

# Public Prosecutions (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

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Read 1° 3 May 1995

*(Brought in by Mrs Wade and Mr Gude)*

A BILL

to amend the **Public Prosecutions Act 1994** and the **Constitution Act 1975** and make consequential amendments to certain other Acts and for other purposes.

**Public Prosecutions (Amendment) Act  
1995**

**The Parliament of Victoria enacts as follows:**

***1. Purposes***

The purposes of this Act are—

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- (a) to provide for the appointment of Associate Crown Prosecutors;
- (b) to enable the Attorney-General to request the Chief Crown Prosecutor or a Crown Prosecutor to perform the functions or exercise the powers of the Director of Public Prosecutions where the Director has requested the Attorney-General to
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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

*Public Prosecutions (Amendment)*

perform those functions or exercise those powers;

(c) to enable the Attorney-General to lay annual reports under the **Public Prosecutions Act 1994** and the **Financial Management Act 1994** before Parliament in a consolidated form;

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(d) to make further provision with respect to—

(i) the term of appointment of the Director of Public Prosecutions, the Chief Crown Prosecutor and Senior Crown Prosecutors;

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(ii) the delegation powers of the Director of Public Prosecutions;

(iii) the briefing of counsel other than Crown Prosecutors or Associate Crown Prosecutors;

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(iv) the pension entitlement of any Senior Crown Prosecutor who is appointed as a Supreme Court Judge.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

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No. 43/1994.  
Amended by  
No. 109/1994.

**3. Principal Act**

In this Act, the **Public Prosecutions Act 1994** is called the Principal Act.

**4. Terms of appointment**

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(1) In section 4 (2) of the Principal Act, after “years” insert “or for the longer term, not exceeding 20 years, that is specified in his or her instrument of appointment”.

(2) In section 13 (2) of the Principal Act, after “years” insert “or for the longer term, not exceeding 20 years, that is specified in his or her instrument of appointment”.

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- (3) In section 32 (1) of the Principal Act, after “years” **insert** “or for the longer term, not exceeding 20 years, that is specified in his or her instrument of appointment”.

5 **5. *Request by Attorney-General***

- (1) In section 20 (2) of the Principal Act, at the end of paragraph (b) **insert**—

“; or

(c) the performance of a function or the exercise of a power by the Chief Crown Prosecutor under section 29.”.

- (2) In section 29 (2) of the Principal Act, after “relates” **insert** “or request the Chief Crown Prosecutor or a Crown Prosecutor to perform those functions or exercise those powers”.

- (3) In section 29 (3) of the Principal Act, after “Attorney-General” **insert** “, the Chief Crown Prosecutor or a Crown Prosecutor”.

- (4) In section 36 (5) of the Principal Act, at the end of paragraph (b) **insert**—

“; or

(c) the performance of a function or the exercise of a power by a Crown Prosecutor under section 29.”.

25 **6. *Delegation***

- (1) In section 30 of the Principal Act, for “the Solicitor for Public Prosecutions” **substitute** “a Crown Prosecutor”.

- (2) In section 38 (1) of the Principal Act, paragraph (c) is **repealed**.

- (3) In section 41 (1) of the Principal Act, paragraph (b) is **repealed**.

**7. New Part 5A inserted**

After Part 5 of the Principal Act insert—

**“PART 5A—ASSOCIATE CROWN PROSECUTORS**

**36A. Appointment**

- (1) The Governor in Council may appoint as an Associate Crown Prosecutor a person who is a barrister and solicitor of the Supreme Court and who has practised as such for not less than 3 years. 5
- (2) The Governor in Council may appoint as many Associate Crown Prosecutors as are required. 10
- (3) An appointment as an Associate Crown Prosecutor may be made on a full-time or part-time basis. 15

**36B. Terms and conditions**

- (1) A person appointed as an Associate Crown Prosecutor holds office for the term, not exceeding 5 years, that is specified in his or her instrument of appointment and is eligible for re-appointment. 20
- (2) An Associate Crown Prosecutor is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act. 25
- (3) An Associate Crown Prosecutor is entitled to the remuneration and allowances (if any) fixed in respect of him or her by the Governor in Council. 30
- (4) An Associate Crown Prosecutor appointed on a full-time basis must not, without the consent of the Director and in

accordance with any conditions attached to that consent, engage in the practice of the law or in any paid employment (whether within or outside Victoria) outside the duties of his or her office.

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- (5) The office of Associate Crown Prosecutor is not an authority within the meaning of section 89 (1) of the **Public Sector Management Act 1992**.

10                   **36C. Resignation**

An Associate Crown Prosecutor may resign from office by delivering to the Governor a signed letter of resignation.

15                   **36D. Removal from office**

The Governor in Council may remove an Associate Crown Prosecutor from office if—

- 20                   (a) he or she becomes bankrupt; or
- (b) in the opinion of the Governor in Council he or she is unable, because of mental illness, to perform the duties of the office; or
- 25                   (c) he or she is absent from duty for 14 days (whether or not consecutive) in any period of 12 months without the approval of the Director but not including any absence occasioned by illness or other unavoidable cause; or
- 30                   (d) he or she fails, without reasonable excuse, to comply with section 36B (4); or
- (e) the Committee for Public Prosecutions recommends to the Attorney-General that he or she be removed from office.
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**36E. Functions of Associate Crown Prosecutors**

- (1) The functions of an Associate Crown Prosecutor are—
- (a) to conduct, and appear as counsel in, proceedings on behalf of the Director; 5
- (b) any other functions that are given to Associate Crown Prosecutors by or under this or any other Act or by the Director. 10
- (2) In the performance of his or her functions an Associate Crown Prosecutor must have regard to the need to ensure that the prosecutorial system gives appropriate consideration to the concerns of the victims of crime. 15
- (3) An Associate Crown Prosecutor is responsible to the Director for the due exercise of the Associate Crown Prosecutor's functions. 20
- (4) Nothing in this Act empowers the Director or the Chief Crown Prosecutor to give any direction to an Associate Crown Prosecutor with respect to the performance of his or her function as a member of a Director's Committee." 25

