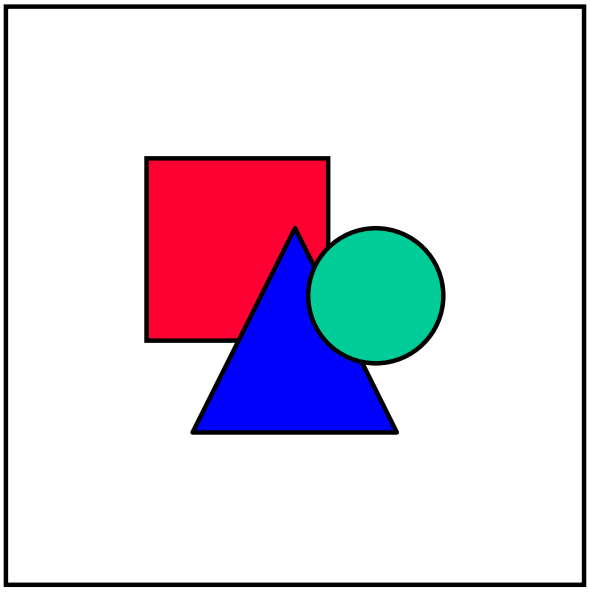

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Ms Catherine Cornish
Acting Secretary
House of Representatives
Standing Committee on Legal
and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Cornish

CRIMINAL CODE AMENDMENT (THEFT, FRAUD, BRIBERY AND RELATED OFFENCES) BILL - SUBMISSION

Thank you for your invitation to the Secretary of this Department to make a submission to the inquiry on the Bill. I am replying on behalf of the Secretary.

2. The rationale for and explanation of the various provisions in the Bill is detailed in the Explanatory Memorandum. This submission avoids repeating matters already covered in the Explanatory Memorandum but will supplement it in relation to issues about which members of the Standing Committee have expressed an interest. The Department would be grateful for an opportunity to make a final submission following the public hearings of the Standing Committee on 15 and 22 May 2000.

3. The Bill is an important part of the Government's law reform program. The *Crimes Act 1914* offences have been recognised as being out of date and requiring reform for over a decade. The Department has therefore devoted resources to developing new offences which will improve upon those that already exist and, provide the basis for a rationalisation of Commonwealth offences and achieve consistency with State and Territory offences. It is for these reasons that successive Governments have participated in development of the Model Criminal Code which is the basis of most offences contained in the Bill. The Model Criminal Code offences were developed in cooperation with State and Territory criminal law advisers and after public consultation.

4. The first stage of the Commonwealth *Criminal Code*, the general principles of criminal responsibility, was passed in 1995 and the remaining stages are being developed on a progressive basis. During 1999 offences in relation to slavery and sexual servitude and the bribery of foreign public officials were added to the *Criminal Code.* The Bill proposes the addition of a full range of offences which, if passed, will represent the most substantial step forward towards the completion of the Commonwealth *Criminal Code.* At the same time it will also represent a major step forward in the development of the Model Criminal Code and national consistency. The description of the chapters of the Commonwealth *Criminal Code* varies due to differing criminal jurisdictions between the States and Territories, with additional offences in some cases but all key offences are consistent with the model. **Annex A** contains an indicative outline of the proposed chapters and content of the Commonwealth *Criminal Code.*

5. I shall now address some of the issues which I understand the Standing Committee would like more information.

Overlapping serious and less serious offences

6. Unlike many central criminal statutes the Bill collects together serious and less serious offences in the one chapter. This has enabled the Government to significantly reduce duplication and repeal over 250 offences scattered throughout the Commonwealth statute book. Many of the offences to be repealed are concerned with making misleading statements or providing incorrect information in anti-fraud measures. Often the conduct amounts to fraud but the nature of the misleading statement and the money involved is so small that it is considered more reasonable and efficient to prosecute the defendant for a lesser offence (like proposed clause 136.1) rather than fraud (clause 134.2). The lesser offence can be dealt with in the lower courts and the penalty range (maximum penalty of 12 months imprisonment) is also appropriate. Much the same occurs with other lesser offences such as clauses 132.6, 132.8 and 135.2. Options of this nature have always existed under Commonwealth and State laws - the Bill simply makes it more transparent and through consistent drafting provides for a very clear outline of the relationship between serious and less serious offences.

