



DPP

Commonwealth Director of Public Prosecutions

Your reference:

Our reference:

28 July 2008

Mr Peter Hallahan
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

Inquiry into the Evidence Amendment Bill 2008

Thank you for your letter of 1 July 2008 affording the Office of the Commonwealth Director of Public Prosecutions (CDPP) the opportunity to comment on the Evidence Amendment Bill 2008 (the Bill).

The CDPP is responsible for the prosecution of offences against Commonwealth law, and the recovery of the proceeds of Commonwealth crime. The CDPP is an independent prosecuting agency under the control of the Director. Cases prosecuted by the CDPP involve drug importation and money laundering, offences against the corporations legislation, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, people trafficking, terrorism, and a range of regulatory offences. The CDPP is not an investigative agency. It can only prosecute, or take confiscation action, where there has been an investigation by an investigative agency such as the Australian Federal Police or the Australian Crime Commission.

The CDPP prosecutes Commonwealth offences in State and Territory courts. The Judiciary Act applies procedural law of the States or Territories, such as evidence law, to Commonwealth prosecutions. Accordingly, the CDPP has experience in relation to those provisions of the *Evidence Act 1995* (Cth) (the Commonwealth Evidence Act) with extended operation, such as the provisions dealing with Commonwealth records, which apply in all Australian courts. The CDPP also has experience in applying the applicable uniform evidence Act when prosecuting cases in NSW, the ACT and Tasmania. However, in other jurisdictions, the CDPP uses the legislation applicable in each particular jurisdiction rather than the Commonwealth Evidence Act.

The CDPP has been invited to provide input on a number of occasions during the drafting of the Bill, particularly in relation to section 128 of the Bill dealing with the privilege in respect of self-incrimination in other proceedings. Much of our feedback on this section was based upon our involvement in the High Court case of *Cornwell v The Queen* [2007] HCA 12.

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Essentially our advice has been not to amend section 128(8) and rely upon the very clear authority of *Cornwell* to interpret the meaning of that section. I note that in the current Bill section 128(10) replicates the current section 128(8) in accordance with our advice.

I trust this information is of some assistance to you.

Yours sincerely

Penny McKay
Principal Legal Officer
Legal and Practice Management Branch