

*Note*

*In order to give effect to the Cross-border Justice Act 2009, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act 2009 as if this law had been altered in that way.*

*For modifications of this law prescribed by regulation, see Part 3, Division 5 of the Cross-border Justice Regulations 2009.*

**NORTHERN TERRITORY OF AUSTRALIA**

**DIRECTOR OF PUBLIC PROSECUTIONS ACT 1990**

As in force at 20 June 2018

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 June 2018

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## DIRECTOR OF PUBLIC PROSECUTIONS ACT 1990

**An Act to provide for the appointment of a Director of Public Prosecutions, and for other purposes**

### **Part 1                      Preliminary matters**

#### **1                      Short title**

This Act may be cited as the *Director of Public Prosecutions Act 1990*.

#### **2                      Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3                      Definitions**

In this Act:

***Deputy Director*** means a Deputy Director of Public Prosecutions appointed under section 10.

***Director*** means the Director of Public Prosecutions appointed under section 4 and includes an Acting Director appointed under section 9, while he or she is so acting.

***offence*** means an offence:

- (a) subject to paragraph (b), against a law in force in the Territory;  
or
- (b) against a law of the Commonwealth but limited to an offence to which particular proceedings relate where the Director is authorised to bring or conduct those proceedings.

## **Part 2                      Director of Public Prosecutions**

### **4                      Director of Public Prosecutions**

- (1) The Administrator may, by instrument in writing, appoint a person who has:
  - (a) not attained the age of 70 years; and
  - (b) been a lawyer for at least 10 years;to hold the office of Director of Public Prosecutions for such period as is specified in the instrument of appointment or without limitation on the period of office.
- (2) Subject to this Act, the Director is entitled to such salary and allowances, and holds office on such terms and conditions, as the Administrator determines.
- (4) In order to exercise the Director's powers or perform the Director's functions, the Director is entitled to practice as a legal practitioner as if he or she were holding an unrestricted practising certificate issued under the *Legal Profession Act 2006*.
- (5) The Director must not, without the consent of the Attorney-General, engage in:
  - (a) practice as a legal practitioner; or
  - (b) paid employment;outside the duties of his or her office.
- (6) Despite anything to the contrary in subsection (1), the *Supreme Court (Judges Pensions) Act 1980* applies to and in relation to a person appointed to the office of the Director in the same way and to the same extent as if the person had been appointed to be a Supreme Court Judge who is to cease to hold office on attaining the age of 70 years.
- (7) A pension or other money payable because of subsection (6) is to be paid from the public moneys of the Territory and the appropriation for that purpose is established or increased to the extent necessary.
- (8) If a person who holds or has held office as the Director becomes a Supreme Court Judge, the period during which the person held office is taken to be prior judicial service for the *Supreme Court (Judges Pensions) Act 1980*.

- (9) Despite anything in the terms and conditions of his or her employment, a Director, by force of this subsection, retires from office on the day on which he or she attains the age of 70 years.

## **5 Leave of absence**

The Attorney-General may grant to the Director leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Attorney-General thinks fit.

## **6 Disclosure of interests**

The Director must, as soon as practicable after being appointed, and from time to time after acquiring them, give written notice to the Attorney-General of all direct or indirect pecuniary interests that the Director has or acquires in any business, whether in Australia or elsewhere, or in any body corporate carrying on such business.

## **7 Oath of office**

- (1) The Director must not perform the duties of the Director's office unless the Director has taken an oath in relation to that office in accordance with the form of oath in the Schedule.
- (2) An oath under subsection (1) must be administered by a Supreme Court Judge.

## **8 Resignation and removal from office**

- (1) The Director may resign office by writing signed by him or her and delivered to the Administrator.
- (2) The Administrator must remove the Director from office if, and only if, the Director:
- (a) except by reason of temporary illness, becomes incapable of performing the duties of his or her office; or
  - (b) is guilty of misbehaviour; or
  - (c) becomes bankrupt or insolvent, applies to take the benefit of a 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.

**9 Acting Director**

- (1) The Administrator may appoint an Acting Director of Public Prosecutions to act during the absence of the Director through illness or other cause or during any vacancy in the office of Director and may at any time revoke that appointment.
- (2) The Acting Director, while so acting:
  - (a) has all the powers and duties, and may exercise any of the functions, of the Director; and
  - (b) is entitled to be paid such:
    - (i) remuneration; and
    - (ii) travelling and other allowances;as the Administrator from time to time determines.

