

2019

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Crimes Legislation Amendment  
(Combating Corporate Crime) Bill 2019**

**No.     , 2019**

*(Attorney-General)*

**A Bill for an Act to amend legislation relating to the  
criminal law and law enforcement, and for related  
purposes**



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1     **A Bill for an Act to amend legislation relating to the**  
2     **criminal law and law enforcement, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act is the *Crimes Legislation Amendment (Combatting*  
7                     *Corporate Crime) Act 2019*.

8     **2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with  
11                     column 2 of the table. Any other statement in column 2 has effect  
12                     according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 1, item 11	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
4. Schedule 1, items 12 to 15	The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
5. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	
6. Schedule 2, Part 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
7. Schedule 2, Part 3	The day after this Act receives the Royal Assent.	
8. Schedule 3	The day after this Act receives the Royal Assent.	

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4

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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7

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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1 **3 Schedules**

2           Legislation that is specified in a Schedule to this Act is amended or  
3           repealed as set out in the applicable items in the Schedule  
4           concerned, and any other item in a Schedule to this Act has effect  
5           according to its terms.

1 **Schedule 1—Amendments relating to foreign**  
2 **bribery**

3 **Part 1—Main amendments**

4 ***Criminal Code Act 1995***

5 **1 Before section 70.1 of the *Criminal Code***

6 Insert:

7 **Subdivision A—Definitions**

8 **2 Section 70.1 of the *Criminal Code***

9 Insert:

10 *advantage* means an advantage of any kind and is not limited to  
11 property.

12 *annual turnover* has the meaning given by section 70.5C.

13 *associate*: a person is an *associate* of another person if the  
14 first-mentioned person:

- 15 (a) is an officer, employee, agent or contractor of the other  
16 person; or  
17 (b) is a subsidiary (within the meaning of the *Corporations Act*  
18 *2001*) of the other person; or  
19 (c) is controlled (within the meaning of the *Corporations Act*  
20 *2001*) by the other person; or  
21 (d) otherwise performs services for or on behalf of the other  
22 person.

23 **3 Section 70.1 of the *Criminal Code* (definitions of *benefit* and  
24 *business advantage*)**

25 Repeal the definitions.

26 **4 Section 70.1 of the *Criminal Code* (at the end of the  
27 definition of *foreign public official*)**

28 Add:



1 ; or (m) an individual standing, or nominated, (whether formally or  
2 informally) as a candidate to be a foreign public official  
3 covered by any of paragraphs (a) to (k) of this definition.

#### 4 **5 After section 70.1 of the *Criminal Code***

5 Insert:

#### 6 **Subdivision B—Bribery of foreign public officials**

#### 7 **6 Section 70.2 of the *Criminal Code***

8 Repeal the section, substitute:

#### 9 **70.2 Bribing a foreign public official**

10 (1) A person commits an offence if:

11 (a) the person:

12 (i) provides a benefit to another person; or

13 (ii) causes a benefit to be provided to another person; or

14 (iii) offers to provide, or promises to provide, a benefit to  
15 another person; or

16 (iv) causes an offer of the provision of a benefit, or a  
17 promise of the provision of a benefit, to be made to  
18 another person; and

19 (b) the first-mentioned person does so with the intention of  
20 improperly influencing a foreign public official (who may be  
21 the other person) in order to obtain or retain business or a  
22 business or personal advantage (whether or not for the  
23 first-mentioned person).

24 Note: See also section 70.2A. For defences see sections 70.3 and 70.4.

25 (2) For the purposes of paragraph (1)(b):

26 (a) the first-mentioned person does not need to intend to  
27 influence a particular foreign public official; and

28 (b) the first-mentioned person does not need to intend to obtain  
29 or retain particular business or a particular business or  
30 personal advantage; and

31 (c) business, or a business or personal advantage, does not need  
32 to be actually obtained or retained.

1 *Penalty for individual*

- 2 (3) An offence against subsection (1) committed by an individual is  
3 punishable on conviction by imprisonment for not more than 10  
4 years, a fine not more than 10,000 penalty units, or both.

5 *Penalty for body corporate*

- 6 (4) An offence against subsection (1) committed by a body corporate  
7 is punishable on conviction by a fine not more than the greatest of  
8 the following:  
9 (a) 100,000 penalty units;  
10 (b) if the court can determine the value of the benefit that the  
11 body corporate, and any body corporate related to the body  
12 corporate, have obtained directly or indirectly and that is  
13 reasonably attributable to the conduct constituting the  
14 offence—3 times the value of that benefit;  
15 (c) if the court cannot determine the value of that benefit—10%  
16 of the annual turnover of the body corporate during the  
17 period (the *turnover period*) of 12 months ending at the end  
18 of the month in which the body corporate committed, or  
19 began committing, the offence.

