

(Reprint No. 1)

SOUTH AUSTRALIA

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 5 August 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

being

Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]¹

as amended by

Statutes Amendment (Attorney-General's Portfolio) Act 1993 No. 34 of 1993 [Assented to 13 May 1993]²

An Act to establish the Office of Director of Public Prosecutions; to make consequential amendments to certain Acts; and for related purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Director of Public Prosecutions Act 1991*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

“Director” means the Director of Public Prosecutions and includes a person acting in the position of Director of Public Prosecutions:

“Office” means the Office of the Director of Public Prosecutions.

Director of Public Prosecutions

4. (1) There will be a Director of Public Prosecutions.
(2) The Director will be appointed by the Governor.
(3) A person is not eligible for appointment as the Director unless he or she is a legal practitioner of at least seven years standing.
(4) The Director will be appointed—
 - (a) for a term of office of seven years;
and
 - (b) on terms and conditions determined by the Governor.

¹Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.

²Came into operation 5 August 1993: *Gaz.* 29 July 1993, p. 682.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

(5) At the expiration of a term of office, the Director will be eligible for re-appointment.

(6) The Director must inform the Attorney-General in writing of—

(a) any direct or indirect pecuniary interest that the Director has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere;

and

(b) any other direct or indirect interest that the Director has or acquires that conflicts, or may conflict, with the Director's duties.

(7) The Director must not—

(a) engage in legal practice outside the duties of his or her office;

or

(b) engage, without the consent of the Attorney-General, in any other remunerated employment.

(8) The Governor may terminate the Director's appointment if the Director—

(a) is guilty of misbehaviour;

(b) becomes physically or mentally incapable of carrying out official duties satisfactorily;

(c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors;

(d) is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months;

or

(e) contravenes or fails to comply with subsection (6) or (7).

(9) Except as provided in subsection (8), the Director's appointment cannot be terminated.

Acting Director

5. (1) If the Director is temporarily absent, or the Director's position is temporarily vacant, the Attorney-General may assign a suitable person to act in the Director's position during the temporary absence or vacancy.

(2) A person is not eligible to act in the Director's position unless he or she is a legal practitioner of at least seven years standing.

(3) The terms on which a person is assigned to act in the Director's position will be as determined by the Attorney-General.

Office of the Director

6. (1) The Office of the Director of Public Prosecutions is established.

(2) The Office consists of—

(a) the Director of Public Prosecutions;

and

(b) any persons assigned under the *Government Management and Employment Act 1986* to work in the Office.

(3) The Director has the administration and control of the Office.

* * * * *

Delegation

6A. The Director may, by instrument in writing, delegate to any suitable person any of the director's powers or functions under this Act but such a delegation—

- (a) is revocable at will; and
- (b) does not prevent the Director from acting personally in the matter.

Powers of the Director

7. (1) The Director has the following powers:

- (a) to lay charges of indictable or summary offences against the law of the State;
- (b) to prosecute indictable or summary offences against the law of the State;
- (c) to claim and enforce, either on behalf of the Crown or other persons, civil remedies that arise out of, or are related to, prosecutions commenced by the Director;
- (d) to take proceedings for or in relation to the confiscation of profits of crime;
- (e) to enter a *nolle prosequi* or otherwise terminate a prosecution in appropriate cases;
- (f) to grant immunity from prosecution in appropriate cases;
- (g) to exercise appellate rights arising from proceedings of the kind referred to above;
- (h) to carry out any other function assigned to the Director by regulation;
- (i) to do anything incidental to the foregoing.

(2) The Attorney-General may, by notice in the *Gazette*, transfer to the Director any powers or functions of the kind referred to above, or any power to consent to a prosecution, vested in the Attorney-General by an Act passed before the commencement of this Act.

(3) A person who has power to consent to a prosecution, or to allow an extension of the period for commencing a prosecution, for an offence of a particular kind under the law of the State may, by notice in the *Gazette*, delegate that power to the Director.

(4) A delegation under subsection (3)—

- (a) is revocable by subsequent notice in the *Gazette*;
- and
- (b) does not prevent the person from acting personally in a matter,

but, once a decision on a particular matter has been made by the Director in pursuance of a delegation, the delegator is bound by that decision.

(5) A document apparently signed by the Director and stating that the Director consents to a particular prosecution or that the Director allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(6) Where an information or complaint charging an offence is apparently signed by the Director or a person acting on the Director's authorization, the information or complaint will, in the absence of proof to the contrary, be taken to have been duly signed by or on behalf of the Director.

