

# Director of Public Prosecutions Act 1986 No 207

[1986-207]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
*Courts and Crimes Legislation Amendment Bill 2011*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Director of Public Prosecutions Act 1986 No 207



New South Wales

An Act to create the office of Director of Public Prosecutions and to confer functions on the Director of Public Prosecutions; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Director of Public Prosecutions Act 1986*.

### 2 Commencement

- (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.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**appeal** includes any proceedings in the nature of an appeal, including:

- (a) any proceedings under Part 3, 4 or 5 of the *Crimes (Local Courts Appeal and Review) Act 2001*, and
- (b) any proceedings referred to in section 69 of the *Supreme Court Act 1970*.

**committal proceedings** means a hearing before a Magistrate for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence.

**coroner** includes any person exercising any of the jurisdiction or functions of a coroner.

**Deputy Director** means a Deputy Director of Public Prosecutions.

**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.

**Officer** means the Director, a Deputy Director, the Solicitor or a member of the staff referred to in section 32.

**prescribed summary offence** means a summary offence of a kind prescribed by the regulations for the purposes of this Act.

**prosecutor** includes an informant, a complainant and an applicant under the *Crimes (Domestic and Personal Violence) Act 2007*.

**regulations** means regulations under this Act.

**Solicitor** means the Solicitor for Public Prosecutions.

**summary offence** means an offence that is not an indictable offence.

(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.

## Part 2 Senior Officers

### 3A Guidelines for Senior Officer appointments

The Attorney General may issue guidelines as to the process for the selection of a person to be proposed for appointment (including reappointment) to any office under this Act. The guidelines are not mandatory and a failure to comply with them does not affect the validity of an appointment.

### 4 Director

- (1) The Governor may appoint a Director of Public Prosecutions.
- (2) The Director shall have and may exercise the functions conferred or imposed on the Director by or under this or any other Act.
- (3) The Director is responsible to the Attorney General for the due exercise of the Director's functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, institution and conduct of any proceedings.

#### **4A Veto of proposed appointment of Director**

- (1) A person is not to be appointed as Director until:
  - (a) a proposal that the person be appointed has been referred to the Committee on the Office of the Ombudsman under section 31BA of the *Ombudsman Act 1974*, and
  - (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section, **appointment** includes re-appointment.

#### **5 Deputy Directors**

- (1) The Governor may appoint one or more Deputy Directors of Public Prosecutions.
- (2) A Deputy Director shall have and may exercise the functions conferred or imposed on a Deputy Director by or under this or any other Act.
- (3) A Deputy Director is responsible to the Director for the due exercise of the Deputy Director's functions.

#### **6 Solicitor for Public Prosecutions**

- (1) The Governor may appoint a Solicitor for Public Prosecutions.
- (2) The Solicitor shall have and may exercise the functions conferred or imposed on the Solicitor by or under this or any other Act.
- (3) The Solicitor is responsible to the Director for the due exercise of the Solicitor's functions.

### **Part 3 Functions**

#### **7 Principal functions**

- (1) The principal functions and responsibilities of the Director are:
  - (a) to institute and conduct, on behalf of the Crown, prosecutions (whether on indictment or summarily) for indictable offences in the Supreme Court and the District Court,
  - (b) to institute and conduct, on behalf of the Crown, appeals in any court in respect of any such prosecution, and

(c) to conduct, on behalf of the Crown as respondent, any appeal in any court in respect of any such prosecution.

(2) The Director has the same functions as the Attorney General in relation to:

- (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial,
- (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence, and
- (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

### **8 Instituting other proceedings**

(1) The Director may institute and conduct:

- (a) committal proceedings for indictable offences,
- (b) proceedings for summary offences in any court, and
- (c) summary proceedings for indictable offences that may be dealt with summarily in the Local Court.

(2) If the Director has instituted any such proceeding, the Director may:

- (a) institute and conduct, on behalf of the Crown or the prosecution, appeals in any court arising from the proceeding, and
- (b) conduct, as respondent, appeals in any court arising from the proceeding.

(3) The Director may not exercise any function under this section in respect of a summary offence, unless:

- (a) the offence is a prescribed summary offence, or
- (b) the person otherwise responsible for the prosecution or proceeding concerned has consented in writing.