20 **70.2A Improper influence**

21 *Determination to be a matter for the trier of fact*

- 22 (1) In a prosecution for an offence against section 70.2, the  
23 determination of whether influence is improper is a matter for the  
24 trier of fact.

25 *Matters that must be disregarded*

- 26 (2) In determining whether influence is improper for the purposes of  
27 paragraph 70.2(1)(b), a trier of fact must disregard the following:  
28 (a) the fact that the benefit, or the offer or promise to provide the  
29 benefit, may be, or be perceived to be, customary, necessary  
30 or required in the situation;  
31 (b) any official tolerance of the benefit;

- 1 (c) if particular business or a particular business or personal  
2 advantage is relevant to proving the matters referred to in that  
3 paragraph—the following:  
4 (i) if the value of the business or advantage is  
5 insignificant—that fact;  
6 (ii) in the case of an advantage—any official tolerance of  
7 the advantage;  
8 (iii) in the case of an advantage—the fact that the advantage  
9 may be customary, or perceived to be customary, in the  
10 situation.

11 *Matters to which regard may be had*

- 12 (3) In determining whether influence is improper for the purposes of  
13 paragraph 70.2(1)(b), a trier of fact may have regard to the  
14 following:  
15 (a) the recipient or intended recipient of the benefit;  
16 (b) the nature of the benefit;  
17 (c) the manner of the provision of the benefit (or, if applicable,  
18 the offered or promised manner of the provision of the  
19 benefit);  
20 (d) whether the value of the benefit is disproportionate to the  
21 value of any consideration provided or purported to have  
22 been provided for the benefit;  
23 (e) if the benefit was provided, or the offer or promise to provide  
24 the benefit was made, in the absence of any legal obligation  
25 to do so—that fact;  
26 (f) whether the benefit was provided, or the offer or promise to  
27 provide the benefit was made, dishonestly;  
28 (g) whether, and to what extent, the provision of the benefit, or  
29 the offer or promise to provide the benefit, is recorded or  
30 documented;  
31 (h) if the provision of the benefit, or the offer or promise to  
32 provide the benefit, is recorded or documented:  
33 (i) the accuracy of the record or documentation; and  
34 (ii) whether the record or documentation is consistent with  
35 the ordinary practices of the person who made the  
36 record or documentation;

- 1 (i) whether there is evidence that due diligence was exercised by  
2 the first-mentioned person in section 70.2 in relation to the  
3 benefit, or the offer or promise to provide the benefit;  
4 (j) whether any of the following conduct is contrary to a written  
5 law in force in the place where that conduct occurs:  
6 (i) the provision of the benefit, or the offer or promise to  
7 provide the benefit;  
8 (ii) the acceptance of the benefit;  
9 (iii) any conduct directly connected with conduct referred to  
10 in subparagraph (i) or (ii);  
11 (k) if particular business or a particular business or personal  
12 advantage is relevant to proving the matters referred to in that  
13 paragraph—the following:  
14 (i) whether the business or advantage was awarded on a  
15 competitive or non-commercial basis;  
16 (ii) whether there is any demonstrable conflict of interest in  
17 the provision of the business or advantage.
- 18 (4) To avoid doubt, subsection (3) does not limit the matters to which  
19 the trier of fact may have regard.

## 20 **7 After subsection 70.3(2) of the *Criminal Code***

21 Insert:

- 22 (2A) A person does not commit an offence against section 70.2 if:  
23 (a) the person's conduct occurred in relation to a foreign public  
24 official (the ***relevant foreign public official***); and  
25 (b) the relevant foreign public official is covered by  
26 paragraph (m) of the definition of ***foreign public official*** in  
27 section 70.1 because the relevant foreign public official is a  
28 candidate to be a particular foreign public official (the  
29 ***substantive foreign public official***); and  
30 (c) assuming that the first-mentioned person's conduct had  
31 occurred wholly in the place, the foreign country or the part  
32 of the foreign country, as the case may be, (the ***relevant***  
33 ***place***) referred to in the item of the table in subsection (1)  
34 that would be applicable if the first-mentioned person's  
35 conduct had occurred in relation to the substantive foreign  
36 public official, a written law in force in the relevant place

1 permits the provision of the benefit to the relevant foreign  
2 public official.

