

Questions on Notice CDPP

PJCIS Inquiry into Royal Commission Legislation Amendment (Protections for Providing Information Bill) 2026

1. Please outline the role the CDPP would have in relation to an investigation and prosecution against an intelligence official for committing a secrecy offence? At what stage in an investigation are you likely to become involved?

The CDPP is not an investigative agency. The investigation of a secrecy offence is a matter for the relevant investigative agency. The CDPP may play a role in the course of an investigation by providing assistance to an investigative agency through the provision of legal advice relevant to a possible prosecution based on specific facts or allegations or guidance about the elements of an offence. If an investigative agency refers a brief of evidence to the CDPP, the CDPP assesses the brief of evidence and determines whether or not to commence a prosecution in accordance with the Prosecution Policy of the Commonwealth. On occasions an investigative agency may arrest a person prior to referring a brief of evidence. The CDPP will take carriage of the prosecution following the arrest.

2. What factors would be most important to you for determining whether to proceed with a prosecution?

The Prosecution Policy of the Commonwealth underpins all prosecution decisions made by the CDPP. There is a two-stage test that must be satisfied before a prosecution is commenced or continued:

- (a) there must be sufficient admissible evidence to justify a prosecution, there is a prima facie case and there is a reasonable prospect of a conviction being secured; and
- (b) in light of the provable facts and the whole of the surrounding circumstances, the prosecution is in the public interest.

3. Are there any past or ongoing cases that you think would be handled substantially differently had this Bill already been in effect?

The CDPP does not have any ongoing cases relating to an alleged breach of a Commonwealth secrecy offence by a person as a result of voluntary or compulsory disclosure of information to a Royal Commission.

The CDPP is not aware of any past cases relating to an alleged breach of a Commonwealth secrecy offence by a person as a result of voluntary or compulsory disclosure of information to a Royal Commission.

4. Schedule 3 of the Bill provides a defence “where a person communicates or deals with information for the primary purpose of providing it to the Royal Commission and the person has a reasonable belief that the information was relevant to the Royal Commission’s inquiry”
 - a. A scenario: If an intelligence official removes a classified document from a secure facility with the intent of providing it to the Royal Commission - and determines to do so voluntarily without prior approval from their agency - under this Bill would they have an *immunity from prosecution* or they could still be charged but would have access to a defence?
 - b. How will you understand voluntary disclosure, does it include instances in which an official decides on their own and essentially in secret to provide information to the Royal Commission outside of an agency process?

As this question is directed at seeking an explanation of the intended operation of the Bill, the CDPP considers this question should be directed to the Attorney-General’s Department as the responsible policy agency for the Bill.

In case it assists the Committee, the CDPP confirms that in applying the Prosecution Policy of the Commonwealth to determine whether to prosecute a matter as outlined in the response to Question 2, the CDPP evaluates the strength of the case. This evaluation takes into account, amongst other factors, the availability of any exceptions, immunities and lines of defence available to the defendant. A consideration of the protections in proposed ss 6PD(2) and 6PE(2) of the Bill would be part of this exercise.

5. The new Section 6PD provides that a person’s disclosure to the Royal Commission has a use immunity for future court proceedings against them, but only where the disclosure is conducted in-line with the arrangements. Does this mean a voluntary disclosure made outside of arrangements would not have this use immunity in other proceedings?

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6. With regards to the concept of ‘reasonable belief’, the Bill provides protections for voluntary disclosure where the person has a ‘reasonable belief’ the information is relevant to the Royal Commission. How will you navigate and judge this concept of ‘reasonable belief’?

“Reasonable belief” is a legal concept that is established in Australian law. For instance s 9.2 of *Criminal Code 1995* (Cth) refers to “reasonable belief about those facts” in the context of the application of the principle of Mistake of Fact to strict liability offences. The CDPP will apply the existing jurisprudence on the concept of “reasonable belief” to the evidence that is available in any case that is referred to it.

7. Based on your understanding of the Bill, do you see key differences between how an intelligence official and a non-intelligence official interacts with secrecy offences?
 - a. Do you believe they have the same immunities?
 - b. If not, could it be the case that you may pursue prosecution of a non-intelligence official for a disclosure that had they been an intelligence official they would have had immunities?

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