

FIRST PRINT

DIRECTOR OF PUBLIC PROSECUTIONS BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

- Crown Prosecutors Bill 1986;
- Criminal Procedure Bill 1986;
- District Court (Amendment) Bill 1986;
- Criminal Appeal (Amendment) Bill 1986;
- Miscellaneous Acts (Public Prosecutions) Amendment Bill 1986.

The objects of this Bill are—

- (a) to create the office of Director of Public Prosecutions and associated offices; and
- (b) to confer functions on the Director with respect to the prosecution of indictable and other offences.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 contains definitions for use in interpreting the proposed Act.

PART 2—SENIOR OFFICERS

Clause 4 provides for the appointment of a Director of Public Prosecutions, who is to be responsible to the Attorney General.

Clause 5 provides for the appointment of one or more Deputy Directors of Public Prosecutions, who are to be responsible to the Director.

Clause 6 provides for the appointment of a Solicitor for Public Prosecutions, who is to be responsible to the Director.

PART 3—FUNCTIONS

Clause 7 specifies the principal functions and responsibilities of the Director. These are—

- (a) to institute and conduct, on behalf of the Crown, prosecutions for indictable offences in the Supreme Court and the District Court;
- (b) to conduct appeals in respect of any such prosecutions;
- (c) to find bills, or determine that no bill be found, in respect of indictable offences; and
- (d) to direct that no further proceedings be taken against persons committed for trial or sentence.

Clause 8 authorises the Director to institute or conduct—

- (a) committal proceedings for summary offences;
- (b) proceedings for summary offences;
- (c) summary proceedings for indictable offences that may be dealt with summarily in Local Courts; and
- (d) appeals arising from any such proceedings.

The Director's powers under the clause may be exercised in respect of a summary offence only if it is an offence of a kind prescribed by the regulations (a "prescribed summary offence") or if a person otherwise responsible for prosecuting the offence consents.

Clause 9 authorises the Director to take over prosecutions and proceedings instituted by other persons.

Clause 10 requires the Director to notify the prosecutor and court, as appropriate, when taking over a prosecution or proceeding.

Clause 11 provides that a person whose consent is necessary for the prosecution of particular offences may authorise the Director to consent instead.

Clause 12 enables the Director to assist a coroner with the consent of the coroner.

Clause 13 empowers the Director to furnish guidelines to the Deputy Directors, the Solicitor for Public Prosecutions and the Crown Prosecutors, but not in relation to particular cases.

Clause 14 empowers the Director to make recommendations to the police and other persons for the institution of proceedings for offences. The clause also empowers the Director to furnish guidelines to the police and other persons with respect to the prosecution of indictable offences and prescribed summary offences, but not in relation to particular cases.

Clause 15 requires the Director to give a copy of any such guideline to the Attorney General and to include a copy in the Director's annual report. The persons to whom guidelines are furnished are subject to the guidelines.

Clause 16 empowers the Director to give directions to the police and other persons as to matters to be referred to the Director.

Clause 17 empowers the Director to require a person to give the Director information in relation to matters that have been or may be taken over by the Director.

Clause 18 empowers the Director to request information to be furnished by police or other persons in relation to matters that have been or may be taken over by the Director.

Clause 19 provides that the Director may request the Attorney General to grant an indemnity from prosecution or to give an undertaking that an answer, statement or disclosure will not be used in evidence. Provision for such indemnities and undertakings is made in the Criminal Procedure Bill 1986.

Clause 20 provides that the Director may exercise other functions prescribed by regulations and may exercise any incidental functions.

Clause 21 provides that the Director may appear in person or by counsel or a solicitor.

Clause 22 states the functions of a Deputy Director. A Deputy Director is to assist the Director and has the same functions as a Crown Prosecutor.

Clause 23 states the functions of the Solicitor for Public Prosecutions. These are to act as solicitor for the Director and to instruct the Crown Prosecutors and other counsel on behalf of the Director.

Clause 24 provides that the Director and other members of the staff assisting the Director may, with the consent of the Attorney General and if commissioned to do so, institute prosecutions for Commonwealth offences.

PART 4—THE ATTORNEY GENERAL

Clause 25 provides for consultation between the Attorney General and the Director.

Clause 26 makes the Director subject to guidelines furnished by the Attorney General, but not in relation to particular cases. A copy of such a guideline is to be published in the Gazette and a copy is to be laid before each House of Parliament.

Clause 27 requires the Attorney General to notify the Director of occasions when the Attorney General finds a bill, determines that no bill be found, directs that no further proceedings be taken against a person committed for trial or sentence or appeals against a sentence. A report of any such notifications is to be included in the Director's annual report.

Clause 28 provides that the Director is not to exercise a function inconsistently with the manner in which the Attorney General has already exercised a function in relation to the same matter, unless the Attorney General consents. In cases where the Attorney General has, before the commencement of the legislation, determined that no bill be found or directed that no further proceedings be taken, the Director may not exercise a function inconsistently, unless there is significant new evidence or fraud was involved.

Clause 29 authorises the Director to request the Attorney General to exercise a function, where the Director considers it desirable in the interests of justice that the Director not exercise the function.

Clause 30 makes it clear that nothing in the proposed Act affects any functions of the Attorney General.

PART 5—MISCELLANEOUS

Clause 31 is a formal provision giving effect to Schedule 1 (which consists of provisions relating to the Director and other senior officers).

Clause 32 provides for the appointment of staff under the Public Service Act 1979 to assist the Director. The clause also enables the appointment of consultants and casual staff, subject to ministerial approval.

Clause 33 empowers the Director to delegate certain functions to members of staff, Crown Prosecutors or persons approved by the Attorney General. Certain functions may be delegated to Deputy Directors only (clause 33 (2)).

Clause 34 requires the Director to prepare an annual report, which is to be laid before each House of Parliament.

Clause 35 protects the Director and others from personal liability when exercising functions in good faith.

Clause 36 contains savings and transitional provisions. One of these provides for the person holding office as Solicitor for Public Prosecutions immediately before the commencement of the legislation to be deemed to have been appointed to the office of that name under the proposed Act.

Clause 37 is a regulation-making provision.

SCHEDULE 1—PROVISIONS RELATING TO SENIOR OFFICERS

Clause 1 contains definitions for use in interpreting the Schedule. A "Senior Officer" means the Director, a Deputy Director or the Solicitor for Public Prosecutions.

Clause 2 provides that a person of or above the age of 65 cannot be appointed as a Senior Officer. The clause also provides that, to be eligible for appointment, the Director must be a Queen's Counsel and that the other Senior Officers must have at least 5 years' standing as lawyers. A member of any Australian parliament is not eligible for appointment.

Clause 3 provides for the remuneration of Senior Officers to be determined under the Statutory and Other Offices Remuneration Act 1975.

Clause 4 specifies the circumstances in which Senior Officers vacate office. They are to hold office until reaching the age of 65 years.

Clause 5 requires Senior Officers to disclose to the Attorney General any pecuniary interests in any business or in any body corporate that carries on any business.

Clause 6 provides that a Senior Officer may not engage in other work without the consent of the Attorney General.

Clause 7 provides that the Public Service Act 1979 does not apply to the appointment or tenure of Senior Officers.

Clause 8 provides for the appointment of acting Senior Officers.

Clauses 9, 11 and 12 preserve certain rights of Senior Officers who were previously public servants or contributors to statutory superannuation schemes, and the like.

