

1992

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

DIRECTOR OF PUBLIC PROSECUTIONS (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the Authority of

Mr Terence Connolly MLA

Attorney-General)

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OUTLINE

This Bill will make additions to the functions of the Director of Public Prosecutions (the DPP) contained in subsection 6(1) of the *Director of Public Prosecutions Act 1990*. One function will be the prosecution of offences against laws of the Commonwealth, a capacity necessary for the effective prosecution of cases involving both Commonwealth and Territory offences. A related function will be representing the Commonwealth DPP, complimenting legislation being considered by the Commonwealth so that the Commonwealth can seek the assistance of a State or Territory DPP where it is unnecessary or inappropriate for a Commonwealth DPP lawyer to attend. In addition, a function has been added to confirm the current practice where the DPP attends meetings of the Parole Board to assist it in performing its statutory function in relation to prisoners. An incidental function has also been included modelled on a similar provision contained in the Commonwealth legislation, to overcome any gaps that may arise in the existing list of functions.

The Bill also removes references to the Commonwealth DPP which were included in the Act in anticipation of the Commonwealth DPP acting in relation to the prosecution of ACT offences prior to the appointment of the ACT DPP.

The other aspect of the Bill is to ease the prohibition on engaging in legal practice by the insertion of a requirement for the Attorney-General's consent. In addition, the duty to terminate the DPP's appointment in the case of the DPP engaging in legal practice or other employment becomes a discretion. This is to ensure that the DPP will not be dismissed for technical breaches or for giving gratuitous legal advice. It is also intended to enable the DPP to be able to appear in the occasional test case, where the Attorney-General considers it appropriate and consents.

FINANCIAL IMPLICATIONS

The proposal is to be implemented within existing budgetary constraints. Ordinarily the DPP will not undertake prosecutions of Commonwealth offences unless the substantial offence is a Territory offence. The legislation will also give the DPP the flexibility to appear where convenient on behalf of the Commonwealth DPP. It is envisaged that the Commonwealth would pay the ACT DPP for any work performed on its behalf.

CLAUSE NOTES

Clause 1 and Clause 2: Formal Clauses

Clauses 1 and 2 are formal. They contain the short title of the Bill and definition of the principal Act.

Clause 3: Functions

This clause adds to the list of functions to be performed by the DPP contained in subsection 6(1) of the Director of Public Prosecutions Act.

Subclause 3(a) inserts a paragraph giving the function of prosecuting offences against the laws of the Commonwealth where the DPP is authorised to do this by a law of the Commonwealth, an instrument or agreement.

Subclause 3(b) inserts a consequential reference to the new paragraph inserted by subclause 3(a).

Subclause 3(c) adds the functions of attending meetings of the Parole Board of the ACT and of representing the Commonwealth DPP.

Subclause 3(d) provides the DPP with the capacity to do anything incidental or conducive to the performance of another function.

Subclause 3(e) ensures that the term "prosecution" as used in relation to the function concerning prosecution of Commonwealth offences includes committal proceedings.

Clause 4: Insertion

Clause 4 inserts a provision similar to that inserted by subclause 3(a). It allows a member of the staff of the Office of the DPP to prosecute Commonwealth offences where authorised under a law, instrument or agreement providing that she or he is a barrister or solicitor within the meaning of the *Legal Practitioners Act 1970*. As in clause 3, a committal hearing is included in the definition of prosecution.

Clause 5: Appointment

This Clause removes the capability of the Executive to appoint the Commonwealth DPP to the position of DPP, a capability which was intended only as a transitional arrangement.

Clause 6: Remuneration and Allowances

Clause 6 removes the reference to the non-applicability of the section dealing with remuneration and allowances for the Commonwealth DPP, thereby removing an obsolete reference to the Commonwealth DPP.

Clause 7: Leave of Absence

This clause removes the reference to the Commonwealth DPP in relation to the granting of leave of absence, since being a transitional provision it is no longer applicable.

Clause 8: Substitution

Clause 8 recasts the wording of section 25 of the Director of Public Prosecutions Act so that the DPP must seek the consent of the Attorney-General if he/she practices as a legal practitioner or undertakes paid employment beyond the performance of the functions of the office of the DPP.

Clause 9: Termination of Employment

This clause removes the duty to terminate the appointment of the DPP on the grounds of engaging in legal practice or paid employment without the Attorney-General's consent. The Attorney-General instead has a discretionary capacity to terminate the appointment if the conditions outlined in proposed section 25 are not met, that is, if the DPP engages in legal practice or paid employment without the Attorney's consent, in addition to the usual grounds on which the Attorney-General has a discretion to terminate, that is, misbehaviour or physical or mental incapacity.

Subclause 9(d) removes an obsolete subsection which rendered this termination provision inapplicable to the Commonwealth DPP.

Clause 10: Acting Director

This clause removes an obsolete provision dealing with acting arrangements where the Commonwealth DPP holds the office of DPP but is absent or unavailable.

Clause 11: Substitution

Clause 11 substitutes a provision which deletes the reference to staff classifications contingent on the Commonwealth DPP holding the office of DPP, something which is not necessary with the appointment of an ACT DPP.