

Introduced by Mr A A Tink, MP

First print



New South Wales

## **Director of Public Prosecutions Amendment Bill 1995**

### **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* to establish a Parliamentary Joint Committee (to be known as the Committee on the Office of the Director of Public Prosecutions) which will:

- (a) recommend, annually, the amount to be appropriated out of the Consolidated Fund for the Office of the Director of Public Prosecutions and comment generally on the budget of that Office, and
  - (b) have the power to veto the proposed appointment of a person as Director of Public Prosecutions, and
  - (c) monitor and review the exercise by the Director of Public Prosecutions of the Director's functions under the *Director of Public Prosecutions Act 1986* and any other Act.
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However, the monitoring and review will not extend to recommending that the Director of Public Prosecutions make a decision that relates to the institution or cessation of prosecutions or proceedings in a particular case, or to reconsidering any such decision.

The powers, functions (other than the function of recommending appropriations out of the Consolidated Fund and commenting on budget) and procedures of the proposed Joint Committee are similar to those of existing Joint Committees under the *Ombudsman Act 1974*, the *Independent Commission Against Corruption Act 1988* and the *Health Care Complaints Act 1993*.

The Bill also makes consequential amendments to the *Ombudsman Act 1974*.

## Outline of provisions

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

**Clause 2** provides for the proposed Act to commence on assent.

**Clause 3** is a formal provision giving effect to the amendments to the *Director of Public Prosecutions Act 1986* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Ombudsman Act 1974* set out in Schedule 2.

## **Schedule 1      Amendment of Director of Public Prosecutions Act 1986**

**Schedule 1 [3]** inserts a new Part (Part 4A Parliamentary Joint Committee), consisting of proposed clauses 30A–30M, into the *Director of Public Prosecutions Act 1986*.

Proposed clause 30A provides for the establishment of the Committee on the Office of the Director of Public Prosecutions as a Joint Committee of Parliament.

Proposed clause 30B sets out the functions of the Joint Committee. These include the following:

- recommending the amounts of money to be appropriated annually from Consolidated Revenue to fund the operation of the Office of the Director of Public Prosecutions, and commenting generally on the budget of that Office,

Director of Public Prosecutions Amendment Bill 1995

Explanatory note

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- monitoring and reviewing the exercise by the Director of Public Prosecutions of his or her functions,
- reporting to Parliament on such matters relating to the Director of Public Prosecutions as the Joint Committee considers should be brought to Parliament's attention,
- examining annual and other reports of the Director of Public Prosecutions and reporting to Parliament on those reports,
- reporting to Parliament any changes that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Director of Public Prosecutions,
- inquiring into any question in connection with its own functions that is referred to it by Parliament, and reporting accordingly.

The functions may be exercised in respect of matters that occurred before the establishment of the proposed Joint Committee. However, the Joint Committee will not be able to recommend that the Director of Public Prosecutions make a decision that relates to the institution or cessation of prosecutions or proceedings in a particular case, or to reconsider any such decision.

Proposed clause 30C specifies the annual date by which the Joint Committee is to notify the Treasurer of the amount it recommends be appropriated from Consolidated Revenue to fund the Office of the Director of Public Prosecutions.

Proposed clause 30D enables the Joint Committee to veto the proposed appointment of a person as Director of Public Prosecutions.

Proposed clause 30E provides that the Joint Committee is to consist of 3 members of the Legislative Council (appointed by the Council) and 8 members of the Legislative Assembly (appointed by the Assembly).

Proposed clause 30F specifies the circumstances in which a member of the Joint Committee ceases to hold office, and provides for the filling of any vacancies.

Proposed clause 30G provides for a Chairman and Vice-Chairman of the Joint Committee.

Proposed clause 30H sets out the procedure of the Joint Committee.

Proposed clause 30I provides a mechanism by which the Joint Committee can report to Parliament when Parliament is not sitting.



Proposed clause 30J enables the Joint Committee to send for persons, papers and records and requires the Joint Committee to take evidence in public (unless reasons of confidentiality dictate otherwise).

Proposed clause 30K deals with confidentiality and sets out the circumstances in which evidence must be taken in private, documents produced to the Joint Committee must be treated as confidential and the members of the Joint Committee are prohibited from disclosing evidence or the contents of documents. (Matters relating to the proposed appointment of a person as Director of Public Prosecutions are confidential.)

