



DPP

Commonwealth Director of Public Prosecutions

SUBMISSION BY THE COMMONWEALTH DPP

THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE *CRIMES LEGISLATION AMENDMENT (SERIOUS DRUGS, IDENTITY CRIME AND OTHER MEASURES) BILL 2012*

Introduction

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is responsible for the prosecution of criminal offences against the laws of the Commonwealth. The CDPP can only prosecute when there has been an investigation by an investigation agency. The CDPP does not have an investigative function. The Office prosecutes matters investigated by the Australian Federal Police or other investigative agencies.

The CDPP is responsible for the prosecution of serious drug offences under Part 9.1 of the *Criminal Code* (the Code), and identity crime offences under Part 9.5 of the Code. These offences are referred to the CDPP by investigation agencies, such as the AFP.

Amendments to the Criminal Code

The *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012* (the Bill) amends the Code by moving the lists of substances to which the Commonwealth's serious drug offences apply to regulations, improving emergency determination mechanisms and establishing and refining criteria for listing substances. The CDPP sees benefit in these amendments which will ensure the Commonwealth's serious drug offences framework remains up to date and is better able to respond to new and emerging substances.

The Bill also broadens existing identity crime provisions in Part 9.5 of the Code and creates new offences and powers relating to air travel and the use of false identities. The Committee may be assisted in their consideration of these proposed offences by the following breakdowns of the proposed offences into their physical and fault elements, as provided for in Part 2.2 of Chapter 2 of the Code.

Section 372.1A – Dealing in identification information that involves the use of a carriage service

Subsection 1 – Dealing in identification information using a carriage service

(a) D deals in identification information (conduct)

Fault: intending that any person (the user) (whether or not D) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of committing an offence; or facilitating the commission of an offence (the "intended offence"). (s372.1A(1)(c) of the Code)

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(b) D does so using a carriage service

Fault: absolute liability (s372.1A(2) of the Code)

(c) The intended offence is an indictable offence against a law of the Commonwealth, or a law of a State or Territory or a foreign indictable offence. (circumstance)

Fault: absolute liability (s372.1A(2) of the Code)

Subsection 3 – Dealing in identification information obtained using a carriage service

(a) D obtains identification information (conduct)

Fault: intention (s5.6 of the Code)

(b) D deals in the identification information (conduct)

Fault: intention that any person (the user) (whether or not D) will use the identification information to pretend to be, or to pass the user off as, another person (whether living, dead, real or fictitious) for the purpose of committing an offence; or facilitating the commission of an offence. (s372.1A(3)(d) of the Code)

(c) D does so using a carriage service (circumstance)

Fault: absolute liability (s372.1A(4) of the Code)

(d) The intended offence is an indictable offence against a law of the Commonwealth, or a law of a State or Territory or a foreign indictable offence. (circumstance)

Fault: absolute liability (s372.1A(4) of the Code)

Section 376.2 – False identification information – at constitutional airports

(a) D uses information at a place (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the information is used to identify D as a passenger on a flight. (s376.2(1)(b) of the Code)

(b) The information is identification information (circumstance)

Fault: recklessness (s5.6 of the Code)

(c) The information is false in relation to the defendant (circumstance)

Fault: recklessness (s5.6 of the Code)

(d) The place is a constitutional airport (circumstance)

Fault: absolute liability (s376.2(2) of the Code)

Section 376.3 – False identification information – air passenger tickets obtained using a carriage service

Subsection 1 – Carriage service offence – using information to obtain an air passenger ticket

- (a) D uses information (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the information is used to identify D, or another person, as a passenger on a flight. (s376.3(1)(ii) of the Code)

- (b) As a result, an air passenger ticket for a flight is obtained (whether by the defendant or another person) (result of conduct)

Fault: recklessness (s5.6 of the Code)

- (c) The information is identification information (circumstance)

Fault: recklessness (s5.6 of the Code)

- (d) The information is false in relation to the person who takes, or intends to take, the flight using the ticket (circumstance)

Fault: recklessness (s5.6 of the Code)

- (e) A carriage service is used (whether by the defendant or another person) to obtain the ticket (circumstance)

Fault: absolute liability (s376.3(4) of the Code)

- (f) The flight starts or ends within Australia (circumstance)

Fault: absolute liability (s376.3(4) of the Code)

Subsection 2 – Carriage service offence – taking a flight using an air passenger ticket

- (a) D takes a flight using an air passenger ticket (conduct)

Fault: intention (s5.6 of the Code)

- (b) Identification information was used by D to obtain the ticket (conduct)

Fault: intention (s5.6 of the Code)

OR

Identification information was used by another person to obtain the ticket (circumstance)

Fault: recklessness (s5.6 of the Code)

- (c) The information resulted in the identification of a person as a passenger on the flight (result of conduct)

Fault: recklessness (s5.6 of the Code)

- (d) The information is false in relation to D (circumstance)

Fault: recklessness (s5.6 of the Code)

- (e) A carriage service is used (whether by the defendant or another person) to obtain the ticket (circumstance)

Fault: absolute liability (s376.3(4) of the Code)

- (f) The flight starts or ends within Australia (circumstance)

Fault: absolute liability (s376.3(4) of the Code)

Section 376.4 – False identification information – air passenger tickets for constitutional flights

Subsection 1 – Constitutional flight offence – using information to obtain an air passenger ticket

- (a) D uses information (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the information is used to identify D, or another person, as a passenger on a flight. (s376.4(1)(b)(ii) of the Code)

- (b) As a result, an air passenger ticket for a flight is obtained (whether by the defendant or another person) (result of conduct)

Fault: recklessness (s5.6 of the Code)

- (c) The information is identification information (circumstance)

Fault: recklessness (s5.6 of the Code)

- (d) The information is false in relation to the person who takes, or intends to take, the flight using the ticket (circumstance)

Fault: recklessness (s5.6 of the Code)

- (e) The flight is a constitutional flight (circumstance)

Fault: absolute liability (s376.4(3) of the Code)

Subsection 2 – Constitutional flight offence – taking a flight using an air passenger ticket

- (a) D takes a flight using an air passenger ticket (conduct)

Fault: intention (s5.6 of the Code)

- (b) Identification information was used by D to obtain the ticket (conduct)

Fault: intention (s5.6 of the Code)

OR

Identification information was used by another person to obtain the ticket
(circumstance)

Fault: recklessness (s5.6 of the Code)

- (c) The information resulted in the identification of a person as a passenger on the flight
(circumstance)

Fault: recklessness (s5.6 of the Code)

- (d) The information is false in relation to D (circumstance)

Fault: recklessness (s5.6 of the Code)

- (e) The flight is a constitutional flight (circumstance)

Fault: absolute liability (s376.4(3) of the Code)