3 Note: A defendant bears an evidential burden in relation to the matter in  
4 subsection (2A). See subsection 13.3(3).

## 5 **8 After section 70.5 of the *Criminal Code***

6 Insert:

### 7 **Subdivision C—Failure to prevent bribery of foreign public** 8 **officials**

#### 9 **70.5A Failing to prevent bribery of a foreign public official**

##### 10 *Offence*

- 11 (1) A person (the *first person*) commits an offence if:
- 12 (a) the first person is a body corporate:
- 13 (i) that is a constitutional corporation; or
- 14 (ii) that is incorporated in a Territory; or
- 15 (iii) that is taken to be registered in a Territory under
- 16 section 119A of the *Corporations Act 2001*; and
- 17 (b) an associate of the first person:
- 18 (i) commits an offence against section 70.2; or
- 19 (ii) engages in conduct outside Australia that, if engaged in
- 20 in Australia, would constitute an offence (the *notional*
- 21 *offence*) against section 70.2; and
- 22 (c) the associate does so for the profit or gain of the first person.
- 23 (2) Absolute liability applies to:
- 24 (a) paragraphs (1)(a) and (c); and
- 25 (b) the circumstance in subparagraph (1)(b)(i) that the associate
- 26 commits an offence against section 70.2; and
- 27 (c) the circumstance in subparagraph (1)(b)(ii) that the associate
- 28 engages in conduct outside Australia that, if engaged in in
- 29 Australia, would constitute the notional offence.
- 30 (3) To avoid doubt, the first person may be convicted of an offence
- 31 against subsection (1) because of the commission by the associate

**Schedule 1** Amendments relating to foreign bribery

**Part 1** Main amendments

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1 of an offence against section 70.2 even if the associate has not been  
2 convicted of that offence.

3 (4) Section 12.6 applies in relation to an offence against subsection (1)  
4 of this section as if the reference in section 12.6 to an employee,  
5 agent or officer of a body corporate included any associate of the  
6 body corporate.

7 *Exception*

8 (5) Subsection (1) does not apply if the first person proves that the first  
9 person had in place adequate procedures designed to prevent:

10 (a) the commission of an offence against section 70.2 by any  
11 associate of the first person; and

12 (b) any associate of the first person engaging in conduct outside  
13 Australia that, if engaged in in Australia, would constitute an  
14 offence against section 70.2.

15 Note: A defendant bears a legal burden in relation to the matter in  
16 subsection (5): see section 13.4.

17 *Penalty*

18 (6) An offence against subsection (1) is punishable on conviction by a  
19 fine not more than the greatest of the following:

20 (a) 100,000 penalty units;

21 (b) if the court can determine the value of the benefit that the  
22 associate obtained directly or indirectly and that is reasonably  
23 attributable to the conduct constituting the offence, or that  
24 would have constituted the notional offence, against  
25 section 70.2—3 times the value of that benefit;

26 (c) if the court cannot determine the value of that benefit—10%  
27 of the annual turnover of the first person during the period  
28 (the *turnover period*) of 12 months ending at the end of the  
29 month in which the associate committed, or began  
30 committing, the offence or notional offence against  
31 section 70.2.

32 *Geographical jurisdiction*

33 (7) Section 15.1 (extended geographical jurisdiction—category A)  
34 applies to an offence against subsection (1).

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1 **70.5B Guidance on preventing bribery of foreign public officials**

2 (1) The Minister must publish guidance on the steps that a body  
3 corporate can take to prevent an associate from bribing foreign  
4 public officials.

5 (2) Guidance under subsection (1) is not a legislative instrument.

6 **9 Before section 70.6 of the *Criminal Code***

7 Insert:

8 **Subdivision D—Miscellaneous**

9 **70.5C Meaning of annual turnover**

10 (1) For the purposes of this Division, the *annual turnover* of a body  
11 corporate, during the turnover period, is the sum of the values of all  
12 the supplies that the body corporate, and any body corporate  
13 related to the body corporate, have made, or are likely to make,  
14 during that period, other than the following supplies:

- 15 (a) supplies made from any of those bodies corporate to any  
16 other of those bodies corporate;
- 17 (b) supplies that are input taxed;
- 18 (c) supplies that are not for consideration (and are not taxable  
19 supplies under section 72-5 of the *A New Tax System (Goods  
20 and Services Tax) Act 1999*);
- 21 (d) supplies that are not made in connection with an enterprise  
22 that the body corporate carries on.

