

Queensland



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ELIZABETHAE SECUNDAE REGINAE



No. 82 of 1988

An Act to provide for a Special Prosecutor and for other purposes

[ASSENTED TO 17TH NOVEMBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Special Prosecutor Act 1988*.

2. Commencement. (1) Except as provided by subsection (2), this Act shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Section 16 shall commence on a day to be appointed by Proclamation.

3. Interpretation. In this Act, unless the contrary intention appears—

“chairman of the Commission of Inquiry” means Gerald Edward Fitzgerald, one of Her Majesty's Counsel, and includes any other person who at any time constitutes the Commission of Inquiry or who is deemed by Order in Council to constitute the Commission of Inquiry for the purposes of this Act;

“Commission of Inquiry” means the Commission, within the meaning of the *Commissions of Inquiry Act 1950-1988*, consisting of—

- (a) an Order in Council of 26 May 1987 published in the Gazette of that date;
 - (b) an Order in Council of 24 June 1987 published in the Gazette of that date;
 - (c) an Order in Council of 25 August 1988 published in the Gazette of that date;
- and
- (d) any further instrument that may be, or have been, issued in relation thereto,
and constituted by Gerald Edward Fitzgerald, one of Her Majesty's Counsel;

“criminal proceedings” means—

- (a) proceedings in respect of offences that have been referred to the Special Prosecutor by the chairman of the Commission of Inquiry;
 - (b) proceedings in respect of offences that have been disclosed to or before the Commission of Inquiry or in material produced or information given to the Special Prosecutor in accordance with this Act;
 - (c) proceedings in respect of offences that have been committed in connexion with the Commission of Inquiry;
- and
- (d) proceedings in respect of offences that arise out of such offences, material or information;

“deputy to the Commission of Inquiry” means Patricia Mary Wolfe, barrister, and includes any other person who at any time is a deputy to the Commission of Inquiry;

“Minister” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act and includes any Minister of the Crown for the time being performing the duties of the Minister;

“person assisting the Commission of Inquiry” includes any person who is or was engaged, retained or seconded to assist or perform services for or on behalf of the Commission of Inquiry;

“proceedings” includes—

(a) proceedings in or before any court;

(b) proceedings before justices;

(c) proceedings before any tribunal or person (including any inquiry, examination or arbitration) in which evidence is or may be given;

and

(d) any part of proceedings;

“Special Prosecutor” means the Special Prosecutor appointed under this Act;

“Under Secretary” means the Under Secretary, Department of Justice or the chief executive of the department for which the Minister of the Crown for the time being charged with the administration of this Act is responsible.

4. Appointment of Special Prosecutor. (1) The Governor in Council, from time to time by notification published in the Gazette, may appoint a barrister or solicitor of the Supreme Court of not less than 10 years' standing to be the Special Prosecutor.

(2) The Special Prosecutor—

(a) shall be appointed for such term as the Governor in Council determines and specifies in the instrument of appointment;

(b) shall be paid such fees, whether by way of salary and allowances or otherwise, as the Minister determines;

(c) shall be eligible for re-appointment upon the expiration of his term of appointment;

and

(d) shall not be subject to the *Public Service Management and Employment Act 1988*.

5. Termination of Special Prosecutor's appointment. (1) The Special Prosecutor may resign his office by writing signed by him and delivered to the Minister.

(2) The Governor in Council may terminate the appointment of the Special Prosecutor for misbehaviour or physical or mental incapacity.

(3) The Governor in Council shall terminate the appointment of the Special Prosecutor if—

- (a) he becomes bankrupt or takes advantage of the laws in force relating to bankruptcy;
- (b) he is absent from duty, except on leave of absence to which he is entitled under the conditions of his employment or granted by the Minister, for 14 consecutive working days, or for 28 working days in any period of 12 months;
- or
- (c) he contravenes section 6.

6. Other employment curtailed. The Special Prosecutor shall not, without the consent of the Minister—

- (a) engage in the practice of his profession except in the exercise of the functions of his office;
- or
- (b) engage in paid employment outside the duties of his office.

