence (for instance, if the DPP institutes proceedings in respect of the offence).

Schedule 1 [3] clarifies the duty of disclosure, insofar as it applies to sensitive material (that is, information, documents or other things that are the subject of a claim of privilege, public interest immunity or statutory immunity). At present, law enforcement officers are not required to disclose sensitive material to the DPP, but are required to disclose that they have obtained sensitive material. The amendment makes it clear that law enforcement officers are not required to provide sensitive material to the DPP, but are required to inform the DPP of:

- (a) the existence of the sensitive material, and
- (b) the nature of the claim relating to it.

Law enforcement officers are required to provide the sensitive material to the DPP if the DPP requests the provision of the material.

The sunset provision that applies to the existing provision relating to disclosure of sensitive material is repealed.

Schedule 1 [3] also provides for a new exception from the duty of disclosure. A law enforcement officer is not required to provide to the DPP any information, document or other thing if to do so would contravene a statutory publication restriction. A statutory publication restriction is a statutory provision, or an order made under a statutory provision, that prohibits or restricts the publication of certain evidence given before or obtained by the Police Integrity Commission, the New South Wales Crime Commission, or the Independent Commission Against Corruption. Law

enforcement officers are required to inform the DPP of the existence and nature of material the subject of a statutory publication restriction, but only to the extent not prohibited by the statutory publication restriction.

Schedule 1 [6] and [7] provide for specific transitional matters and enable savings and transitional regulations to be made as a consequence of the amendments. Schedule 1 [4] and [5] are consequential amendments.

Schedule 2 Amendment of Director of Public Prosecutions Regulation 2010

Schedule 2 amends the *Director of Public Prosecutions Regulation 2010* as a consequence of the amendments to the Act. In particular, it provides for a new form in which disclosures to the DPP are to be made.