23 (2) Expressions used in this section that are also used in the *A New Tax  
24 System (Goods and Services Tax) Act 1999* have the same meaning  
25 in this section as they have in that Act.

26 **70.5D Related bodies corporate**

27 The question whether 2 bodies corporate are related to each other  
28 is to be determined for the purposes of this Division in the same  
29 way as for the purposes of the *Corporations Act 2001*.

1 **10 Application of amendments**

2 The amendments made by this Part apply in relation to conduct engaged  
3 in on or after the commencement of this Part.



1 **Part 2—Other amendments**

2 ***Director of Public Prosecutions Act 1983***

3 **11 Subsection 17B(1) (table item 5, column headed**  
4 **“Provisions”)**

5 After “70.2,” insert “70.5A,”.

6 ***Income Tax Assessment Act 1997***

7 **12 Subsection 26-52(2)**

8 Repeal the subsection, substitute:

9 (2) An amount is a *bribe to a foreign public official* to the extent that:

10 (a) you incur the amount in, or in connection with:

11 (i) providing a benefit to another person; or

12 (ii) causing a benefit to be provided to another person; or

13 (iii) offering to provide, or promising to provide, a benefit to  
14 another person; or

15 (iv) causing an offer of the provision of a benefit, or a  
16 promise of the provision of a benefit, to be made to  
17 another person; and

18 (b) you incur the amount with the intention of improperly  
19 influencing a \*foreign public official (who may be the other  
20 person) in order to obtain or retain business or a business or  
21 personal advantage (whether or not for yourself).

22 The benefit may be any advantage and is not limited to property.

23 **13 Subsection 26-52(2A)**

24 Omit “a business advantage”, substitute “a business or personal  
25 advantage”.

26 **14 Subsections 26-52(6) and (7)**

27 Repeal the subsections, substitute:

1

*Improper influence*

2

(6) In determining whether influence is improper, disregard the following:

3

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(a) the fact that the benefit, or the offer or promise to provide the benefit, may be, or be perceived to be, customary, necessary or required in the situation;

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(b) any official tolerance of the benefit;

8

9

(c) if particular business or a particular business or personal advantage is relevant to determining whether influence is improper—the following:

10

11

(i) if the value of the business or advantage is insignificant—that fact;

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13

(ii) in the case of an advantage—any official tolerance of the advantage;

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15

(iii) in the case of an advantage—the fact that the advantage may be customary, or perceived to be customary, in the situation.

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**15 Application of amendments**

19

The amendments of the *Income Tax Assessment Act 1997* made by this Part apply to a loss or outgoing incurred on or after the commencement of Part 1 of this Schedule.

20

21

1 **Schedule 2—Amendments relating to deferred**  
2 **prosecution agreements**

3 **Part 1—Main amendments**

4 *Director of Public Prosecutions Act 1983*

5 **1 Before section 1**

6 Insert:

7 **Part 1—Preliminary**  
8

9 **2 Subsection 3(1)**

10 Insert:

11 *approving officer* means a person appointed as an approving  
12 officer under section 17G.

13 *Commonwealth entity* has the same meaning as in the *Public*  
14 *Governance, Performance and Accountability Act 2013*.

15 *conduct* has the same meaning as in the *Criminal Code*.

16 *deferred prosecution agreement* means an agreement mentioned in  
17 subsection 17A(1).

18 *DPA* (short for deferred prosecution agreement): see *deferred*  
19 *prosecution agreement*.

20 *secrecy provision* means a provision that:

- 21 (a) is a provision of a law of the Commonwealth (other than this  
22 Act); and  
23 (b) prohibits or regulates the use or disclosure of information.

24 **3 Before section 5**

25 Insert:

1 **Part 2—Office of the Director of Public**  
2 **Prosecutions**  
3

4 **4 After paragraph 6(1)(fa)**

5 Insert:

6 (fb) to negotiate, enter into, and administer, on behalf of the  
7 Commonwealth, deferred prosecution agreements; and

8 **5 After subsection 9(6F)**

9 Insert:

10 (6G) The Director may, on behalf of the Commonwealth, enter into a  
11 DPA and do all things necessary or convenient to be done for or in  
12 connection with negotiating, entering into, or administering, a  
13 DPA.

14 **6 After subsection 11(2)**

15 Insert:

16 (2A) Without limiting the generality of subsection (1), directions or  
17 guidelines under that subsection may be given or furnished in  
18 relation to negotiating, entering into, or administering, deferred  
19 prosecution agreements.