**10 Deputy Director**

- (1) The Director may appoint a member of the Director's staff to be a Deputy Director of Public Prosecutions.
- (2) Subject to the direction and control of the Director, a Deputy Director may exercise the powers and perform the functions of the Director.
- (3) A power exercised or functions performed under this section is taken to have been exercised or performed by the Director.

**Part 3 Functions of Director****11 General principles relating to functions**

- (1) The functions of the Director:
  - (a) are performed on behalf of the Crown but may be performed in the name of the office of the Director; and
  - (b) do not affect any right that a person has to bring or conduct proceedings, unless the Director takes over those proceedings under this Part.
- (2) Where an aspect of the investigation and prosecution of an offence is the subject of a national co-operative scheme or of an inter-government arrangement, the Director must have regard to and seek to give effect to that scheme or arrangement, its objectives and the policies being pursued under it, in the

performance of the functions of the Director.

## **12 Prosecutions on indictment**

- (1) It is a function of the Director to bring and conduct prosecutions on indictment for offences.
- (2) The function mentioned in subsection (1) includes the bringing and conduct of committal proceedings or a preliminary hearing under the *Local Court (Criminal Procedure) Act 1928* related to an offence.

## **13 Summary prosecutions**

It is a function of the Director:

- (a) to institute and conduct prosecutions, not on indictment, for indictable offences, including the summary hearing and determination of charges of indictable offences; and
- (b) to take over a prosecution, not on indictment, for an indictable offence brought by another person, including the summary hearing and determination of charges of an indictable offence; and
- (c) to bring and conduct proceedings for summary offences; and
- (d) to take over and conduct any proceedings in respect of a summary offence.

## **14 Appeals**

It is a function of the Director:

- (a) to institute and conduct, or to conduct as respondent, any appeal or further appeal relating to a prosecution mentioned in section 12(1) or 13, or to request and conduct a reference under section 414 of the Criminal Code; and
- (b) where a prosecution has been brought by another person and an appeal or further appeal relating to that prosecution has been brought, to take over the appeal from that person, whether as appellant or respondent.

## **15 Extradition**

It is a function of the Director to take steps to secure the extradition to the Northern Territory of any person required to answer a charge of an offence, or to serve a sentence imposed, in the Northern Territory.

**16 Inquests**

It is a function of the Director:

- (a) to participate in proceedings under the *Coroners Act 1993*; and
- (b) with the concurrence of a coroner, to assist the coroner;

if the Director considers that in a particular case such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of the case.

**17 Enforcement of forfeiture order etc.**

Where the Director has conducted proceedings under the *Criminal Property Forfeiture Act 2002* and as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeit to the Territory under a court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order.

**18 Assistance to officers of other jurisdictions**

- (1) It is a function of the Director to provide assistance in the Territory in respect of a corresponding function of a corresponding public officer.
- (2) In subsection (1):

***corresponding function*** means a function similar to a function of the Director.

***corresponding public officer*** means a public officer having corresponding functions in the jurisdiction of the Commonwealth or a State or another Territory of the Commonwealth or of another country.

**19 Related functions**

It is a function of the Director:

- (a) to institute, intervene in, and conduct proceedings that are connected with or arise out of a function of the Director; or
- (b) otherwise to do anything that is incidental or conducive to the performance of a function of the Director.

**20 Further provisions as to taking over of matters**

- (1) For sections 13 and 14(b), the Director takes over a prosecution or appeal by giving notice in writing that the Director has taken over the matter:
  - (a) to the person who would otherwise be responsible for the matter as complainant, informant, appellant or respondent; and
  - (b) if the prosecution or appeal has been initiated in a court, to the registrar of the court;and on compliance with this subsection, the Director becomes the prosecutor, appellant or respondent, as the case may be.
- (2) An irregularity or defect in a notice under subsection (1) does not affect its validity.
- (3) This Part does not prevent the exercise by the Director of a power or discretion to discontinue or terminate a prosecution or appeal that has been taken over under this Part.