Clause 10 gives the Director an entitlement to a judicial pension.

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SCHEDULE 1—PROVISIONS RELATING TO SENIOR OFFICERS

DIRECTOR OF PUBLIC PROSECUTIONS BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to create the office of Director of Public Prosecutions and to confer functions on the Director of Public Prosecutions; and for other purposes.

See also Crown Prosecutors Bill 1986; Criminal Procedure Bill 1986; District Court (Amendment) Bill 1986; Criminal Appeal (Amendment) Bill 1986; Miscellaneous Acts (Public Prosecutions) Amendment Bill 1986.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1**PRELIMINARY****Short title**

1. This Act may be cited as the "Director of Public Prosecutions Act 1986".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by
15 proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"appeal" includes any proceedings in the nature of an appeal, including—

20 (a) any proceedings under Part V of the Justices Act 1902; and

(b) any proceedings referred to in section 69 of the Supreme Court Act 1970;

"committal proceedings" means a hearing before a Magistrate (or one or more justices) for the purpose of deciding whether a person charged
25 with an indictable offence should be committed for trial or sentence;

"coroner" includes any person exercising any of the jurisdiction or functions of a coroner;

"Deputy Director" means a Deputy Director of Public Prosecutions;

"Director" means the Director of Public Prosecutions;

30 "indictable offence" means an offence (including a common law offence) that may be prosecuted on indictment;

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- “justice” means a justice of the peace;
- “offence” means an offence against the laws of the State;
- “Officer” means the Director, a Deputy Director, the Solicitor or a member of the staff referred to in section 32;
- 5 “prescribed summary offence” means a summary offence of a kind prescribed by the regulations for the purposes of this Act;
- “prosecutor” includes an informant and a complainant;
- “regulations” means regulations under this Act;
- “Solicitor” means the Solicitor for Public Prosecutions;
- 10 “summary offence” means an offence that is not an indictable offence.
- (2) In this Act—
- (a) a reference to a function includes a reference to a power, authority and duty; and
- 15 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2

SENIOR OFFICERS

Director

4. (1) The Governor may appoint a Director of Public Prosecutions.
- 20 (2) The Director shall have and may exercise the functions conferred or imposed on the Director by or under this or any other Act.
- (3) The Director is responsible to the Attorney General for the due exercise of the Director’s functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, 25 institution and conduct of any proceedings.

Deputy Directors

5. (1) The Governor may appoint one or more Deputy Directors of Public Prosecutions.

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(2) A Deputy Director shall have and may exercise the functions conferred or imposed on a Deputy Director by or under this or any other Act.

(3) A Deputy Director is responsible to the Director for the due exercise of the Deputy Director's functions.

Solicitor for Public Prosecutions

6. (1) The Governor may appoint a Solicitor for Public Prosecutions.

(2) The Solicitor shall have and may exercise the functions conferred or imposed on the Solicitor by or under this or any other Act.

10 (3) The Solicitor is responsible to the Director for the due exercise of the Solicitor's functions.

PART 3
FUNCTIONS

Principal functions

15 7. (1) The principal functions and responsibilities of the Director are—

(a) to institute and conduct, on behalf of the Crown, prosecutions (whether on indictment or summarily) for indictable offences in the Supreme Court and the District Court;

20 (b) to institute and conduct, on behalf of the Crown, appeals in any court in respect of any such prosecution; and

(c) to conduct, on behalf of the Crown as respondent, any appeal in any court in respect of any such prosecution.

(2) The Director has the same functions as the Attorney General in relation to—

25 (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;

(b) directing that no further proceedings be taken against a person who has been committed for trial or sentence; and

- (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

Instituting other proceedings

- 5 **8. (1)** The Director may institute and conduct—
 - (a) committal proceedings for indictable offences;
 - (b) proceedings for summary offences in any court; and
 - (c) summary proceedings for indictable offences that may be dealt with summarily in Local Courts.
- 10 **(2)** If the Director has instituted any such proceeding, the Director may—
 - (a) institute and conduct, on behalf of the Crown or the prosecution, appeals in any court arising from the proceeding; and
 - (b) conduct, as respondent, appeals in any court arising from the proceeding.
- 15 **(3)** The Director may not exercise any function under this section in respect of a summary offence, unless—
 - (a) the offence is a prescribed summary offence; or
 - (b) the person otherwise responsible for the prosecution or proceeding concerned has consented in writing.

20 Taking over prosecutions or proceedings

- 9. **(1)** If a prosecution or proceeding in respect of an offence (whether it is an indictable offence or a summary offence) has been instituted by a person other than the Director, the Director may take over the matter and—
 - (a) carry on the prosecution or proceeding;
 - 25 (b) carry on, on behalf of the prosecution or as respondent, an appeal in any court in respect of the offence;
 - (c) institute and conduct, on behalf of the prosecution, an appeal in any court in respect of the offence; and
 - 30 (d) conduct, as respondent, an appeal in any court in respect of the offence.

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(2) The Director may not take over a matter under this section involving a summary offence, unless—

- (a) the offence is a prescribed summary offence; or
- (b) a person otherwise responsible for the matter has consented in writing.

(3) Except as provided by subsection (2), the Director may take over a matter under this section whether or not the person otherwise responsible for the matter consents.

(4) If the Director takes over a matter under this section—

- (a) the Director shall, as from the time when the Director complies with section 10 (1) in relation to the matter, be deemed to be the prosecutor in connection with the prosecution or proceeding concerned; and
- (b) the Director may decline to carry the prosecution further or may cause the proceeding to be terminated.

Director to inform court etc. when taking over proceedings

10. (1) If the Director decides to take over a matter in accordance with section 9, the Director shall, as soon as practicable—

- (a) by notice in writing, inform the person otherwise responsible for the matter; and
- (b) if the matter is pending before a court or justice—
 - (i) by notice in writing, inform the registrar or other proper officer of the court in which the prosecution or proceeding concerned is to be heard; or
 - (ii) if the prosecution or proceeding is being heard by a Judge, Magistrate or justice—in such manner as the Director thinks fit, inform the Judge, Magistrate or justice,

that the Director has taken over the matter.

(2) Failure by the Director to notify or inform does not affect any of the Director's functions in relation to the matter.

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Consents

11. (1) The Director may consent to prosecutions for offences, being offences of a kind in relation to which an order under subsection (2) is in force.

5 (2) A person who has, under a law of the State, the power to consent to prosecutions for offences of a particular kind may, by order published in the Gazette, authorise the Director to consent to prosecutions for offences of that kind.

(3) Such an authorisation may not be given by a person who has that
10 power by virtue of an authorisation granted to the person by another person.

(4) The mere giving of an authorisation under this section does not prevent the giving of a consent by a person who, but for this section, would have power to give a consent.

(5) If the Director consents to a prosecution for an offence, being an
15 offence of a kind to which an order under subsection (2) is in force, the prosecution may be instituted and conducted without the consent of any other person.

(6) The Director shall notify the person who gives an authorisation under this section of the giving or refusing of consent under the authorisation.

20 (7) If the Director gives or refuses consent under an authorisation under this section, the person who gives the authorisation is bound by the Director's decision.

(8) In this section—

“consent” includes authorisation, sanction and any similar authority.