20 **7 Before section 18**

21 Insert:

22 **Part 3—Deferred prosecution agreement scheme**  
23

24 **17A Entering into a DPA**

25 (1) The Director may, if the Director considers it appropriate to do so,  
26 enter into an agreement, on behalf of the Commonwealth, with a  
27 person (other than an individual) for an offence mentioned in  
28 section 17B that is specified in the agreement.

- 1 (2) Criminal proceedings must not be instituted in a federal court or in  
2 a court of a State or Territory against the person in relation to an  
3 offence specified in the agreement if the agreement is approved  
4 under section 17D.
- 5 (3) Subsection (2) does not apply if:  
6 (a) the Director is satisfied that there has been a material  
7 contravention of the agreement by the person; or  
8 (b) both of the following apply:  
9 (i) the person provided inaccurate, misleading or  
10 incomplete information to a Commonwealth entity in  
11 connection with the agreement;  
12 (ii) the person knew, or ought to have known that the  
13 information was inaccurate, misleading or incomplete.

14 **17B Offences to which a DPA may relate**

- 15 (1) A DPA may be entered into in relation to an offence against a  
16 provision listed in the following table.  
17

<b>Offences to which a DPA may relate</b>		
<b>Item</b>	<b>Act</b>	<b>Provisions</b>
1	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	Sections 35H, 35J and 35K, a provision of Part 4 (other than Division 4 of that Part), sections 74, 123, 136, 137, 138, 139, 140, 141, 142, 143 and 162
2	<i>Autonomous Sanctions Act 2011</i>	Sections 16 and 17
3	<i>Charter of the United Nations Act 1945</i>	Sections 20, 21, 27 and 28
4	<i>Corporations Act 2001</i>	Sections 1041A, 1041B, 1041C, 1041D, 1041E, 1041F, 1041G, 1043A and 1307
5	<i>Criminal Code</i>	Sections 70.2, 131.1, 134.1, 134.2, 135.1, 135.4, 141.1, 142.1, 144.1, 145.1, 145.2, 145.3, 145.4, 145.5, 400.3, 400.4, 400.5, 400.6 and 400.7, subsection 400.8(1) and sections 400.9, 480.4, 480.5, 480.6,

**Schedule 2** Amendments relating to deferred prosecution agreements

**Part 1** Main amendments

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**Offences to which a DPA may relate**

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<b>Item</b>	<b>Act</b>	<b>Provisions</b>
		490.1 and 490.2

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- 1 (2) A DPA may be entered into in relation to:
- 2 (a) an offence against section 11.1, 11.4 or 11.5 of the *Criminal*
- 3 *Code* that relates to an offence mentioned in subsection (1) of
- 4 this section; or
- 5 (b) an offence prescribed by the regulations for the purposes of
- 6 this paragraph.
- 7 (3) If a DPA is entered into in relation to an offence mentioned in
- 8 subsection (1) or (2) (the *primary offence*), the DPA may also be
- 9 entered into in relation to an offence (the *secondary offence*) to
- 10 which all of the following apply:
- 11 (a) the secondary offence is likely to arise out of the same course
- 12 of conduct that constitutes, or may constitute, the primary
- 13 offence;
- 14 (b) the secondary offence has a maximum penalty that is less
- 15 than the maximum penalty for the primary offence;
- 16 (c) the Director is satisfied that it is appropriate to enter into the
- 17 DPA in relation to the secondary offence.

18 **17C Content of a DPA**

- 19 (1) A DPA entered into with a person must contain the following:
- 20 (a) a statement of facts relating to each offence specified in the
- 21 DPA;
- 22 (b) the last day for which the DPA will be in force;
- 23 (c) the requirements to be fulfilled by the person under the DPA;
- 24 (d) the amount of financial penalty to be paid by the person to
- 25 the Commonwealth;
- 26 (e) the circumstances which constitute a material contravention
- 27 of the DPA, including (but not limited to) the following
- 28 circumstances:
- 29 (i) the contravention of a term of the DPA that is specified
- 30 in the DPA as a significant term;