7. Division of legal profession inapplicable. For the purposes of this Act the Special Prosecutor and a barrister or solicitor appointed to assist him shall be entitled in any matter to act as both barrister and solicitor.

8. Acting appointment. (1) The Governor in Council may appoint a person who is eligible for appointment as Special Prosecutor to act as Special Prosecutor during the absence of the Special Prosecutor through illness or other cause or during any vacancy in the office of Special Prosecutor and may at any time revoke that appointment.

(2) The Acting Special Prosecutor while so acting—

- (a) shall have all the powers and duties and may discharge any of the functions of the Special Prosecutor;
- and
- (b) shall hold office upon such terms and conditions as to salary, allowances and other conditions of employment as the Minister determines.

9. Functions of Special Prosecutor. (1) The Special Prosecutor—

- (a) shall prepare, institute and conduct on behalf of and in the name of Her Majesty—
 - (i) criminal proceedings;
 - or
 - (ii) proceedings in respect of such offences or class of offences (which proceedings are not criminal proceedings) as the Minister, by notification in writing published in the Gazette, specifies;
- (b) shall perform such duties as he may be charged with by or under this or any other Act.

(2) The Minister, by notice in writing, may give directions or furnish guidelines to the Special Prosecutor with respect to the performance of the Special Prosecutor's functions under this Act but the Minister is not entitled to give directions or furnish guidelines in relation to a particular case.

(3) Where the Minister gives directions or furnishes guidelines to the Special Prosecutor under subsection (2), the Minister shall cause a copy of the directions or guidelines to be published in the Gazette.

(4) The institution or conduct by the Special Prosecutor of proceedings for an offence referred to in subsection (1) (a) (ii), or any other act or thing done by the Special Prosecutor in relation to the proceedings, shall not be challenged or called in question in any court on the grounds that the proceedings did not relate to an offence or class of offences specified in a notification published pursuant to that subsection.

(5) In proceedings with which he is concerned the Special Prosecutor may appear in person or by a barrister or solicitor.

10. Powers of Special Prosecutor. (1) The Special Prosecutor, from time to time—

(a) may furnish guidelines in writing to—

Crown Prosecutors and other persons acting on his behalf;
or

the Commissioner of Police,

with respect to prosecutions of criminal proceedings;

(b) may give directions to the Commissioner of Police and other persons with respect to criminal proceedings.

(2) The Special Prosecutor—

(a) shall give to the Minister a copy of each guideline or direction furnished or given by him under subsection (1);
and

(b) shall include in a report furnished under section 13—

(i) a copy of each guideline or direction furnished or given by him under subsection (1) during the period to which the report relates;

and

(ii) a copy of each guideline or direction furnished or given by him under subsection (1) as in force at the end of the period to which the report relates.

(3) A guideline furnished under subsection (1) shall not prevent or hinder the discharge of any function or the exercise of any power by a Crown Prosecutor pursuant to *The Criminal Code*.

11. Police assistance to Special Prosecutor. (1) Where, in relation to any criminal proceedings under consideration or conducted by the Special Prosecutor, a matter arises which requires further investigation,

the Special Prosecutor may, in writing, request the Commissioner of Police for the assistance of members of the Police Force in the conduct of that investigation.

(2) The Commissioner of Police shall, as far as possible, comply with any request made to him under subsection (1).

12. Special Prosecutor is a Crown Law Officer. For the purposes of the prosecution of criminal proceedings that are prepared, instituted and conducted by the Special Prosecutor pursuant to section 9 (1) (a) or that he takes over pursuant to section 16 (a) the Special Prosecutor shall be a Crown Law Officer within the meaning of *The Criminal Code* in place of the Director of Prosecutions whose powers and authorities in respect of those criminal proceedings shall thereupon terminate but without prejudice to the continued validity and effect of anything done by the Director of Prosecutions in exercise of any of those powers and authorities before such termination.