25 **Coroners**

12. The Director may, with the consent of the coroner, assist a coroner in any inquest or inquiry.

Guidelines to Crown Prosecutors etc. by Director

30 13. (1) The Director may, by order in writing, furnish guidelines to the Deputy Directors, the Solicitor and the Crown Prosecutors with respect to the prosecution of offences, including guidelines as to the exercise of specified functions (whether statutory or not).

(2) Guidelines may not be furnished in relation to particular cases.

Recommendations and guidelines to police etc. by Director

14. (1) The Director may recommend to—

(a) the Commissioner of Police; or

5 (b) any other person who—

(i) conducts investigations in relation to offences; or

(ii) institutes or conducts prosecutions for offences,

that proceedings be instituted in respect of any offence.

10 (2) The Director may, by order in writing, and after consultation with the Attorney General, furnish guidelines to the Commissioner of Police or any such person with respect to the prosecution of indictable offences or prescribed summary offences.

(3) Guidelines may not be furnished in relation to particular cases.

Provisions relating to guidelines

15 15. (1) The Director shall—

(a) give to the Attorney General a copy of each guideline furnished under this Part; and

(b) include in a report under section 34—

20 (i) a copy of each guideline furnished during the period to which the report relates; and

(ii) a copy of each guideline furnished as in force at the end of that period.

(2) The persons to whom guidelines are furnished under this Part are subject to the guidelines.

25 **Directions to police etc. by Director**

16. (1) The Director may, by order in writing, give directions specifying matters referred to in subsection (2) to—

(a) the Commissioner of Police; or

30 (b) any other person who institutes or conducts prosecutions for offences.

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(2) Such a direction may specify—

- (a) an offence, being an offence a matter relating to which is to be referred to the Director for the institution or carrying on of a prosecution for that offence; or
- 5 (b) a class of offences, being offences matters relating to which are to be referred to the Director for the institution or carrying on of prosecutions for those offences.

(3) A person to whom such a direction is given shall comply with the direction.

10 (4) In this section—

“offence” means an indictable offence or a prescribed summary offence.

Provision of information to Director

17. (1) If a prosecution for an offence has been instituted by a person other than the Director and—

- 15 (a) the Director informs the person that the Director is considering taking over the prosecution;
- (b) the Director takes over the prosecution; or
- (c) the person considers that the Director should take over the prosecution,

20 the person shall furnish to the Director the relevant information or material.

(2) The relevant information or material is—

- (a) a full report of the circumstances of the matter;
- (b) a copy of the statements of any witnesses;
- (c) each material document in the possession of the person; and
- 25 (d) such other information or material as the Director requires.

Request for assistance from police etc. by Director

18. (1) If the Director is considering instituting or taking over, or has instituted or taken over, a prosecution for an offence, the Director may, by order in writing, request—

- 30 (a) the Commissioner of Police; or

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(b) any other person who—

(i) conducts investigations in relation to offences; or

(ii) institutes or conducts prosecutions for offences,

to investigate or further investigate matters associated with the alleged
5 commission of the offence.

(2) The Commissioner or other person shall, so far as practicable, comply with the request.

Indemnities and undertakings

19. (1) The Director may request the Attorney General to exercise the
10 function of the Attorney General—

(a) to grant indemnity from prosecution (whether on indictment or summarily); or

(b) to give an undertaking that an answer, statement or disclosure will not be used in evidence.

15 (2) The Director may not grant such an indemnity or give such an undertaking.

Other functions of Director

20. (1) The functions of the Director include the following:

(a) to exercise such functions as are prescribed;

20 (b) to do anything incidental or conducive to the exercise of any functions of the Director.

(2) The Director may advise and assist any Crown Prosecutor, any member of the Police Force or, if so directed by the Attorney General, any other person in respect of the conduct of criminal proceedings.

25 Appearances by and on behalf of Director

21. The Director may appear in person or may be represented by counsel or a solicitor in—

(a) any proceedings which are conducted or carried on by the Director or to which the Director is otherwise a party; or

30 (b) any inquest or inquiry in which the Director is assisting a coroner.

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Functions of Deputy Directors

22. (1) A Deputy Director shall assist the Director, as the Director requires.

(2) A Deputy Director has the same functions as a Crown Prosecutor.

5 Functions of Solicitor

23. The functions of the Solicitor are—

(a) to act as solicitor for the Director in the exercise of the Director's functions; and

10 (b) to instruct the Crown Prosecutors and other counsel on behalf of the Director.

Offences under Commonwealth laws

24. If an Officer, with the consent of the Attorney General, holds an appointment, commission or authority to prosecute offences against laws of the Commonwealth, the Officer may institute and conduct (in accordance
15 with the terms of the appointment, commission or authority) prosecutions for such offences.

PART 4**THE ATTORNEY GENERAL****Consultation**

20 25. (1) The Director shall, if requested to do so by the Attorney General, consult with the Attorney General with respect to matters concerning the exercise of the Director's functions.

(2) The Attorney General shall, if requested to do so by the Director, consult with the Director with respect to matters concerning the exercise of
25 the Director's functions.

Guidelines by Attorney General

26. (1) In the exercise of the Director's functions, the Director is subject to such guidelines as the Attorney General, after consultation with the Director, furnishes to the Director by order in writing.

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(2) Without limiting the generality of subsection (1), guidelines may relate to the circumstances in which the Director should institute or carry on prosecutions for offences.

(3) A guideline may not be furnished in relation to a particular case.

5 (4) If the Attorney General furnishes a guideline under this section, the Attorney General shall—

(a) as soon as practicable after furnishing it, cause a copy of the order to be published in the Gazette; and

10 (b) cause a copy of the order to be laid before each House of Parliament within 14 sitting days of that House after publication.

(5) For the purposes of this section, sitting days shall be counted whether or not they occur during the same session.

Attorney General to notify Director of bills and no bills

15 27. (1) The Attorney General shall notify the Director whenever the Attorney General exercises any of the following functions:

(a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;

20 (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence;

(c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial;

25 (d) appealing under section 5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.

(2) The Director shall include in a report under section 34 information as to the notifications received by the Director from the Attorney General under this section during the period to which the report relates.

Attorney General's functions to prevail

30 28. (1) The Director shall not, without the consent of the Attorney General, exercise a function in a manner that is inconsistent with the manner in which the Attorney General has, after the commencement of this section, already exercised a function in relation to the same matter.

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(2) If the Attorney General has, before the commencement of this section, determined that no bill of indictment be found in respect of an offence, or has directed that no further proceedings be taken against a person in respect of an offence, the Director shall not exercise a function in a manner that is
 5 inconsistent with the determination or direction, unless the Director is satisfied that—

(a) significant fresh evidence has been produced that was not previously available for consideration; or

(b) the determination or direction was obtained by fraud,

10 and that in all the circumstances it is in the interests of justice that the matter be re-opened.

Director may make request to Attorney General

29. If the Director considers it desirable in the interests of justice that the Director should not exercise certain functions in relation to a particular
 15 case, the Director may request the Attorney General to exercise the Attorney General's corresponding functions.

Attorney General's powers not affected

30. Nothing in this Act affects any functions of the Attorney General that the Attorney General has apart from this Act.

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PART 5**MISCELLANEOUS****Provisions relating to appointment etc. of Director etc.**

31. Schedule 1 has effect.

Staff

25 32. (1) Such staff as may be necessary to enable the Director and Solicitor to exercise their functions shall be employed under the Public Service Act 1979.

