

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO**

Program: Commonwealth Director of Public Prosecutions

Question No. AE17/055

Senator Pratt asked the following question at the hearing on 28 February 2017:

1. Please provide a breakdown of the numbers of prosecutions undertaken by the DPP in 2015-16 by offence.
2. Please provide a breakdown of the number of convictions secured by the DPP in 2015-16 by offence.
3. Section 12.3 of the Commonwealth Criminal Code provides that a company may be found to have committed an offence under certain provisions of the Code if it is proved that a corporate culture existed within the company that 'directed, encouraged, tolerated or led to non-compliance with the relevant provision' or which did not require compliance with the provision.
 - a) How many prosecutions has the DPP made using this corporate culture provision?

The answer to the honourable senator's question is as follows:

1 & 2: Prosecutions and convictions 2015-16

The CDPP dealt with a total of 3,029 defendants in the 2015-16 financial year. This includes not only convictions and findings of guilt but also matters resulting in acquittals, prosecutions which are discontinued in accordance with the *Prosecution Policy of the Commonwealth* based on evidentiary or public interest considerations or as part of a charge negotiation, as well as when there is a hung jury, matters where a warrant is issued as the defendant has absconded, and determinations that a defendant is unfit to be tried.

Table 1 details the Acts under which charges were dealt with (reported as Table 9 in the CDPP's 2015-16 Annual Report). A defendant can be charged and prosecuted for more than one offence. The majority of these charges were under the *Commonwealth Criminal Code*. Table 2 provides a further breakdown by offences under the Code (see Table B at <https://www.cdpp.gov.au/statistics/additional-tables>).

Table 1: Legislation under which charges were dealt with in 2015–16

Legislation	Summary (charges)	Indictable (charges)
<i>Airports (Control of On-Airport Activities) Regulations 1997</i>	6	0
<i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i>	9	45
<i>Australian Citizenship Act 2007</i>	11	0
<i>Australian Federal Police Act 1979</i>	1	2
<i>Australian Passports Act 2005</i>	25	4
<i>Aviation Transport Security Act 2004</i>	6	0
<i>Aviation Transport Security Regulations 2005</i>	15	0
<i>Bankruptcy Act 1966</i>	199	5
<i>Child Support (Registration and Collection) Act 1988</i>	40	0
<i>Civil Aviation Act 1988</i>	38	0

<i>Civil Aviation Regulations 1988</i>	67	0
<i>Civil Aviation Safety Regulations 1998</i>	6	0
<i>Commonwealth Electoral Act 1918</i>	26	0
<i>Competition and Consumer Act 2010</i>	3	0
<i>Copyright Act 1968</i>	185	7
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	18	0
<i>Corporations Act 2001</i>	41	137
<i>Crimes (Aviation) Act 1991</i>	37	3
<i>Crimes (Currency) Act 1981</i>	56	8
<i>Crimes (Foreign Incursions and Recruitment) Act 1978</i>	0	7
<i>Crimes Act 1914</i>	38	27
<i>Criminal Code (Cth)*</i>	3568	2281
<i>Customs Act 1901</i>	220	80
<i>Defence Act 1903</i>	1	0
<i>Defence Force Regulations 1952</i>	3	0
<i>Environment Protection (Sea Dumping) Act 1981</i>	1	0
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	45	66
<i>Environment Protection and Biodiversity Conservation Regulations 2000</i>	24	0
<i>Excise Act 1901</i>	0	2
<i>Financial Management and Accountability Act 1997</i>	0	3
<i>Financial Transaction Reports Act 1988</i>	8	13
<i>Fisheries Management Act 1991</i>	129	0
<i>Foreign Passports (Law Enforcement and Security) Act 2005</i>	5	1
<i>Great Barrier Reef Marine Park Act 1975</i>	42	0
<i>Great Barrier Reef Marine Park Regulations 1983</i>	22	0
<i>Health Insurance Act 1973</i>	117	14
<i>Marine Safety (Domestic Commercial Vessel) National Law Act 2012</i>	4	0
<i>Marriage Act 1961</i>	6	1
<i>Migration Act 1958</i>	42	176
<i>National Consumer Credit Protection Act 2009</i>	8	0
<i>National Measurement Act 1960</i>	1	0
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>	9	0
<i>Passports Act 1938</i>	10	0
<i>Primary Industries Levies and Charges Collection Act 1991</i>	3	0
<i>Proceeds of Crime Act 1987</i>	0	1
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	3	0
<i>Public Order (Protection of Persons and Property) Act 1971</i>	14	0

