

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(This Memorandum takes account of amendments made by the
House of Representatives to the Bill as introduced)

(Circulated by Authority of Senator the Hon. Gareth Evans, Q.C.,
Minister representing the Attorney-General)

DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1986

GENERAL OUTLINE

The amendments to the Director of Public Prosecutions Act 1983 as proposed in this Bill arise from the experience of the operation of the Act since it came into operation on 5 March 1984.

The major amendments -

- (a) clarify doubts as to the circumstances in which the Director may present an indictment and as to the extent to which the Director may represent persons involved in civil proceedings which arise out of, or are connected with, the performance of any of the functions of the Director; and
- (b) give to the Director more flexibility in engaging consultants consistent with the devolution by the Public Service Board in 1985 of responsibilities in this regard to Commonwealth Government Departments. The amendments also permit the Director to engage persons on short-term contracts.

This legislation has no financial implications.

NOTES ON CLAUSES

Clause 1 - Short Title

Formal.

Clause 2 - Commencement

The legislation will come into operation on a date to be fixed by proclamation.

Clause 3 - Functions of Director

This clause amends section 6 of the Principal Act by giving to the Director a function, where a person has been committed for trial in respect of an indictable offence or indictable offences, to present an indictment in respect of:

- (a) any other offence for which the person was examined (that is, the subject of the committal proceedings) but not committed for trial; or
- (b) any other offence founded on facts or evidence disclosed in the course of the committal proceedings.

In addition, the amendments provide that the Director is authorised to present an indictment where no committal order has been made provided the defendant consents. The Director is not otherwise authorised to present an indictment for an offence not included in the committal order, or where no committal order was made at all, and the question of presenting an ex officio indictment in such other circumstances would be a matter for the Attorney-General.

This clause also amends sub-section 6(3) of the Act to make it clear that the operation of an instrument referred to in sub-section 6(3) does not depend upon publication in the

Gazette. The amendment also permits delaying of a gazettal where public gazettal relating to a particular person may prejudice the investigation of that person.

Clause 4 - Powers of Director

This clause amends section 9 of the Principal Act and provides that the Director (or any person entitled to represent the Director) may act as counsel or solicitor for an authority of the Commonwealth where that authority is a party to a proceeding in respect of a matter -

- (a) that has arisen out of or is connected with the performance of any of the functions of the Director; or
- (b) that may result in the performance by the Director of such a function.

The purpose of the amendment is to enable the Director to act on behalf of persons who may be the subject of civil proceedings in the circumstances described. An example of such a situation is where the issue of a search warrant has been challenged and the relevant informant is the subject of civil proceedings.

Clause 5 - Appearances on behalf of Director in summary or committal proceedings

The purpose of this amendment is to enable police prosecutors to represent the Director in remote localities in proceedings for the summary conviction of a person or at mentions, remands and other non-substantive hearings in relation to committals for trial.

Clause 6 - Prohibition of publication of evidence, &c., in certain proceedings

By clause 5 of the Director of Public Prosecutions Amendment Act 1985 section 16A was inserted into the Act to provide for prohibition of publication of particular evidence or information in proceedings for civil remedies taken by the Director. The purpose of the amendment the subject of this clause is to provide for the similar prohibition of publication of evidence or information in relation to proceedings for recovery of pecuniary penalties.

Clause 7 - Staff

The purpose of this amendment is to permit the Director, with the approval of the Attorney-General or a person authorised in writing by the Attorney-General, to employ persons under term contracts. The terms and conditions of such persons are subject to the approval of the Public Service Board.

Clause 8 - Engagement of consultants, &c.

On 2 July 1984 the Public Service Board notified all Departments and Statutory Authorities that Departments and Authorities should make decisions to engage consultants and other contractors for services without reference to the Board within the financial limits set in the Budget process for such expenditure. Since the date of this notification, Departments and Authorities have been responsible for the engagement of consultants and other contractors for services without reference to the Board. The purpose of the amendment proposed in this clause is to give to the Director the same capacity to engage consultants and other contractors for services, as is possessed by a Department or Authority. The amendment removes the requirement that the engagement of consultants be approved by the Attorney-General or by a person authorised by the Attorney-General in writing for that purpose.