(2) The Director may—

(a) with the approval of the Attorney General; and

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- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

5 (3) The Director may—

- (a) for any purpose approved by the Attorney General; and
 (b) on such terms and conditions as may be approved by the Public Service Board,

employ such consultants or casual staff as may be required by the Director
 10 in exercising the Director's functions.

(4) The Public Service Act 1979 does not apply to or in respect of the employment of consultants or casual staff under this section and a person is not, as a consultant or member of the casual staff, subject to that Act.

Delegation

15 33. (1) The Director may delegate to—

- (a) an Officer;
 (b) a Crown Prosecutor; or
 (c) a person approved by the Attorney General,

the exercise of any of the Director's functions (other than this power of
 20 delegation).

(2) The Director may not delegate the exercise of any of the following functions, except to a Deputy Director:

- 25 (a) determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
 (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence;
 30 (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial;
 (d) appealing under section 5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.

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(3) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Director.

5 **(4)** A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Director.

10 **(6)** A delegation does not prevent the exercise of a function by the Director.

(7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Annual report

15 **34. (1)** As soon as practicable after 30 June, but on or before 31 December, in each year, the Director shall prepare and forward to the Attorney General a report of the work and activities of the Director for the 12 months ending on 30 June in that year.

20 **(2)** The Attorney General shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) The report shall not identify persons who have been the subject of consideration under this Act in relation to alleged offences, unless the persons have appeared before a court in relation to the alleged offences.

Protection from liability

25 **35. (1)** In this section—

 “prescribed person” means an Officer, a Crown Prosecutor or any person assisting an Officer or Crown Prosecutor;

 “relevant law” means this Act or any other Act or law to the extent that the other Act or law confers or imposes functions on the Director.

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(2) No matter or thing done by a prescribed person shall, if the matter or thing was done in good faith for the purpose of executing any relevant law, subject any prescribed person personally to any action, liability, claim or demand.

- 5 (3) A prescribed person is entitled to be indemnified by the State for any costs awarded against the prescribed person personally in any proceedings in which the prescribed person is involved through the execution of any relevant law.

Savings and transitional provisions

- 10 36. (1) This Act applies to offences committed before the commencement of this subsection, as well as to offences committed afterwards.

(2) Anything duly done by or in the name of the Attorney General before the commencement of this subsection is not affected by anything in this Act.

- 15 (3) The person holding office as Solicitor for Public Prosecutions immediately before the commencement of section 6 shall be deemed to have been appointed as Solicitor for Public Prosecutions under this Act.

Regulations

- 20 37. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- 25 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Director of Public Prosecutions 1986

SCHEDULE 1

(Sec. 31)

PROVISIONS RELATING TO SENIOR OFFICERS

Definitions

5 1. In this Schedule—

“office” means the office of Director, Deputy Director or Solicitor;

“Senior Officer” means the Director, a Deputy Director or the Solicitor;

“statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

10 **Eligibility for appointment**

2. (1) A person of or above the age of 65 years is not eligible to be appointed as a Senior Officer.

(2) A person is not eligible to be appointed as Director unless the person is one of Her Majesty's Counsel for the State.

15 (3) A person is not eligible to be appointed as a Deputy Director unless the person is a barrister of the Supreme Court and has been a barrister or solicitor of the Supreme Court (or both) for not less than 5 years.

(4) A person is not eligible to be appointed as Solicitor unless the person is a solicitor of the Supreme Court and has been a barrister or solicitor (or both) of the Supreme Court
20 for not less than 5 years.

(5) A person is not eligible to be appointed as a Senior Officer if the person is a member of the Legislative Council or the Legislative Assembly of New South Wales or is a member of a House of Parliament of another State or of the Commonwealth.

Remuneration

25 3. A Senior Officer is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Attorney General may from time to time determine in respect of the Senior Officer.

30 **Vacation of office**

4. (1) A Senior Officer shall be deemed to have vacated office if the Officer—

(a) dies;

(b) resigns the office by instrument in writing addressed to the Governor;

(c) reaches the age of 65 years; or

35 (d) is removed from office by the Governor under subclause (2) or (3).

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(2) If a Senior Officer—

(a) is nominated for election as a member of the Legislative Council or the Legislative Assembly of New South Wales or as a member of a House of Parliament of another State or of the Commonwealth;

5 (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

10 (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

15 (d) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Attorney General or unless the absence is occasioned by illness or other unavoidable cause; or

(e) fails, without reasonable excuse, to comply with clause 5 or 6,
the Officer shall be removed from office by the Governor.

(3) The Governor may remove a Senior Officer from office—

(a) for incapacity, incompetence or misbehaviour; or

20 (b) if the Officer is—

(i) convicted in New South Wales of an offence that is punishable by imprisonment or penal servitude for 12 months or upwards; or

(ii) convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable.

25 (4) Anything done or purporting to have been done by a Senior Officer after the Officer has reached the age of 65 years is nevertheless as valid as if the Officer had not reached that age.

Disclosure of interests

30 5. A Senior Officer shall give written notice to the Attorney General of all direct or indirect pecuniary interests that the Officer has or acquires in any business whether in New South Wales or elsewhere or in any body corporate carrying on any such business.

Other work

6. (1) A Senior Officer shall not, without the consent of the Attorney General—

35 (a) engage in the practice of the law (whether within or outside New South Wales) outside the duties of his or her office; or

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(b) engage in paid employment outside the duties of his or her office.

(2) A Senior Officer shall not contravene or fail to comply with any conditions attached to any such consent.

Public Service Act 1979

- 5 7. The Public Service Act 1979 does not apply to or in respect of the appointment of a Senior Officer and a Senior Officer is not, as a Senior Officer, subject to that Act.

Acting Senior Officers

8. (1) The Attorney General may appoint a person who is eligible for appointment as a Senior Officer to act in the office of that Senior Officer—

- 10 (a) during a vacancy in that office, whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the person holding that office is absent from duty or from New South Wales or is, for any other reason, unable to exercise the functions of that office.

- 15 (2) An appointment of a person under this clause may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Attorney General may—

- 20 (a) subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of a Senior Officer; and

(b) terminate such an appointment at any time.

(4) A person may not act or be appointed to act under this clause for a period of more than 12 months at a time.

- 25 (5) While a person is acting in the office of a Senior Officer, the person has and may exercise all the functions of the Officer and shall be deemed to be the Officer.

(6) The validity of anything done by or in relation to a person purporting to act in the office of a Senior Officer under an appointment made under this clause shall not be called in question on the ground that—

- (a) the occasion for the appointment had not arisen;
- 30 (b) there is a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued***Preservation of rights of Senior Officer previously public servant etc.**

9. (1) Subject to subclause (2) and to the terms of appointment, if a Senior Officer was, immediately before being appointed as a Senior Officer—

- (a) an officer of the Public Service;
- 5 (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- 10 (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a Senior Officer; and
- 15 (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a Senior Officer and—

- (h) his or her service as a Senior Officer shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- 20 (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

25 (2) If a Senior Officer would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- 30 (a) he or she shall not be so entitled on becoming (whether on appointment as a Senior Officer or at any later time while holding office as a Senior Officer) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(3) Subclause (2) does not prevent the payment to a Senior Officer on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by resignation, to be an officer or employee for the purposes of the scheme.