(7) In any legal proceedings, the Director may appear personally or may be represented by a member of the staff of the office who is a legal practitioner or by counsel or solicitor (including the Crown Solicitor or the Solicitor-General).

(8) Details of any notices published under this section must be included in the Director's annual report.

Consultation

8. (1) The Director must, if requested to do so by the Attorney-General, consult with the Attorney-General with respect to the exercise of the Director's powers or functions.

(2) The Attorney-General must, if requested to do so by the Director, consult with the Director with respect to the exercise of the Director's powers or functions.

Independence of Director

9. (1) Subject to this section, the Director is entirely independent of direction or control by the Crown or any Minister or officer of the Crown.

(2) The Attorney-General may, after consultation with the Director, give directions and furnish guidelines to the Director in relation to the carrying out of his or her functions.

(3) Directions or guidelines under this section—

(a) must, as soon as practicable after they have been given, be published in the *Gazette*;

and

(b) must, within six sitting days after they have been given, be laid before each House of Parliament.

(4) Subsection (3) need not be complied with in relation to directions or guidelines under this section relating to individual matters if, in the opinion of the Attorney-General, disclosure may be prejudicial to an investigation or prosecution, but, in that case, the directions or guidelines must be published in the *Gazette*, and laid before each House of Parliament, as soon as practicable after the matter is determined or otherwise completed.

(5) If the Attorney-General is satisfied that disclosure under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Attorney-General may withhold material from disclosure so far as necessary to avoid that consequence.

Investigation and report

10. The Commissioner of Police must, so far as it is practicable to do so, comply with any request from the Director to investigate, or report on the investigation of, any matter.

Directions and guidelines by Director

11. (1) The Director may give directions or furnish guidelines to the Commissioner of Police or other persons investigating, or prosecuting, offences on behalf of the Crown.

(2) Any such directions or guidelines must be published in the Director's annual report.

(3) If the Director is satisfied that publication of material under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Director may withhold the material from publication so far as necessary to avoid that consequence.

Annual reports

12. (1) The Director must, before 30 September in each year, prepare and provide the Attorney-General with a report on the operations of the Office during the year that ended on the preceding 30 June.

(2) The Attorney-General must have a copy of the report laid before each House of Parliament within six sitting days after the date of its receipt.

(3) The Director may at any time report to Parliament on any matter affecting the proper carrying out of the functions of the Office.

(4) The report must be given to the Speaker of the House of Assembly and the President of the Legislative Council and they must lay copies of the report before their respective Houses as soon as practicable after its receipt.

Saving provision

13. This Act does not derogate from the right of the Attorney-General to appear personally in any proceedings on behalf of the Crown.

Regulations

14. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

SCHEDULE 1

TRANSITIONAL PROVISIONS

Retrospectivity

1. (1) This Act applies in relation to proceedings commenced before the commencement of this Act.
- (2) This Act applies in relation to offences committed before the commencement of this Act.

Director to take over from Attorney-General

2. Where, before the commencement of this Act, the Attorney-General had exercised, in relation to particular proceedings, a power or function of a kind vested in the Director under this Act, the Director may assume and continue to exercise that power or function as if it had been exercised by the Director from the inception of the proceedings.

SCHEDULE 2

Consequential Amendments

Provision Amended	How Amended
<i>Bail Act 1985</i>	
Section 21a	Strike out paragraphs (a) and (b) and "or" between those paragraphs and substitute: (a) the Director of Public Prosecutions; (b) a person acting on the instructions of the Crown; or (c) any member of the police force.
<i>Children's Protection and Young Offenders Act 1979</i>	
Section 46(2)(a)	Strike out "made by the Attorney-General".
Section 46(2)(b)	Strike out "by the Attorney-General".
Section 47(1)	Strike out "Attorney-General" first occurring and substitute "Director of Public Prosecutions". Strike out "Attorney-General" second occurring and substitute "Director".
Section 47(2) - (5)	Strike out "Attorney-General" wherever occurring and substitute, in each case, "Director".
<i>Controlled Substances Act 1984</i>	
Section 45a	Strike out paragraphs (a) and (b) and "or" between those paragraphs and substitute: (a) the Director of Public Prosecutions; (b) a member of the police force; or (c) a person authorised in writing by the Director of Public Prosecution to commence the prosecution.
<i>Crimes (Confiscation of Profits) Act 1986</i>	
Section 5(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 6(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 6(8)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 9a(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
<i>Criminal Law Consolidation Act 1935</i>	
Section 57a(2)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 57a(3)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 275(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 276(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 276(2)	Strike out "Attorney-General" twice occurring and substitute, in each case, "Director of Public Prosecutions".
Section 281a(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 281a(3)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 285c(3)(d)	Strike out "Crown Prosecutor" twice occurring and substitute, in each case, "Director of Public Prosecutions".
Section 285c(7)	Strike out "Crown Prosecutor" and substitute "Director of Public Prosecutions".
Section 348a	Strike out this section.
Section 350(1a)	Insert "or the Director of Public Prosecutions" after "Attorney-General".