**21 Powers of Director**

- (1) The Director has power to do all things that are necessary or convenient to be done for performing the functions of the Director.
- (2) Without limiting subsection (1), the Director may, for that subsection:
  - (a) exercise a power, authority or discretion relating to the investigation and prosecution of offences that is vested in the Attorney-General; or
  - (b) grant an indemnity from prosecution, whether on indictment or otherwise; or
  - (c) give an undertaking to a person that an answer given or a statement or disclosure made by the person will not be used in evidence against the person.
- (3) This Act does not derogate from a function of the Attorney-General.

**22 Appearance by Director**

In proceedings to which the Director is a party or in respect of which he or she otherwise has a function under this Part, the Director may appear in person or be represented:

- (a) by a legal practitioner; or
- (b) where the proceedings are in the Local Court or Youth Justice Court, by a legal practitioner or a police officer.

**23 Director may request information**

- (1) The Director may, in accordance with subsection (2), make a request in writing to an official whose functions include prosecuting for or investigating offences.
- (2) Where the Director has instituted or taken over, or is considering whether to bring or take over, a prosecution or appeal in relation to an offence or suspected offence, a request may be made for:
  - (a) any specified information, document or material or a specified kind of information, document or material, or for all relevant information, documents and material, to be given to the Director; or
  - (b) the provision of assistance, including the carrying out of an investigation or further investigation of a matter;in relation to the offence or suspected offence.
- (3) Despite any other written law, an official to whom a request is made under this section must comply with it so far as it is practicable to do so.
- (4) In this section:

**document** includes data recorded or stored mechanically, photographically or electronically and any tape, disc or other device or medium on which it is recorded or stored.

**official** means:

- (a) a police officer (including the Commissioner of Police); or
- (b) a person employed by an authority or corporation established under a law of the Territory and authorised by or under that law to investigate, or to make a complaint charging, an offence against a law in force in the Territory; or

- (c) an officer or employee of the Public Service of the Commonwealth or of the Public Sector, as defined in section 3 of the *Public Sector Employment and Management Act 1993*, acting in the course of his or her employment as such an officer or employee.

## **24 Director may limit powers of other officials**

- (1) The Director may give directions in writing to an official mentioned in section 23(1) directing that:
  - (a) a prosecution for a specified offence or class of offences must not be brought by that official; and
  - (b) all matters relating to any such offence must be referred to the Director;

and an official to whom a direction is so given must comply with the direction.

- (2) The Director may recommend that proceedings be brought in respect of an offence mentioned in a direction under subsection (1).

## **25 Director may issue guidelines**

- (1) The Director may issue a statement of guidelines intended to be followed in the performance of the Director's functions.
- (2) A statement issued under subsection (1) must be published in the report mentioned in section 33 and may be published in such other manner as the Director, after consultation with the Attorney-General, thinks fit.
- (3) An act or omission of the Director or a person acting on his behalf must not be called in question or held to be invalid on the grounds of a failure to comply with a statement issued under this section.

# **Part 4 Relationship with Attorney-General**

## **26 General freedom from direction**

Except as provided in this Part, the Director is not subject to direction by the Attorney-General or any other person in the performance of the Director's functions.

**27 Consultation**

- (1) The Director must, if requested to do so by the Attorney-General, consult the Attorney-General about matters concerning the performance of the Director's functions.
- (2) The Attorney-General must, if requested to do so by the Director, consult the Director about matters concerning the performance of the Director's functions.

**28 Directions by Attorney-General**

- (1) The Attorney-General may, after consultation with the Director, issue to the Director directions as to the general policy to be followed in the performance of a function of the Director.
- (2) A direction may not be issued under subsection (1) in respect of a particular case.
- (3) The Director may:
  - (a) in respect of a function, request the Attorney-General to issue directions under subsection (1) concerning that function; and
  - (b) in respect of a particular case, request the Attorney-General to issue directions to the Director as to the performance of the Director's functions in that case; and
  - (c) if the Director considers that the interests of justice require that the Director should not perform a function in a particular case, request the Attorney-General to perform the corresponding function of the Attorney-General in the case;

and the Attorney-General may comply with a request under this subsection.

- (4) The Director must comply with a direction of the Attorney-General under this section.
- (5) Every direction under this section must be in writing and must be included in the annual report of the Director under section 33.

**29 Consistency between Attorney-General and Director**

- (1) Where in a particular case the Attorney-General has performed a function that is vested in both the Attorney-General and the Director, the Director must not, without the consent of the Attorney-General, perform that function inconsistently with the action of the Attorney-General.

