



New South Wales

# Director of Public Prosecutions Amendment (Disclosures) Bill 2012

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Director of Public Prosecutions Act 1986* (*the Act*) as follows:

- (a) to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the Director of Public Prosecutions (*the DPP*) all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person, in the same way as the police,
- (b) to clarify an exception from the duty of disclosure that applies in respect of material that is the subject of a claim of privilege, public interest immunity or statutory immunity, and to remove a sunset provision that applies in relation to that exception,
- (c) to allow law enforcement officers to withhold providing to the DPP any material obtained during an investigation that is the subject of a statutory publication restriction.

The Bill also amends the *Director of Public Prosecutions Regulation 2010* as a consequence of the above amendments.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Director of Public Prosecutions Act 1986 No 207**

**Schedule 1 [1]** (and **Schedule 1 [3]**, to the extent that it defines *law enforcement officer*) extends existing disclosure requirements, that currently apply to police officers, so as to require officers of the New South Wales Crime Commission, the Police Integrity Commission and the Independent Commission Against Corruption, when investigating alleged indictable offences, to disclose to the DPP all relevant material that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

**Schedule 1 [2]** makes it clear that the duty of disclosure arises if the DPP exercises any function under the Act with respect to the prosecution of the offence (for instance, if the DPP institutes proceedings in respect of the offence).

**Schedule 1 [3]** clarifies the duty of disclosure, insofar as it applies to sensitive material (that is, information, documents or other things that are the subject of a claim of privilege, public interest immunity or statutory immunity). At present, law enforcement officers are not required to disclose sensitive material to the DPP, but are required to disclose that they have obtained sensitive material. The amendment makes it clear that law enforcement officers are not required to provide sensitive material to the DPP, but are required to inform the DPP of:

- (a) the existence of the sensitive material, and
- (b) the nature of the claim relating to it.

Law enforcement officers are required to provide the sensitive material to the DPP if the DPP requests the provision of the material.

The sunset provision that applies to the existing provision relating to disclosure of sensitive material is repealed.

**Schedule 1 [3]** also provides for a new exception from the duty of disclosure. A law enforcement officer is not required to provide to the DPP any information, document or other thing if to do so would contravene a statutory publication restriction. A statutory publication restriction is a statutory provision, or an order made under a statutory provision, that prohibits or restricts the publication of certain evidence given before or obtained by the Police Integrity Commission, the New South Wales Crime Commission, or the Independent Commission Against Corruption. Law

enforcement officers are required to inform the DPP of the existence and nature of material the subject of a statutory publication restriction, but only to the extent not prohibited by the statutory publication restriction.

**Schedule 1 [6] and [7]** provide for specific transitional matters and enable savings and transitional regulations to be made as a consequence of the amendments. **Schedule 1 [4] and [5]** are consequential amendments.

## **Schedule 2      Amendment of Director of Public Prosecutions Regulation 2010**

**Schedule 2** amends the *Director of Public Prosecutions Regulation 2010* as a consequence of the amendments to the Act. In particular, it provides for a new form in which disclosures to the DPP are to be made.



First print



New South Wales

# Director of Public Prosecutions Amendment (Disclosures) Bill 2012

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New South Wales

# Director of Public Prosecutions Amendment (Disclosures) Bill 2012

No. , 2012

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## A Bill for

An Act to amend the *Director of Public Prosecutions Act 1986*, and the regulation under that Act, to make further provision with respect to disclosures to the DPP.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Director of Public Prosecutions Amendment (Disclosures) Act 2012</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6