### **9 Taking over prosecutions or proceedings**

(1) If a prosecution or proceeding in respect of an offence (whether it is an indictable offence or a summary offence) has been instituted by a person other than the Director, the Director may take over the matter and:

- (a) carry on the prosecution or proceeding,
- (b) carry on, on behalf of the prosecution or as respondent, an appeal in any court in

respect of the offence,

(c) institute and conduct, on behalf of the prosecution, an appeal in any court in respect of the offence, and

(d) conduct, as respondent, an appeal in any court in respect of the offence.

(2) The Director may not take over a matter under this section involving a summary offence, unless:

(a) the offence is a prescribed summary offence, or

(b) a person otherwise responsible for the matter has consented in writing.

(3) Except as provided by subsection (2), the Director may take over a matter under this section whether or not the person otherwise responsible for the matter consents.

(4) If the Director takes over a matter under this section:

(a) the Director shall, as from the time when the Director complies with section 10 (1) in relation to the matter, be deemed to be the prosecutor in connection with the prosecution or proceeding concerned, and

(b) the Director may decline to proceed further in the prosecution or to carry the proceeding further.

(5) For the purposes of this section, **proceeding** includes any application, appeal or other proceeding commenced under Division 1A of Part 3 of the *Confiscation of Proceeds of Crime Act 1989*.

#### **9A Handing back of matters to original prosecutor**

(1) If a prosecution or proceeding that has been taken over by the Director under section 9 is remitted to the Local Court, the Director may hand the matter back to the prosecutor from whom it was taken over (the **original prosecutor**) or, if the original prosecutor (being a holder of a position in the Government Service or a member of the NSW Police Force) no longer holds that position, to the person now holding that position (the **original prosecutor's successor**).

(2) If a matter is handed back under this section, the original prosecutor or the original prosecutor's successor, as the case may be, shall, as from the time when the Director complies with section 10 (1A) in relation to the matter, be deemed to be the prosecutor in connection with the matter.

#### **10 Director to inform court etc when taking over, or handing back, proceedings**

(1) If the Director decides to take over a matter in accordance with section 9, the Director shall, as soon as practicable:



- (a) by notice in writing, inform the person otherwise responsible for the matter, and
  - (b) if the matter is pending before a court:
    - (i) by notice in writing, inform the registrar or other proper officer of the court in which the prosecution or proceeding concerned is to be heard, or
    - (ii) if the prosecution or proceeding is being heard by a Judge or Magistrate—in such manner as the Director thinks fit, inform the Judge or Magistrate,
- that the Director has taken over the matter.

(1A) If the Director hands a matter back in accordance with section 9A, the Director shall, as soon as practicable:

- (a) by notice in writing, inform the original prosecutor (or the original prosecutor's successor) referred to in section 9A, and
- (b) by notice in writing, inform the registrar or other proper officer of the Local Court in which the prosecution or proceeding concerned is to be heard,

that the Director has handed the matter back to the original prosecutor (or the original prosecutor's successor).

(2) Failure by the Director to notify or inform does not affect any of the Director's functions in relation to the matter.

## **11 Consents**

- (1) The Director may consent to prosecutions for offences, being offences of a kind in relation to which an order under subsection (2) is in force.
- (2) A person who has, under a law of the State, the power to consent to prosecutions for offences of a particular kind may, by order published in the Gazette, authorise the Director to consent to prosecutions for offences of that kind.
- (3) Such an authorisation may not be given by a person who has that power by virtue of an authorisation granted to the person by another person.
- (4) The mere giving of an authorisation under this section does not prevent the giving of a consent by a person who, but for this section, would have power to give a consent.
- (5) If the Director consents to a prosecution for an offence, being an offence of a kind to which an order under subsection (2) is in force, the prosecution may be instituted and conducted without the consent of any other person.
- (6) The Director shall notify the person who gives an authorisation under this section of the giving or refusing of consent under the authorisation.

(7) If the Director gives or refuses consent under an authorisation under this section, the person who gives the authorisation is bound by the Director's decision.

(8) In this section:

**consent** includes authorisation, sanction and any similar authority.

## **12 Coroners**

The Director may, with the consent of the coroner, assist a coroner in any inquest or inquiry.

## **13 Guidelines to Crown Prosecutors etc by Director**

(1) The Director may, by order in writing, furnish guidelines to the Deputy Directors, the Solicitor and the Crown Prosecutors with respect to the prosecution of offences, including guidelines as to the exercise of specified functions (whether statutory or not).

