

Crown Prosecutors Act 1986 No 208

[1986-208]



New South Wales

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Crown Prosecutors Act 1986 No 208



New South Wales

An Act to create the office of Crown Prosecutor and to confer functions on the Crown Prosecutors; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Crown Prosecutors 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:

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.

part-time Crown Prosecutor means a Crown Prosecutor exercising his or her functions as a Crown Prosecutor on a part-time basis, as provided by an agreement referred to in section 4 (3A).

- (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 The Crown Prosecutors

3A Guidelines for 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 Crown Prosecutors

- (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 an Australian lawyer.
- (2A) A Crown Prosecutor 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. A Crown Prosecutor is eligible (if otherwise qualified) for reappointment.
- (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.
- (3A) A Crown Prosecutor may, by agreement in writing entered into with the Director of Public Prosecutions, exercise his or her functions as a Crown Prosecutor on a part-time basis.
- (4) A Crown Prosecutor is responsible to the Director for the due exercise of the Crown Prosecutor's functions.
- (5) Schedule 1 has effect.

4A Senior Crown Prosecutor

- (1) The Governor may appoint a Senior Crown Prosecutor.
- (2) A person is not eligible to be appointed as Senior Crown Prosecutor unless the person is an Australian lawyer.
- (3) The Senior Crown Prosecutor 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. The Senior Crown Prosecutor is eligible (if otherwise qualified) for reappointment.
- (4) The Senior Crown Prosecutor has such functions in connection with the work of Crown

Prosecutors as the Director determines.

- (5) The Senior Crown Prosecutor also has all the functions of a Crown Prosecutor and is taken to be a Crown Prosecutor.
- (6) The Senior Crown Prosecutor is responsible to the Director for the due exercise of the Senior Crown Prosecutor's functions.

4B Deputy Senior Crown Prosecutor

- (1) The Governor may appoint one or more Deputy Senior Crown Prosecutors.
- (2) A person is not eligible to be appointed as Deputy Senior Crown Prosecutor unless the person is an Australian lawyer.
- (3) A Deputy Senior Crown Prosecutor 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. A Deputy Senior Crown Prosecutor is eligible (if otherwise qualified) for reappointment.
- (4) A Deputy Senior Crown Prosecutor has such functions in connection with the work of Crown Prosecutors as the Director determines.
- (5) A Deputy Senior Crown Prosecutor also has all the functions of a Crown Prosecutor and is taken to be a Crown Prosecutor.
- (6) A Deputy Senior Crown Prosecutor is responsible to the Senior Crown Prosecutor for the due exercise of the Deputy Senior Crown Prosecutor's functions.

Part 3 Functions

5 Functions

- (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.

6 Disposition of work

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

7 Offences under Commonwealth laws

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.

7A Attorney General may arrange secondments

The Attorney General may make arrangements with the Director for the secondment of Crown Prosecutors to act as Public Defenders or to assist in the conduct of inquiries or investigations under the [Royal Commissions Act 1923](#) or the [Independent Commission Against Corruption Act 1988](#) or other such inquiries or investigations.

Part 4 Miscellaneous

8 (Repealed)

9 Vacation of office

- (1) A Crown Prosecutor vacates office if he or she:
- (a) dies, or
 - (b) resigns the office by instrument in writing addressed to the Governor, or
 - (c) reaches the age of 72 years, or
 - (d) ceases to be an Australian lawyer, or
 - (e) is removed from office by the Governor under subsection (2), (3) or (4).
- (2) A Crown Prosecutor who fails, without reasonable excuse, to comply with section 10 is to be removed from office by the Governor.
- (3) The Governor may remove a Crown Prosecutor from office for incapacity, incompetence, misbehaviour or unsatisfactory performance.
- (4) The Governor may also remove a Crown Prosecutor from office if the 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, or
 - (b) becomes a mentally incapacitated person, or
 - (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) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
 - (e) is convicted elsewhere than in New South Wales of an offence that if committed in New South Wales would be an offence so punishable.
- (5) Anything done or purporting to have been done by a Crown Prosecutor after he or she reaches the age of 72 years is nevertheless as valid as if he or she had not reached that age.
- (6) In this section, **Crown Prosecutor** includes the Senior Crown Prosecutor and a Deputy Senior Crown Prosecutor.

9A Suspension from duty pending decision in relation to misconduct

- (1) If of the opinion that there may be grounds for a Crown Prosecutor's removal from office, the Director of Public Prosecutions may suspend the Crown Prosecutor from duty pending a decision being made as to whether or not he or she should be so removed.
- (2) If the Director of Public Prosecutions so directs, any salary payable to the Crown Prosecutor in relation to the period during which he or she is under suspension is to be withheld.
- (3) If the Crown Prosecutor is removed from office, any salary so withheld is forfeited to the State unless the Director of Public Prosecutions otherwise directs.
- (4) A suspension imposed under this section may be removed by the Director of Public Prosecutions at any time.
- (5) In this section, **Crown Prosecutor** includes the Senior Crown Prosecutor and a Deputy Senior Crown Prosecutor.

10 Other work

- (1) The Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or 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) The Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor shall not contravene or fail to comply with any conditions attached to any such consent.

11 Government Sector Employment Act 2013 not to apply

The offices of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor and Crown Prosecutor are statutory offices and the [Government Sector Employment Act 2013](#) (including Part 6) does not apply to those offices.