7. It is submitted that a range of offences is necessary. The given offences cover a wider range of conduct which requires sanctions if public assets and revenue are to be adequately protected. However, this conduct will overlap with fraud or theft which have additional

elements that must and should be proved the higher penalties and stigma attaching to more serious dishonesty offences. Concerns about unfairness in the charging of these offences are dealt with by the attached general prosecution guidelines and those which apply to the charging of certain social security offences (paragraphs 2.18-2.24 and 6.13). The focus on the use of appropriate charges in the Commonwealth prosecution guidelines was commended at the recent conference on the Reform of Criminal Trial Procedure. Upon the enactment of the Bill the guidelines will need to be revised to recognise that more of the lesser offences will now be in the *Criminal Code* (though there is overlapping in the existing central statute between the offences at sections 29A, 29B and 29D of *the Crimes Act 1914*). Considerations covered in the current guidelines are sound and the approach taken in them can be continued with the new offences. The guidelines and comments about them at the Reform of Criminal Trial Procedure conference are at **Annex B**.

Receiving (clause 132.1 Bill)

8. Receiving is a property related offence - so is theft and property fraud (clauses 131.1 and 134.1). Theft is about dishonestly assuming the rights of an owner without their consent - property does not pass to the person assuming those rights. Property fraud is about dishonestly tricking the owner to pass ownership of the property to another. Although these offences focus on property consultation on the Model Criminal Code strongly favour at having a separate offence of receiving primarily because of community recognition of it as being something different from theft and fraud. It follows that the offence should apply to people who receive property from both thieves and fraudsters.

9. Section 16.8 of the Model Criminal Code simplifies the offence of receiving and as noted at para 127 of the Explanatory Memorandum, clause 132.1 of the Bill is designed to simplify and clarify the offence a step further. The Standing Committee will need to make a judgment about whether the further simplification is appropriate. In doing this I do not wish to overstate the importance of receiving. The existing Commonwealth receiving offence is used rarely (once each year), and the issue described below is very much at the margins.

10. The approach taken in the Bill recognises that in most cases where there is a series of receivers the first receiver will be a thief. This is because in most cases the person would have simply assumed the rights of the owner and not tricked the person into passing ownership of the property. Recognising this the Bill relies on subsequent receivers being charged as receivers on the basis that the previous receiver is also a thief. It is an attempt to save the prosecutor from having to prove a trail of receiving.

11. However, where the original offender obtained the property by fraud (by a dishonest trick) it will only be the first receiver who gets caught by the offence. As opposed to where there is a theft, subsequent receivers would not be caught by this offence if the original offence is property fraud (clause 134.1) even if they know the circumstances of that fraud. It should be noted that the cases where the offence will not apply are limited to those where the defendant has received property from a person who owns it and who did not obtain it by

deception. While this would be a very rare event, it is something that the Standing Committee needs to consider.

12. Paragraph 16.8(2)(c) of the Model Criminal Code is intended to cover both situations - it refers to the proceeds of stolen property in the custody of a person who obtains the stolen property. Clause 132.1 is an improvement on the drafting of 16.8(2) in that it uses definitions which assist the reader to understand the different types of property which are covered by the offence - it refers to 'stolen property', 'original stolen property' and 'tainted property'. The drafting approach taken in clause 132.1 is something that should continue to be pursued - the provision can be redrafted to give the provision wider coverage if that is the Standing Committee's wish. However, a complete return to 16.8(2) would be unfortunate.
The Model Criminal Code is not perceived by its authors or Governments as being so sacrosanct that it cannot be improved upon. The aim is to follow its general framework and to feed back to the Standing Committee of Attorneys-General any improvements that flow from the Parliamentary process.