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<b>Schedule 1</b>	<b>Amendment of Director of Public Prosecutions Act 1986 No 207</b>	1
		2
<b>[1]</b>	<b>Section 15A Disclosures by law enforcement officers</b>	3
	Omit “Police officers” and “police officers” wherever occurring in section 15A (1), (3), (4) and (5).	4
		5
	Insert instead “Law enforcement officers” and “law enforcement officers”, respectively.	6
		7
<b>[2]</b>	<b>Section 15A (1A)</b>	8
	Insert after section 15A (1):	9
	(1A) The duty of disclosure arises if the Director exercises any function under this Act with respect to the prosecution of the offence.	10
		11
		12
<b>[3]</b>	<b>Section 15A (6)–(9)</b>	13
	Omit section 15A (6) and (7). Insert instead:	14
	(6) The duty imposed by this section does not require law enforcement officers to provide to the Director any information, documents or other things that are the subject of a claim of privilege, public interest immunity or statutory immunity. The duty of a law enforcement officer in such a case is to inform the Director of:	15
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	(a) the existence of any information, document or other thing of that kind, and	21
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	(b) the nature of that information, document or other thing and the claim relating to it.	23
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	(7) However, a law enforcement officer must provide to the Director any information, document or other thing the subject of a claim of privilege, public interest immunity or statutory immunity, if the Director requests it to be provided.	25
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	(8) The duty imposed by this section does not require law enforcement officers to provide to the Director any information, document or other thing if to do so would contravene a statutory publication restriction. The duty of a law enforcement officer in such a case is to inform the Director of the following, but only to the extent not prohibited by the statutory publication restriction:	29
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	(a) the existence of any information, document or other thing of that kind,	35
		36
	(b) the nature of that information, document or other thing.	37

(9)	In this section:	1
	<i>law enforcement officer</i> means a police officer, or an officer of	2
	one of the following agencies, who is responsible for an	3
	investigation into a matter that involves the suspected	4
	commission of an alleged indictable offence:	5
	(a) the Police Integrity Commission,	6
	(b) the New South Wales Crime Commission,	7
	(c) the Independent Commission Against Corruption.	8
	<i>statutory publication restriction</i> means a prohibition or	9
	restriction on publication that is imposed by or under:	10
	(a) section 52 or 53 of the <i>Police Integrity Commission Act</i>	11
	<i>1996</i> , or	12
	(b) section 45 of the <i>Crime Commission Act 2012</i> , or	13
	(c) section 112 of the <i>Independent Commission Against</i>	14
	<i>Corruption Act 1988</i> .	15
[4]	<b>Section 36 Savings and transitional provisions</b>	16
	Insert “, as so inserted,” after “of section 15A (6)” in section 36 (11).	17
[5]	<b>Section 36, note</b>	18
	Insert after section 36 (11):	19
	<b>Note.</b> For savings and transitional provisions relating to amendments	20
	made to this Act after 2011, see Schedule 2.	21
[6]	<b>Section 37 Regulations</b>	22
	Insert at the end of section 37 (3):	23
	any Act that amends this Act	24

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<b>[7] Schedule 2</b>	1
Insert after Schedule 1:	2
<b>Schedule 2 Savings, transitional and other provisions</b>	3
	4
<b>Part 1 Provision consequent on Director of Public Prosecutions Amendment (Disclosures) Act 2012</b>	5
	6
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<b>1 Application of amendments</b>	8
	9
An amendment made to section 15A or the <i>Director of Public Prosecutions Regulation 2010</i> by the <i>Director of Public Prosecutions Amendment (Disclosures) Act 2012</i> extends to an alleged indictable offence that a law enforcement officer investigated, or started to investigate, before the commencement of the amendment if the Director first exercises a function under this Act, in respect of the prosecution of the offence, after the commencement of the amendment.	10
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<b>Schedule 2</b>	<b>Amendment of Director of Public Prosecutions Regulation 2010</b>	1
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<b>[1] Clause 5</b>		3
	Omit the clause. Insert instead:	4
<b>5 Prescribed form for law enforcement officer disclosure</b>		5
	For the purposes of section 15A of the Act, disclosures by a law enforcement officer to the Director must:	6
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	(a) be in the form set out in Schedule 1, and	8
	(b) be completed, signed and dated by the law enforcement officer, and	9
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	(c) be signed and dated by the relevant superior officer, being:	11
	(i) in the case of a disclosure by a police officer—the police officer who holds the position of Brief Manager in the NSW Police Force, or	12
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	(ii) in the case of a disclosure by an officer of the New South Wales Crime Commission—the Commissioner or an Assistant Commissioner of the Commission, or	15
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	(iii) in the case of a disclosure by an officer of the Police Integrity Commission—the Commissioner or an Assistant Commissioner of the Commission, or	19
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		21
	(iv) in the case of a disclosure by an officer of the Independent Commission Against Corruption—the Commissioner or an Assistant Commissioner of the Commission.	22
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		25
<b>[2] Schedule 1</b>		26
	Omit the Schedule. Insert instead:	27
<b>Schedule 1</b>	<b>Disclosure certificate (for prosecutions and advisings)</b>	28
		29
	(Clause 5)	30
	(Director of Public Prosecutions Act 1986, section 15A)	31
	Matter of:	32
	Charge No(s) [ <i>if applicable</i> ]:	33
	For indictable offence(s) of:	34