<i>Quarantine Act 1908</i>	15	22
<i>Radiocommunications Act 1992</i>	3	4
<i>Royal Commissions Act 1902</i>	0	5
<i>Social Security (Administration) Act 1999</i>	172	0
<i>Social Security Act 1991</i>	4	0
<i>Taxation Administration Act 1953</i>	714	131
<i>Telecommunications (Interception and Access) Act 1979</i>	0	2
<i>Therapeutic Goods Act 1989</i>	48	0
<i>Torres Strait Fisheries Act 1984</i>	15	0
<i>Trade Marks Act 1995</i>	8	0
<i>Work Health and Safety Act 2011</i>	3	0
Non-Commonwealth legislation	264	421
Total*	6,358	3,468

*Note: there is a minor adjustment in the charges dealt with under the Criminal Code and subsequently the total charges dealt with, from the table published in the Annual Report due to data correction.

Table 2. Charges Dealt With Summarily and on Indictment - (Commonwealth Criminal Code 1995) 1 July 2015 to 30 June 2016 (data as at 27/07/2016)

Sections	Description	Summary Charges	Indictable Charges
Part 2.7 - Geographical jurisdiction		1	0
73.1(1)	People smuggling	1	0
Part 5.3 - Terrorism		0	6
101.4(1)	Possessing things connected with terrorist acts	0	1
101.6(1)	Other acts done in preparation for, or planning terrorist acts	0	2
104.27	Contravening a control order	0	3
Part 7.2 - Theft and Other property offences		33	15
131.1(1)	Theft of Commonwealth property	33	15
Part 7.3 - Fraudulent conduct		2821	898
134.1(1)	Obtaining Commonwealth property by deception	0	18
134.2(1)	Obtaining a financial advantage by deception	130	507
135.1(1)	Dishonestly intending to obtain a gain	40	6
135.1(3)	Dishonestly intending to cause a loss	32	28
135.1(5)	Dishonestly causing a loss or risk of loss	6	14
135.1(7)	Dishonestly intending to influence a Commonwealth public official	8	318
135.2(1)	Obtains financial advantage from a Commonwealth entity	2592	1
135.2(2)	Obtaining a financial advantage	8	0

	for another person		
135.4(1)	Conspiracy with intent to obtain a gain	4	1
135.4(3)	Conspiracy to defraud	1	1
135.4(5)	Conspires with another person to cause a loss or risk of loss	0	1
135.4(7)	Conspire to dishonestly influence Commonwealth official	0	3
Part 7.4 - False or misleading statements		165	2
136.1(1)	Make false or misleading statement in applications	135	1
136.1(4)	False or misleading statements (recklessness)	1	0
137.1(1)	False or misleading information	19	0
137.2(1)	False or misleading documents	10	1
Part 7.6 - Bribery and related offences		2	12
141.1(3)	Receiving a bribe by a Commonwealth public official	0	4
142.1(1)	Giving a corrupting benefit	0	1
142.2(1)	Abuse of public office	2	7
Part 7.7 - Forgery and related offences		21	55
144.1(1)	Making forged document with intention that is accepted as genuine by Commonwealth public official	1	0
144.1(5)	Making forged Commonwealth document with intention it is accepted as genuine by a third person	2	0
145.1(1)	Using forged document with intention that is accepted as genuine by Commonwealth public official	12	41
145.1(5)	Using forged Commonwealth document with intention that is accepted as genuine by a third person	4	14
145.4(1)	Falsification of Commonwealth documents etc.	1	0
145.4(2)	Falsification of documents with intention	1	0
Part 7.8 - Causing harm to, and impersonation and obstruction of, Commonwealth public officials		44	5
147.1(1)	Cause harm to Commonwealth official etc.	19	2
147.2(1)	Threatening to cause serious harm to a Commonwealth public official	4	1