General dishonesty offence (clause 135.1)

13. The reasons for the proposed offence are explained at page 55 of the Explanatory Memorandum. The offence which it replaces, section 29D of the *Crimes Act 1914*, was developed in response to the 'bottom of the harbour' taxation cases on the recommendation of the Special Crown Prosecutor, Roger Gyles QC in his 1982/1983 annual report (extract at **Annex C**). His report noted that without a general dishonesty offence ("defrauding the revenue simplicitor") law enforcement was being forced to charge conspiracy to defraud which was an unnecessarily complex process. The 'bottom of the harbour' schemes involved defendants buying a profitable company with a large tax liability and, through a series of transactions, taking cash out of the company, leaving it with the tax liability but in the hands of people with no assets. It was possible to receive the taxation benefits of these schemes without deceiving the Commonwealth. While a number of measures have since been taken to prevent transactions of that nature, the reasons for having such an offence remain much the same. There are concerns that it may be possible for people to develop schemes that can be used to defraud the Commonwealth of taxation revenue without engaging in an act of deception. The other serious fraud offences require proof of deception (see clauses 134.1 and 134.2). It is also possible that some will devise other schemes not limited to taxation that defraud the Commonwealth in much the same way.

14. While the 1995 Model Criminal Code Officers Committee report recommended that there be no general dishonesty offence they did concede at p.171 that "..in this area of the criminal law, there are special problems (which may be peculiar to a particular jurisdiction) that may justify creation of special offences of a general nature." In their 1997 report on Conspiracy to Defraud (**Annex D**), after discussing the various gaps usually cited in favour of retaining the offence, the Committee concluded at p.27:

> "On balance, MCCOC concludes that the arguments for retaining conspiracy to defraud are more persuasive. Although this decision leaves open the criticism that the

same conduct concerned would not be criminal if committed by an individual, the Committee concludes that the long history of the offence and its recent use in significant cases shows its importance. At the end of the day, it may not be that conspiracy to defraud is justified on the basis of gaps in the existing law (all of which could be addressed by specific legislation) but on the basis that human ingenuity is such that there is a need to have an offence which can be used in relation to newly devised gaps. Addressing them with specific legislation after the event may be too late."

15. The general dishonesty and conspiracy to defraud offences (clauses 135.1 and 136.1) have the same elements except that the latter must involve a conspiracy. It follows that if there is reluctance in the 1997 Report to abolish the offence of conspiracy to defraud because of concerns about human ingenuity, then the same is true about the general dishonesty offence. In addition to this, the Commonwealth is particularly vulnerable to the development of dishonest but ingenious schemes because of its national revenue collection and distribution functions. There will always be circumstances where the level of payments, whether they are to the Commonwealth or made by it, will depend on the disclosure of new circumstances not known to the administering officials. In such cases the level of payment can be incorrect without there being an active deception on the part of anyone. The approach taken in the Bill is therefore also consistent with the qualifications given to the recommendation in the 1995 Report.

16. In addition to the concern about proving deception, there are also situations with the fraud offences (clauses 134.1 and 134.2) to prove that some property or financial advantage was obtained from the Commonwealth where it may be difficult. Note that under subclause 135.1(3) it is sufficient to prove a loss or at subclause 135.1(7) dishonestly influencing a public official. Sometimes the loss of revenue for the Commonwealth may be achieved by sophisticated methods of asset stripping - while a loss was caused to the Commonwealth it is difficult to show that an advantage was obtained from the Commonwealth. In other cases the financial advantage may be remote (for example, the grant of residential status) and therefore appropriately dealt with under subclause 135.1(7). These types of offences can be committed by individuals on their own. It is not logical to make it a crime if there is an agreement to do these things with someone else but not if there is no agreement.

17. The point made by the Special Crown Prosecutor is quite obvious when one examines the main conspiracy to defraud cases. In each of them the same activity could have occurred as a result of the dishonesty of one person rather than with the dishonest assistance of others:

- ***Scott v Metropolitan Commissioner of Police*** **[1975] AC 819**

  The defendant paid employees of a cinema to lend him films, without the knowledge of the owners of the cinema, in order that he could make copies which he later distributed commercially. The defendant could have easily been getting the films from the employees without their having any idea of or caring about what he was doing with them. (They could have assumed that he was simply watching them for

personal pleasure.) If the employees were ignorant, the defendant would have been just as dishonest, causing losses to the cinema and at the same time he could not have been shown to have obtained financial advantage by deception.