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**Acknowledgement**

I am aware that as a law enforcement officer investigating an alleged indictable offence I have a duty, under section 15A of the *Director of Public Prosecutions Act 1986*, to disclose to the Director of Public Prosecutions (**the DPP**) all relevant material.

I understand **relevant material** to be all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

I am aware that my duty to disclose continues until the DPP decides that the accused person will not be prosecuted for the alleged offence(s), the accused person is found guilty or acquitted, or the prosecution is terminated.

I am aware that my duty to disclose as outlined above is subject to claims of privilege, public interest immunity or statutory immunity. I am aware that such claims are to be directed as follows:

- (a) for police officers—through my Commander to the General Manager, Court and Legal Services of the NSW Police Force,
- (b) for other law enforcement officers—through my manager to the Commissioner or an Assistant Commissioner of the agency of which I am an officer.

I am aware that the duty to disclose is also subject to any statutory publication restriction. A **statutory publication restriction** is a prohibition or restriction on publication imposed by or under section 52 or 53 of the *Police Integrity Commission Act 1996*, section 45 of the *Crime Commission Act 2012* or section 112 of the *Independent Commission Against Corruption Act 1988*.

**Certification**

I certify that the information I have given in Schedules 1, 2 and 3 is true, to the best of my knowledge and belief.

Schedule 1 relates to relevant material, not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. I am aware that I am required to disclose to the DPP the existence and nature of all such material. I am aware that I must retain the material for as long as my duty to disclose exists and provide the material to the DPP on request.

Schedule 2 relates to relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction. I am aware that I am required to disclose to the DPP the existence of any such material, and the nature of the material, but only to the extent not prohibited by the statutory publication restriction. I am aware that I must retain the material for as long as my duty to disclose exists.

Schedule 3 relates to relevant material, not contained in the brief of evidence, that is not the subject of a privilege or an immunity claim or a statutory publication restriction. Unless impracticable to do so, I have attached a copy of all such material to this certificate. If a copy of any such material has not been provided, I am aware that I must retain the material for as long as my duty to disclose exists and facilitate access to the material by the DPP.

**Undertaking**

I undertake to advise the DPP in writing, as soon as practicable, if I become aware of any additional information, documents or other things that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Signed [*officer responsible for investigation of case*]:

Date:

Name:

Rank [*if applicable*]:

**Received and noted by superior officer\***

Signed [*superior officer*]:

Date:

Name:

Rank [*if applicable*]:

\*If the disclosing law enforcement officer is a police officer, this form should be signed by the Brief Manager of the NSW Police Force. If the disclosing law enforcement officer is an officer of the NSW Crime Commission, the Independent Commission Against Corruption or the Police Integrity Commission, this form should be signed by the Commissioner or an Assistant Commissioner of that agency.

**Schedule 1: relevant material that may be immune from disclosure**

Certification*	Yes	No
There is relevant material, not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. That material is described in this Schedule below.		

Description of item	Privilege/immunity sought**

**Schedule 2: relevant material that is the subject of a statutory publication restriction**

Certification*	Yes	No
There is relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction and the existence of which I can disclose without contravening the statutory publication restriction. That material is described in this Schedule below. [ <i>Describe the material only to the extent not prohibited by the statutory publication restriction</i> ]		

Description of item

**Schedule 3: relevant material that is not immune from disclosure or the subject of a statutory publication restriction**

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Certification*	Yes	No
There is relevant material, not contained in the brief of evidence, that is not the subject of a claim of privilege or immunity or a statutory publication restriction. That material is described in this Schedule below.		

Description of item	Copy attached?***	
	Yes	No

*\*Tick either yes or no in relation to the statement*

*\*\*Describe the nature of the privilege or immunity claim in relation to each item*

*\*\*\*Tick either yes or no in relation to each item*

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