**8. Briefing of outside counsel**

- (1) In section 38 (1) (b) of the Principal Act, for "after consultation with the Director" **substitute** "subject to sub-section (1A)". 30
- (2) In section 38 of the Principal Act, after sub-section (1) **insert**—
- “(1A) The Director may establish guidelines on the classes of proceeding in which he or she is to be consulted before counsel other than Crown Prosecutors or Associate Crown Prosecutors 35



are briefed to appear on behalf of the Director and, in any such proceeding, the Solicitor for Public Prosecutions may only brief counsel other than Crown Prosecutors or Associate Crown Prosecutors after having consulted the Director.”.

**9. *New section 48A inserted***

After section 48 of the Principal Act **insert**—

**“48A. *Consolidated annual report***

The Attorney-General may consolidate in the one document all or any two of the reports under sections 12 and 45 of this Act and the report of operations of the Office of Public Prosecutions under Part 7 of the **Financial Management Act 1994**.”.

**10. *Amendments consequential on creation of office of Associate Crown Prosecutor***

(1) In section 1 (a) of the Principal Act, after “Crown Prosecutors” **insert** “, Associate Crown Prosecutors”.

(2) In section 3 of the Principal Act—

(a) before the definition of “Chief Crown Prosecutor” **insert**—

“**Associate Crown Prosecutor**” means an Associate Crown Prosecutor appointed under Part 5A;’;

(b) in the definition of “special decision”—

(i) in paragraph (d), after “or” (where first occurring) **insert** “an Associate Crown Prosecutor or”;

(ii) in paragraph (e), after “Crown Prosecutor” **insert** “, Associate Crown Prosecutor”.

- (3) In section 14 (a) of the Principal Act, after “Crown Prosecutors” **insert** “and Associate Crown Prosecutors”.
- (4) In section 23 (2) (c) of the Principal Act—
- (a) in sub-paragraph (i), after “Crown Prosecutor” **insert** “, Associate Crown Prosecutor”; 5
- (b) after sub-paragraph (i) **insert**—
- “(ia) if both a Crown Prosecutor and an Associate Crown Prosecutor is concerned, the Crown Prosecutor; or”; 10
- (c) in sub-paragraph (iii), after “Crown Prosecutor” **insert** “or Associate Crown Prosecutor”;
- (d) in sub-paragraph (iv), after “one” (where fourthly occurring) **insert** “Associate Crown Prosecutor or”; 15
- (e) in sub-paragraph (v), after “Crown Prosecutor” (where first occurring) **insert** “, Associate Crown Prosecutor”.
- (5) In section 26 (1) of the Principal Act, after paragraph (a) **insert**— 20
- “(ab) Associate Crown Prosecutors; and”.
- (6) In section 26 (4) of the Principal Act, after “Crown Prosecutor” **insert** “or Associate Crown Prosecutor”.
- (7) In section 38 (1) (b) of the Principal Act, after “Crown Prosecutors” (where twice occurring) **insert** “or Associate Crown Prosecutors”. 25
- (8) In section 43 (1) (g) of the Principal Act, after “Crown Prosecutor” **insert** “or Associate Crown Prosecutor”.
- (9) In section 43 (3) of the Principal Act, after “any Crown Prosecutor” **insert** “or Associate Crown Prosecutor”. 30
- (10) In section 48 of the Principal Act—
- (a) in paragraph (a) after “a Crown Prosecutor” **insert** “or Associate Crown Prosecutor”; 35

(b) in paragraph (b) for “or Crown Prosecutor”  
**substitute** “, Crown Prosecutor or Associate  
Crown Prosecutor”.

**11. Transitional provision**

5                   The Governor in Council may, at the request of a  
person holding office as Director of Public  
Prosecutions, Chief Crown Prosecutor or Senior  
Crown Prosecutor immediately before the  
10 commencement of this Act, amend the instrument of  
appointment of that person to extend his or her term  
of appointment to a term not exceeding 20 years from  
the date of his or her initial appointment as provided  
by the Principal Act as amended by section 4.

**12. Amendment of Constitution Act 1975**

No. 8750.  
R printed to  
No. 109/1994.

15                   In section 83 (6) (ab) of the **Constitution Act  
1975**—

(a) for “or Chief Crown Prosecutor” (where first  
occurring) **substitute** “, Chief Crown Prosecutor  
or a Senior Crown Prosecutor”;

20                   (b) for “or Chief Crown Prosecutor” (where  
secondly occurring) **substitute** “, Chief Crown  
Prosecutor or Senior Crown Prosecutor”.

**13. Amendment of Sentencing Act 1991**

No. 49/1991.  
R printed to  
No. 60/1993.  
Subsequently  
amended by  
Nos 23/1994,  
24/1994,  
43/1994 and  
109/1994.

25                   (1) In section 100 (2) (a) of the **Sentencing Act 1991**,  
after “Prosecutor” **insert** “or Associate Crown  
Prosecutor”.

(2) In Part A of Schedule 1 to the **Sentencing Act 1991**,  
after “(member of the police force)” **insert** “or  
(Associate Crown Prosecutor)”.

No. 68/1992.  
Reprinted to  
No. 43/1994.

**14. *Amendment of Public Sector Management Act 1992***

In section 5 (1) (*fa*) of the **Public Sector Management Act 1992**, after “any Crown Prosecutor” insert “or Associate Crown Prosecutor”.

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