



CDPP's Relationship with the Attorney General

Last Update: October 2019

Contents

1. Overview of CDPP's Relationship with the Attorney General.....	1
2. Section 8 Directions.....	2
• Parliamentary Commission of Inquiry	2
• Serious Corporate Wrongdoing: Direction relating to investigation and enforcement.....	2
• Part IIIA of the <i>Crimes Act 1914</i> : Child Sex Tourism	2
• Appearances before a Parliamentary Committee	2
• Section 233C <i>Migration Act 1958</i> : People Smuggling	3
• People Smuggling Direction: Revoked.....	3
• Prosecution of Journalists for Disclosure offences.....	3

1. Overview of CDPP's Relationship with the Attorney General

Ministerial accountability, and ultimate responsibility, for the prosecution function remains with the Attorney-General. The Attorney-General retains all his powers to institute and conduct prosecutions (see s10(1) of the Director of Public Prosecutions Act 1983 ("the Act"). The Attorney-General is also empowered by s8 of the Act to give to the Director both general directions and directions that relate to the conduct of particular cases.

The Act imposes no obligation on the Attorney-General to become involved in the handling of particular cases as a matter of course. In practice, the Director operates independently of the Attorney-General and the political process.

While the authority of the Attorney-General to give directions to the Director is a constitutionally important link in the chain of ministerial accountability, the Second Reading Speech to the Act emphasised that the Attorney-General will normally play no part in day-to-day decision making. Any other course would defeat a major purpose of the Act, the distancing of the prosecution process from the political arena.

The essential independence of the DPP is reinforced by the conditions that attach to the issue of a direction under s8.

A s8 direction must be:

- preceded by consultation with the Director;
- in writing;
- published in the gazette; and

- tabled in each House of the Parliament within 15 sitting days (with provision for publication to be deferred if it would prejudice pending criminal proceedings).

The directions, set out below, have been issued under s8. None relate to the conduct of a specific case.

2. Section 8 Directions

- **Parliamentary Commission of Inquiry**

[General Gazette No 26, 1 July 1986, p 2682](#): Direction to produce materials relating to the committal proceedings and the trial and re-trial of the Honourable Mr Justice Murphy to the Parliamentary Commission of Inquiry, dated 13 June 1986.

In 1986, a direction was issued requiring the DPP to make available to a Parliamentary Commission of Inquiry all material in the possession of the Office relating to the prosecution of Mr Justice Murphy.

- **Serious Corporate Wrongdoing: Direction relating to investigation and enforcement**

[General Notice Gazette No 40, 7 October 1992, p 2720](#): Serious Corporate Wrongdoing: Direction relating to Investigation and Enforcement. Dated 30 September 1992.

On 30 September 1992 the Attorney-General issued a s8 direction to the Director and a direction under s12 of *ASC Law* to the Australian Securities and Investment Commission. The direction required the ASIC and the DPP to develop and implement policies for the exercise and discharge of their respective powers and functions to comply with guidelines set out in the direction. [*See 2 Relations with the ASIC, Part 8 for the full text of the Guidelines, as amended, that were developed as a result of the Direction*]

- **Part IIIA of the *Crimes Act 1914*: Child Sex Tourism**

[General Notice Gazette No 45, 16 November 1994, p 2919](#): Directions relating to the circumstances in which the DPP should institute or carry on prosecutions for offences under Part IIIA of the *Crimes Act 1914*. Dated 3 October 1994.

On 3 October 1994 the Minister for Justice issued a direction to the Director relating to the circumstances in which the DPP should institute or carry on prosecutions for child sex tourism offences under Part IIIA of the *Crimes Act 1914*.

- **Appearances before a Parliamentary Committee**

[General Notice Gazette No 44, 6 November 1996, p 3297](#): Direction to the Director with respect to the general policy to be pursued in relation to the performance of the functions and the exercise of the powers of the Director. Dated 20 October 1996.

On 20 October 1996 the Attorney-General issued a direction setting out the procedures to be followed by the DPP in cases where Parliament or a Parliamentary Committee seeks access to information held by the DPP.

- **Section 233C Migration Act 1958: People Smuggling**

[General Gazette No 35, 5 September 2012, p 2318](#): Directions relating to the circumstances in which the DPP should institute or carry on prosecutions for offences under 233C of the *Migration Act 1958* (Cth) (“the Migration Act”).

On 27 August 2012 the Attorney-General issued a section 8 direction to the Director relating to the circumstances in which the DPP should institute, carry on or continue to carry on a prosecution for people smuggling offences under section 233C of the Migration Act.

- **People Smuggling Direction: Revoked**

[Government Notices Gazette C2014G00412, 7 March 2014](#): Directions regarding the revocation of s8 Direction relating to people smuggling prosecutions.

On 4 March 2014 the Attorney-General issued a section 8 direction to the Director revoking the direction issued to the Director on 27 August 2012 under section 8 of the Act (see above) regarding prosecution for people smuggling offences under section 233C of the Migration Act.

Note: The revocation does not apply to any proceedings, including appeals, which commenced prior to 4 March 2014.

- **Prosecution of Journalists for Disclosure offences**

[Government Notices Gazette C2014G02068, 15 December 2014](#): Directions regarding the Prosecution of Disclosure Offences in National Security Legislation.

On 30 October 2014 the Attorney-General issued a section 8 direction to the Director requiring the Director not to proceed with a prosecution of a person for alleged contravention of section 35P of the *Australian Security Intelligence Organisation Act 1979* and sections 15HK, 15HL and 3ZZHA of the *Crimes Act 1914* without the written consent of the Attorney General where the person is a journalist and the facts constituting the alleged offence relate to the work of the person in a professional capacity as a journalist.

- **Prosecution of Journalists for Disclosure offences - revocation of 2014 Direction and new Direction**

[Government Notices Gazette C2019G00878, 30 September 2019](#): Directions regarding the revocation of s8 Direction dated 30 October 2014 relating to the prosecution of journalists for disclosure offences and issuing a new section 8 Direction relating to the prosecution of journalists for disclosure offences.

On 19 September 2019, the Attorney-General issued a section 8 direction to the Director, revoking a direction issued on 30 October 2014 (see link to [Government Notices Gazette C2014G02068, 15 December 2014](#)) and issuing a new direction to the Director under section 8(1) of the *DPP Act 1983*, requiring the Director not to proceed with a prosecution of a person, without the written consent of the Attorney-General, for alleged contravention of section 35P of the *Australian Security Intelligence Organisation Act 1979*, sections 3ZZHA,

15HK, 15HL and 70 of the *Crimes Act 1914*, sections 131.1 and 132.1 of the *Criminal Code* and section 73A of the *Defence Act 1903*, where the person is a journalist and the facts constituting the alleged offence relate to the work of the person in a professional capacity as a journalist.