13. Annual report of Special Prosecutor. (1) As soon as is practicable in each year but not later than 30 April the Special Prosecutor shall cause to be prepared and furnished to the Minister a report of his operations under this Act during the year ending on the preceding 31 December.

(2) The Minister shall cause every report furnished to him under subsection (1) to be laid before the Legislative Assembly within 14 sitting days after he receives the report.

14. Appointees to office of Special Prosecutor authorized to present indictments. A person appointed to the office of Special Prosecutor shall be taken to be, by virtue of that appointment and for so long as he holds that office, an officer appointed by the Governor in Council to present indictments in any court of criminal jurisdiction.

15. Protection of persons executing Act. No act or thing done or omission made by the Minister, the Special Prosecutor or any person assisting the Special Prosecutor for the purpose of giving effect to this Act or discharging, exercising or performing any function, power, authority or duty under this Act shall subject the Crown, the Minister, the Special Prosecutor or any person to liability at law in respect thereof.

16. Assumption of responsibility by Special Prosecutor. On and from the commencement of this section—

- (a) the Special Prosecutor shall take over from the Director of Prosecutions the conduct of criminal proceedings in being immediately before such commencement;
- (b) all acts and things done or omissions made by, on behalf of or in the name of the Director of Prosecutions in connexion with criminal proceedings referred to in paragraph (a) shall be deemed to have been done or made by, on behalf of or in the name of the Special Prosecutor.

17. Special Prosecutor's professional involvement no bar. (1) Subject to subsection (2), the Special Prosecutor shall not be prevented from or limited in discharging his functions under this Act by reason that before his appointment to the office of Special Prosecutor took effect he had been involved, in the practice of his profession, in a matter that at the time his appointment took effect had not been finally determined.

(2) The Special Prosecutor—

- (a) shall not disclose to any person information that came to his knowledge before his appointment to the office of Special Prosecutor took effect, in the practice of his profession, concerning a matter that at the time his appointment took effect had not been finally determined to any person except—
 - (i) the person for whom he was acting in the matter in the practice of his profession;
 - (ii) a legal representative of that person;
 - or
 - (iii) a person duly authorized by the person or legal representative referred to in subparagraph (i) or (ii) to receive the information;
- (b) shall not act personally in respect of any matter in which he had been involved in the practice of his profession before his appointment to the office of Special Prosecutor took effect and that had not been finally determined at the time his appointment took effect.

(3) Where the Special Prosecutor is by this Act precluded from acting personally in respect of any matter a Crown Prosecutor appointed for that purpose by the Special Prosecutor shall discharge the functions of the Special Prosecutor in respect of that matter.

18. Administrative and financial control. (1) The Under Secretary shall be the chief executive within the meaning of the *Public Service Management and Employment Act 1988*, as amended and in force for the time being, in respect of matters of an administrative nature associated with the discharge of the Special Prosecutor's functions.

(2) For the purposes of the *Financial Administration and Audit Act 1977-1988* the Under Secretary shall be the accountable officer in respect of the discharge of the Special Prosecutor's functions.

The Special Prosecutor shall do all such things as the Under Secretary, in the proper performance of his duties as such accountable officer, may require for the purposes of that Act.

19. Withdrawal of undertaking indemnifying from prosecution. (1) Any undertaking given by the Attorney-General (whether given before or after the commencement of this section) that no prosecution will be brought against the person named in the undertaking may, in the absolute

discretion of the Attorney-General, be withdrawn by the Attorney-General where—

- (a) the person is convicted of—
 - (i) perjury committed by the person when giving evidence before the Commission of Inquiry;
 - (ii) an offence, the particulars of which would have been disclosed had the person, when making application for the undertaking, made full and true disclosure concerning any material particular within his knowledge relevant to the matter or matters into or with respect to which the Commission of Inquiry is required to conduct its inquiry;

or

- (b) the Special Prosecutor certifies to the Attorney-General that the Special Prosecutor is satisfied that the person made a statement or declaration relevant to the matter or matters into or with respect to which the Commission of Inquiry is required to conduct its inquiry which statement or declaration, in any material particular, is, or was at the time of making the statement or declaration, to the person's knowledge false.