- ***Wai Yu-Tsang*** **[1992] 1 AC 269**

  The defendant, a chief accountant at a bank, in conjunction with the managing director of the bank and others, concealed in the bank's accounts dishonoured cheques payable to the bank. The public accounts were misleading and the true position was only recorded in private ledgers. The defendant said he had only done this to prevent junior employees from finding out the true position and causing a run on the bank. He believed that subsequent balancing transactions were genuine and that he was acting for the good of the bank. He was charged and convicted of conspiracy to defraud the bank, existing and potential shareholders, creditors and depositors. He was convicted because it was held he was dishonest and had imperilled the economic rights of the victims. It is quite possible that as chief accountant the defendant could have concealed the accounts without the assistance of others. He would not have been convicted of fraud because although he was dishonest, he had not obtained any financial advantage by his conduct. However he risked enormous losses to others.

- ***Adams*** **[1995] AC 52**

  The defendant was the deputy chairman of a company. He and some others formed a small 'investment group' within the company. They established an elaborate loop of companies controlled by them to conceal the movement of money from the company to themselves. One transaction involved the group buying large numbers of shares in another company owned by the company and later selling them back to the company at a profit. Questions were raised about the dealing in the shares at a board meeting of the company but those in the group did not reveal that they had been trading in the shares. The court held that they had a duty as directors to disclose their dealings and were therefore dishonest. Again, while it may have been more difficult to achieve, there is no reason why a devious deputy chairman of a company with an apathetic board could not have done the same thing on his own.

- ***Eade*** **(1984) 14 A Crim R 186**

  The defendant agreed with another person to 'fix' a greyhound race by installing a device which would discharge ammonia into the starting boxes of all the dogs except the favourite. The defendant was convicted of conspiracy to defraud persons having an interest in the outcome of the race. The defendant's conduct could not be classified as fraud because the court recognised there would be no actual obtaining money by deception. It was because a certain dog won.

- ***Attorney-General's Reference (No 1 of 1985)*** **[1986] QB 491**

  The defendant was a salaried hotel manager selling beer made by himself from his employer's hotel and keeping the proceeds. Although what he did was a breach of

contract it was not theft because the money did not belong to the employer and it was not fraud because there was no deception. The defendant was dishonest and intended to obtain a gain and cause the employer a loss. The patrons were buying the defendant's beer, not that of the employer. If the defendant had agreed to do this with someone else it would be the offence of conspiracy to defraud. If done by himself it would not be an offence unless there was a general dishonesty offence.

- ***Hollinshead*** **[1985] 3 WLR 159**

  The defendants were involved in the manufacture of devices to defraud the electricity supplier. The defendants planned to sell the devices to a distributor who would in turn sell it to people who would use it to commit the offence of fraud against the electricity supplier. The conduct was too remote for it to be an attempt, the conduct was discovered before any of the devices reached the customers (so there was no complicity to commit fraud) and the defendants did not obtain anything from deceiving the electricity supplier. The defendants were convicted of conspiracy to defraud. One person could have manufactured the device. If that occurred it would not have been an offence.

18. Some of these cases could have applied to a Commonwealth entity. *Scott* could have involved Commonwealth owned property, the *Attorney-General's Reference case* could, with other items, occur at Commonwealth owned shop-front enterprises and even *Hollinshead* could apply to energy generated by the Commonwealth in a remote location. The type of problem in *Wai Yu-Tsang* could have application where the absence of a report on the poor performance of a particular project from someone who is asked to make such a report could expose the Commonwealth to the risk of loss. The range of cases also demonstrate that human ingenuity is not always easy to anticipate with specialist legislation.