(2) Guidelines may not be furnished in relation to particular cases.

## **14 Recommendations and guidelines to police etc by Director**

(1) The Director may recommend to:

(a) the Commissioner of Police, or

(b) any other person who:

(i) conducts investigations in relation to offences, or

(ii) institutes or conducts prosecutions for offences,

that proceedings be instituted in respect of any offence.

(2) The Director may, by order in writing, and after consultation with the Attorney General, furnish guidelines to the Commissioner of Police or any such person with respect to the prosecution of indictable offences or prescribed summary offences.

(3) Guidelines may not be furnished in relation to particular cases.

## **15 Provisions relating to guidelines**

(1) The Director shall:

(a) give to the Attorney General a copy of each guideline furnished under this Part, and

(b) include in a report under section 34:

(i) a copy of each guideline furnished during the period to which the report

relates, and

(ii) the title of, and a brief description of any publication containing, each guideline furnished as in force at the end of that period.

(2) The persons to whom guidelines are furnished under this Part are subject to the guidelines.

### **15A Disclosures by investigating police officers**

(1) Police officers investigating alleged indictable offences have a duty to disclose to the Director 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.

(2) The duty of disclosure continues until one of the following happens:

(a) the Director decides that the accused person will not be prosecuted for the alleged offence,

(b) the prosecution is terminated,

(c) the accused person is convicted or acquitted.

(3) Police officers investigating alleged indictable offences also have a duty to retain any such documents or other things for so long as the duty to disclose them continues under this section. This subsection does not affect any other legal obligation with respect to the possession of the documents or other things.

(4) The regulations may make provision for or with respect to the duties of police officers under this section, including for or with respect to:

(a) the recording of any such information, documents or other things, and

(b) verification of compliance with any such duty.

(5) The duty imposed by this section is in addition to any other duties of police officers in connection with the investigation and prosecution of offences.

(6) The duty imposed by this section does not require police officers investigating alleged indictable offences to disclose to the Director any information, documents or other things that are the subject of a bona fide claim of privilege, public interest immunity or statutory immunity. The duty of police officers in such a case is to inform the Director that they have obtained information, documents or other things of that kind.

(7) Subsection (6) ceases to have effect on 1 January 2013.

## **16 Directions to police etc by Director**

- (1) The Director may, by order in writing, give directions referred to in subsection (2) to:
  - (a) the Commissioner of Police, or
  - (b) any other person who institutes or conducts prosecutions for offences.
- (2) Directions may be given requiring specified information or kinds of information to be referred to the Director for the purpose of enabling the Director to consider:
  - (a) instituting or carrying on a prosecution or prosecutions for a specified offence or class of offences,
  - (b) instituting, carrying on or taking over proceedings for a specified offence or class of offences, or
  - (c) instituting, carrying on or taking over other proceedings in connection with functions conferred on the Director whether under this Act or otherwise.
- (3) A person to whom such a direction is given shall comply with the direction.
- (4) In this section:

**offence** means an indictable offence or a prescribed summary offence.

## **17 Provision of information to Director**

- (1) If a prosecution for an offence has been instituted by a person other than the Director and:
  - (a) the Director informs the person that the Director is considering taking over the prosecution,
  - (b) the Director takes over the prosecution, or
  - (c) the person considers that the Director should take over the prosecution, the person shall furnish to the Director the relevant information or material.
- (2) The relevant information or material is:
  - (a) a full report of the circumstances of the matter,
  - (b) a copy of the statements of any witnesses,
  - (c) each material document in the possession of the person, and
  - (d) such other information or material as the Director requires.

### **18 Request for assistance from police etc by Director**

- (1) If the Director is considering instituting or taking over, or has instituted or taken over, a prosecution for an offence, the Director may, by order in writing, request:
  - (a) the Commissioner of Police, or
  - (b) any other person who:
    - (i) conducts investigations in relation to offences, or
    - (ii) institutes or conducts prosecutions for offences,to investigate or further investigate matters associated with the alleged commission of the offence.
- (2) The Commissioner or other person shall, so far as practicable, comply with the request.

### **19 Indemnities and undertakings**

- (1) The Director may request the Attorney General to exercise the function of the Attorney General:
  - (a) to grant indemnity from prosecution (whether on indictment or summarily), or
  - (b) to give an undertaking that an answer, statement or disclosure will not be used in evidence.
- (2) The Director may not grant such an indemnity or give such an undertaking.