147.2(2)	Threatening to cause harm	2	1
148.1(2)	False representation of being a public official	4	0
149.1(1)	Obstruction of Commonwealth public officials	15	1
Chapter 8 - Offences against humanity and related offences		0	35
271.2(1B)	Organises or facilitates entry of a person and is reckless to whether the person is exploited after	0	12
271.4(1)	Organising/facilitating entry into Australia of another person under 18 to provide sexual services	0	2
272.8(1)	Engaging in sexual intercourse with child outside Australia	0	3
272.9(1)	Engaging in sexual activity (other than sexual intercourse) with child outside Australia	0	3
272.9(2)	Engaging in conduct causing child to engage in sexual activity in the presence of that person	0	3
272.10(1)	Child with mental impairment or under care, supervision or authority - aggravated offence	0	1
272.11(1)(a)	Persistent sexual abuse of child outside Australia under subsection 272.8(1)	0	1
272.14(1)	Procuring child to engage in sexual activity outside Australia	0	2
272.18(1)	Benefiting from sexual offences against children outside Australia	0	1
272.19(1)	Encouraging offence against this Division	0	2
273.5(1)(a)(i)	Possessing or controlling child pornography material outside Australia	0	5
Part 9.1 - Serious drug offences		46	497
302.2(1)	Trafficking commercial quantities of controlled drugs	0	31
302.3(1)	Trafficking marketable quantities of controlled drugs	0	10
302.4(1)	Trafficking controlled drugs	2	8
305.4(1)	Manufacturing marketable quantities of controlled drugs	0	4
307.1(1)	Importing or exporting commercial quantities of border controlled drugs or border controlled plants	0	112
307.2(1)	Importing or exporting marketable	1	134

	quantities of border controlled drugs or border controlled plants		
307.3(1)	Importing or exporting border controlled drugs or border controlled plants	12	21
307.4(1)	Importing or exporting border controlled drug or plants, no commercial intent	16	1
307.5(1)	Possess commercial quantity unlawfully imported border controlled drug or plants	0	51
307.6(1)	Possessing marketable quantities of unlawfully imported border controlled drugs or plants	0	34
307.7(1)	Possessing unlawfully imported border controlled drugs or border controlled plants	1	4
307.8(1)	Possessing commercial quantities of border controlled drugs/plants, suspected unlawful importation	0	5
307.9(1)	Possessing marketable border controlled drugs or plants suspected of having been unlawfully imported	0	9
307.10(1)	Possessing border controlled drugs or border controlled plants suspected of being illegally imported	1	0
307.11(1)	Importing and exporting commercial quantities of border controlled precursors	0	14
307.12(1)	Importing and exporting marketable quantities of border controlled precursors	0	37
307.13(1)	Importing and exporting border controlled precursors	0	4
308.1(1)	Possessing controlled drugs	13	14
308.4(1)	Possessing substance, equipment or instructions for commercial manufacture of controlled drugs	0	4
Part 9.5 – Identity crime		35	84
372.1(1)	Dealing in identification information and using to pretend to be or pass of as another person	0	5
372.2(1)	Possesses identification information with intent to use the information to engage in conduct	1	79
376.2(1)	Using false identification information at Constitutional	14	0

