



JOHN R. CHAMPION S.C.
DIRECTOR of
PUBLIC PROSECUTIONS
VICTORIA

Director's Chambers
565 Lonsdale Street
Melbourne VIC 3000
DX 210290
T: (03) 9603 7508
F: (03) 9602 3637

07 May 2015

Our Reference: 2015-00399

Ms Sophie Dunstone
Committee Secretary
PO Box 6100
Parliament House
Canberra
ACT 2600

By Email - LegCon.Sen@aph.gov.au

Dear Ms Dunstone,

Senate Standing Committee on Legal and Constitutional Affairs inquiry with respect to the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015

We refer to your letter dated 1 April 2015 and your invitation for submissions with respect to the measures contained in the above named Bill.

Much of the measures contained in the Bill are matters within the remit of the Federal Parliament and to the extent (if any) that the Victorian Director of Public Prosecutions (DPP) and the staff of the Office of Public Prosecutions (OPP) deal with federal offending, the law of the Commonwealth would be applied as intended by the Parliament.

The proposed legislation includes amendment to the *Crimes Act 1914* (Cth) to facilitate information sharing about federal offenders to improve decision making of the Commonwealth Attorney-General's office in matters such as parole and prisoner review as legislated by the current Part IB of the *Crimes Act* inter alia. The proposed legislation as contained in Schedule 9 of the Bill would make the DPP and OPP subject to the information sharing provisions.

In so far as the operation of Schedule 9 is concerned we would make the following comments:

- The information likely to be sought under the amendments potentially raises conflict with state law on questions of privacy and legislative

restrictions on the sharing or reporting of certain types of information, especially in relation to victims of crime. Any potential conflict of laws could have an adverse effect decision making by the DPP or OPP.

- As a corollary to this, the DPP and OPP would not be primary sources of the types of information likely to be sought in relation to the functions of the Attorney-General.
- With reference to s.20BZA(5), aimed at addressing this issue of inconsistent laws, the breadth of the provision is notable and it is questionable whether such an approach was strictly necessary to meet the objectives of the amendment or the appropriate mechanism for dealing with inconsistent laws.
- For these reasons, the DPP and OPP should not be included on the list of relevant persons.
- Section 20BZA is unnecessarily complex in containing provision for requests (subsection 1) which need not be in writing and requirements (subsection 2) to provide information to Attorney-General, Secretary or delegate. The compliance obligation under subsection (1) is ambiguous.
- We consider that ordinary principles of prudent legal practice and governance would suggest that such requests should be in writing with the basis of the “reasonable belief” clearly stated along with the nature of the information sought. This would avoid ambiguity and ensure that requests forthcoming under the amendments were appropriately and expediently dealt with.
- Further clarification of “reasonable belief” may be necessary with consideration of how this is demonstrated to relevant persons.
- Section 20BZA(6) provides an exemption to a court registrar or other official from compliance with a request to the extent that information relates to proceedings that are still before the court. In the event that the DPP and OPP remain listed as relevant persons, as a prosecution service with an overriding duty to due process and fairness, we would seek to subject to a similar exemption.

Yours faithfully

John Champion SC
Director of Public Prosecutions