### **20 Other functions of Director**

- (1) The functions of the Director include the following:
  - (a) to exercise such functions as are prescribed,
  - (b) to do anything incidental or conducive to the exercise of any functions of the Director.
- (2) The Director may advise and assist any Crown Prosecutor, any member of the Police Force or, if so directed by the Attorney General, any other person in respect of the conduct of criminal proceedings.

### **20A Proceedings for order under [Crimes \(Domestic and Personal Violence\) Act 2007](#)**

- (1) The Director may institute and conduct, on behalf of an applicant, proceedings for an order under the [Crimes \(Domestic and Personal Violence\) Act 2007](#) in the Local Court, the Children's Court or the District Court.
- (2) Even if the Director does not institute and conduct such proceedings, the Director

may:

- (a) institute and conduct, on behalf of an applicant, appeals in any court arising from such proceedings, and
  - (b) conduct, on behalf of an applicant as respondent, appeals in any court arising from such proceedings.
- (3) This Act applies in relation to any proceedings for an order under the *Crimes (Domestic and Personal Violence) Act 2007* as if the proceedings were a prosecution or proceedings in respect of an offence.

## **21 Appearances by and on behalf of Director**

The Director may appear in person or may be represented by counsel or a solicitor in:

- (a) any proceedings which are conducted or carried on by the Director or to which the Director is otherwise a party, or
- (b) any inquest or inquiry in which the Director is assisting a coroner.

## **22 Functions of Deputy Directors**

- (1) A Deputy Director shall assist the Director, as the Director requires.
- (2) A Deputy Director has the same functions as a Crown Prosecutor.

## **23 Functions of Solicitor**

The functions of the Solicitor are:

- (a) to act as solicitor for the Director in the exercise of the Director's functions, and
- (b) to instruct the Crown Prosecutors and other counsel on behalf of the Director.

## **24 Offences under Commonwealth laws**

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

# **Part 4 The Attorney General**

## **25 Consultation**

- (1) The Director shall, if requested to do so by the Attorney General, consult with the Attorney General with respect to matters concerning the exercise of the Director's functions.
- (2) The Attorney General shall, if requested to do so by the Director, consult with the

Director with respect to matters concerning the exercise of the Director's functions.

## **26 Guidelines by Attorney General**

- (1) In the exercise of the Director's functions, the Director is subject to such guidelines as the Attorney General, after consultation with the Director, furnishes to the Director by order in writing.
- (2) Without limiting the generality of subsection (1), guidelines may relate to the circumstances in which the Director should institute or carry on prosecutions for offences.
- (3) A guideline may not be furnished in relation to a particular case.
- (4) If the Attorney General furnishes a guideline under this section, the Attorney General shall:
  - (a) as soon as practicable after furnishing it, cause a copy of the order to be published in the Gazette, and
  - (b) cause a copy of the order to be laid before each House of Parliament within 14 sitting days of that House after publication.
- (5) For the purposes of this section, sitting days shall be counted whether or not they occur during the same session.

## **27 Attorney General to notify Director of bills and no bills**

- (1) The Attorney General shall notify the Director whenever the Attorney General exercises any of the following functions:
  - (a) finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial,
  - (b) directing that no further proceedings be taken against a person who has been committed for trial or sentence,
  - (c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial,
  - (d) appealing under section 5D of the *Criminal Appeal Act 1912* to the Court of Criminal Appeal against a sentence.
- (2) The Director shall include in a report under section 34 information as to the notifications received by the Director from the Attorney General under this section during the period to which the report relates.

## **28 Attorney General's functions to prevail**

- (1) The Director shall not, without the consent of the Attorney General, exercise a function in a manner that is inconsistent with the manner in which the Attorney General has, after the commencement of this section, already exercised a function in relation to the same matter.
- (2) If the Attorney General has, before the commencement of this section, determined that no bill of indictment be found in respect of an offence, or has directed that no further proceedings be taken against a person in respect of an offence, the Director shall not exercise a function in a manner that is inconsistent with the determination or direction, unless the Director is satisfied that:
  - (a) significant fresh evidence has been produced that was not previously available for consideration, or
  - (b) the determination or direction was obtained by fraud,and that in all the circumstances it is in the interests of justice that the matter be re-opened.

