

Director of Public Prosecutions Amendment Regulations 1998 (No. 1) 1998 No. 356

Explanatory Statement

Statutory Rules 1998 No. 356

Issued by the Authority of the Attorney-General

Director of Public Prosecutions Act 1983

Director of Public Prosecutions Amendment Regulations 1998 (No. 1)

Background

Section 6 of the *Director of Public Prosecutions Act 1983* specifies the functions conferred on the Director of Public Prosecutions (DPP). Apart from the functions specified in subsection 6(1), paragraph 6(2)(b) states that those functions are "such other functions as are prescribed". Regulation 3 of the Director of Public Prosecutions Regulations (the Regulations) prescribes those functions for the purposes of paragraph 6(2)(b).

The purpose of the Regulations is to put the DPP in the position which was formerly believed to have existed. From time to time, the DPP gives legal advice to a Commonwealth authority with respect to law enforcement functions of the authority before (and whether or not) that authority becomes a party to a proceeding. The legal advice may relate to a particular investigation (for example, whether evidence of a certain fact or transaction is needed, the drafting of informations, and the drafting of warrants). It may, where the occasion requires, include legal advice in respect of law enforcement functions generally; that is, not related to a specific investigation.

Also, from time to time, the DPP is required to give advice to State and Territory authorities with respect to matters relating to the investigation or prosecution of offences against Commonwealth law. It is not unusual for State or Territory authorities to seek advice on some aspect of the prosecution, such as the choice of charge, or the dispositions available when a federal offender is being sentenced. Those requests for advice can arise when State or Territory authorities are conducting an investigation into conduct that involves both Commonwealth offences alone, or Commonwealth and State or Territory offences. That occurs principally in the areas of corporate wrongdoing and drug offences, where offences may have been committed against both Commonwealth and State or Territory laws.

The Regulations provide authority for the DPP to give legal advice on law enforcement or a matter relating to law enforcement to a Commonwealth authority whether or not the advice is for the purposes of a particular investigation.

The Regulations further provide authority for the DPP to give legal advice on the investigation or prosecution of an offence against a law of the Commonwealth or a matter relating to the investigation or prosecution of such an offence, to a State or Territory authority, whether or not the advice is for the purposes of a particular investigation.

The Regulations will not affect the power of the DPP or a person entitled to represent the Director under subsection 9(11) of the Act, which provides that the DPP or a person who is entitled to represent the DPP may act as counsel or solicitor for an authority of the Commonwealth which is a party to a proceeding in respect of a matter that has arisen out of or is connected with the performance of any of the functions of the DPP, or that may result in the performance by the DPP of such a function..

Details of the Regulations are in the attachment.

Attachment

The Amendments

Regulation 1 is a formal clause providing for the name of the amending regulations.

Regulation 2 provides that the regulations commence upon gazettal.

Regulation 3 is also a formal clause providing for amendment of the regulations as set out in Schedule 1 of the amending regulations.

Schedule 1

Item 1 substitutes a new form of citation of the Regulations and a new definition regulation in place of an interpretation regulation.

Regulation 1 stipulates the name of the regulations as the *Director of Public Prosecutions Regulations 1984*. That new title of the Regulations reflects a revised approach to the naming of Commonwealth regulations.

Regulation 2, setting out definitions, replaces an interpretation regulation. The new heading to Regulation 2 reflects a revised approach to the drafting of Commonwealth regulations. By means of the first definition, "Act" is defined to mean the *Director of Public Prosecutions Act 1983*. The second definition is new and is added for the purposes of new regulation 3(e). It defines "State or Territory authority" as an agency of a State or Territory government that conducts investigations into offences against State or Territory laws or is responsible for conducting prosecutions for breaches of those State or Territory laws.

Item 2 is a formal amendment, omitting introductory words, adding a clause number, and inserting the introductory words again. That change to the numbering of clauses is necessary because a second clause has been added after paragraph 3 (g).

Item 3 is a formal amendment of paragraph 3 (e), to provide for the substitution of punctuation after "New South Wales", and the addition of the word "and".

Item 4 inserts new paragraphs 3(f) and 3(g) to the Regulations which prescribe additional functions of the DPP for the purposes of paragraph 6(2)(b) of the DPP Act.

New clause (2) provides - that new paragraph 3(f) does not affect the power of the DPP or a person entitled to represent the Director under subsection 9(11) of the Act. That subsection provides that the DPP or a person who is entitled to represent the DPP may act as counsel or solicitor for an authority of the Commonwealth which is a party to a proceeding in respect of a matter that has arisen out of or is connected with the performance of any of the functions of the DPP, or that may result in the performance by the DPP of such a function.