

Director of Public Prosecutions Amendment Regulations 2003 (No. 1) 2003 No. 211

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 211

Issued by the authority of the Attorney-General

Director of Public Prosecutions Act 1983

Director of Public Prosecutions Amendment Regulations 2003 (No. 1)

Section 34 of the *Director of Public Prosecutions Act 1983* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 6 of the Act sets out the functions of the Director of Public Prosecutions (the Director). Paragraph 6(1)(n) includes a power to do anything incidental or conducive to the performance of any of the specified functions. Subsection 6(2) of the Act provides that additional functions may be conferred on the Director by a law of the Commonwealth or may be prescribed.

The *Crimes (Superannuation Benefits) Act 1989* (the CSB Act) and Part VA of the *Australian Federal Police Act 1979* (the AFP Act) enable courts, on the application of the Director, to make superannuation orders against Commonwealth employees and AFP employees who have been convicted of corruption offences and sentenced to imprisonment for a term longer than 12 months. Such orders, which may be made in favour of the Commonwealth or a Commonwealth authority, enable the Commonwealth to recover the Commonwealth-funded employer component of the employee's superannuation.

The power to enforce superannuation orders is not listed as a function of the Director under subsection 6(1) of the Act, and neither the CSB Act nor the AFP Act expressly gives the Director that function. It is not certain that enforcement of superannuation orders would fall within the incidental power contained in paragraph 6(1)(n) of the Act.

The purpose of the proposed Regulations is to ensure that superannuation orders made under the CSB Act or the AFP Act may be enforced by the Director on behalf of the Commonwealth or a Commonwealth authority. This would be achieved by prescribing the enforcement of such superannuation orders as a function of the Director.