

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 8 September 1982

(Minister Assisting the Attorney-General)

A BILL

FOR

An Act to provide for Special Prosecutors

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Special Prosecutors Act 1982*.

5 **Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

- 10 3. (1) In this Act, unless the contrary intention appears—
- “appoint” includes re-appoint;
- “legal practitioner” means a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory;
- “State” includes the Northern Territory;
- 15 “Territory” does not include the Northern Territory.

(2) A reference in this Act to a prosecution for an offence against a law of the Commonwealth includes a reference to a proceeding by the Crown in right of the Commonwealth for the recovery of a pecuniary penalty under a law of the Commonwealth.

Extension to external Territories

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4. This Act extends to all the external Territories.

The Special Prosecutors

5. (1) The Governor-General may appoint such number of persons as he considers necessary to be Special Prosecutors.

(2) A person shall not be appointed as a Special Prosecutor unless he is enrolled as a legal practitioner and has been so enrolled for not less than 5 years.

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Functions

6. (1) The functions of a Special Prosecutor are—

(a) in respect of such matters or classes of matters as the Attorney-General, by instrument in writing published in the *Gazette*, from time to time specifies in relation to that Special Prosecutor for the purposes of this paragraph—

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(i) to institute prosecutions in any court for offences against the laws of the Commonwealth or of the Territories; and

(ii) to carry on prosecutions (whether or not instituted by him) in any court for offences against the laws of the Commonwealth or of the Territories; and

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(b) in respect of such matters or classes of matters as the Attorney-General, by instrument in writing published in the *Gazette*, from time to time specifies in relation to that Special Prosecutor for the purposes of this paragraph, to take, or to coordinate or supervise the taking of, civil remedies on behalf of the Commonwealth and its authorities.

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(2) The institution or carrying on by a Special Prosecutor of a prosecution for an offence against a law of the Commonwealth or of a Territory, or any other act or thing done by a Special Prosecutor in relation to such a prosecution, shall not be challenged or called in question in any court on the ground that the prosecution did not relate to a matter specified by the Attorney-General under paragraph (1) (a).

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(3) The taking by a Special Prosecutor of a civil remedy on behalf of the Commonwealth or an authority of the Commonwealth, or any other act or thing done by a Special Prosecutor in relation to the taking of such a civil remedy, shall not be challenged or called in question in any court on the ground that the taking of the civil remedy did not relate to a matter specified by the Attorney-General under paragraph (1) (b).

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(4) In addition to his functions under sub-section (1), a Special Prosecutor shall perform any functions in relation to the institution or carrying on of

prosecutions for offences against the laws of a State that are conferred upon him by or under any State Act.

5 (5) Nothing in this Act affects the right of any person other than a Special Prosecutor to institute or carry on a prosecution for an offence against a law of the Commonwealth or of a Territory or to take a civil remedy on behalf of the Commonwealth or an authority of the Commonwealth.

Directions and guidelines to Special Prosecutor

10 7. (1) The Attorney-General may, by notice in writing, give directions or furnish guidelines to a Special Prosecutor with respect to the performance of the functions of that Special Prosecutor but the Attorney-General is not entitled to give directions or furnish guidelines in relation to a particular case.

(2) Where the Attorney-General gives any directions or furnishes any guidelines to a Special Prosecutor under sub-section (1), the Attorney-General shall cause a copy of the directions or guidelines to be published in the *Gazette*.

Powers of Special Prosecutor

15 8. (1) For the purposes of the performance of his functions, a Special Prosecutor is entitled to prosecute by indictment in his own name indictable offences against the laws of the Commonwealth or of the Territories but nothing in this sub-section prevents a Special Prosecutor from prosecuting an offence against the laws of the Commonwealth or of the Territories in any other manner.

20 (2) Where a person is under commitment on a charge of an indictable offence against the laws of the Commonwealth or of a Territory, being a prosecution instituted or carried on by a Special Prosecutor, that Special Prosecutor may decline to proceed further in the prosecution and may, if the person is in custody, by warrant under his hand direct the discharge of the person from custody, and where such a direction is given, the person shall be discharged accordingly.

25 (3) Nothing in this section affects the powers under sections 69 and 71 of the *Judiciary Act* 1903 of the Attorney-General or a person appointed by the Governor-General.

30 (4) In this section, "Special Prosecutor" includes a person acting as a Special Prosecutor.

Special Prosecutor may appear personally or by counsel or solicitor

35 9. (1) In any proceeding instituted or carried on by a Special Prosecutor, or any proceeding by way of appeal from or otherwise arising out of a proceeding instituted or carried on by a Special Prosecutor, that Special Prosecutor may appear in person or may be represented by counsel or solicitor.

