

SECOND READING SPEECH

Director of Public Prosecutions Amendment Bill 2013

Mr Speaker the *Director of Public Prosecutions Act 1973* provides for the appointment, remuneration, conditions of service and functions of the Director of Public Prosecutions.

Under the Act the Director of Public Prosecutions prosecutes on behalf of the Crown, that is, on behalf of the Tasmanian community.

The Director of Public Prosecutions is responsible to the Attorney General for the due exercise of his or her functions of the office, but acts independently of the government of the day and political and other sectional influences.

Currently, subsection 12(3) of the Act provides that in the event of the illness or absence from office of Director of Public Prosecutions, his or her functions will be performed by the Solicitor-General.

Subsection 12(4) provides that, if by reason of the office of the Solicitor-General being vacant or of illness or absence from the office of Solicitor-General, it is not practicable for the functions of the Director of Public Prosecutions to be performed by the Solicitor-General, the Governor may appoint a person who is eligible for appointment as Director of Public Prosecutions as Acting Director of Public Prosecutions.

Mr Speaker, the role of the Tasmanian Solicitor-General under the *Solicitor-General Act 1983* is to provide definitive legal advice to Ministers, agencies and instrumentalities of the Crown. The legal opinions of the Solicitor-General are final and determinative, although there is no statutory requirement that the Executive follow that advice.

The Solicitor-General also has the important function of representing the State of Tasmania in any constitutional litigation.

Subsections 12(3) and (4) of the *Director of Public Prosecutions Act 1973* have been in place since 1973 when the office of the Crown Advocate (as the Director of Public Prosecutions was then called) was first established by statute.

The subsections have the advantage of clearly setting out who will act in the event of a temporary vacancy and require no special arrangements to be put in place.

However, the requirement that the Solicitor-General act as Director of Public Prosecutions can give rise to a potential conflict of interest, particularly if the Solicitor-General is called upon to advise the Executive Government about an investigation or prosecution.

A number of arrangements to avoid such conflict have been put in place in the current situation whilst the Director of Public Prosecutions remains on leave and the Solicitor-General is performing his functions.

The Solicitor-General does not consider the requirement that he act as Director of Public Prosecutions ideal and the additional work-load created needs to be carefully managed so as to avoid any conflict, or perception of conflict, of interest.

In addition to this the need for one person to fill two critical roles results in obvious resource issues that impact on both the Office of the Director of Public Prosecutions and Office of Solicitor-General while these arrangements continue into the longer term.

No other Australian jurisdiction has a provision which appoints the Solicitor-General as acting DPP where that position is temporarily vacant.

In the Commonwealth, South Australia and New South Wales the Attorney General may appoint an eligible person to act as Director of Public Prosecutions during a vacancy. The Australian Capital Territory does not have specific provision for an acting appointment but relies on the *Legislation Act* (similar to *Acts Interpretation Act* in Tasmania).

In the Northern Territory the Administrator may appoint an acting Director of Public Prosecutions and in Western Australia and Victoria such appointment is by the Governor. In Victoria in the event that the Governor does not make such an appointment then the Chief Crown Prosecutor (a role that does not exist in the Tasmanian jurisdiction) may act.

This Bill amends the *Director of Public Prosecutions Act* to omit subsections 12(3) & (4) to remove the automatic appointment of the Solicitor-General as acting Director of Public Prosecutions.

Once subsections 12(3) & (4) are repealed acting arrangements can be made under section 21A of the *Acts Interpretation Act 1931*.

Section 21A provides that where the holder of a statutory office is for any reason unable to perform his or her duties the relevant Minister may in writing direct an eligible person to exercise those duties as if that eligible person were the holder of that office.

This provision essentially provides power to the Attorney-General to appoint an acting Director of Public Prosecutions and such arrangements can be done without delay.

This amendment will immediately relieve the Solicitor General of the burden of juggling two roles, allow the early appointment of an eligible person to the position of acting Director of Public Prosecutions and ease the strain on the resources in both Offices.

Finally may I express my appreciation to both the Solicitor General and the staff of the Office of the Director of Public Prosecutions for the way that they have shouldered the burden of responsibility over the past several months.

I commend the Bill to the House.