- 5 (4) A Senior Officer is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

(5) In this clause—

10 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Pension of Director

- 15 10. (1) The Judges’ Pensions Act 1953 applies, with any necessary adaptations, to a person who is or was Director (and the person’s spouse and children) in the same way as it applies to a person who is or was a judge (and the person’s spouse and children), except that—

- (a) the pension payable under section 3 of that Act is payable on the Director’s retirement at the age of 65 years after serving as Director for not less than 5 years; and
20 (b) the pension payable under section 4 of that Act is payable on the Director’s retirement after reaching the age of 60 years and before reaching the age of 65 years, after serving as Director for not less than 10 years.

(2) If a person who is or was Director becomes a judge within the meaning of the Judges’ Pensions Act 1953—

- 25 (a) any period served by the person in the office of Director shall, for the purposes of that Act, be computed as portion of the person’s service as a judge in the judicial office which the person held immediately before retiring as a judge or immediately before death before retirement, as the case may be; and
(b) the right to any pension which the person is receiving, or is entitled to receive, under that Act as applied by this clause shall cease.

- 30 (3) Subclauses (1) and (2) do not apply to—

(a) a person who elects, pursuant to subclause (5), to continue to contribute under another superannuation scheme; or

(b) a person acting in the office of Director.

- 35 (4) The Director is not, subject to subclause (5), an employee for the purposes of another superannuation fund.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(5) A person appointed to be Director who, at the date of the appointment, was a contributor under another superannuation scheme may elect to continue to contribute under that scheme, and if the person so elects the person shall be deemed to be an employee for the purposes of that scheme.

5 **Senior Officer entitled to re-appointment to former employment in certain cases**

11. (1) A person who—

(a) ceases to be a Senior Officer by resignation;

(b) was, immediately before being appointed as a Senior Officer—

(i) an officer of the Public Service; or

10 (ii) an officer or employee of a statutory body; and

(c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which

15 the person held immediately before being appointed as a Senior Officer.

(2) Where subclause (1) does not apply to a person who—

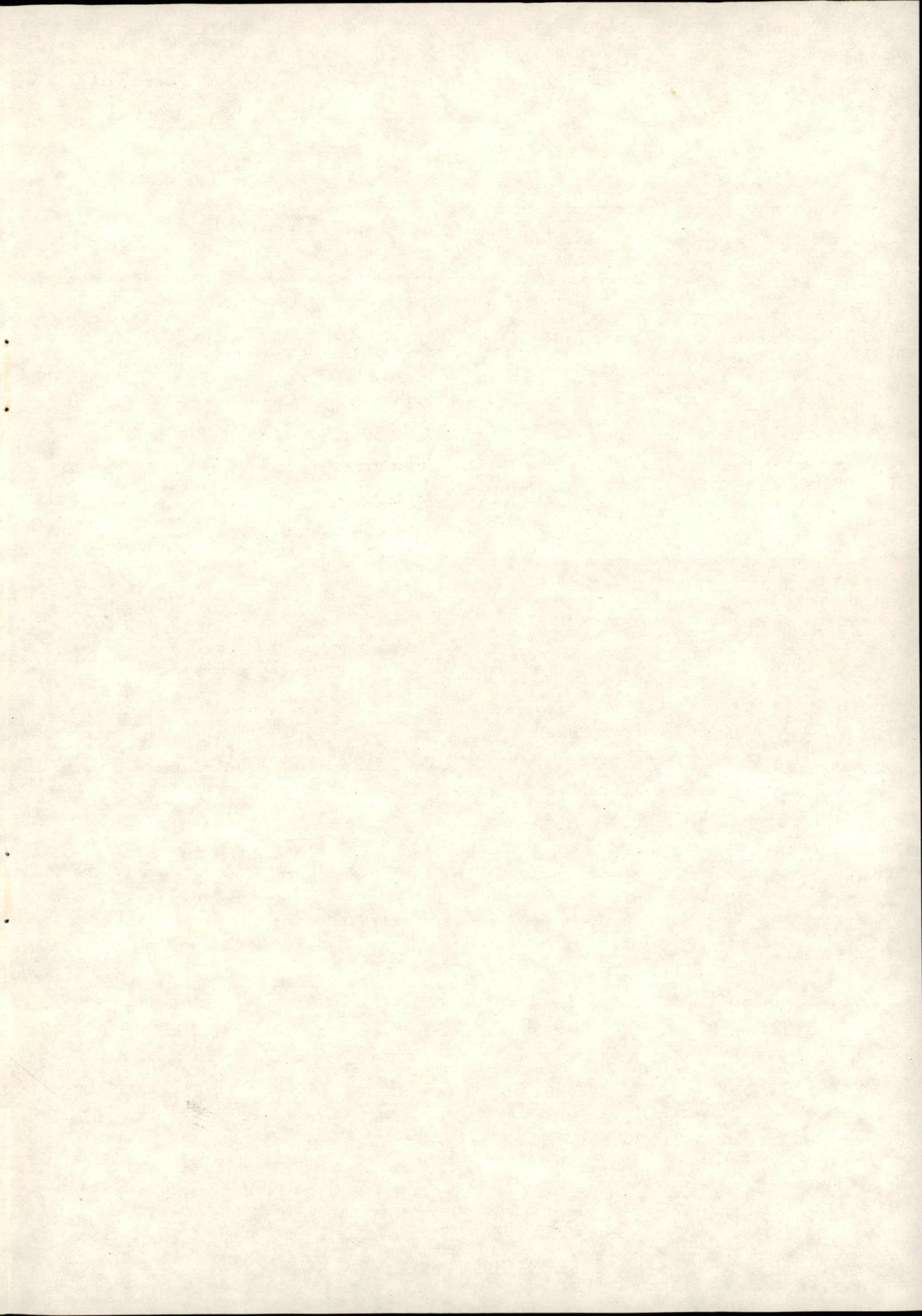
(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and

(b) is after that appointment appointed as a Senior Officer,

20 the person shall have such rights, if any, to appointment as such an officer or employee, in the event of ceasing to be a Senior Officer, as are specified in the instrument of appointment as a Senior Officer or as are agreed on by the person and by or on behalf of the Government.

Declaration of statutory bodies

25 12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.



DIRECTOR OF PUBLIC PROSECUTIONS ACT 1986 No. 207

NEW SOUTH WALES



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SCHEDULE 1—PROVISIONS RELATING TO SENIOR OFFICERS

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1986 No. 207

NEW SOUTH WALES



Act No. 207, 1986

An Act to create the office of Director of Public Prosecutions and to confer functions on the Director of Public Prosecutions; and for other purposes.
[Assented to 23 December 1986]

See also Crown Prosecutors Act 1986; Criminal Procedure Act 1986; District Court (Amendment) Act 1986; Criminal Appeal (Amendment) Act 1986; Miscellaneous Acts (Public Prosecutions) Amendment Act 1986.

