

NORTHERN TERRITORY OF AUSTRALIA
DIRECTOR OF PUBLIC PROSECUTIONS ACT 1990

No. 35 of 1990

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 35 of 1990

AN ACT

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

[Assented to 15 June 1990]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

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, unless the contrary intention appears -

"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) against a law of the Territory; or

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- (b) against a law of the Commonwealth but limited to an offence to which particular proceedings relate where the Director is authorized to bring or conduct those proceedings.

PART II - 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 65 years; and
- (b) been enrolled as a legal practitioner of the High Court, or of the Supreme Court of a State or Territory of the Commonwealth, for not less than 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 shall be entitled to such salary and allowances, and shall hold office on such terms and conditions, as the Administrator determines.

(3) The *Public Service Act* does not apply to or in relation to the office of the Director or a person holding that office.

(4) The Director shall, for the purposes of exercising the Director's powers or performing the Director's functions, be entitled to practice as a legal practitioner as if he or she were holding an unrestricted practising certificate issued under the *Legal Practitioners Act*.

(5) The Director shall 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) Notwithstanding anything to the contrary in subsection (1), the *Supreme Court (Judges Pensions) Act* 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 Judge (within the meaning of that Act) who is to cease to hold office on attaining the age of 65 years.

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(7) A pension or other money payable by virtue of subsection (6) shall be payable from the Consolidated Fund, which is appropriated accordingly.

(8) If a person who holds or has held office as the Director becomes a Judge, the period during which the person held office shall, for the purposes of the *Supreme Court (Judges Pensions) Act*, be deemed to be prior judicial service within the meaning of that Act.

(9) Notwithstanding 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 65 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 shall, 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 OR AFFIRMATION OF OFFICE

(1) The Director shall not perform the duties of the Director's office unless the Director has made an oath or affirmation in relation to that office in accordance with the form of oath or affirmation in the Schedule.

(2) An oath or affirmation under subsection (1) shall be made before a Judge of the Supreme Court.

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 shall 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;
- (b) is guilty of misbehaviour; or
- (c) becomes bankrupt or insolvent, applies to take the benefit of a law for the relief of bankrupt

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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;

(b) shall be entitled to be paid such -

(i) remuneration; and

(ii) travelling and other allowances,

as the Administrator from time to time determines; and

(c) shall not, in respect of the office of Acting Director, be subject to the *Public Service Act*.

10. DEPUTY DIRECTOR

(1) The Director may appoint a member of the Director's staff under section 31 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 shall be deemed to have been exercised or performed by the Director.

PART III - 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.

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(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 shall 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 referred to in subsection (1) includes the bringing and conduct of committal proceedings or a preliminary hearing under the *Justices Act* 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 trial of indictable offences;
- (b) to take over a prosecution, not on indictment, for an indictable offence brought by another person, including the summary trial of an indictable offence;
- (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 referred to 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

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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*; 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. RECOVERY OF PENALTY, &c.

Where the Director has conducted a prosecution or appeal and as a result of the proceedings a person becomes subject to a pecuniary penalty or forfeiture or other order, it is a function of the Director to take any further proceedings that may be required to recover the penalty 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.

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20. FURTHER PROVISIONS AS TO TAKING OVER OF MATTERS

(1) For the purposes of 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 clerk or 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) Nothing in this Part shall be read as preventing 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 the purpose of performing the functions of the Director.

(2) Without limiting subsection (1), the Director may, for the purpose referred to in that subsection -

- (a) exercise a power, authority or discretion relating to the investigation and prosecution of offences that is vested in the Attorney-General;
- (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 -

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- (a) by a legal practitioner; or
- (b) where the proceedings are in a court of summary jurisdiction or the juvenile court, by a legal practitioner or a member of the Police Force.

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 furnished 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) Notwithstanding any other written law, an official to whom a request is made under this section shall 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 member of the Police Force of the Northern Territory (including the Commissioner of Police);
- (b) a person employed by an authority or corporation established under a law of the Territory and authorized 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 Territory acting in the course of his or

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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 referred to in section 23(1) directing that -

- (a) a prosecution for a specified offence or class of offences shall not be brought by that official; and
- (b) all matters relating to any such offence shall be referred to the Director,

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

(2) The Director may recommend that proceedings be brought in respect of an offence referred to in 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) shall be published in the report referred to 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 shall 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 IV - 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 shall, 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 shall, if requested to do so by the Director, consult the Director about matters concerning the performance of the Director's functions.

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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;

(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 shall comply with a direction of the Attorney-General under this section.

(5) Every direction under this section shall be in writing and shall 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 shall 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 shall refer to that occurrence in the annual report of the Director under section 33.

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30. INFORMATION TO BE FURNISHED TO ATTORNEY-GENERAL

The Director shall, so far as the interests of justice allow, furnish 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 V - MISCELLANEOUS

31. STAFF

(1) Subject to the *Public Service Act*, there may be appointed such staff as are necessary to assist the Director in the preparation and work required in relation to the institution and conduct of criminal proceedings and in the carrying out of any other function or duty given to the Director by or under this or any other Act.

(2) The Director has all the powers of, or exercisable by, a Departmental Head under the *Public Service Act*, so far as those powers relate to the branch of the Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Public Service.

(3) In addition to the staff referred to in subsection (1), the Director may, on behalf of the Territory and with the approval of the Attorney-General or a person authorized in writing by the Attorney-General to grant approvals under this subsection, employ, under agreements in writing, such persons as the Director thinks necessary for the purposes of the performance of the functions of the Director.

32. DELEGATION

(1) The Director may, by instrument in writing, delegate to a member of the Director's staff or other person employed under section 31 any of the Director's powers and functions under this or any other Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Director.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Director.

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33. ANNUAL REPORT OF DIRECTOR

(1) The Director shall, 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 shall cause the report received under subsection (1) to be laid before the Legislative Assembly within 6 sitting days of the Assembly after it is received by the Attorney-General.

(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 purposes of the *Financial Administration and Audit Act* 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 shall 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) of the fact that that person is or was the Director or the Acting Director, as the case may be.

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 the purpose of 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

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- (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, shall be deemed 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.

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SCHEDULE

Section 7(1)

OATH

I, A.B., do swear 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!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare 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.