- (2) If in a case the operation of subsection (1) precludes the Director from taking an action he or she would otherwise have taken, the Director must refer to that occurrence in the annual report of the Director under section 33.

**30 Information to be provided to Attorney-General**

The Director must, so far as the interests of justice allow, provide the Attorney-General with such information relating to the functions of the Director as the Attorney-General requires:

- (a) for the proper conduct of the Attorney-General's public business; or
- (b) to enable the Legislative Assembly to be informed and questions asked in the Assembly to be answered concerning the functions of the Director or the operation of this Act.

**Part 5 Miscellaneous matters**

**32 Delegation**

The Director may, in writing, delegate to any suitable person any of the Director's powers and functions under this or any other Act.

**33 Annual report of Director**

- (1) The Director must, as soon as is practicable in each year but not later than 30 September, prepare and deliver to the Attorney-General a report on the performance of the Director's functions during the year that ended on the preceding 30 June.
- (2) The Attorney-General must table a copy of the report in the Legislative Assembly within 6 sitting days after the Attorney-General receives the report.
- (3) The Director may at any time report to the Attorney-General on any matter relating to the operation of this Act.

**34 Director to be accountable officer**

For the *Financial Management Act 1995* the Director is the accountable officer in relation to the Director's functions under this Act and that Act applies accordingly.

**35 Judicial notice**

All courts, judges and persons acting judicially must take judicial notice of:

- (a) the official signature of a person who is or has been the Director or the Acting Director on any document; and
- (b) the fact that that person is or was the Director or the Acting Director.

**36 Protection from liability**

The Director, the Deputy Director or any other person acting under this Act:

- (a) is not liable for anything that in good faith he or she does or refrains from doing for carrying out this Act; and
- (b) without limiting paragraph (a), is entitled to be indemnified by the Territory for any liability incurred in any proceedings related to the carrying out of this Act.

**37 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**38 Savings and transitional**

- (1) The application of this Act to offences, prosecutions, appeals, references and proceedings extends to offences committed and prosecutions, appeals, references and proceedings brought or commenced before the commencement of this Act.
- (2) A reference in a law of the Territory to the Crown Prosecutor, unless inconsistent with the context or subject-matter, is taken to be a reference to the Director and the Deputy Director.

**39 Transitional**

- (1) On and from the commencement of this Act:
- (a) the Director shall take over from the Attorney-General, Solicitor-General or Solicitor for the Northern Territory the conduct of all criminal proceedings continuing immediately before the commencement of this section;
  - (b) all acts, matters and things made or done by or on behalf of or in the name of the Attorney-General, Solicitor-General or Solicitor for the Northern Territory in relation to those criminal proceedings shall be deemed to have been made or done by or on behalf of or in the name of the Director;
  - (c) a reference to the Attorney-General, Solicitor-General or Solicitor for the Northern Territory in an order or document arising from or relating to those criminal proceedings shall, unless inconsistent with the context or subject-matter, be deemed to be a reference to the Director; and
  - (d) all documents served on or by or on behalf of or in the name of the Attorney-General, Solicitor-General or Solicitor for the Northern Territory in connection with those criminal proceedings shall be deemed to have been served on or by or on behalf of the Director.
- (2) Notwithstanding anything in subsection (1), the operation of an authority, sanction or consent given before the commencement of this section by the Attorney-General, or other person empowered, to the commencement of proceedings in relation to an offence shall not be abated or affected thereby.

## Schedule

section 7(1)

### OATH

I, \_\_\_\_\_ *[promise/ swear etc. as required by Oaths, Affidavits and Declarations Act 2010]* that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Director of Public Prosecutions.

*[So help me God! or as appropriate]*

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Director of Public Prosecutions Act 1990 (Act No. 35, 1990)***

Assent date	15 June 1990
Commenced	21 January 1991 ( <i>Gaz</i> G2, 16 January 1991, p 9)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993)

***Director of Public Prosecutions Amendment Act 1994 (Act No. 47, 1994)***

Assent date	20 September 1994
Commenced	1 October 1994 ( <i>Gaz</i> S51, 30 September 1994)

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 <i>Financial Management 1995</i> (Act No. 4, 1995) and <i>Gaz</i> S13, 31 March 1995)

***Statute Law Revision (No. 2) Act 1998 (Act No. 92, 1998)***

Assent date	11 December 1998
Commenced	11 December 1998

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date	18 June 1999
Commenced	18 June 1999