Provision Amended	How Amended
Section 351(2b)	Insert "or, if the Director of Public Prosecutions made the application, the Director" after "Attorney-General" first occurring. Insert "or the Director of Public Prosecutions (as the case may require)" after "Attorney-General" second occurring.
Section 352(2)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 353(5)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 362	Strike out "Attorney-General" first occurring and substitute "Director of Public Prosecutions". Strike out "Attorney-General" second occurring and substitute "Director".
Section 366(2)	Insert "or Director of Public Prosecutions" after "Attorney-General".
Section 366(3)	Strike out "or by the Attorney-General" and substitute "Attorney-General or Director of Public Prosecutions".
Section 369	Strike out "Chief Secretary" first occurring and substitute "Attorney-General". Strike out "with the concurrence of the Attorney-General". Strike out "Chief Secretary" second occurring and substitute "Attorney-General".
Schedule 1	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Schedule 2	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Schedule 3	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
<i>Criminal Law (Sentencing) Act 1988</i>	
Section 22(2)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 22(7)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 23(11)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 24(1)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 24(5)(a)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 24(5)(b)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 24(11)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 26	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 27a(1)(c)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 27a(2)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 27a(5)(a)(iii)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 27a(5)(b)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 27a(6)	Strike out "Crown" first occurring and substitute "Director of Public Prosecutions". Strike out "Crown" second and third occurring and substitute, in each case, "Director".
Section 32(6)	Strike out "Crown" and substitute "Director of Public Prosecutions".
Section 32(7)(b)	Strike out "Crown" and substitute "Director of Public Prosecutions".

Provision Amended	How Amended
Section 32(10)(b)	Strike out "Crown" and substitute "Director of Public Prosecutions".
<i>Evidence Act 1929</i>	
Section 56(2)	Insert "the Director of Public Prosecutions," after "the Crown Solicitor,".
<i>Freedom of Information Act 1991</i>	
Schedule 2, paragraph (k)	Strike out "Crown Prosecutor" and substitute "Director of Public Prosecutions".
<i>Juries Act 1927</i>	
Section 31(2)	Strike out "Crown Solicitor" and substitute "Director of Public Prosecutions".
<i>Justices Act 1921</i>	
Section 141(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 141(3)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 155(5)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 155(6)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 188(3)	Strike out "Crown Solicitor" and substitute "Director of Public Prosecutions".
<i>Legal Practitioners Act 1981</i>	
Section 21(3)(w)	Insert "or the Director of Public Prosecutions" after "Australian Government Solicitor".
Section 51(1)(a)	Insert "and the Director of Public Prosecutions" after "Australian Government Solicitor".
Section 51(1)(b)	Strike out this paragraph and substitute: (b) a legal practitioner acting on the instructions of— (i) the Attorney-General of the State; (ii) the Attorney-General of the Commonwealth; (iii) the Crown Solicitor; (iv) the Australian Government Solicitor; or (v) the Director of Public Prosecutions;
<i>Local and District Criminal Courts Act 1927</i>	
Section 327(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 337(1)	Strike out "Attorney-General or, in his absence, on the Solicitor-General," and substitute "Director of Public Prosecutions".
Section 339	Strike out "Attorney-General" second occurring and substitute "Director of Public Prosecutions".
Section 340(1)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 340(2)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 340(3)	Strike out "Attorney-General" and substitute "Director of Public Prosecutions".
Section 340a	Strike out this section.
<i>National Crime Authority (State Provisions) Act 1984</i>	
Section 19(5)	Strike out "Crown Prosecutor, or a similar office" and substitute "Director of Public Prosecutions".
<i>Supreme Court Act 1935</i>	
Section 118a	Strike out this section.

APPENDIX

LEGISLATIVE HISTORY

Section 6(4):
Section 6A:

repealed by 34, 1993, s. 4
inserted by 34, 1993, s. 5