



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Committee report:

*Crimes Legislation Amendment (Combatting Corporate Crime) Bill
2017*

FEBRUARY 2021

Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report

Inquiry into the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017

The Government thanks the Committee for its consideration of the provisions of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017 (the bill).

The bill lapsed with the dissolution of parliament in May 2019. A substantially similar bill was introduced into the Senate in December 2019, titled the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019.

The Government provides the following responses to the Committee's recommendations.

Recommendation 1:

The committee recommends that as part of the public consultation on the minister's guidance that is to be issued on adequate procedures, the government consider publishing an exposure draft which allows corporate stakeholders a four week period to provide comment.

Response:

The Government agrees with the recommendation and notes that the Government published the draft guidance on adequate procedures to prevent the commission of foreign bribery (draft guidance) on 2 December 2019 and sought feedback and comments from stakeholders by 28 February 2020. The Government will consider all submissions received through the consultation process before finalising the guidance.

Recommendation 2:

The committee recommends that the government include internal corporate whistleblowing systems as part of any recommended adequate procedures designed to prevent foreign bribery by its associates.

Response:

The Government agrees with the recommendation and notes that the draft guidance states that secure channels for whistleblower reporting is a fundamental element of bribery prevention policies. The draft guidance provides information about the features of effective reporting and investigation mechanisms to assist corporations in implementing and achieving robust whistle-blowing systems.

Recommendation 3:

The committee recommends that as part of the public consultation on the draft Deferred Prosecution Agreement Code of Practice, the government consider publishing an exposure draft which allows corporate stakeholders a four week period to provide comment.

Response:

The Government agrees with the recommendation and notes that the Government published the draft Deferred Prosecution Agreement Code of Practice on 8 June 2018 and sought feedback and comments from stakeholders by 9 July 2018. The Government will consider all submissions received through the consultation process before finalising the Deferred Prosecution Agreement Code of Practice.

Recommendation 4:

The committee recommends that the bill be passed.

Response:

The Government agrees with the recommendation and notes that the 2019 bill is currently before the Senate.

Response to Additional Comments from Senator Rex Patrick

The Government notes that Senator Rex Patrick supported Recommendations 1, 2 and 3 of the Committee's recommendations and made the following recommendations in his Additional Comments.

Recommendation 1:

That the bill be amended to remove the discretion to not publish a DPA.

Response:

The Government does not accept the recommendation. The circumstances of each deferred prosecution agreement (DPA) are likely to differ significantly depending on the circumstances of the case. Accordingly, while the bill would establish a presumption in favour of publication (per proposed subsection 17D(7) of the *Director of Public Prosecutions Act 1983*), it is appropriate that the Commonwealth Director of Public Prosecutions (CDPP) be able to exercise discretion in circumstances where publication is not in the interests of justice. For example, it may not be in the interests of justice to publish a DPA if publication could prejudice a related prosecution.

However, to strengthen the transparency of the DPA scheme, the Government will look to introduce amendments to the bill to require the CDPP to obtain the agreement of the approving officer whenever the CDPP chooses to not publish all or part of a DPA. In effect, the CDPP will only be permitted to exercise its discretion to not publish all or part of a DPA if the approving officer is also satisfied that it would be in the interests of justice to do so.

Recommendation 2:

That the bill be amended to include a minimum disclosure standard for all DPAs.

Response:

The Government does not accept the recommendation. The bill would require the CDPP to publish an approved DPA, unless it would not be in the interests of justice to do so. The Government considers it appropriate that the CDPP be given this discretion under the DPA scheme with respect to this matter.

The Government will look to introduce amendments to the bill to require the approving officer to provide reasons for their approval to the CDPP and the corporation, and, if the DPA is approved, require the CDPP to publish the approving officer's reasons for approving the DPA on the CDPP's website within 10 business days unless it would not be in the interests of justice to do so. This will allow members of the public to access and scrutinise the reasons why a DPA has been approved.

Further recommendation 2:

With regard to Recommendation 2, I make a further recommendation that the Government adopt the recommendations contained in my Dissenting Report to the inquiry into the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

Response:

The Government responded to those recommendations in March 2019 in its response to the Senate Economics Legislation Committee report on the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017.

Recommendation 3:

In circumstances where a DPA has not been published in full because of concerns that it is not in the interests of justice to do so, full publication of the DPA must occur once this concern is no longer present.

Response:

The Government agrees in principle with this recommendation. The bill contains provisions which make clear that the CDPP may publish a DPA that had previously not been published, or not published in full once the grounds that previously prevented publication no longer exist.

The Government will look to introduce amendments to the bill to ensure the provisions in the bill are consistent with this expectation in favour of full publication. These amendments will provide that if, at a later stage, there are no longer any grounds for not publishing the full version of the DPA, it will be open to the CDPP to proceed with publication of the full version and the CDPP will not be required to satisfy a separate requirement that publication must be in the interests of justice. If, at that later stage, the CDPP wishes to publish a redacted version of the DPA, the agreement of the approving officer must be obtained, and the redactions must be in the interests of justice.