***Criminal Property Forfeiture (Consequential Amendments) Act 2002 (Act No. 35, 2002)***

Assent date	16 July 2002
Commenced	1 June 2003 (s 2, s 2 <i>Criminal Property Forfeiture Act 2002</i> (Act No. 34, 2002) and <i>Gaz</i> G21, 28 May 2003, p 2)

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***Justice Portfolio (Miscellaneous Amendments) Act 2005 (Act No. 20, 2005)***

Assent date 6 May 2005  
Commenced 6 May 2005 (s 2)

***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date 22 September 2005  
Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and Gaz G30, 26 July 2006, p 3)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date 8 March 2007  
Commenced 8 March 2007

***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date 17 May 2007  
Commenced s 10: 1 July 2007; rem: 17 May 2007 (s 2 and Gaz G26, 27 June 2007, p 3)

***Financial Management Amendment Act 2009 (Act No. 15, 2009)***

Assent date 18 June 2009  
Commenced 18 June 2009

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and Gaz G7, 16 February 2011, p 4)

***Statute Law Revision Act 2011 (Act No. 30, 2011)***

Assent date 31 August 2011  
Commenced 21 September 2011 (Gaz G38, 21 September 2011, p 5)

***Justice Legislation Amendment (Age of Retirement) Act 2013 (Act No. 5, 2013 )***

Assent date 14 March 2013  
Commenced 2 April 2013 (Gaz S14, 2 April 2013)

***Statute Law Revision Act 2014 (Act No. 38, 2014)***

Assent date 13 November 2014  
Commenced 13 November 2014

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date 6 April 2016  
Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and Gaz S34, 29 April 2016)

***Statute Law Revision Act 2018 (Act No. 10, 2018)***

Assent date 23 May 2018  
Commenced 20 June 2018 (Gaz S41, 20 June 2018)

**3****GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 12, 16, 17, 23 and 34 and sch.

**4****LIST OF AMENDMENTS**

pt 1 hdg	amd No. 30, 2011, s 3
s 3	amd No. 47, 1994, s 4; No. 30, 2011, s 3
pt 2 hdg	amd No. 30, 2011, s 3
s 4	amd No. 28, 1993, s 3; No. 92, 1998, s 8; No. 27, 1999, s 15; No. 7, 2007, s 16; No. 15, 2009, s 16; No. 30, 2011, s 3; No. 5, 2013, s 4; No. 38, 2014, s 2; No. 8, 2016, s 45
s 6	amd No. 30, 2011, s 3
s 7	amd No. 40, 2010, s 118; No. 30, 2011, s 3; No. 8, 2016, s 45
s 8	amd No. 30, 2011, s 3
s 9	amd No. 28, 1993, s 3; No. 92, 1998, s 8; No. 30, 2011, s 3
s 10	amd No. 92, 1998, s 8; No. 30, 2011, s 3
pt 3 hdg	amd No. 30, 2011, s 3
s 11	amd No. 30, 2011, s 3
ss 12 – 13	amd No. 30, 2011, s 3; No. 8, 2016, s 45
s 14	amd No. 30, 2011, s 3
s 16	amd No. 30, 2011, s 3
s 17	sub No. 35, 2002, s 3
s 20	amd No. 30, 2011, s 3; No. 8, 2016, s 45
s 21	amd No. 30, 2011, s 3
s 22	amd No. 33, 2005, s 5; No. 30, 2011, s 3; No. 8, 2016, s 45
s 23	amd No. 28, 1993, s 3; No. 30, 2011, s 3
s 24	amd No. 30, 2011, s 3; No. 38, 2014, s 2
s 25	amd No. 30, 2011, s 3
pt 4 hdg	amd No. 30, 2011, s 3
ss 27 – 30	amd No. 30, 2011, s 3
pt 5 hdg	amd No. 30, 2011, s 3
s 31	rep No. 28, 1993, s 3
s 32	amd No. 47, 1994, s 5 sub No. 20, 2005, s 27
s 33	amd No. 30, 2011, s 3; No. 10, 2018, s 6
s 34	amd No. 5, 1995, s 19; No. 30, 2011, s 3
s 35	amd No. 4, 2007, s 7; No. 30, 2011, s 3
s 36	amd No. 30, 2011, s 3
s 38	amd No. 30, 2011, s 3
sch	amd No. 40, 2010, s 118