- 1 (ii) a pattern or sequence of contraventions of a term or  
2 terms of the DPA that, considered collectively, are  
3 significant;
- 4 (f) that the person consents, in circumstances mentioned in  
5 subsection 17A(3), to the Director instituting a prosecution of  
6 the person on indictment for an offence specified in the DPA  
7 without the person having been examined or committed for  
8 trial.
- 9 (2) A DPA entered into with a person may contain any of the  
10 following terms:
- 11 (a) a term requiring the person to do any of the following:
- 12 (i) to compensate victims of an offence specified in the  
13 DPA;
- 14 (ii) to donate money to a charity or other third party;
- 15 (iii) to consent to any relevant orders under the *Proceeds of*  
16 *Crime Act 2002* being made in relation to an offence  
17 specified in the DPA;
- 18 (iv) to implement a compliance program or policies;
- 19 (v) to cooperate in any investigation or prosecution relating  
20 to a matter specified in the DPA;
- 21 (vi) to pay reasonable costs incurred by a Commonwealth  
22 entity relating to negotiations for the DPA;
- 23 (b) a term setting out the consequences of a failure by the person  
24 to comply with any of the terms of the DPA;
- 25 (c) any other term that the Director considers appropriate.
- 26 (3) A financial penalty for the purposes of paragraph (1)(d) must be of  
27 a severity that the Director considers appropriate having regard to  
28 all circumstances relating to the DPA, including:
- 29 (a) the person's cooperation in negotiations for the DPA; and  
30 (b) the severity of the penalty that may be imposed by a court if  
31 the person was convicted of each offence specified in the  
32 DPA; and  
33 (c) the inclusion in the DPA of terms of a kind mentioned in  
34 subparagraph (2)(a)(i), (ii) or (iii).
- 35 (4) Despite paragraph (1)(d), a DPA need not include a financial  
36 penalty if the Director is satisfied that there are exceptional
-

1 circumstances and it is not in the interests of justice to include such  
2 a penalty.

3 **17D Approval of a DPA**

- 4 (1) After the person and the Director agree to the terms of the DPA,  
5 the Director must give the following to an approving officer:  
6 (a) the DPA;  
7 (b) a written statement that the Director is satisfied of the matters  
8 mentioned in subsection (2).
- 9 (2) The Director must be satisfied of the following:  
10 (a) there are reasonable grounds to believe that an offence  
11 specified in the DPA has been committed;  
12 (b) entering into the DPA is in the public interest.
- 13 (3) The approving officer must review the DPA and decide to either:  
14 (a) approve the DPA; or  
15 (b) not approve the DPA.
- 16 (4) The approving officer must approve the DPA if the approving  
17 officer is satisfied that:  
18 (a) the terms of the DPA are in the interests of justice; and  
19 (b) the terms of the DPA are fair, reasonable and proportionate.
- 20 (5) For the purposes of subsections (3) and (4), an approving officer  
21 must assume that the information set out in the DPA is true and  
22 correct.
- 23 (6) The approving officer must give written notice of the decision to  
24 the person and the Director.
- 25 (7) If the approving officer approves the DPA, the Director must,  
26 within 10 business days after the day notice of the decision is  
27 given, publish the DPA on the Office's website.
- 28 (8) Despite subsection (7), the Director may do either of the following  
29 if the Director considers it appropriate to do so in the interests of  
30 justice:



- 1 (a) publish a version of the DPA that does not disclose the name  
2 of the person or any other material the Director considers  
3 should not be disclosed;  
4 (b) not publish the DPA.
- 5 (9) Without limiting subsection (8), the Director may publish a version  
6 of the DPA, or not publish the DPA, if the Director is satisfied that  
7 publishing the full version of the DPA may:  
8 (a) pose a threat to public safety; or  
9 (b) prejudice an ongoing investigation; or  
10 (c) prejudice the fair trial of a person; or  
11 (d) be contrary to an order of a court.
- 12 (10) Subsection (8) does not prevent the Director publishing the DPA,  
13 or a version of the DPA, at a later time if the Director considers  
14 that it would be in the interests of justice to do so.

### 15 **17E When a DPA is in force**

- 16 (1) A DPA is in force for the period beginning the day after notice of  
17 the approval of the DPA is given as mentioned in  
18 subsection 17D(6) and ending on the earliest of the following:  
19 (a) the day specified in the DPA for the purposes of  
20 paragraph 17C(1)(b);  
21 (b) if the Director is satisfied that there has been a material  
22 contravention of the agreement—the day the person is given  
23 notice of the initiation of criminal proceedings of a kind  
24 mentioned in subsection 17A(2).
- 25 (2) However, if:  
26 (a) a person is given notice as mentioned in paragraph (1)(b);  
27 and  
28 (b) a court makes a declaration (however described) that there  
29 has not been a material contravention of the agreement;  
30 the agreement is taken not to be in force for the period between the  
31 day the person is given the notice and the day the court makes the  
32 declaration.
- 33 (3) A variation to a DPA takes effect immediately after the day notice  
34 of the approval of the variation is given under subsection 17F(2).