Director of Public Prosecutions 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Director of Public Prosecutions Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"appeal" includes any proceedings in the nature of an appeal, including—

- (a) any proceedings under Part V of the Justices Act 1902; and
- (b) any proceedings referred to in section 69 of the Supreme Court Act 1970;

"committal proceedings" means a hearing before a Magistrate (or one or more justices) for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence;

"coroner" includes any person exercising any of the jurisdiction or functions of a coroner;

"Deputy Director" means a Deputy Director of Public Prosecutions;

"Director" means the Director of Public Prosecutions;

"indictable offence" means an offence (including a common law offence) that may be prosecuted on indictment;

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"justice" means a justice of the peace;

"offence" means an offence against the laws of the State;

"Officer" means the Director, a Deputy Director, the Solicitor or a member of the staff referred to in section 32;

"prescribed summary offence" means a summary offence of a kind prescribed by the regulations for the purposes of this Act;

"prosecutor" includes an informant and a complainant;

"regulations" means regulations under this Act;

"Solicitor" means the Solicitor for Public Prosecutions;

"summary offence" means an offence that is not an indictable offence.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2

SENIOR OFFICERS

Director

4. (1) The Governor may appoint a Director of Public Prosecutions.

(2) The Director shall have and may exercise the functions conferred or imposed on the Director by or under this or any other Act.

(3) The Director is responsible to the Attorney General for the due exercise of the Director's functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, institution and conduct of any proceedings.

Deputy Directors

5. (1) The Governor may appoint one or more Deputy Directors of Public Prosecutions.

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(2) A Deputy Director shall have and may exercise the functions conferred or imposed on a Deputy Director by or under this or any other Act.

(3) A Deputy Director is responsible to the Director for the due exercise of the Deputy Director's functions.

Solicitor for Public Prosecutions

6. (1) The Governor may appoint a Solicitor for Public Prosecutions.

(2) The Solicitor shall have and may exercise the functions conferred or imposed on the Solicitor by or under this or any other Act.

(3) The Solicitor is responsible to the Director for the due exercise of the Solicitor's functions.

PART 3
FUNCTIONS

Principal functions

7. (1) The principal functions and responsibilities of the Director are—

- (a) to institute and conduct, on behalf of the Crown, prosecutions (whether on indictment or summarily) for indictable offences in the Supreme Court and the District Court;
- (b) to institute and conduct, on behalf of the Crown, appeals in any court in respect of any such prosecution; and
- (c) to conduct, on behalf of the Crown as respondent, any appeal in any court in respect of any such prosecution.

(2) The Director has the same functions as the Attorney General in relation to—

- (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
- (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence; and

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- (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

Instituting other proceedings

- 8. (1) The Director may institute and conduct—
 - (a) committal proceedings for indictable offences;
 - (b) proceedings for summary offences in any court; and
 - (c) summary proceedings for indictable offences that may be dealt with summarily in Local Courts.
- (2) If the Director has instituted any such proceeding, the Director may—
 - (a) institute and conduct, on behalf of the Crown or the prosecution, appeals in any court arising from the proceeding; and
 - (b) conduct, as respondent, appeals in any court arising from the proceeding.
- (3) The Director may not exercise any function under this section in respect of a summary offence, unless—
 - (a) the offence is a prescribed summary offence; or
 - (b) the person otherwise responsible for the prosecution or proceeding concerned has consented in writing.

Taking over prosecutions or proceedings

- 9. (1) If a prosecution or proceeding in respect of an offence (whether it is an indictable offence or a summary offence) has been instituted by a person other than the Director, the Director may take over the matter and—
 - (a) carry on the prosecution or proceeding;
 - (b) carry on, on behalf of the prosecution or as respondent, an appeal in any court in respect of the offence;
 - (c) institute and conduct, on behalf of the prosecution, an appeal in any court in respect of the offence; and
 - (d) conduct, as respondent, an appeal in any court in respect of the offence.

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(2) The Director may not take over a matter under this section involving a summary offence, unless—

- (a) the offence is a prescribed summary offence; or
- (b) a person otherwise responsible for the matter has consented in writing.

(3) Except as provided by subsection (2), the Director may take over a matter under this section whether or not the person otherwise responsible for the matter consents.

(4) If the Director takes over a matter under this section—

- (a) the Director shall, as from the time when the Director complies with section 10 (1) in relation to the matter, be deemed to be the prosecutor in connection with the prosecution or proceeding concerned; and
- (b) the Director may decline to carry the prosecution further or may cause the proceeding to be terminated.

Director to inform court etc. when taking over proceedings

10. (1) If the Director decides to take over a matter in accordance with section 9, the Director shall, as soon as practicable—

- (a) by notice in writing, inform the person otherwise responsible for the matter; and
- (b) if the matter is pending before a court or justice—
 - (i) by notice in writing, inform the registrar or other proper officer of the court in which the prosecution or proceeding concerned is to be heard; or
 - (ii) if the prosecution or proceeding is being heard by a Judge, Magistrate or justice—in such manner as the Director thinks fit, inform the Judge, Magistrate or justice,

that the Director has taken over the matter.

(2) Failure by the Director to notify or inform does not affect any of the Director's functions in relation to the matter.

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Consents

11. (1) The Director may consent to prosecutions for offences, being offences of a kind in relation to which an order under subsection (2) is in force.

(2) A person who has, under a law of the State, the power to consent to prosecutions for offences of a particular kind may, by order published in the Gazette, authorise the Director to consent to prosecutions for offences of that kind.

(3) Such an authorisation may not be given by a person who has that power by virtue of an authorisation granted to the person by another person.

(4) The mere giving of an authorisation under this section does not prevent the giving of a consent by a person who, but for this section, would have power to give a consent.

(5) If the Director consents to a prosecution for an offence, being an offence of a kind to which an order under subsection (2) is in force, the prosecution may be instituted and conducted without the consent of any other person.

(6) The Director shall notify the person who gives an authorisation under this section of the giving or refusing of consent under the authorisation.

(7) If the Director gives or refuses consent under an authorisation under this section, the person who gives the authorisation is bound by the Director's decision.

(8) In this section—

“consent” includes authorisation, sanction and any similar authority.

Coroners

12. The Director may, with the consent of the coroner, assist a coroner in any inquest or inquiry.

Guidelines to Crown Prosecutors etc. by Director

13. (1) The Director may, by order in writing, furnish guidelines to the Deputy Directors, the Solicitor and the Crown Prosecutors with respect to the prosecution of offences, including guidelines as to the exercise of specified functions (whether statutory or not).

- (2) Guidelines may not be furnished in relation to particular cases.

Recommendations and guidelines to police etc. by Director

14. (1) The Director may recommend to—

- (a) the Commissioner of Police; or
- (b) any other person who—
 - (i) conducts investigations in relation to offences; or
 - (ii) institutes or conducts prosecutions for offences,

that proceedings be instituted in respect of any offence.

(2) The Director may, by order in writing, and after consultation with the Attorney General, furnish guidelines to the Commissioner of Police or any such person with respect to the prosecution of indictable offences or prescribed summary offences.

- (3) Guidelines may not be furnished in relation to particular cases.

Provisions relating to guidelines

15. (1) The Director shall—

- (a) give to the Attorney General a copy of each guideline furnished under this Part; and
- (b) include in a report under section 34—
 - (i) a copy of each guideline furnished during the period to which the report relates; and
 - (ii) a copy of each guideline furnished as in force at the end of that period.

(2) The persons to whom guidelines are furnished under this Part are subject to the guidelines.

Directions to police etc. by Director

16. (1) The Director may, by order in writing, give directions specifying matters referred to in subsection (2) to—

- (a) the Commissioner of Police; or
- (b) any other person who institutes or conducts prosecutions for offences.

