



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

Legal Business Improvement
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23 June 2017

Ms Toni Matulick
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
PO Box 6100 - Parliament House
CANBERRA ACT 2600

Dear Madam,

Inquiry into the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017*

I refer to your letter dated 15 May 2017 addressed to the Director inviting submissions on this Bill.

Please find attached the CDPP submission.

If you wish to discuss this matter please contact Mr. Berdj Tchakerian of this office on

Yours faithfully,

Berdj Tchakerian
Assistant Director
Legal Business Improvement Unit



CDPP

Australia's Federal Prosecution Service

SUBMISSION BY THE COMMONWEALTH DPP

23 JUNE 2017

**Inquiry into the Crimes Legislation Amendment
(Powers, Offences and Other Measures) Bill 2017**

INTRODUCTION

1. The Office of the Commonwealth Director of Public Prosecutions ('CDPP') was established under the *Director of Public Prosecutions Act 1983* and is responsible for the prosecution of offences against the Commonwealth.
2. Cases typically prosecuted by the CDPP include drug importation, money laundering, offences against corporate law, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, sexual servitude and terrorism.

Schedule 4

3. Schedule 4 will increase the maximum penalty for breaches of the general dishonesty offences contained in section 135.1 of the *Criminal Code* from five years imprisonment to ten years imprisonment.
4. The CDPP strongly supports this proposed amendment and submits that the current five year maximum penalty is inconsistent with penalties for offences covering similar types of conduct, and has proved an insufficient penalty for a range of conduct that is most appropriately prosecuted under the section. The CDPP submits that increasing the maximum penalty will provide a sentencing judge with greater scope to address the full range of offending that can be captured and prosecuted under section 135.1.

5. The general dishonesty offences were inserted into the *Criminal Code* in 2001. Previously section 29D of the *Crimes Act 1914* contained the comparable offence of 'defrauding the Commonwealth' carrying a maximum penalty of 10 years' imprisonment.
6. A maximum penalty of 5 years' imprisonment is in contrast to other serious fraud offences in the *Criminal Code*, such as obtaining property by deception under section 134.1 and obtaining financial advantage by deception under section 134.2, which both carry maximum penalties of 10 years' imprisonment.
7. A maximum penalty of 5 years' imprisonment is also in contrast to the general dishonesty provision in section 1041G of the *Corporations Act* which carries a maximum penalty of 10 years' imprisonment. This provision prohibits a person who carries on a financial services business from engaging in dishonest conduct in relation to a financial product or financial service.
8. The CDPP's Guidelines on charging dishonesty offences under the *Criminal Code* provide that where alleged criminal conduct constitutes both an offence of obtaining property or financial advantage by deception and an offence of general dishonesty, ordinarily the appropriate course will be to charge the offence of obtaining.
9. However, charges of obtaining property or financial advantage by deception are not always available to the CDPP. For example, a fraudulent scheme might consist of numerous instances of obtaining property or financial advantage by deception each of which, when taken individually, may be relatively minor but when combined may amount to a significant fraud. In such cases it may not be possible to proceed, if the matter is to be contested, on charges for each instance of deception as to do so may overload the indictment, a course which courts generally do not allow on the basis of unfairness to an accused.
10. An alternative approach of laying representative charges of obtaining property or financial advantage by deception may also be inadequate to reflect the gravity and scope of the fraud.
11. There may also be cases where it is appropriate to pursue a charge of general dishonesty in preference for obtaining property or financial advantage charges because there is insufficient evidence to establish that property or a financial advantage was obtained as a result of a deception. In other instances where the benefit was obtained as a result of an omission, charges of obtaining property or financial advantage by deception may not be viable.
12. In each of the examples provided in paragraph 11 the monetary value of the offending might be large and the accused's criminality high, but if the only available charge is one of general dishonesty the sentencing judge will be limited to a maximum penalty of five years' imprisonment.
13. If the maximum penalty for general dishonesty offences is increased, it is proposed that the CDPP Guidelines referred to above will remain in place and prosecutors will still be directed to lay

charges of obtaining property or financial advantage by deception where such charges are open on the evidence and appropriate to the circumstances of the case.

14. Finally, the general structure of the *Criminal Code* is that persons who conspire to commit an offence face the same maximum penalty as persons who commit that substantive offence; see section 11.5(1) of the *Code*. It is anomalous that the offences in section 135.4 of conspiring with the intention of dishonestly obtaining a gain from or causing a loss to the Commonwealth, or conspiring with the intention of dishonestly influencing a Commonwealth public official, carry a maximum penalty of 10 years' imprisonment when the equivalent substantive offences in section 135.1 are punishable by five years' imprisonment. The CDPP submits that this is further justification for the proposed amendment.
15. Each of the conspiracy offences under section 135.4 carries a maximum penalty of 10 years' imprisonment. In the CDPP's submission it is an anomaly that a person who commits an offence under section 135.1 faces a lesser maximum penalty than a person who conspires to commit that same offence.

Schedule 7

16. Schedule 7 amends the *Crimes Act 1914* to permit the collection, use and disclosure of personal information for the purposes of preventing, detecting, investigating, or dealing with fraud or corruption against the Commonwealth, while maintaining appropriate safeguards to protect the privacy of individuals.
 17. The CDPP supports this proposed amendment on the basis that it will enable information to be provided across Commonwealth agencies to detect and deal with fraud and corruption, thereby enhancing the means available to the Commonwealth as a whole to combat such pernicious conduct.
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