19. Other situations where there might be difficulty with the fraud offences are as follows:

- where documentation to prove false representations are for some reason not available;
- where taxation returns and other documentation material to liability to taxation has not been lodged - can range from income to sales tax and can of course involve substantial sums (several $100,000's);
- failure to provide information relevant to the appropriate level of payments for workers compensation.

20. While it may be argued there should always be systems in place to ensure defendants are forced to make a statement which can then be used as evidence of a deception, no system of documentation will be perfect. Why should someone who has dishonestly caused a loss to the Commonwealth in these ways completely escape criminal responsibility? At a time when many transactions are done quickly through the use of technology it would appear to be hardly the time to reduce the armoury of law enforcement officers and prosecutors by removing the existing general dishonesty offence and not including another one in the Bill.

21. The reported cases on the existing general dishonesty offence (section 29D of the *Crimes Act 1914*) invariably involve complex fact situations where the benefit can be pinned down to having been obtained by deception. Cases that can be charged under the general dishonesty offence and not the fraud offences will be rare. While there are approximately 150 cases per year where the existing general dishonesty offence (section 29D of the *Crimes Act* 1914) is charged, it is difficult to find a case where the defendant could not have been charged under the proposed fraud offences (clauses 134.1 and 134.2).

22. There is the occasional case where relieving the prosecution of having to prove the financial advantage or property was obtained by deception is necessary to appropriately punish the accused or at least simplify the case. A recent example was a case before the ACT Magistrates' Court called ***Batten v Lindsay*** on 30 March 1999 where the defendant was convicted under the existing general dishonesty offense because he dishonestly used frequent flyer points accrued on official travel. Although he was aware of numerous staff bulletins and other warnings that the points should only be used for official business, he proceeded to use them for personal purposes. It is hard to point to how the financial advantage/property was obtained by deception as the airlines are not concerned with what the points were used for and they can be claimed without any reference to the Department (eliminating any need to deceive the Commonwealth). The defendant was dishonest, obtained a financial advantage and caused a loss to the Commonwealth, or risked it, by taking away its capacity to use the frequent flyer points for official business.

23. There are of course plenty of examples which, while on their own facts involve some deception, reveal it is possible to devise dishonest schemes where it will be hard to prove that benefits were obtained by deception:

- ***Elvin & Elvin*** **(1996) 91 A Crim R 213**

  The defendants were directors of a concrete company. Tax auditors found discrepancies in actual, as opposed to reported, assessable income for a period when the defendants admit they lost control of the business record keeping of the company for a 2 year period. Employees were paid out of the cash receipts to keep them happy and in the knowledge that payments were probably not to be declared by the employees as assessable income for the purposes of taxation. The people running the company had substantially opted out of the system. There was some reported assessable income, so deception could have been proved. However, it is easy to see from this case that with a business which has less of a public profile than this type of company it is quite possible for people to opt out of the system for some time without being detected. If they had not lodged some reports of income they may have been detected earlier, particularly because of the overt nature of the business, but the case shows the potential for difficulties of proof of deception where someone opts out altogether.

- ***Nguyen & Phan*** **(1996) 86 A Crim R 521**

> The defendants were partners in a clothing industry business. They only banked a fraction of the cheques which formed their income and only that part was shown in their taxation returns. The remaining cheques were money laundered by a third party for a 5% fee. The business employed large numbers of outworkers. As with *Elvin*, the outworkers were paid in cash so as reduce costs in the knowledge that the outworkers would not pay tax. As a result over $900,000 in tax was evaded over a 2 year period. This was a case where deception could be established, but it would have been much more difficult if the defendants had completely opted out of the system and ran their business in a more clandestine manner. At the time this would appear to have been happening elsewhere in the industry. Brooking JA observed at 525 "the offences were committed in a branch of an industry in which, according to the evidence led and the assertions made by the counsel on the plea, tax evasion by manufacturers by the failure to disclose income could probably, without any exaggeration, be described as the norm."

24. An extreme example of someone who opted out of the system was a barrister who did not lodge a taxation return for 15 years.