(2) The powers of withdrawal of an undertaking conferred by subsection (1) are in addition to, and in no way in substitution for or derogation of, the general powers of withdrawing instruments indemnifying persons against prosecution vested in the Attorney-General.

20. Confidentiality. (1) Neither the chairman of the Commission of Inquiry nor the deputy to the Commission of Inquiry is required to—

- (a) produce in any proceedings or to any person any document or thing that has come into the possession, custody or control of the chairman of the Commission of Inquiry by reason of, or in the course of, the exercise of his functions or any act done by the deputy to the Commission of Inquiry or any person assisting the Commission of Inquiry;
- (b) divulge or communicate in any proceedings or to any person any information that has come to the notice or into the possession, custody or control of the chairman of the Commission of Inquiry by reason of, or in the course of, the exercise of his functions or any act done by the deputy to the Commission of Inquiry or any person assisting the Commission of Inquiry;

or

- (c) attend any proceedings for such a purpose.

(2) Except as directed or permitted by the chairman of the Commission of Inquiry or as required for the proper performance of

his functions or authorized by this Act, a person assisting the Commission of Inquiry is not required to and shall not—

- (a) produce any document or thing referred to in subsection (1) (a) in any proceedings or to any person other than the chairman of the Commission of Inquiry;
- (b) divulge or communicate any information referred to in subsection (1) (b) in any proceedings or to any person other than the chairman of the Commission of Inquiry;
- or
- (c) attend any proceedings for such a purpose.

(3) Except as prohibited by the regulations or any other Act or a law of the Commonwealth any document or thing referred to in subsection (1) (a) may be produced and any information referred to in subsection 1 (b) may be divulged or communicated to the Special Prosecutor and, subject to subsection (4), may be utilized by him for those purposes in accordance with this Act and for no other purpose.

(4) Where pursuant to subsection (3), any document or thing is produced or any information is divulged or communicated to the Special Prosecutor the chairman of the Commission of Inquiry may direct that in respect of any such document, thing or information the Special Prosecutor, except as provided by section 21, shall not—

- (a) produce any such document or thing in any proceedings or to any person other than the chairman of the Commission of Inquiry;
- (b) divulge or communicate any such information in any proceedings or to any person other than the chairman of the Commission of Inquiry;
- or
- (c) attend any proceedings for such a purpose.

(5) Except as provided by subsection (3) and section 21, neither the Special Prosecutor nor any other person to whom any document or thing referred to in subsection (1) (a) is produced or any information referred to in subsection (1) (b) is divulged or communicated in accordance with this Act is required to or shall—

- (a) produce any such document or thing in any proceedings or to any person other than the chairman of the Commission of Inquiry;
- (b) divulge or communicate any such information in any proceeding or to any person other than the chairman of the Commission of Inquiry;
- or
- (c) attend any proceedings for such a purpose.

(6) Except as provided by section 21, no court, justice, tribunal or person (including any inquiry, examination or arbitration) shall order the production of any document or thing referred to in subsection (1)

(a) or that any information referred to in subsection (1) (b) be divulged or communicated by the chairman of the Commission of Inquiry, the deputy to the Commission of Inquiry, a person assisting the Commission of Inquiry, the Special Prosecutor or any other person referred to in subsection (5).

21. Entitlement to information, etc. (1) Except where the production of material or evidence or the disclosure of matter referred to in this subsection would contravene a direction given under section 20 (4) or would not be in the public interest, the Special Prosecutor, at the election of the Special Prosecutor, shall—

(a) produce material and admissible evidence of which he is aware of a matter the proof of which is necessary to a fair hearing for a defendant in criminal proceedings which the Special Prosecutor is conducting;

or

(b) disclose such a matter of which he is aware to the defendant, as soon as is reasonably possible after the commencement of the criminal proceedings.