Proposed clause 30L specifies the way in which the Joint Committee is to be regarded for certain purposes (such as the purposes of the *Parliamentary Evidence Act 1901*).

Proposed clause 30M makes it clear that acts and proceedings of the Joint Committee are valid despite any technical deficiency in the Joint Committee as constituted at the time of the act or proceeding.

**Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [4]** inserts a provision requiring proceedings for offences against the Act to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

**Schedule 1 [1]** inserts a definition of *Joint Committee* into the Act.

## **Schedule 2     Amendment of Ombudsman Act 1974**

**Schedule 2 [1]–[3]** makes consequential amendments to the *Ombudsman Act 1974*. At present, the power to veto the appointment of a person as Director of Public Prosecutions that the Bill proposes to confer on the new Joint Committee is exercised by the Committee on the Office of Ombudsman. Schedule 2 removes that power from the latter committee.



New South Wales

## Director of Public Prosecutions Amendment Bill 1995

### Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Director of Public Prosecutions Act 1986 No 207	2
4 Amendment of Ombudsman Act 1974 No 68	2

---

### Schedules

1 Amendment of Director of Public Prosecutions Act 1986	3
2 Amendment of Ombudsman Act 1974	13

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New South Wales

## Director of Public Prosecutions Amendment Bill 1995

No , 1995

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### **A Bill for**

An Act to amend the *Director of Public Prosecutions Act 1986* to establish a Parliamentary Joint Committee on the Office of the Director of Public Prosecutions and to provide for its functions and operation; and to make consequential amendments to the *Ombudsman Act 1974*.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Director of Public Prosecutions Amendment Act 1995*.

**2    Commencement**

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This Act commences on the date of assent.

**3    Amendment of Director of Public Prosecutions Act 1986  
No 207**

The *Director of Public Prosecutions Act 1986* is amended as set out in Schedule 1.

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**4    Amendment of Ombudsman Act 1974 No 68**

The *Ombudsman Act 1974* is amended as set out in Schedule 2.



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## Schedule 1    Amendment of Director of Public Prosecutions Act 1986

(Section 3)

### [1]    Section 3 Definitions

Insert in alphabetical order in section 3 (1):

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*Joint Committee* means the Joint Committee called the Committee on the Office of the Director of Public Prosecutions constituted under Part 4A.

### [2]    Section 4A Veto of proposed appointment of Director

Omit "Committee on the Office of the Ombudsman under section 31BA of the *Ombudsman Act 1974*" from section 4A (1) (a).  
Insert instead "Joint Committee under section 30D".

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### [3]    Part 4A

Insert after section 30:

#### **Part 4A    Parliamentary Joint Committee**

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##### **30A Constitution of Joint Committee**

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Office of the Director of Public Prosecutions, is to be appointed.

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##### **30B Functions of Joint Committee**

(1)    The functions of the Joint Committee are as follows:

- (a)    to recommend the sums to be appropriated out of the Consolidated Fund for the recurrent services and the capital works and services of the Office of the Director in respect of each financial year of that Office, and to comment generally on the budget of the Office,

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Director of Public Prosecutions Amendment Bill 1995

Schedule 1 Amendment of Director of Public Prosecutions Act 1986

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- (b) to monitor and to review the exercise by the Director of the functions of the Director under this or any other Act,
  - (c) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Director or connected with the exercise of the functions of the Director to which, in the opinion of the Joint Committee, the attention of Parliament should be directed, 5
  - (d) to examine each annual and other report made by the Director, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report, 10
  - (e) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Director, 15
  - (f) to inquire into any question in connection with the Joint Committee's functions that is referred to it by both Houses of Parliament, and to report to both Houses on that question. 20
- (2) Nothing in this Part authorises the Joint Committee to recommend that a decision be made, or to reconsider a decision: 25
  - (a) to institute or not to institute a prosecution or proceeding, or
  - (b) to direct that no further proceedings be taken, in a particular case.
- (3) The functions of the Joint Committee (other than the function referred to in subsection (1) (a)) may be exercised in respect of matters occurring before or after the commencement of this section. 30

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**30C Joint Committee to notify Treasurer of sums recommended for appropriation**

The Joint Committee is to notify the Treasurer in writing of the sums recommended under section 30B (1) (a). The notification is to be given no later than 5 months before the beginning of the financial year of the Office of the Director to which the recommendation relates.

