

[Act 1995 No 28]



New South Wales

Public Defenders Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the appointment and functions of a Senior Public Defender and of Deputy Senior Public Defenders and Public Defenders,
 - (b) to repeal the *Public Defenders Act 1969*,
 - (c) to make consequential amendments to the *Crown Prosecutors Act 1986*, the *Jury Act 1977*, the *Legal Aid Commission Act 1979* and the *Statutory and Other Offices Remuneration Act 1975*,
 - (d) to enact certain savings provisions.
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Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Appointment of Public Defenders

Clause 4 enables the Governor to appoint a Senior Public Defender, who will be responsible to the Attorney General for the due exercise of the Senior Public Defender's functions.

Clause 5 enables the Governor to appoint one or more Deputy Senior Public Defenders, who will be responsible to the Senior Public Defender for the due exercise of their functions.

Clause 6 enables the Governor to appoint such number of Public Defenders as the Governor thinks necessary, who will be responsible to the Senior Public Defender for the due exercise of their functions.

Clause 7 enables the Attorney General to appoint persons to act in the office of Senior Public Defender, Deputy Senior Public Defender or Public Defender.

Part 3 Functions of Public Defenders

Clause 8 sets out the functions of the Senior Public Defender, which will be as follows:

- (a) to make arrangements and give directions for the disposition of the work of Public Defenders and so to ensure the effective and efficient conduct of that work,
- (b) to provide advice and assistance to, and to monitor the work and activities of, Public Defenders,
- (c) to consult with the Legal Aid Commission and with community legal centres about, and to enter into arrangements with the Legal Aid Commission and community legal centres for, the provision of legal assistance to legally assisted persons,
- (d) to advise the Attorney General, whether on the request of the Attorney General or otherwise, on matters relating to the reform of the law relevant to the work and activities of Public Defenders.

The Senior Public Defender will also have all the functions of a Public Defender.

Clause 9 sets out the functions of a Deputy Senior Public Defender, which will be to assist the Senior Public Defender as the Senior Public Defender requires. A Deputy Senior Public Defender will also have all the functions of a Public Defender.

Clause 10 sets out the functions of a Public Defender, which will be as follows:

- (a) to advise and appear in criminal proceedings, and other proceedings in the nature of criminal proceedings, on behalf of legally assisted persons,
- (b) to advise on matters referred to the Public Defender by the Senior Public Defender,
- (c) to carry out such other related functions as may be specified by the Attorney General after consultation with the Senior Public Defender.

Clause 11 will enable the Senior Public Defender to establish guidelines with respect to the exercise of Public Defenders' functions. Guidelines will not be able to be established in relation to particular cases.

Clause 12 provides for the recovery from community legal centres of the costs incurred by Public Defenders in providing legal assistance to persons referred to the Public Defenders by such centres.

Part 4 Miscellaneous

Clause 13 provides for the appointment of staff to assist the Senior Public Defender in the exercise of the Senior Public Defender's functions.

Clause 14 provides for the delegation of the Senior Public Defender's functions.

Clause 15 enables the Attorney General to arrange for the secondment of Public Defenders to act as Crown Prosecutors and to assist in the conduct of certain inquiries and investigations.

Clause 16 exempts the Senior Public Defender, Deputy Senior Public Defenders and Public Defenders from personal liability for things done or omitted by them in the execution of the proposed Act.

Clause 17 requires the Senior Public Defender to prepare annual reports as to the Public Defenders' work and activities.

Clause 18 enables the Attorney General to establish an external review committee to monitor the work and activities of Public Defenders. The constitution, procedure and functions of the committee will be prescribed by regulations under the proposed Act.

Clause 19 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 20 repeals the *Public Defenders Act 1969*.

Clause 21 is a formal provision that gives effect to a schedule of amendments to other Acts.

Clause 22 is a formal provision that gives effect to a schedule of savings, transitional and other provisions.

Clause 23 requires the Attorney General to review the proposed Act and to table a report on the outcome of the review in Parliament within 6 years after the date of assent to the proposed Act.

Schedule 1 Provisions relating to Public Defenders

This Schedule contains provisions concerning the appointment, terms of office and conditions of service of the Senior Public Defender, Deputy Senior Public Defenders and Public Defenders. The Senior Public Defender will be appointed for a term of not more than 7 years. A Deputy Senior Public Defender will be appointed for a term of not more than 5 years. A Public Defender will be appointed for an unlimited term.

Schedule 2 Amendment of other Acts

This Schedule:

- (a) amends the *Crown Prosecutors Act 1986* so as:
 - (i) to ensure that all legal practitioners (not just barristers) are eligible for appointment as Crown Prosecutors, and
 - (ii) to enable the Attorney General to arrange for the secondment of Crown Prosecutors to act as Public Defenders and to assist in the conduct of inquiries and investigations, and
 - (iii) to provide that a Crown Prosecutor may be removed from office on ceasing to be a legal practitioner, and
- (b) amends the *Jury Act 1977* so as to ensure that the Senior Public Defender and the Deputy Senior Public Defenders, and their spouses or de facto partners, are exempt from jury service in the same way as Public Defenders, and their spouses or de facto partners, are exempt.

- (c) amends the *Legal Aid Commission Act 1979* so as to replace a reference to the *Public Defenders Act 1969* with a reference to the proposed Act, and
- (d) amends the *Statutory and Other Offices Remuneration Act 1975* so as to provide for the remuneration of persons appointed under the proposed Act.

Schedule 3 Savings, transitional and other provisions

This Schedule:

- (a) enables the regulations under the proposed Act to contain provisions of a savings or transitional nature, and
- (b) provides that the Public Defenders under the *Public Defenders Act 1969* are to become Public Defenders under the proposed Act, retaining the rights to which they are currently entitled, except that the current Senior Public Defender will be taken to have been appointed as such for a term of 7 years and the current Deputy Senior Public Defender will be taken to have been appointed for a term of 5 years.