40 (2) A Special Prosecutor is, in his official capacity, entitled to practise as a barrister in any federal court or court exercising federal jurisdiction and in any court of a Territory and is entitled to all the rights and privileges of a barrister in

every such court whether or not he would, but for this section, be entitled to practise in that court.

(3) In this section—

“Special Prosecutor” includes a person acting as a Special Prosecutor;

“Territory” includes the Northern Territory.

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Terms and conditions of appointment

10. (1) Subject to this section, a Special Prosecutor holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed as a Special Prosecutor and a person shall not be appointed as a Special Prosecutor for a period that extends beyond the day on which he will attain the age of 65 years.

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(3) A Special Prosecutor holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

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Remuneration and allowances

11. (1) A Special Prosecutor shall be paid such remuneration and allowances as are determined by the Attorney-General.

(2) An office of Special Prosecutor is not a public office for the purposes of Part II of the *Remuneration Tribunals Act 1973*.

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Leave of absence

12. The Attorney-General may grant to a Special Prosecutor leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

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Resignation

13. A Special Prosecutor may resign his office by writing signed by him and delivered to the Governor-General.

Disclosure of interests

14. A Special Prosecutor shall give written notice to the Attorney-General of all direct or indirect pecuniary interests that he has or acquires in any business or in any body corporate carrying on any business.

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Termination of appointment

15. (1) The Governor-General may terminate the appointment of a Special Prosecutor for misbehaviour or physical or mental incapacity.

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(2) Where the Governor-General is satisfied, having regard to any report made to the Attorney-General by a Special Prosecutor under section 20, that that Special Prosecutor has discharged his functions in relation to the matters or classes of matters specified in relation to him by the Attorney-General under

section 6, the Governor-General may terminate the appointment of that Special Prosecutor.

(3) If a Special Prosecutor—

5 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) is absent from duty except on leave of absence granted by the Attorney-General for 14 consecutive days or for 28 days in any 12 months;

10 (c) without the consent of the Attorney-General engages in practice as a barrister or solicitor, or engages in paid employment, outside the duties of his office; or

(d) fails, without reasonable excuse, to comply with his obligations under section 14,

15 the Governor-General shall terminate the appointment of that Special Prosecutor.

Acting Special Prosecutor

20 **16. (1)** The Attorney-General may appoint a person to act as a Special Prosecutor during any period, or during all periods, when a Special Prosecutor is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office.

(2) The Attorney-General may—

25 (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a Special Prosecutor; and

(b) at any time terminate such an appointment.

(3) The appointment of a person to act as a Special Prosecutor ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Attorney-General.

30 (4) While a person is acting as a Special Prosecutor, he has, and may exercise, all the powers and shall perform all the functions of a Special Prosecutor.

35 (5) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Appointment of staff, consultants, &c.

40 **17. (1)** A Special Prosecutor may, on behalf of the Commonwealth and with the approval of the Attorney-General, employ, under agreements in writing, such persons as he thinks necessary for the purposes of the performance of his functions.

(2) A Special Prosecutor may, on behalf of the Commonwealth and with the approval of the Attorney-General, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to, or to perform services for, that Special Prosecutor.

(3) The terms and conditions of employment of persons employed by a Special Prosecutor under sub-section (1), and the terms and conditions of engagement of persons engaged by a Special Prosecutor under sub-section (2), are such as are from time to time determined by that Special Prosecutor, with the approval of the Public Service Board.

(4) In this section, "Special Prosecutor" includes a person acting as a Special Prosecutor.

Staff on secondment to Special Prosecutor

18. In addition to persons employed or engaged under section 17, a Special Prosecutor shall be assisted by—

- (a) persons appointed or employed under the *Public Service Act* 1922 whose services are made available to that Special Prosecutor;
- (b) members of the Australian Federal Police whose services are made available to that Special Prosecutor;
- (c) officers and employees of authorities of the Commonwealth whose services are made available to that Special Prosecutor; and
- (d) persons whose services are made available to that Special Prosecutor pursuant to arrangements made under section 19.

Administrative arrangements

19. (1) The Attorney-General may make an arrangement with the appropriate Minister of a State or of the Northern Territory under which the State or Territory will, from time to time as agreed upon under the arrangement, make available a person who is an officer or employee of the State or Territory or of an authority of the State or Territory or a member of the Police Force of the State or Territory, or persons who are such officers, employees or members, to perform services for a Special Prosecutor.

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of a person or persons to whom the arrangement relates.

(3) In this section, "State" does not include the Northern Territory.

Annual report

20. (1) Each Special Prosecutor shall, as soon as practicable after each 30 June, prepare and furnish to the Attorney-General a report of his operations under this Act during the year that ended on that 30 June.

(2) The Attorney-General shall cause a copy of every report furnished to him by a Special Prosecutor under this section to be laid before each House of

the Parliament within 15 sitting days of that House after the report is received by him.

Regulations

5 **21.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