(2) (a) A defendant in criminal proceedings that are being conducted by the Special Prosecutor may apply for an order that the Special Prosecutor, at the election of the Special Prosecutor, shall—

(i) admit a specific fact;

or

(ii) produce or disclose particular material in relation to or particular admissible evidence of the specific fact.

In making an application under this paragraph (a) the defendant shall furnish the grounds upon which he intends to rely in order to provide the proof referred to in paragraph (c).

(b) An application under paragraph (a) shall be made in the course of the criminal proceedings that are being conducted by the Special Prosecutor and, where the criminal proceedings are being conducted before justices, the application shall, if so requested by the Special Prosecutor, be referred to a District Court which shall hear and determine such application.

(c) An order shall not be made granting an application under paragraph (a)—

(i) in respect of any material, evidence or matter that is the subject of a direction under section 20 (4);

(ii) where the admission of a fact contained in such material, evidence or matter or the production of such material, evidence or matter would not be in the public interest;

or

(iii) in respect of material, evidence or matter that is not the subject of such a direction and is not material, evidence or

matter to which subparagraph (ii) applies unless it is proved by the defendant that—

- (A) proof of the specific fact is necessary to a fair hearing for the defendant;
 - (B) particular material and admissible evidence of the specific fact are available to the Special Prosecutor;
 - (C) the Special Prosecutor will not admit the specific fact or produce the material, evidence or matter without an order under this subsection;
- and
- (D) no or insufficient evidence of the specific fact can be adduced in the criminal proceedings without an order under this subsection.

(3) An order under this section shall be confined to the specific fact and the particular evidence (including only the appropriate part or parts of any material, evidence or matter) and such fact and evidence shall be clearly and accurately described and identified in the order and in the application therefor.

(4) Where the Special Prosecutor for any reason is precluded from complying with the provisions of subsection (1), the Special Prosecutor shall notify the defendant in general terms that he has in his possession, custody or control any material, evidence or matter or that there has been disclosed or communicated to him information which he is precluded from producing or disclosing or, as the case may be, divulging or communicating.

(5) (a) Where the Special Prosecutor gives a notification under subsection (4), the court or justices before which or whom the criminal proceedings are being conducted shall not order the Special Prosecutor to produce or disclose any material, evidence or matter or divulge or communicate any information referred to in subsection (4) to the defendant in the criminal proceedings, but it or they, on the application of the defendant, may direct the Special Prosecutor to make any such material, evidence, matter or information in the possession, custody or control of the Special Prosecutor available for inspection or consideration by the court or justices.

(b) After inspecting any material, evidence or matter or considering any information made available pursuant to paragraph (a), the court or justices, if it or they consider that it is necessary to a fair hearing for the defendant may—

(i) require the Special Prosecutor to admit a specific fact;

or

(ii) stay the criminal proceedings in which the application is made permanently or temporarily and either unconditionally or upon such conditions as the court or justices thinks fit.

(c) An application under paragraph (a) shall be made in the course of the criminal proceedings that are being conducted by the Special

Prosecutor and, where the criminal proceedings are being conducted before justices, the application shall, if so requested by the Special Prosecutor, be referred to a District Court to hear and determine the application.

(6) Any material, evidence, matter or information produced or disclosed or, as the case may be, divulged or communicated under this section shall not be used for any purpose other than the proper conduct of the criminal proceedings against the defendant.

(7) Subsections (1), (2), (3), (4) and (5) do not apply in respect of material, evidence, matter or information—

(a) where the production or disclosure of that material, evidence or matter or the divulging or communicating of that information would contravene any other Act or law;

or

(b) where the material, evidence, matter or information is prescribed by the regulations for the purposes of this subsection or is part of a class of material, evidence, matter or information which is so prescribed.

22. Regulations. The Governor in Council may make regulations not inconsistent with this Act for and with respect to all matters necessary or convenient for the administration of this Act or for achieving the objects and purposes of this Act.