



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
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Your Reference:

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13 December 2016

Mr Mark Fitt
Committee Secretary
Senate Economics References Committee
By email: economics.sen@aph.gov.au

Dear Mr Fitt

**Inquiry into criminal, civil and administrative penalties for white collar crime
Questions on Notice**

The Committee asked two questions of the CDPP at the hearing on 6 December 2016, which I took on notice. I now provide the answers to those questions.

When did section 12.3 of the *Criminal Code* (Cth) (the corporate culture provision) come into operation?

Section 12.3 of the *Criminal Code* came into operation on 1 January 1997 when the *Criminal Code Act 1995* commenced.

However, as I indicated in my evidence before the Committee, it is only recently that investigative agencies have begun referring briefs of evidence for alleged white collar offences committed by corporate entities to the CDPP. Consequently, the opportunities to apply section 12.3 of the *Code* have been few.

What percentage of prosecutions conducted by the CDPP has resulted in an appeal by the Director against the inadequacy of the sentence?

The table below sets out data relating to Director's appeals in cases conducted between 1 April 2013 and 13 December 2016. (The date 1 April 2013 has been selected to capture data reflecting the move to the practice group model within the CDPP). During the period in question, the Commercial, Financial and Corruption (CFC) practice group handled offences referred by ASIC and more serious white collar offences referred by the Australian Federal Police and the Australian Taxation Office

(but not matters such as social security fraud or less serious tax offences). The table contains data relating to Director's appeals in the following categories of cases:

1. all cases (both summary and indictable) conducted by the whole of the CDPP;
2. all cases (both summary and indictable) conducted by the CFC practice group;
3. cases prosecuted by the whole of the CDPP on indictment (that is, cases prosecuted in the higher courts rather than the Magistrates' Court); and
4. cases prosecuted on indictment by the CFC practice group.

	Number of prosecutions proven	Number of Director's appeals	Percentage	Director's appeals upheld	Director's appeals dismissed	Director's appeal withdrawn or abandoned
Whole of CDPP – all cases	8626	64	0.7%	37	20	7
CFC – all cases	151	6	4.0%	3	3	0
Whole of CDPP – prosecutions on indictment	2375	54	2.3%	32	16	6
CFC – prosecutions on indictment	88	6	6.8%	3	3	0

Yours sincerely

Shane Kirne
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Commercial, Financial & Corruption Practice Group