25. While the general dishonesty offence is not proposed for procedural reasons, the Standing Committee should also note that the general dishonesty offence is sometimes used to deal with a course of conduct that discloses a fraudulent enterprise and where "to take the individual acts one by one does not reveal the true overall situation". (Smart AJ in *R v. Moussad* (1999) NSW CCA [1999] NSW CCA 337 at paragraph 25). The court has held the offence can be used to group together a series of similar acts of dishonest obtaining under one charge. This means the offence can be used to simplify cases and is also favoured by the DPP for that reason as well as a way of dealing with new and ingenious schemes.

Obtaining financial advantage (clause 135.2)

26. This lesser offence focuses on overpayments. Sometimes overpayments can involve large amounts of money. In cases involving larger amounts the more appropriate charge may be under the general dishonesty offence (subclause 135.1(5)) which will also apply to overpayments on the basis that the defendant dishonestly causes a loss or knows and believes the loss will occur or there is a substantial risk of loss to the Commonwealth. In those cases subclause 135.1(5), which has a maximum penalty of 5 years imprisonment, attracts the operation of the *Proceeds of Crime Act 1987* which provides appropriate remedies where the conduct is more serious. Clause 135.2 is a simpler summary offence with a low maximum penalty of 12 months imprisonment but still requires proof that the defendant knew or believed there was no eligibility to receive the financial advantage.

False or misleading information offence (clause 137.1)

27. The proposed offence is likely to concern some as being too broad in its coverage. However, it is very hard to justify distinguishing between the alternative categories of information listed in paragraph 137.1(1)(c) - information given to:

- a Commonwealth entity (ie the Commonwealth or a Commonwealth authority);
- a person exercising powers or functions under a Commonwealth law;
- in compliance with a law of the Commonwealth.

28. Many important aspects of government administration are carried out without specific legislation. It would be very artificial to distinguish between them for these purposes on the basis of the extent to which the scheme is legislatively based. Apart from the inefficiency of driving agencies to legislate for this reason alone, it is difficult to explain why someone who knowingly gives false and misleading information to the Commonwealth should escape criminal responsibility just because it does not involve gaining a benefit. The provision of false or misleading information can result in considerable expense and in some circumstances safety concerns.

29. We have carefully considered how this offence could be limited but have found it very difficult to appropriately draw a line between lies that can be said to matter and those that do not. It would also be unfortunate to water the offence down as it would reduce the number of offences that can be repealed by the proposed Bill and create the need for a further scattering of offences and the almost certain continuation of fragmentation in relation to this type of offence (as well as adding to the workload of the Parliament and the size of the statute book).

30. One option that the Standing Committee might consider is to insert a defence that provides the offence does not apply unless the person requesting the information draws attention to the offence prior to asking for the information. If the person cannot tell the truth, then they will be on notice that they can take the option of not answering the question. If the request for information is in writing, the warning can be included in writing.

31. I should add that concerns about the privilege of self-incrimination are not warranted. The offence covers the situation where the defendant has given information. The offence does not and should not deal with the right of the defendant to refuse to give information. Providing misleading information or a making a misleading omission is not the way in which the privilege can be exercised. Those who wish to use the privilege should simply not provide the information. In some cases the relevant statute may remove or restrict the privilege but that is for the information gathering power, not the proposed offence. Indeed, the Scrutiny of Bills Committee has endorsed providing for an exception to the principle where otherwise self-incriminatory material can be used against a person to establish that the person made a false and misleading statement under questioning or in documents that were disclosed (June 1999 report (1996-1998) at paragraph 2.77, page 25). However, the proposed defence requiring the person to be informed of the consequences of not telling the truth will, depending on the nature of any relevant information gathering power, provide notice that an individual may wish to refuse to answer the question on the basis of the privilege.

Burglary (clause 132.4)

32. Burglary is divided into segments. The first, subclause 132.4(1) concerns entering/remaining in any building as a trespasser (whether owned or occupied by the Commonwealth or not) and stealing Commonwealth property. The second, subclause 132.4(3) entering/remaining in any building as a trespasser with intent to commit a Commonwealth personal or property harm offence. The third, subclause 132.4(6) focuses on where there is any personal or property harm offence (including State offences) in a Commonwealth owned and occupied building. This division is quite sensible and highlights the Commonwealth connection to each offence.