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(2) Such a direction may specify—

- (a) an offence, being an offence a matter relating to which is to be referred to the Director for the institution or carrying on of a prosecution for that offence; or
- (b) a class of offences, being offences matters relating to which are to be referred to the Director for the institution or carrying on of prosecutions for those offences.

(3) A person to whom such a direction is given shall comply with the direction.

(4) In this section—

“offence” means an indictable offence or a prescribed summary offence.

Provision of information to Director

17. (1) If a prosecution for an offence has been instituted by a person other than the Director and—

- (a) the Director informs the person that the Director is considering taking over the prosecution;
- (b) the Director takes over the prosecution; or
- (c) the person considers that the Director should take over the prosecution,

the person shall furnish to the Director the relevant information or material.

(2) The relevant information or material is—

- (a) a full report of the circumstances of the matter;
- (b) a copy of the statements of any witnesses;
- (c) each material document in the possession of the person; and
- (d) such other information or material as the Director requires.

Request for assistance from police etc. by Director

18. (1) If the Director is considering instituting or taking over, or has instituted or taken over, a prosecution for an offence, the Director may, by order in writing, request—

- (a) the Commissioner of Police; or

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(b) any other person who—

(i) conducts investigations in relation to offences; or

(ii) institutes or conducts prosecutions for offences,

to investigate or further investigate matters associated with the alleged commission of the offence.

(2) The Commissioner or other person shall, so far as practicable, comply with the request.

Indemnities and undertakings

19. (1) The Director may request the Attorney General to exercise the function of the Attorney General—

(a) to grant indemnity from prosecution (whether on indictment or summarily); or

(b) to give an undertaking that an answer, statement or disclosure will not be used in evidence.

(2) The Director may not grant such an indemnity or give such an undertaking.

Other functions of Director

20. (1) The functions of the Director include the following:

(a) to exercise such functions as are prescribed;

(b) to do anything incidental or conducive to the exercise of any functions of the Director.

(2) The Director may advise and assist any Crown Prosecutor, any member of the Police Force or, if so directed by the Attorney General, any other person in respect of the conduct of criminal proceedings.

Appearances by and on behalf of Director

21. The Director may appear in person or may be represented by counsel or a solicitor in—

(a) any proceedings which are conducted or carried on by the Director or to which the Director is otherwise a party; or

(b) any inquest or inquiry in which the Director is assisting a coroner.

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Functions of Deputy Directors

22. (1) A Deputy Director shall assist the Director, as the Director requires.

(2) A Deputy Director has the same functions as a Crown Prosecutor.

Functions of Solicitor

23. The functions of the Solicitor are—

- (a) to act as solicitor for the Director in the exercise of the Director's functions; and
- (b) to instruct the Crown Prosecutors and other counsel on behalf of the Director.

Offences under Commonwealth laws

24. If an Officer, with the consent of the Attorney General, holds an appointment, commission or authority to prosecute offences against laws of the Commonwealth, the Officer may institute and conduct (in accordance with the terms of the appointment, commission or authority) prosecutions for such offences.

PART 4**THE ATTORNEY GENERAL****Consultation**

25. (1) The Director shall, if requested to do so by the Attorney General, consult with the Attorney General with respect to matters concerning the exercise of the Director's functions.

(2) The Attorney General shall, if requested to do so by the Director, consult with the Director with respect to matters concerning the exercise of the Director's functions.

Guidelines by Attorney General

26. (1) In the exercise of the Director's functions, the Director is subject to such guidelines as the Attorney General, after consultation with the Director, furnishes to the Director by order in writing.

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(2) Without limiting the generality of subsection (1), guidelines may relate to the circumstances in which the Director should institute or carry on prosecutions for offences.

(3) A guideline may not be furnished in relation to a particular case.

(4) If the Attorney General furnishes a guideline under this section, the Attorney General shall—

- (a) as soon as practicable after furnishing it, cause a copy of the order to be published in the Gazette; and
- (b) cause a copy of the order to be laid before each House of Parliament within 14 sitting days of that House after publication.

(5) For the purposes of this section, sitting days shall be counted whether or not they occur during the same session.

Attorney General to notify Director of bills and no bills

27. (1) The Attorney General shall notify the Director whenever the Attorney General exercises any of the following functions:

- (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
- (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence;
- (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial;
- (d) appealing under section 5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.

(2) The Director shall include in a report under section 34 information as to the notifications received by the Director from the Attorney General under this section during the period to which the report relates.

Attorney General's functions to prevail

28. (1) The Director shall not, without the consent of the Attorney General, exercise a function in a manner that is inconsistent with the manner in which the Attorney General has, after the commencement of this section, already exercised a function in relation to the same matter.

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(2) If the Attorney General has, before the commencement of this section, determined that no bill of indictment be found in respect of an offence, or has directed that no further proceedings be taken against a person in respect of an offence, the Director shall not exercise a function in a manner that is inconsistent with the determination or direction, unless the Director is satisfied that—

(a) significant fresh evidence has been produced that was not previously available for consideration; or

(b) the determination or direction was obtained by fraud,

and that in all the circumstances it is in the interests of justice that the matter be re-opened.

Director may make request to Attorney General

29. If the Director considers it desirable in the interests of justice that the Director should not exercise certain functions in relation to a particular case, the Director may request the Attorney General to exercise the Attorney General's corresponding functions.

Attorney General's powers not affected

30. Nothing in this Act affects any functions of the Attorney General that the Attorney General has apart from this Act.

PART 5**MISCELLANEOUS****Provisions relating to appointment etc. of Director etc.**

31. Schedule 1 has effect.

Staff

32. (1) Such staff as may be necessary to enable the Director and Solicitor to exercise their functions shall be employed under the Public Service Act 1979.

(2) The Director may—

(a) with the approval of the Attorney General; and

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- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

- (3) The Director may—

- (a) for any purpose approved by the Attorney General; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

employ such consultants or casual staff as may be required by the Director in exercising the Director's functions.

(4) The Public Service Act 1979 does not apply to or in respect of the employment of consultants or casual staff under this section and a person is not, as a consultant or member of the casual staff, subject to that Act.

Delegation

33. (1) The Director may delegate to—

- (a) an Officer;
- (b) a Crown Prosecutor; or
- (c) a person approved by the Attorney General,

the exercise of any of the Director's functions (other than this power of delegation).

(2) The Director may not delegate the exercise of any of the following functions, except to a Deputy Director:

- (a) determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
- (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence;
- (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial;
- (d) appealing under section 5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.

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(3) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and
- (c) may be revoked, wholly or partly, by the Director.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Director.

(6) A delegation does not prevent the exercise of a function by the Director.

(7) A function purporting to have been exercised by a delegate shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

Annual report

34. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director shall prepare and forward to the Attorney General a report of the work and activities of the Director for the 12 months ending on 30 June in that year.

(2) The Attorney General shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) The report shall not identify persons who have been the subject of consideration under this Act in relation to alleged offences, unless the persons have appeared before a court in relation to the alleged offences.

Protection from liability

35. (1) In this section—

“prescribed person” means an Officer, a Crown Prosecutor or any person assisting an Officer or Crown Prosecutor;

“relevant law” means this Act or any other Act or law to the extent that the other Act or law confers or imposes functions on the Director.

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(2) No matter or thing done by a prescribed person shall, if the matter or thing was done in good faith for the purpose of executing any relevant law, subject any prescribed person personally to any action, liability, claim or demand.