## **29 Director may make request to Attorney General**

If the Director considers it desirable in the interests of justice that the Director should not exercise certain functions in relation to a particular case, the Director may request the Attorney General to exercise the Attorney General's corresponding functions.

## **30 Attorney General's powers not affected**

Nothing in this Act affects any functions of the Attorney General that the Attorney General has apart from this Act.

## **Part 5 Miscellaneous**

### **31 Provisions relating to appointment etc of Director etc**

Schedule 1 has effect.

### **32 Staff**

- (1) Such staff as may be necessary to enable the Director and Solicitor to exercise their functions shall be employed under the [Public Service Act 1979](#).
- (2) The Director may:
  - (a) with the approval of the Attorney General, and
  - (b) on such terms and conditions as may be approved by the Public Service Board, arrange for the use of the services of any staff or facilities of a government



department, administrative office or public authority.

(3) The Director may:

(a) for any purpose approved by the Attorney General, and

(b) on such terms and conditions as may be approved by the Public Service Board, employ such consultants or casual staff as may be required by the Director in exercising the Director's functions.

(4) The *Public Service Act 1979* does not apply to or in respect of the employment of consultants or casual staff under this section and a person is not, as a consultant or member of the casual staff, subject to that Act.

### **33 Delegation**

(1) The Director may delegate to:

(a) an Officer,

(b) a Crown Prosecutor, or

(c) a person approved by the Attorney General,

the exercise of any of the Director's functions (other than this power of delegation).

(2) The Director may not delegate the exercise of any of the following functions, except to a Deputy Director:

(a) determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial,

(b) directing that no further proceedings be taken against a person who has been committed for trial or sentence,

(c) finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial,

(d) appealing under section 5D of the *Criminal Appeal Act 1912* to the Court of Criminal Appeal against a sentence.

(3) A delegation:

(a) shall be in writing,

(b) may be general or limited, and

(c) may be revoked, wholly or partly, by the Director.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are

specified in the instrument of delegation.

- (5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Director.
- (6) A delegation does not prevent the exercise of a function by the Director.
- (7) A function purporting to have been exercised by a delegate shall, until the contrary is proved be deemed to have been duly exercised by a delegate under this section.

### **34 Annual report**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director shall prepare and forward to the Attorney General a report of the work and activities of the Director for the 12 months ending on 30 June in that year.
- (2) The Attorney General shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) The report shall not identify persons who have been the subject of consideration under this Act in relation to alleged offences, unless the persons have appeared before a court in relation to the alleged offences.

### **35 Protection from liability**

- (1) In this section:

**prescribed person** means an Officer, a Crown Prosecutor or any person assisting an Officer or Crown Prosecutor.

**relevant law** means this Act or any other Act or law to the extent that the other Act or law confers or imposes functions on the Director.

- (2) No matter or thing done by a prescribed person shall, if the matter or thing was done in good faith for the purpose of executing any relevant law, subject any prescribed person personally to any action, liability, claim or demand.
- (3) A prescribed person is entitled to be indemnified by the State for any costs awarded against the prescribed person personally in any proceedings in which the prescribed person is involved through the execution of any relevant law.

### **36 Savings and transitional provisions**

- (1) This Act applies to offences committed before the commencement of this subsection, as well as to offences committed afterwards.
- (2) Anything duly done by or in the name of the Attorney General before the commencement of this subsection is not affected by anything in this Act.

- (3) The person holding office as Solicitor for Public Prosecutions immediately before the commencement of section 6 shall be deemed to have been appointed as Solicitor for Public Prosecutions under this Act.
- (4) The amendments made to Schedule 1 by the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007* do not apply to a Senior Officer in respect of any office held by the Senior Officer immediately before the commencement of that Act.
- (5) Clause 10 of Schedule 1 (as amended by the *Courts and Other Legislation Amendment Act 2011*) extends to any appointment to the office of Director made on or after the day on which the Bill for that Act was first introduced into Parliament.
- (6) A person who holds office as a Deputy Director or the Solicitor immediately before the commencement of the *Crown Law Officers Legislation Amendment (Retirement Age) Act 2011* and who was appointed for a specified term of office shorter than 7 years is taken to have been appointed for a term of 7 years.
- (7) Subsection (6) does not apply to the term of office of a person appointed to act as a Deputy Director or the Solicitor.
- (8) The amendments made to this Act by the *Crown Law Officers Legislation Amendment (Retirement Age) Act 2011* do not affect any right preserved by this section to hold office beyond a retiring age provided by this Act.
- (10) Section 15A (6), as inserted by the *Director of Public Prosecutions Amendment (Disclosures) Act 2011*, extends to proceedings for indictable offences commenced before the commencement of that subsection.
- (11) Anything done or omitted to be done before the commencement of section 15A (6) by a police officer, the Director or any other person having functions with respect to the prosecution of indictable offences, that would have been validly done or omitted if section 15A (6) had been in force at the time that it was done or omitted, is taken to have been validly done or omitted to be done.