33. However, one difficulty is the intruder who does not care whether the property is public or private. While for constitutional reasons the property under threat must be Commonwealth - like other offences such as theft, it should not be necessary to prove the person entered or remained in the building with the intention of stealing Commonwealth property. If the Committee agrees with that view, clause 132.4 will require adjustment as it currently requires proof of intention with respect to the Commonwealth connection in relation to the operation of subclauses 132.4(1) and 132.4(3). The focus of the Bill is currently very much on people who break in with specific plans aimed against the Commonwealth - to steal an important document, a piece of sensitive technology or to destroy something that is incriminating.

Information derived from false documents (clause 145.5 Bill)

34. Clauses 145.4 and 145.5 are based on section 19.7 of the Model Criminal Code (note p.253 of the 1995 Model Criminal Code report for comparison). Being a State based Code, the Model Criminal Code offence is concerned with false accounting - doing so by destroying/altering documents kept for accounting reasons or giving information from the same type of documents in a misleading way. Section 19.7 requires proof that the defendant dishonestly did these things and that it is done with the intention of obtaining a gain or causing a loss.

35. Clauses 145.4 and 145.5 provide for similar offences suited to the Commonwealth context. The offences target documents required to be kept for the purposes of the law of the Commonwealth. Many of these will have an accounting connection but it extends beyond that to other important records (eg environmental and quarantine records).

36. When preparing the new offences it was recognised that the destroying and altering conduct was quite different from the giving of information offence. It was decided to separate them. While that was a reasonable decision, the Standing Committee will note that in paragraphs 145.5(1)(a) and 145.5(2)(a) the fault element of ‘dishonesty’ has been omitted. This was done because it was felt that knowledge that it was false or misleading in a material particular would be sufficient. However, given the level of the maximum penalty, it is arguable the offence should be made consistent with clause 145.4, other

offences in the Bill and section 19.7 of the Model Criminal Code by making dishonesty an element of the offence.

Dishonest removal / use of previously used stamp offences (clauses 471.4 and 471.5)

37. I have some further details about these offences. They will replace section 85J of the *Crimes Act 1914*. They provide for the same maximum penalty -12 months imprisonment - and would continue the specific protection of stamps which has been in the Commonwealth statute book for many years. The offences have been prosecuted from time to time and the practice of using 'washed' stamps is both feasible and not always easy to detect. While the 'washing' of an individual stamp may seem very trivial, if this were to happen on a large scale it would cause significant losses to the postal system. At the end of the day the main purpose of the criminal law is educative and the success of offences should not be measured in terms of the number of prosecutions. There is a real concern that if there are no specific offences, the postal system will only be protected by reliance on State and Territory theft and property damage offences. Few would expect State and Territory agencies to be bothered with infringements of this nature. A community expectation of that nature could cause problems in this area. The specific Federal offence can continue to play a role eliminating expectations of that nature. Similar offences exist in other countries (for example, Canada, the UK and the USA).

38. Australia Post advises that there are considerable losses to the postal system both in Australia and elsewhere as a result of 'washing'. In 1991 a large scale 'washing' operation was discovered in Victoria and reports of similar activities have occurred in Canada, Germany, UK and the United States. In one case in the UK, a dealer was investigated and arrested for stamp 'washing' involving losses of 250,000 pounds. It is expected that more cases of stamp 'washing' will be detected with the development and introduction of sophisticated stamp 'washing' detection measures and techniques. The issue is treated seriously and has been given priority by many postal administration around the world, including Australia Post. The Universal Postal Union, of which Australia Post is a member, released a paper on this issue in 1997. A copy of this paper is at **Annex E**.

Conclusion

39. I am available to assist the Standing Committee with further information at any stage of its inquiry into the Bill and will give any task of that nature priority.

Yours sincerely

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