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**30D Power to veto proposed appointment of Director**

- (1) The Minister is to refer a proposal to appoint a person as Director to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

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**30E Membership**

- (1) The Joint Committee is to consist of 11 members, of whom:
  - (a) 3 are to be members of, and appointed by, the Legislative Council, and
  - (b) 8 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

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- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

**30F Vacancies**

- (1) A member of the Joint Committee ceases to hold office: 5
- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
  - (c) if a member ceases to be a member of the Legislative Council or Legislative Assembly, or 10
  - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or 15
  - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
  - (f) if the member is discharged from office by the House of Parliament to which the member belongs. 20
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House. 25

**30G Chairman and Vice-Chairman**

- (1) There is to be a Chairman and a Vice-Chairman of the Joint Committee, who are to be elected by and from the members of the Joint Committee.
- (2) A member of the Joint Committee ceases to hold office as Chairman or Vice-Chairman of the Joint Committee if: 30
- (a) the member ceases to be a member of the Committee, or



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- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
  - (c) the member is discharged from office by the Committee. 5
- (3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act or under the *Parliamentary Evidence Act 1901*. 10

### 30H Procedure

- (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee. 15
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Joint Committee, 6 members constitute a quorum, but the Committee must meet as a joint committee at all times. 20
- (4) The Chairman or, in the absence of the Chairman, the Vice-Chairman (or, in the absence of both the Chairman and the Vice-Chairman, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee. 25
- (5) The Vice-Chairman or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairman. 30
- (6) The Chairman, Vice-Chairman or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote. 35

Director of Public Prosecutions Amendment Bill 1995

Schedule 1 Amendment of Director of Public Prosecutions Act 1986

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- (7) A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.
- (8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament. 5
- (9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

**30I Reporting when Parliament not in session** 10

- (1) If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report: 15
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and 20
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk. 25

**30J Evidence**

- (1) The Joint Committee has power to send for persons, papers and records.
- (2) Subject to section 30K, the Joint Committee must take all evidence in public. 30

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- (3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence. 5
  - (4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly. 10

### 30K Confidentiality

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must: 15
    - (a) take the evidence in private, or
    - (b) direct that the document, or the part of the document, be treated as confidential. 20
  - (2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as Director, the Committee must (despite any other provision of this section): 25
    - (a) take the evidence in private, or
    - (b) direct that the document, or the part of the document, be treated as confidential. 30
  - (3) Despite any other provision of this section except subsection (9), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies. 35
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.



Director of Public Prosecutions Amendment Bill 1995

Schedule 1 Amendment of Director of Public Prosecutions Act 1986

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- (4) Despite any other provision of this section except subsection (9), the Joint Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 30D (3), disclose whether or not the Joint Committee or any member of the Joint Committee has vetoed, or proposes to veto, the proposed appointment of a person as Director. 5
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both. 10
- (5) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee:
- (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and 15
- (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness. 20
- (6) If, at the request of a witness, evidence is taken by the Joint Committee in private:
- (a) the Committee must not, without the consent in writing of the witness, and 25
- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (8),
- disclose or publish the whole or a part of that evidence. 30
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.



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- (7) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (8), disclose or publish the whole or a part of that evidence. 5
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (8) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (6). 10
- (9) Nothing in this section prohibits: 15
- (a) the disclosure or publication of evidence that has already been lawfully published, or
  - (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee. 20
- (10) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (11) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section: 25
- (a) sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and 30
  - (b) Division 5 of Part 3 of, and Schedule 2 to, the *Defamation Act 1974* apply to and in relation to that evidence as if it were taken by the Committee in public. 35
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### **30L Application of certain Acts**

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and 5
- (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly. 10

### **30M Validity of certain acts or proceedings**

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or 15
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted. 20

## **[4] Section 35A**

Insert after section 35:

### **35A Proceedings for offences**

Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 25

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## **Schedule 2    Amendment of Ombudsman Act 1974**

(Section 4)

**[1]    Section 31BA Power to veto proposed appointment of Ombudsman**

Omit “or Director of Public Prosecutions” from section 31BA (1). 5

**[2]    Section 31BA (5)**

Omit the subsection.

**[3]    Section 31H Confidentiality**

Omit “or Director of Public Prosecutions” from section 31H (1A) and (1C) wherever occurring. 10