### **37 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Crown Law Officers Legislation Amendment (Retirement Age) Act 2011*

(4) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(5) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Schedule 1 Provisions relating to Senior Officers

(Section 31)

### 1 Definitions

In this Schedule:

**office** means the office of Director, Deputy Director or Solicitor.

**Senior Officer** means the Director, a Deputy Director or the Solicitor.

**statutory body** means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

### 2 Eligibility for appointment

(1) (Repealed)

(2) A person is not eligible to be appointed as Director unless the person is an Australian lawyer of at least 7 years' standing.

(3) A person is not eligible to be appointed as a Deputy Director unless the person is an Australian lawyer of at least 5 years' standing.

- (4) A person is not eligible to be appointed as Solicitor unless the person is an Australian lawyer of at least 5 years' standing.
- (5) A person is not eligible to be appointed as a Senior Officer if the person is a member of the Legislative Council or the Legislative Assembly of New South Wales or is a member of a House of Parliament of another State or of the Commonwealth.

## **2A Term of office**

- (1) The Director is to be appointed by the Governor for a term of 10 years or for such shorter term as may be necessary to ensure that the person's term of office extends to (but not beyond) the date on which the person reaches the age of 72 years.
- (2) A Senior Officer other than the Director is to be appointed by the Governor for a term of 7 years or for such shorter term as may be necessary to ensure that the person's term of office extends to (but not beyond) the date on which the person reaches the age of 72 years.
- (3) The Director is not eligible for reappointment, including reappointment after the end of the Director's term.
- (4) A Senior Officer other than the Director is eligible (if otherwise qualified) for reappointment.

## **3 Remuneration**

- (1) A Senior Officer 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 Senior Officer.
- (2) The leave which may be granted to a Senior Officer shall be as the Attorney General may from time to time determine in respect of the Senior Officers.

## **4 Vacation of office**

- (1) A Senior Officer shall be deemed to have vacated office if the Officer:
  - (a) dies,
  - (b) resigns the office by instrument in writing addressed to the Governor, or
  - (c) reaches the age of 72 years, or
  - (d) is removed from office by the Governor under subclause (2) or (3).
- (2) If a Senior Officer:

- (a) is nominated for election as a member of the Legislative Council or the Legislative Assembly of New South Wales or as a member of a House of Parliament of another State or of the Commonwealth,
- (b) 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,
- (c) becomes a mentally incapacitated person,
- (d) 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
- (e) fails, without reasonable excuse, to comply with clause 5 or 6,

the Officer shall be removed from office by the Governor.

(3) The Governor may remove a Senior Officer from office:

- (a) for incapacity, incompetence or misbehaviour, or
- (b) if the Officer is:
  - (i) convicted in New South Wales of an offence that is punishable by imprisonment 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 Senior Officer after the Officer has reached the age of 72 years is nevertheless as valid as if the Officer had not reached that age.

## **5 Disclosure of interests**

A Senior Officer shall give written notice to the Attorney General of all direct or indirect pecuniary interests that the Officer has or acquires in any business whether in New South Wales or elsewhere or in any body corporate carrying on any such business.

## **6 Other work**

(1) A Senior Officer shall not, without the consent of the Attorney General:

- (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 Senior Officer shall not contravene or fail to comply with any conditions attached to any such consent.

## **7 Public Sector Employment and Management Act 2002**

The *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a Senior Officer and a Senior Officer is not, as a Senior Officer, subject to that Act (Chapter 5 included).