- 1 (4) To avoid doubt, a DPA ceasing to be in force does not affect the  
2 validity of anything done by the Director, or the person, in  
3 accordance with the terms of the DPA.

4 **17F Varying a DPA**

- 5 (1) If the person and the Director agree to a variation to the DPA, the  
6 Director must give the DPA as varied to an approving officer.
- 7 (2) The approving officer must review the DPA as varied and decide  
8 to either:  
9 (a) approve the variation; or  
10 (b) not approve the variation.
- 11 (3) However, the approving officer must not approve the variation  
12 unless the approving officer is satisfied that:  
13 (a) the terms of the DPA as varied are in the interests of justice;  
14 and  
15 (b) the terms of the DPA as varied are fair, reasonable and  
16 proportionate.
- 17 (4) For the purposes of subsections (2) and (3), an approving officer  
18 must assume that the information set out in the DPA as varied is  
19 true and correct.
- 20 (5) The approving officer must give written notice of the decision to  
21 the person and the Director.
- 22 (6) If the approving officer approves the variation, the Director must,  
23 within 10 business days after the day notice of the decision is  
24 given, publish the DPA as varied on the Office's website.
- 25 (7) Despite subsection (6), the Director may do either of the following  
26 if the Director considers it appropriate to do so in the interests of  
27 justice:  
28 (a) publish a version of the DPA as varied that does not disclose  
29 the name of the person or any other material that the Director  
30 considers should not be disclosed;  
31 (b) not publish the DPA as varied.
- 32 (8) Without limiting subsection (7), the Director may publish a version  
33 of the DPA as varied, or not publish the DPA as varied, if the
-

- 1 Director is satisfied that publishing the full version of the DPA  
2 may:  
3 (a) pose a threat to public safety; or  
4 (b) prejudice an ongoing investigation; or  
5 (c) prejudice the fair trial of a person; or  
6 (d) be contrary to an order of a court.
- 7 (9) Subsection (7) does not prevent the Director publishing the DPA,  
8 as varied or a version of the DPA as varied, at a later time if the  
9 Director considers that it would be in the interests of justice to do  
10 so.

## 11 **17G Appointment of approving officers**

- 12 (1) The Minister may, in writing, appoint a person as an approving  
13 officer for the purposes of this Part.
- 14 (2) The Minister must not appoint a person as an approving officer  
15 unless the Minister is satisfied that:  
16 (a) the person is a former judicial officer of a federal court or a  
17 court of a State or Territory; and  
18 (b) the person has the knowledge or experience necessary to  
19 properly exercise the powers of an approving officer.
- 20 (3) An approving officer holds office for the period specified in the  
21 instrument of appointment. The period must not exceed 5 years.
- 22 (4) An approving officer is to be paid the remuneration that is  
23 determined by the Minister in writing.
- 24 (5) A determination made under subsection (4) is not a legislative  
25 instrument.

## 26 **17H Evidence**

### 27 *Admissibility*

- 28 (1) In civil or criminal proceedings against a person (other than an  
29 individual) who is, or was, a party to a DPA, or negotiations for a  
30 DPA, none of the following are admissible in evidence against the  
31 person:

- 1 (a) documents (other than the DPA itself) that indicate the  
2 person entered into negotiations for a DPA;  
3 (b) documents (other than the DPA itself) that were created  
4 solely for the purpose of negotiating a DPA.
- 5 (2) Without limiting subsection (1), the documents include the  
6 following:  
7 (a) any record indicating the person entered into negotiations for  
8 the DPA;  
9 (b) any record of negotiations for the DPA;  
10 (c) any draft of the DPA (including any draft statement of facts).
- 11 (3) Subsection (1) does not apply in the following circumstances:  
12 (a) the circumstances mentioned in subsection 17A(3);  
13 (b) if the person has given evidence in another criminal  
14 proceeding or a civil proceeding that is inconsistent with the  
15 documents mentioned in subsection (1).
- 16 (4) To avoid doubt, this section does not affect the admissibility in  
17 evidence of any information or document obtained as an indirect  
18 consequence of a disclosure of, or any information contained in,  
19 any document mentioned in subsection (1).

20 *Agreed facts*

- 21 (5) The statement of facts included in the DPA is taken to be agreed  
22 facts for the purposes of section 191 of the *Evidence Act 1995* in  
23 any of the following:  
24 (a) criminal proceedings that are instituted in circumstances  
25 mentioned in subsection 17A(3);  
26 (b) proceedings under the *Proceeds of Crime Act 2002* that are  
27 instituted after criminal proceedings mentioned in  
28 paragraph (a).

