



Government of South Australia

Director of Public Prosecutions

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Dear Ms Dunstone

I refer to your invitation for submissions with respect to the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015* ("the Bill").

I apologise for the timing of my response. I realise that the date for submissions has past. However, certain aspects of the Bill have only recently come to my attention, to which I feel obliged to respond.

My concerns relate only to the proposed amendment to the *Crimes Act 1914(Cth)* as set out in Schedule 9 of the Bill. I understand these measures are designed to 'facilitate' information sharing about federal offenders.

Section 20BZA specifically allows an "authorised officer" - the Commonwealth Attorney-General or Secretary of the Department (or delegate) - to request a "relevant person" to give information relevant to the exercise of a specified area of law. As well as various Commonwealth officers, a "relevant person" is defined to include a large number of State officers, including myself and my staff, and other State DPPs.

Sub-section 20BZA(1) allows for the request to give information, subsection 20BZA(3) empowers an authorised officer to require a relevant person to give specified information by written notice. Sub-section 20BZA(4) requires a person to comply with the notice.

In contrast to otherwise similar provisions of the *Australian Crime Commission Act 2002* (ss20 and 20A), no provision is made for any agreement between the Commonwealth and the States with respect to the nature of the information that can be required, the persons who may be required to provide information or the saving of State confidentiality obligations.

I am concerned that this unilateral imposition upon State officers to release information might raise a doubt about the constitutionality of section 20BZA (specifically subsections 20BZA(3) and 20BZA(4)). The potential use of section 20BZA to compel the release of such highly sensitive information from such high-level statutory officers without the grant of any discretion on the part of the State officer, could amount to "substantial interference or curtailing"<sup>1</sup> of State constitutional power.

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<sup>1</sup> Melbourne Corporation v Commonwealth (1947) 74 CLR31, 75.

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Further, I understand that sub-section 20BZA(5) operates to resolve any potential conflicts between the duty to disclose information and a State legislative confidentiality provision.

The scope of this clause is especially broad. It refers to unwritten law, presumably purporting to operate to preclude claims of common law immunities and privileges, including legal professional privilege and public interest immunity.

Whilst section 3ZX of the *Crimes Act 1914(Cth)* expressly reserves the law relating to legal professional privilege with respect to the operation of PartIAA of the Act, no such statement is included in relation to 20BZA requests, even though legal officers and courts will be among the relevant persons subject to a requirement to produce information.

In my view, this unqualified approach is undesirable and provision should be made for the preservation and protection of legitimate claims of legal professional privilege and public interest immunity.

Yours sincerely

**Adam Kimber SC**

Director of Public Prosecutions