(3) A prescribed person is entitled to be indemnified by the State for any costs awarded against the prescribed person personally in any proceedings in which the prescribed person is involved through the execution of any relevant law.

Savings and transitional provisions

36. (1) This Act applies to offences committed before the commencement of this subsection, as well as to offences committed afterwards.

(2) Anything duly done by or in the name of the Attorney General before the commencement of this subsection is not affected by anything in this Act.

(3) The person holding office as Solicitor for Public Prosecutions immediately before the commencement of section 6 shall be deemed to have been appointed as Solicitor for Public Prosecutions under this Act.

Regulations

37. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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SCHEDULE 1

(Sec. 31)

PROVISIONS RELATING TO SENIOR OFFICERS

Definitions

1. In this Schedule—

“office” means the office of Director, Deputy Director or Solicitor;

“Senior Officer” means the Director, a Deputy Director or the Solicitor;

“statutory body” means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

Eligibility for appointment

2. (1) A person of or above the age of 65 years is not eligible to be appointed as a Senior Officer.

(2) A person is not eligible to be appointed as Director unless the person is one of Her Majesty's Counsel for the State.

(3) A person is not eligible to be appointed as a Deputy Director unless the person is a barrister of the Supreme Court and has been a barrister or solicitor of the Supreme Court (or both) for not less than 5 years.

(4) A person is not eligible to be appointed as Solicitor unless the person is a solicitor of the Supreme Court and has been a barrister or solicitor (or both) of the Supreme Court for not less than 5 years.

(5) A person is not eligible to be appointed as a Senior Officer if the person is a member of the Legislative Council or the Legislative Assembly of New South Wales or is a member of a House of Parliament of another State or of the Commonwealth.

Remuneration

3. A Senior Officer is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Attorney General may from time to time determine in respect of the Senior Officer.

Vacation of office

4. (1) A Senior Officer shall be deemed to have vacated office if the Officer—

(a) dies;

(b) resigns the office by instrument in writing addressed to the Governor;

(c) reaches the age of 65 years; or

(d) is removed from office by the Governor under subclause (2) or (3).

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(2) If a Senior Officer—

- (a) is nominated for election as a member of the Legislative Council or the Legislative Assembly of New South Wales or as a member of a House of Parliament of another State or of the Commonwealth;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (d) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Attorney General or unless the absence is occasioned by illness or other unavoidable cause; or

(e) fails, without reasonable excuse, to comply with clause 5 or 6,

the Officer shall be removed from office by the Governor.

(3) The Governor may remove a Senior Officer from office—

(a) for incapacity, incompetence or misbehaviour; or

(b) if the Officer is—

- (i) convicted in New South Wales of an offence that is punishable by imprisonment or penal servitude for 12 months or upwards; or
- (ii) convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable.

(4) Anything done or purporting to have been done by a Senior Officer after the Officer has reached the age of 65 years is nevertheless as valid as if the Officer had not reached that age.

Disclosure of interests

5. A Senior Officer shall give written notice to the Attorney General of all direct or indirect pecuniary interests that the Officer has or acquires in any business whether in New South Wales or elsewhere or in any body corporate carrying on any such business.

Other work

6. (1) A Senior Officer shall not, without the consent of the Attorney General—

- (a) engage in the practice of the law (whether within or outside New South Wales) outside the duties of his or her office; or

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(b) engage in paid employment outside the duties of his or her office.

(2) A Senior Officer shall not contravene or fail to comply with any conditions attached to any such consent.

Public Service Act 1979

7. The Public Service Act 1979 does not apply to or in respect of the appointment of a Senior Officer and a Senior Officer is not, as a Senior Officer, subject to that Act.

Acting Senior Officers

8. (1) The Attorney General may appoint a person who is eligible for appointment as a Senior Officer to act in the office of that Senior Officer—

- (a) during a vacancy in that office, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the person holding that office is absent from duty or from New South Wales or is, for any other reason, unable to exercise the functions of that office.

(2) An appointment of a person under this clause may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Attorney General may—

- (a) subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of a Senior Officer; and
- (b) terminate such an appointment at any time.

(4) A person may not act or be appointed to act under this clause for a period of more than 12 months at a time.

(5) While a person is acting in the office of a Senior Officer, the person has and may exercise all the functions of the Officer and shall be deemed to be the Officer.

(6) The validity of anything done by or in relation to a person purporting to act in the office of a Senior Officer under an appointment made under this clause shall not be called in question on the ground that—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued***Preservation of rights of Senior Officer previously public servant etc.**

9. (1) Subject to subclause (2) and to the terms of appointment, if a Senior Officer was, immediately before being appointed as a Senior Officer—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a Senior Officer; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as a Senior Officer and—

- (h) his or her service as a Senior Officer shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If a Senior Officer would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she shall not be so entitled on becoming (whether on appointment as a Senior Officer or at any later time while holding office as a Senior Officer) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

(3) Subclause (2) does not prevent the payment to a Senior Officer on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by resignation, to be an officer or employee for the purposes of the scheme.

(4) A Senior Officer is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

(5) In this clause—

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Pension of Director

10. (1) The Judges' Pensions Act 1953 applies, with any necessary adaptations, to a person who is or was Director (and the person's spouse and children) in the same way as it applies to a person who is or was a judge (and the person's spouse and children), except that—

- (a) the pension payable under section 3 of that Act is payable on the Director's retirement at the age of 65 years after serving as Director for not less than 5 years; and
- (b) the pension payable under section 4 of that Act is payable on the Director's retirement after reaching the age of 60 years and before reaching the age of 65 years, after serving as Director for not less than 10 years.

(2) If a person who is or was Director becomes a judge within the meaning of the Judges' Pensions Act 1953—

- (a) any period served by the person in the office of Director shall, for the purposes of that Act, be computed as portion of the person's service as a judge in the judicial office which the person held immediately before retiring as a judge or immediately before death before retirement, as the case may be; and
- (b) the right to any pension which the person is receiving, or is entitled to receive, under that Act as applied by this clause shall cease.

*Director of Public Prosecutions 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

- (3) Subclauses (1) and (2) do not apply to—
- (a) a person who elects, pursuant to subclause (5), to continue to contribute under another superannuation scheme; or
 - (b) a person acting in the office of Director.
- (4) The Director is not, subject to subclause (5), an employee for the purposes of another superannuation fund.
- (5) A person appointed to be Director who, at the date of the appointment, was a contributor under another superannuation scheme may elect to continue to contribute under that scheme, and if the person so elects the person shall be deemed to be an employee for the purposes of that scheme.

Senior Officer entitled to re-appointment to former employment in certain cases

11. (1) A person who—
- (a) ceases to be a Senior Officer by resignation;
 - (b) was, immediately before being appointed as a Senior Officer—
 - (i) an officer of the Public Service; or
 - (ii) an officer or employee of a statutory body; and
 - (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,
- is entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a Senior Officer.

- (2) Where subclause (1) does not apply to a person who—
- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
 - (b) is after that appointment appointed as a Senior Officer,
- the person shall have such rights, if any, to appointment as such an officer or employee, in the event of ceasing to be a Senior Officer, as are specified in the instrument of appointment as a Senior Officer or as are agreed on by the person and by or on behalf of the Government.

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO SENIOR OFFICERS—*continued*

Declaration of statutory bodies

12. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

