

South Australia

# Director of Public Prosecutions Act 1991

An Act to establish the Office of Director of Public Prosecutions; and for related purposes.

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### The Parliament of South Australia enacts as follows:

#### 1—Short title

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

#### 3—Interpretation

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.

#### 4—Director of Public Prosecutions

- (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.
- (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; or
  - (b) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
  - (c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (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.

## **5—Acting Director**

- (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.

## **6—Office of Director**

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

- (2) The Office consists of—
  - (a) the Director of Public Prosecutions; and
  - (b) Public Service employees assigned to work in the Office.
- (3) The Director has the administration and control of the Office.

### **6A—Delegation**

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.

### **7—Powers of Director**

- (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;
  - (da) to institute civil proceedings for contempt of court;
  - (e) to enter a *nolle prosequi* or otherwise terminate a prosecution in appropriate cases;
  - (f) to grant immunity from prosecution in appropriate cases;
  - (fa) to undertake to a person not to use, or make derivative use of, information or a thing against the person in a proceeding, other than in relation to the falsity of evidence given by the person in a proceeding;
  - (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 any other Act or by regulation under this Act;
  - (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 authorisation, 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.

## **8—Consultation**

- (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.

## **9—Independence of Director**

- (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.

## 10—Investigation and report

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.

### 10A—Disclosure of information to Director

- (1) A police officer in charge of the investigation of an indictable offence (the *chief investigator*) has a duty to disclose to the Director all documentary material collected or created in the course of the investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence.
- (2) The chief investigator must, when so required by the Director, provide the Director with—
  - (a) a list, certified by the chief investigator, of all documentary material so far collected or created in the course of the investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence; and
  - (b) copies of documentary material referred to in the list.
- (3) The duty of disclosure under subsection (1)—
  - (a) extends to material that would be exempt from production in court because it is protected by privilege or for any other reason; and
  - (b) continues until the termination date.
- (4) The chief investigator must ensure that all material disclosed, or liable to disclosure, under subsection (1), is retained until the termination date.
- (5) The chief investigator must, at the request of the Director, provide the Director with copies of specified documentary material collected or created in the course of the investigation that is not liable to disclosure under subsection (1).
- (6) Copies of documentary material to be provided under this section may be provided in electronic form.
- (7) A police officer must not, without good and sufficient cause, fail to carry out a duty under this section promptly and diligently.
- (8) The police officer in charge of the investigation of an indictable offence will, for the purposes of this section, be the police officer appointed by the Commissioner for that purpose.
- (9) In this section—

*termination date* means the date when—

  - (a) the Director decides that the person suspected of having committed the alleged offence not be prosecuted for the offence; or
  - (b) the prosecution is terminated; or
  - (c) the accused person is convicted or acquitted, and all rights of appeal have expired or been exhausted.

## 11—Directions and guidelines by Director

- (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.

## **12—Annual reports**

- (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, including the number of applications for warrants under the *Listening and Surveillance Devices Act 1972* considered, and the number approved, by the Director.
- (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.

## **13—Saving provision**

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

## **14—Regulations**

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**

## **1—Retrospectivity**

- (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.

## **2—Director to take over from Attorney-General**

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.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Director of Public Prosecutions Act 1991* amended the following:

*Bail Act 1985*

*Children's Protection and Young Offenders Act 1979*

*Controlled Substances Act 1984*

*Crimes (Confiscation of Profits) Act 1986*

*Criminal Law Consolidation Act 1935*

*Criminal Law (Sentencing) Act 1988*

*Evidence Act 1929*

*Freedom of Information Act 1991*

*Juries Act 1927*

*Justices Act 1921*

*Legal Practitioners Act 1981*

*Local and District Criminal Courts Act 1927*

*National Crime Authority (State Provisions) Act 1984*

*Supreme Court Act 1935*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette</i> 25.6.1992 p1869)
1993	34	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1993</i>	13.5.1993	ss 4 & 5—5.8.1993 ( <i>Gazette</i> 29.7.1993 p682)

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1994	21	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1994</i>	26.5.1994	s 7—7.7.1994 ( <i>Gazette 7.7.1994 p4</i> )
2001	15	<i>Listening Devices (Miscellaneous) Amendment Act 2001</i>	17.5.2001	s 17—1.1.2003 ( <i>Gazette 12.12.2002 p4554</i> )
2005	74	<i>Statutes Amendment (Criminal Procedure) Act 2005</i>	8.12.2005	Pt 4 (s 11)—1.3.2007 ( <i>Gazette 1.3.2007 p672</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 47 (s 95)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2012</b>	<b>12</b>	<b><i>Statutes Amendment (Serious and Organised Crime) Act 2012</i></b>	<b>10.5.2012</b>	<b>Pt 7 (s 39)—17.6.2012 (<i>Gazette 14.6.2012 p2756</i>)</b>
2012	17	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2012</i>	24.5.2012	Pt 4 (s 13)—5.8.2012 ( <i>Gazette 2.8.2012 p3302</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.1.2003
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 6		
s 6(2)	amended by 84/2009 s 95	1.2.2010
s 6(4)	<i>deleted by 34/1993 s 4</i>	5.8.1993
s 6A	inserted by 34/1993 s 5	5.8.1993
	substituted by 17/2012 s 13	uncommenced—not incorporated
s 7		
s 7(1)	amended by 21/1994 s 7	7.7.1994
	amended by 15/2001 s 17(a)	1.1.2003
	<b>amended by 12/2012 s 39</b>	<b>17.6.2012</b>
s 10A	inserted by 74/2005 s 11	1.3.2007
s 12		
s 12(1)	amended by 15/2001 s 17(b)	1.1.2003
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.1.2003

## Historical versions

Reprint No 1—5.8.1993

Reprint No 2—7.7.1994

Reprint No 3—1.1.2003

1.3.2007

1.2.2010