

Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 1) 2001 No. 328

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 328

Issue by the authority of the Prime Minister

Public Employment (Consequential and Transitional) Act 1999

Public Service Act 1999

Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 1)

Schedule 1 of the *Public Employment (Consequential and Transitional) Amendment Act 1999* (the PECTA Act) repealed the *Merit Protection (Australian Government Employees) Act 1984* (the Merit Protection Act), which provided for the establishment and operation of the Merit Protection and Review Agency. Section 14 of the PECTA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient for carrying out or giving effect to the Act, including the continued operation of the Merit Protection Act for certain purposes.

Regulations 4.4 and 4.5 of the Public Employment (Consequential and Transitional) Regulations 1999 (the PECTA Regulations) provide that the Merit Protection Act continues in force to allow for the determination of outstanding appeals to Disciplinary Appeals Committees and Redeployment and Retirement Appeal Committees. Subregulation 4.2(4) of the PECTA Regulations provides that the Merit Protection (Australian Government Employee) Regulations, which were previously made under section 85 of the Merit Protection Act, continue in force to the extent necessary for the continued operation of the Merit Protection Act.

The *Public Service Act 1999* provides a framework for public service employment. Section 79 of the Act provides that the Governor-General may make regulations required or permitted by the Act to be prescribed, or necessary or convenient for carrying out or giving effect to the Act.

The purpose of the Regulations is to amend offence provisions in the Merit Protection (Australian Government Employee) Regulations (as continued in force by the PECTA Act and PECTA Regulations) and the Public Service Regulations to 'harmonise' them with the Criminal Code (the Code).

The Code, which is contained in the *Criminal Code Act 1995*, establishes general principles of criminal responsibility and a standard approach to the formulation of Commonwealth criminal offences. It commenced on 15 December 2001. The Code may inadvertently change the operation of some offences that were drafted prior to its development. These offences need to be harmonised with the Code by amending them in a way that ensures that they continue to operate in the way originally intended after the Code's commencement.

The Regulations harmonise the Merit Protection (Australian Government Employee) Regulations and the Public Service Regulations with the Code in two ways:

- they make it clear that a defence of reasonable excuse applies to some of the offences. These offences were drafted in such a way that it was not clear whether a reasonable excuse was a defence which could be pleaded by the defendant, or a part of the offence which needed to be proved by the prosecution; and

- they make it clear that strict liability principles apply to some offences or parts of offences. Ordinarily, a defendant must do an act and do it with a guilty mind in order to be convicted of an offence. Strict liability principles apply where a defendant may be convicted even though he or she did not have a guilty mind. Several offences in the Merit Protection (Australian Government Employee) Regulations and the Public Service Regulations are intended to apply strict liability principles. In order to ensure that they continue to apply, the Regulations amend the offence provisions to state this expressly.

The Regulations commenced on 15 December 2001.