12 Remuneration and leave

- (1) The Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor and a Crown Prosecutor are 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.
- (2) The leave that may be granted to the Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor is to be as the Attorney General may from time to time determine.

13 Acting appointments

- (1) The Attorney General may appoint a person who is eligible for appointment as such to act in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or 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 in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or 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 in the office of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor or Crown Prosecutor, the person has and may exercise all the functions of

that office and is taken to be the holder of that office.

- (5) A person may be appointed to act in an office under this section (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.

14 Savings and transitional provisions

- (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.
- (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.
- (8) Section 4 (3A) applies to a Crown Prosecutor appointed before the commencement of that subsection.
- (9) Until a relevant determination is made and takes effect under the *Statutory and Other Offices Remuneration Act 1975*, a part-time Crown Prosecutor is entitled to be paid in accordance with the determination in force for the time being for Crown Prosecutors, but on a pro rata basis (according to time spent in service), as calculated by the Attorney General.
- (10) Schedule 2 has effect.

Schedule 1 Certain rights of Crown Prosecutors

(Section 4 (5))

1 Definitions

In this Schedule:

Crown Prosecutor includes Senior Crown Prosecutor and Deputy Senior Crown Prosecutor.

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

2 Preservation of rights of Crown Prosecutor previously public servant etc

(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) a Public Service employee,
 - (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 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.
- (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.

3 Crown Prosecutor entitled to reappointment to former employment in certain cases

- (1) A person who:
 - (a) ceases to be a Crown Prosecutor by resignation or completes a term of office as Crown Prosecutor and is not reappointed, and
 - (b) was, immediately before being appointed as a Crown Prosecutor, a Public Service employee or member of staff of a statutory body,
 - (c) (Repealed)is entitled to be employed in the Public Service or as a member of staff of that statutory body, as the case requires, at a work level and salary not lower than the level at which the person was employed 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 employee or member of staff 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 employment as such an employee or member of staff, 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.

4 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.

Schedule 2 Savings and transitional provisions

(Section 14 (10))

Part 1 General

1 Regulations

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

Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007

Crown Law Officers Legislation Amendment (Retirement Age) Act 2011

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

Part 2 Provisions consequent on enactment of *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*

2 Definition

In this Part:

2007 amending Act means the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007*.

3 Amendments not to apply to existing Crown Prosecutors

The amendments made to this Act by the 2007 amending Act (except the provisions of this Schedule) do not apply to the office of Crown Prosecutor held by a person immediately before the commencement of the 2007 amending Act.

4 Existing Senior Crown Prosecutor and Deputy Senior Crown Prosecutors

The following additional provisions apply in respect of a person who as a Crown Prosecutor held the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor immediately before the commencement of the 2007 amending Act:

- (a) the person continues (subject to this Act) to hold the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor and is taken to have been duly appointed under section 4A or 4B to the office concerned,
- (b) sections 4A (3), 4B (3) and 9 (1) (c) (as inserted by the 2007 amending Act) do not apply to the person as the holder of the office of Senior Crown Prosecutor or Deputy Senior Crown Prosecutor,
- (c) the person remains a Crown Prosecutor while holding office as Senior Crown Prosecutor or Deputy Senior Crown Prosecutor and (subject to this Act) after ceasing to hold that office.

5 Right of reappointment of existing Crown Prosecutors

- (1) A person who holds office as Crown Prosecutor (whether or not as Senior Crown Prosecutor or Deputy Senior Crown Prosecutor) immediately before the commencement of the 2007 amending Act and who is subsequently appointed to a Crown law office is, on ceasing to hold the Crown law office as a result of resignation or completion of a term of office, entitled to be reappointed to the office of Crown Prosecutor.
- (2) This clause ceases to apply to a person if the person does not take up that reappointment within 3 months of ceasing to hold the Crown law office unless, within that 3-month period, the person is reappointed to that Crown law office or appointed to another Crown law office.
- (3) Sections 4 (2A) and 9 (1) (c) (as inserted by the 2007 amending Act) do not apply to the office of Crown Prosecutor to which a person is reappointed under this clause, and the person continues to hold that office until the person vacates the office under this Act.
- (4) This clause is capable of operation in relation to the same person on more than one occasion.
- (5) In this clause, **Crown law office** means the office of Director of Public Prosecutions, Deputy Director of Public Prosecutions, Solicitor for Public Prosecutions, Senior Crown

Prosecutor, Deputy Senior Crown Prosecutor, Public Defender, Senior Public Defender, Deputy Senior Public Defender or Solicitor General.

6 Existing acting appointments

The substitution of section 13 (Acting appointments) by the 2007 amending Act does not affect the continuity of any appointment in force under that section immediately before its substitution.

Part 3 Provisions consequent on enactment of [Crown Law Officers Legislation Amendment \(Retirement Age\) Act 2011](#)

7 Application of amendments

- (1) A person who holds office as a Crown Prosecutor, Senior Crown Prosecutor or Deputy Senior Crown Prosecutor 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.
- (2) Subclause (1) does not apply to the term of office of a person appointed to act in any such office.
- (3) The amendments made to this Act by the [Crown Law Officers Legislation Amendment \(Retirement Age\) Act 2011](#) (or by the [Courts and Crimes Legislation Further Amendment Act 2008](#)) do not affect (and are taken never to have affected) any right preserved by this Schedule to hold office beyond a retiring age provided by this Act.