

CROWN PROSECUTORS ACT 1986 No. 208

NEW SOUTH WALES



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CROWN PROSECUTORS ACT 1986 No. 208

NEW SOUTH WALES



Act No. 208, 1986

An Act to create the office of Crown Prosecutor and to confer functions on the Crown Prosecutors; and for other purposes. [Assented to 23 December 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:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Crown Prosecutors 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—

“Director” means the Director of Public Prosecutions;

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

“offence” means an offence against the laws of the State.

- (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.

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PART 2

THE CROWN PROSECUTORS

Crown Prosecutors

4. (1) The Governor may appoint such number of Crown Prosecutors as the Governor thinks necessary.

(2) A person is not eligible to be appointed as a Crown Prosecutor unless the person is a barrister of the Supreme Court.

(3) A Crown Prosecutor shall have and may exercise the functions conferred or imposed on Crown Prosecutors by or under this or any other Act.

(4) A Crown Prosecutor is responsible to the Director for the due exercise of the Crown Prosecutor's functions.

(5) Schedule 1 has effect.

PART 3

FUNCTIONS

Functions

5. (1) The functions of a Crown Prosecutor are—

- (a) to conduct, and appear as counsel in, proceedings on behalf of the Director;
- (b) to find a bill of indictment in respect of an indictable offence, whether or not the person concerned has been committed for trial in respect of the offence;
- (c) to advise the Attorney General or Director in respect of any matter referred for advice by either of them; and
- (d) to carry out such other functions of counsel as the Attorney General or Director approves.

(2) Functions under subsection (1) (b) shall be exercised in the name and on behalf of the Director.

(3) A Crown Prosecutor does not have the function of determining that no bill of indictment be found or directing that no further proceedings be taken against a person.

Disposition of work

6. The Director may make arrangements or give directions for the disposition of the work of the Crown Prosecutors.

Offences under Commonwealth laws

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

PART 4**MISCELLANEOUS****Eligibility for appointment**

8. A person of or above the age of 65 years is not eligible to be appointed as a Crown Prosecutor.

Vacation of office

9. (1) A Crown Prosecutor shall be deemed to have vacated office if the Crown Prosecutor—

- (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 subsection (2) or (3).

(2) If a Crown Prosecutor—

- (a) 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;

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- (b) 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;
 - (c) 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
 - (d) fails, without reasonable excuse, to comply with section 10,
- the Crown Prosecutor shall be removed from office by the Governor.

(3) The Governor may remove a Crown Prosecutor from office—

- (a) for incapacity, incompetence or misbehaviour; or
- (b) if the Crown Prosecutor 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 Crown Prosecutor after the Crown Prosecutor has reached the age of 65 years is nevertheless as valid as if the Crown Prosecutor had not reached that age.

Other work

10. (1) A Crown Prosecutor shall not, without the consent of the Attorney General or the Director—

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

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

Public Service Act 1979

11. The Public Service Act 1979 does not apply to or in respect of the appointment of a Crown Prosecutor and a Crown Prosecutor is not, as Crown Prosecutor, subject to that Act.

Remuneration

12. A Crown Prosecutor 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 Crown Prosecutor.

Acting Crown Prosecutors

13. (1) The Attorney General may appoint a person who is eligible for appointment as a Crown Prosecutor to act as Crown Prosecutor.

(2) The Attorney General may—

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

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

(4) While a person is acting as a Crown Prosecutor, the person has and may exercise all the functions of a Crown Prosecutor and shall be deemed to be a Crown Prosecutor.

Savings and transitional provisions

14. (1) In this section, a reference to an existing Crown Prosecutor or a person holding a commission as an existing Crown Prosecutor is a reference to a person holding an appointment under section 5 of The Australian Courts Act 1828 (9 Geo. IV, c. 83) or section 572 of the Crimes Act 1900.

(2) All appointments under section 5 of The Australian Courts Act 1828 and section 572 of the Crimes Act 1900 are revoked.

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(3) The persons holding commissions and paid as existing Crown Prosecutors immediately before the commencement of this subsection shall, if eligible to be appointed as Crown Prosecutors under this Act, be deemed to have been appointed as Crown Prosecutors under this Act.

(4) Anything done or omitted before the commencement of this subsection by an existing Crown Prosecutor shall be deemed to have been done or omitted by a Crown Prosecutor appointed under this Act.

(5) Nothing in this Act affects any proceedings pending immediately before the commencement of this subsection in which an existing Crown Prosecutor was appearing, and the Crown Prosecutor may continue to appear.

(6) A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to a Crown Prosecutor shall be read as a reference to a Crown Prosecutor appointed under this Act.

(7) In the case of a person holding a commission as an existing Crown Prosecutor immediately before the commencement of this subsection, the references in sections 8 and 9 to the age of 65 years shall be read as references to the age of 70 years.

SCHEDULE 1

(Sec. 4(5))

CERTAIN RIGHTS OF CROWN PROSECUTORS

Definition

1. In this Schedule—

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule.

Preservation of rights of Crown Prosecutor previously public servant etc.

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

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or

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- (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 Crown Prosecutor; 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 Crown Prosecutor and—

- (h) his or her service as a Crown Prosecutor 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 Crown Prosecutor 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 Crown Prosecutor or at any later time while holding office as a Crown Prosecutor) 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.

(3) Subclause (2) does not prevent the payment to a Crown Prosecutor 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 Crown Prosecutor is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

*Crown Prosecutors 1986*SCHEDULE 1—*continued*CERTAIN RIGHTS OF CROWN PROSECUTORS—*continued*

(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.

Crown Prosecutor entitled to re-appointment to former employment in certain cases

3. (1) A person who—

- (a) ceases to be a Crown Prosecutor by resignation;
- (b) was, immediately before being appointed as a Crown Prosecutor—
 - (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 Crown Prosecutor.

(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 Crown Prosecutor,

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

Declaration of statutory bodies

4. 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.