## **8 Acting Senior Officers**

- (1) The Attorney General may appoint a person who is eligible for appointment as a Senior Officer to act in the office of that Senior Officer:
  - (a) during a vacancy in that office, whether or not an appointment has previously been made to that office, or
  - (b) during any period, or during all periods, when the person holding that office is absent from duty or from New South Wales or is, for any other reason, unable to exercise the functions of that office.
- (2) An appointment of a person under this clause may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Attorney General may:
  - (a) subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of a Senior Officer, and
  - (b) terminate such an appointment at any time.
- (4) A person may not act or be appointed to act under this clause for a period of more than 12 months at a time.
- (5) While a person is acting in the office of a Senior Officer, the person has and may exercise all the functions of the Officer and shall be deemed to be the Officer.
- (6) The validity of anything done by or in relation to a person purporting to act in the office of a Senior Officer under an appointment made under this clause shall not be called in question on the ground that:
  - (a) the occasion for the appointment had not arisen,
  - (b) there is a defect or irregularity in or in connection with the appointment,
  - (c) the appointment had ceased to have effect, or
  - (d) the occasion for the person to act had not arisen or had ceased.

- (7) A person may be appointed to act in the office of a Senior Officer (and may act in that office) even if the person is of or above the age at which a holder of the office would vacate the office.

**9 Preservation of rights of Senior Officer previously public servant etc**

- (1) Subject to subclause (2) and to the terms of appointment, if a Senior Officer was, immediately before being appointed as a Senior Officer:

- (a) an officer of the Public Service,
- (b) a contributor to a superannuation scheme,
- (c) an officer employed by a statutory body, or
- (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 Senior Officer, 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 Senior Officer and:

- (h) his or her service as a Senior Officer 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 Senior Officer 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 Senior Officer or at any later time while holding office as a Senior Officer) 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 Senior Officer 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 Senior Officer is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.
- (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.

## 10 Pension of Director

- (1) The *Judges' Pensions Act 1953* applies, with any necessary adaptations, to a person who is or was Director (and the person's spouse and children) in the same way as it applies to a person who is or was a judge (and the person's spouse and children), except that:
  - (a) the pension payable under section 3 of that Act is payable on the Director's retirement at the age of 72 years after serving as Director for not less than 5 years, and
  - (b) the pension payable under section 4 of that Act is payable on the Director's retirement after reaching the age of 60 years after serving as Director for not less than 10 years.
- (2) The following provisions apply if a person who is or was a judge becomes Director or a person who is or was Director becomes a judge:
  - (a) in the case of a Director or former Director who becomes a judge (whether or not for the first time):
    - (i) any period served by that person as Director is, for the purposes of the *Judges' Pensions Act 1953*, to be computed as portion of the person's service as a judge in the judicial office that the person holds immediately before the person's retirement as a judge or death before such retirement (as the case may be), and
    - (ii) the right to any pension that the person is receiving, or is entitled to receive, under the *Judges' Pensions Act 1953* (as applied by this clause) in his or her capacity as Director or a former Director ceases,

(b) in the case of a judge or former judge who becomes Director:

- (i) any period served by that person as a judge is, for the purposes of the *Judges' Pensions Act 1953* as applied by this clause, to be computed as portion of the person's service as Director where the person holds that office immediately before the person's retirement as Director or death before such retirement (as the case may be), and
- (ii) the right to any pension that the person is receiving, or is entitled to receive, under the *Judges' Pensions Act 1953* in his or her capacity as a judge or former judge ceases.

(3) Subclauses (1) and (2) do not apply to:

- (a) a person who elects, pursuant to subclause (5), to continue to contribute under another superannuation scheme, or
- (b) a person acting in the office of Director.

(4) The Director is not, subject to subclause (5), an employee for the purposes of another superannuation fund.

(5) A person appointed to be Director who, at the date of the appointment, was a contributor under another superannuation scheme may elect to continue to contribute under that scheme, and if the person so elects the person shall be deemed to be an employee for the purposes of that scheme.

(6) In this clause:

**judge** has the same meaning as in the *Judges' Pensions Act 1953*.

**spouse** has the same meaning as in the *Judges' Pensions Act 1953*.

## **11 Senior Officer entitled to reappointment to former employment in certain cases**

(1) A person who:

- (a) ceases to be a Senior Officer by resignation or completes a term of office as Senior Officer and is not reappointed, and
- (b) was, immediately before being appointed as a Senior Officer:
  - (i) an officer of the Public Service, or
  - (ii) an officer or employee of a statutory body,
- (c) (Repealed)

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 Senior Officer.

(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 Senior Officer,

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

## **12 Declaration of statutory bodies**

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.