



DPP

Commonwealth Director of Public Prosecutions

SUBMISSION BY THE COMMONWEALTH DPP

PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Inquiry into the future impact of serious and organised crime on Australian Society

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 role of the CDPP is to prosecute offences against Commonwealth law, and to confiscate the proceeds of crime. Prosecutions conducted by the CDPP include drug importations, money laundering, offences against corporations legislation, fraud on the Commonwealth, people smuggling, people trafficking, and terrorism. A significant feature of the prosecution of these most significant Commonwealth criminal offences is the serious and organised criminal activity involved.

In order to prosecute alleged offenders the CDPP relies on briefs being referred from various investigative agencies such as the AFP and the ACC on the completion of an investigation. It follows that the role of the DPP in relation to serious and organised crime comes from our involvement in the prosecutions we conduct of crimes of this nature that have been referred for potential prosecution.

As a prosecuting agency, the CDPP does not have any investigative function, nor importantly does it have any intelligence gathering capacity or ability to gather information regarding criminal activity that may be occurring undetected in the community. Accordingly, the CDPP as a downstream agency is not as well placed as some other agencies to make assessments about future trends and changes in criminal activities. Our comments are based on our experience prosecuting, often some time after the events have occurred.

The CDPP prosecutes in accordance with the Prosecution Policy of the Commonwealth. The prosecutor has the responsibility to ensure that the evidence is presented to the court and that charges are brought that adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence. Accordingly, the focus in prosecuting is very much on the conduct of the accused as disclosed by the evidence in the particular matter before the court.

The focus of the prosecutor is on the evidence establishing the elements of the offence and demonstrating the criminality involved in the matter before the court rather than making a broader assessment. Having said that where in a prosecution the prosecutor can assist the court on sentence by leading evidence of the frequency or impact of the relevant criminal activity the DPP will endeavour to draw those matters to the court's attention.

In terms of trends, the nature of Commonwealth offences has changed. Recent years have seen an expansion of the role and importance of federal criminal law. The areas of activity regulated at least in part by federal criminal law have expanded considerably. This trend has continued rapidly, as demonstrated by offences being created in areas such as terrorism, domestic drug activity, the contamination of goods, sexual servitude, transnational crime, cybercrime, and telecommunications offences including offences involving the use of carriage services for child abuse and child pornography material.

HEAD OFFICE

4 Marcus Clarke Street Canberra City 2601
GPO Box 3104 Canberra ACT 2601
Telephone (02) 6206 5666 Facsimile

The CDPP has seen an increase in its practice in the areas of counter-terrorism, tax fraud involving international transactions, and sexual servitude offences. Correlating to this increase there has also been a substantial increase in the complexity of both incoming and outgoing mutual assistance requests.

In prosecuting two recent trends are particularly significant: globalisation and the involvement of technology in offending.

The globalisation of crime, has, and will continue to have an effect on the way serious and organised crime affects Australian society. The rapid mobility of people, money, information, ideas, and commodities generally, has provided new opportunities for crime, and new challenges for law enforcement agencies. It is commonly acknowledged that modern technology, including developments in electronic communications and resources, and transportation, have made criminal behaviour more common, lucrative, easier to commit, and harder to detect.

The emergence of new technology has continued to contribute to the increasing globalisation of crimes such as drug trafficking, money laundering, people smuggling, and the threat from terrorism. Investigations and prosecutions that have an international aspect are becoming more and more common. For example large fraud, drug or terrorist cases, people smuggling and sexual servitude cases, by their very nature have an international dimension.

The mobility of criminal offenders in a shrinking world has increased the need for arrangements to facilitate the apprehension and repatriation of those who seek to evade the law by fleeing to another jurisdiction. One strategy to counter serious and organised crime in a global arena is International cooperation and liaison. It is becoming increasingly apparent that cooperation between countries is an essential part of modern law enforcement. The globalisation of crime and the nature of modern communication and intercourse have meant that country borders assume significantly less relevance.