	airport		
376.3(1)	Using a carriage service with false information to obtain air passenger ticket	2	0
376.3(2)	Carriage Service Offence - taking a flight using an air passenger ticket	5	0
376.4(1)	Using false information to obtain an air passenger ticket to take a constitutional flight	8	0
376.4(2)	Taking a constitutional flight using an air passenger ticket obtained using false information	5	0
Part 10.2 - Money laundering		56	92
400.3(1)	Dealing in proceeds of crime etc. - money or property worth \$1,000,000 or more: intends/believes	0	6
400.3(2)	Dealing in proceeds of crime etc. - money or property worth \$1,000,000 or more: reckless	0	2
400.4(1)	Dealing in proceeds of crime etc. - money or property worth \$100,000 or more: intends/believes	1	13
400.4(2)	Dealing in proceeds of crime etc. - money or property worth \$100,000 or more: reckless	0	3
400.4(3)	Dealing in proceeds of crime etc. - money or property worth \$100,000 or more: negligence	0	1
400.5(1)	Dealing in proceeds of crime etc. - money or property worth \$50,000 or more: intends/believes	0	9
400.5(2)	Dealing in proceeds of crime etc. - money or property worth \$50,000 or more: reckless	0	2
400.6(1)	Dealing in proceeds of crime etc. - money or property worth \$10,000 or more: intends/believes	14	2
400.6(2)	Dealing in proceeds of crime etc. - money or property worth \$10,000 or more: reckless	3	2
400.7(1)	Dealing in proceeds of crime etc. - money or property worth \$1,000 or more: intends/believes	4	1
400.9(1)	Dealing with money or other property reasonably suspected of being proceeds of crime worth	11	45

	\$100,000+		
400.9(1A)	Dealing with money or other property reasonably suspected of being proceeds of crime under \$100,000	23	6
Part 10.5 - Postal services		46	4
471.1(1)	Theft of mail receptacles, articles or postal messages	40	3
471.11(1)	Use postal service to make threat to kill	0	1
471.12	Using a postal service to menace/harass/cause offence	6	0
Part 10.6 - Telecommunications services		170	544
474.14(1)	Using a telecommunications network with intention to commit a serious offence	1	1
474.15(1)	Using a carriage service to make a threat to kill	7	1
474.15(2)	Use carriage service to threaten serious harm	3	2
474.16	Using a carriage service for a hoax threat	3	0
474.17(1)	Use carriage service to menace, harass or cause offence	114	31
474.18(1)	Improper use of emergency call service	19	0
474.18(2)	Vexatious call to emergency service number	10	6
474.19	Use a carriage service to access child pornography material	9	301
474.20(1)(a)(i)	Possess or control child pornography material for use through a carriage service	0	4
474.20(1)(a)(ii)	Produce, supply or obtain child pornography material for use through a carriage service	0	4
474.22(1)(a)(i)	Using a carriage service to access child abuse material	0	4
474.22(1)(a)(iii)-N	Using carriage service to transmit, make avail, publish or distribute child abuse material (post 14/04/2010)	0	1
474.23(1)	Possessing etc. child abuse material for use through a carriage service	0	2
474.24A(1)	Aggravated offence-offence involving conduct on 3 or more occasions and 2 or more people	0	2
474.25A(1)	Engaging in sexual activity with	0	14

	child using a carriage service		
474.26(1)	Use carriage service to procure person under 16 years of age	0	61
474.27(1)	Use carriage service to 'groom' person under 16 years of age	0	38
474.27A(1)	Using a carriage service to transmit indecent communication to person under 16 years of age	4	72
Part 10.7 - Computer offences		94	32
477.1(1)(a)(i)	Causing any unauthorised access to data held in a computer	1	3
477.1(4)	Intention to commit serious Commonwealth offence	0	2
477.2(1)	Unauthorised modification of data to cause impairment	0	7
477.3(1)	Unauthorised impairment of electronic communication	0	1
478.1(1)	Unauthorised access to, or modification of, restricted data	93	19
Part 10.8 - Financial information offences		34	0
480.4	Dishonestly obtain or deal in personal financial information	34	0
Total		3568	2281

In the 2015-16 financial year, there were a total of 2,403 defendants convicted, representing a 97% conviction rate.

The CDPP calculates conviction rates by taking the number of defendants convicted as a percentage of defendants convicted or acquitted (2,473). The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

3& 3a. The CDPP was asked a similar question by the Senate Economics References Committee enquiring into criminal, civil and administrative penalties for white-collar crime on 6 December 2016. Mr Shane Kirne, Practice Group Leader of the Commercial, Financial and Corruption Practice Group, advised the Committee that he was aware of one matter where s.12.3 was considered and that he was not aware of any matters that have proceeded to trial where the prosecution relied upon the corporate criminal responsibility provisions in the Criminal Code.