From a prosecution point of view this has meant an increasing reliance on evidence from overseas or from witnesses located overseas, making international cooperation imperative.

Another strategy that is successfully used to counter serious and organised crime is the confiscation of criminal assets from offenders. Knowledge that the profits of criminal behaviour will ultimately be lost is a valuable adjunct to the principal goal of the criminal justice system. In addition to its prosecutorial responsibilities, the CDPP has important functions relating to taking action under the *Proceeds of Crime Act 2002*.

The multifaceted and cross-jurisdictional nature of serious and organised crime means that many agencies are becoming involved in the investigation and prosecution of complex criminal matters. For example, those involved in narcotics trafficking will also commonly be involved in money laundering and tax evasion. Similarly, terrorist activity may not only involve acts of or in direct preparation for terrorism. While our experience is limited, terrorist activity may be accompanied with other forms of illegal activity such as offences against immigration / passport laws, customs offences, money laundering, fraud, firearm offences, taxation fraud, identity fraud and social security fraud. Such offences involve both Commonwealth and State law and in some cases the prosecution of such activity may depend on drawing together threads of evidence and information from a variety of sources.

Active cross-jurisdictional co-operation between a range of Government agencies is therefore important to identify, investigate and prosecute serious criminal activity. Recent experience in this area has also highlighted the need for effective cooperation, by working collaboratively or in inter-agency taskforces between numerous Commonwealth investigative agencies to combat serious and organised crime.

Major criminal operations are increasingly requiring a whole of government response. The area of identity theft provides another example of criminal investigation which relies on cross-agency co-operation. Criminals are involved in the large-scale manufacture of documents to support false identities. Such documents may be used for a wide range of illegal purposes including defrauding various agencies, obtaining false passports, obtaining credit, and opening false name bank accounts to launder proceeds of crime. Active co-operation between agencies is essential to getting law enforcement results in this area.

One issue that arises in cross agency investigations is the interaction between secrecy provisions in various pieces of legislation and the criminal process. The sharing of information is crucial when a variety of agencies are working collaboratively. A problem arises when some law enforcement agencies can have access to information and others also involved in the investigation cannot due to the operation of secrecy provisions. This situation can give rise to a serious impediment to the proper investigation and prosecution of offences.

In terms of agency specific secrecy provisions generally, issues can arise in relation to the provision of information to investigative agencies and the CDPP for the purposes of prosecuting a criminal offence. For example, this has been problematic in the investigation of serious criminal offences against taxation law. The Commissioner of the Australian Federal Police (the AFP) recently identified the interaction that criminal activity has with the Australian tax system. During hearings before the Parliamentary Joint Committee on the Australian Crime Commission on 7 October 2005, Commissioner Keelty stated:

“There are not many organised crime entities that do not in some way or another affect our taxation system either through defrauding the taxation system or using the taxation system in a variety of ways to benefit themselves.”

As criminal enterprises continue to grow in their interaction with the tax system, either through defrauding it, or using it to their advantage, tax information becomes an increasingly valuable source of intelligence and evidence for the investigation of serious criminal activity. The analysis of tax information can provide a vital part of law enforcement’s armoury in detecting and prosecuting criminal activity.

This is recognised in the Tax Laws Amendment (2007 Measures No.1) Bill 2007 that proposes amendments to the secrecy and disclosure provisions in the *Taxation Administration Act 1953* to allow the Commissioner to share information with other Government agencies in limited circumstances in order to facilitate concerted enforcement of Australia’s laws.

In terms of legislation generally, having clear and effective legislation provides the foundation for deterrent prosecution action. Offence provisions that clearly set out the elements of the offence are important to the prospects of the CDPP being able to successfully prosecute offenders. In order for a person to be found guilty of a Commonwealth offence the prosecution must be able to prove the physical and accompanying fault elements contained in the particular offence. Clear legislation, where these elements can be quickly identified is therefore fundamental to the effective and efficient operation of Commonwealth criminal law.