29 **17J Destroying evidence**

- 30 (1) A person commits an offence if:  
31 (a) a book, document or thing is relevant to:  
32 (i) negotiating a DPA; or  
33 (ii) assessing compliance with a DPA; and
-

- 1 (b) the person causes the book, document or thing to be  
2 prevented from being used in:  
3 (i) negotiating the DPA; or  
4 (ii) assessing compliance with the DPA; or  
5 (iii) evidence in criminal proceedings of a kind mentioned in  
6 subsection 17A(2) relating to the DPA.

7 Penalty:

- 8 (a) for an individual—imprisonment for 5 years or 300 penalty  
9 units, or both; or  
10 (b) for a body corporate—5,000 penalty units.  
11 (2) The fault element for paragraph (1)(b) is intention.

## 12 **17K Disclosure of information**

- 13 (1) This section applies if:  
14 (a) a person is, or was, an official (within the meaning of the  
15 *Public Governance, Performance and Accountability Act*  
16 *2013*) of a Commonwealth entity; and  
17 (b) the person obtains information of a kind mentioned in  
18 subsection (2) (including by a disclosure, or a series of  
19 disclosures, under this section).  
20 (2) The information is information (including personal information  
21 within the meaning of the *Privacy Act 1988*) obtained as a direct  
22 result of the negotiating, entering into, or administering, of a DPA.  
23 (3) The person may disclose the information (including the personal  
24 information) to an authority described in an item of the following  
25 table, or an official of such an authority, for a purpose described in  
26 that item if:  
27 (a) the person believes on reasonable grounds that the disclosure  
28 will serve that purpose; and  
29 (b) a court has not made an order prohibiting the disclosure of  
30 the information to the authority for that purpose.

31

**Schedule 2** Amendments relating to deferred prosecution agreements

**Part 1** Main amendments

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<b>Recipients and purposes of disclosure</b>		
<b>Item</b>	<b>Authority to which disclosure may be made</b>	<b>Purpose for which disclosure may be made</b>
1	Commonwealth entity	Assisting the entity to exercise its powers, or perform its functions or duties
2	Commonwealth entity or an authority of a State or Territory, or of a foreign country	Law enforcement purposes
3	Commonwealth entity or an authority of a State or Territory, or of a foreign country	The protection of public health, or the life or safety of an individual or group of individuals
4	A court or a tribunal, authority or person that has the power to require the answering of questions or the production of documents	For the purposes of proceedings before, or in accordance with an order of, the court, tribunal, authority or person

1 (4) This section applies despite any other secrecy provision, whether  
2 enacted before, at or after the commencement of this section.

3 **17L Disclosure and use of certain information**

4 (1) If a provision of a Commonwealth law authorises the disclosure of  
5 information to, or the use of information by, a person or authority  
6 in relation to a prosecution for an offence, the provision is taken to  
7 authorise the disclosure of the information to, or the use of the  
8 information by, the person or authority for the purposes of  
9 negotiating, entering into or administering a DPA in relation to that  
10 offence.

11 (2) This section applies to a provision of a Commonwealth law  
12 whether the provision was enacted before, at or after the  
13 commencement of this section.

14 **Part 4—Director, Associate Director and staff**

15  
16 **8 Before section 31**

17 Insert:

1 **Part 5—Miscellaneous**  
2

3 **9 Subsection 31(1)**

4 After “9(6D)”, insert “, Part 3”.

5 **10 After subsection 31(1A)**

6 Insert:

7 (1AAA) The Director may, by writing signed by him or her, delegate to a  
8 person who:

9 (a) is a member of the staff of the Office; and

10 (b) is an SES employee; and

11 (c) is a legal practitioner;

12 all or any of the Director’s functions or powers under Part 3 (other  
13 than those under subsections 17B(3), 17C(4), 17D(8) and 17F(7)).

14 **11 Application provision**

15 The amendments made by this Part apply in relation to conduct  
16 occurring before, on or after the commencement of this Part.

1 **Part 2—Consequential amendments to the tax law**

2 *A New Tax System (Goods and Services Tax) Act 1999*

3 **12 After paragraph 69-5(3)(a)**

4 Insert:

5 (aa) section 26-7 of the \*ITAA 1997 (Deferred prosecution  
6 agreements);

7 *Income Tax Assessment Act 1997*

8 **13 Section 12-5 (after table item headed “debt interests”)**

9 Insert:

10

**deferred prosecution agreements**

no deduction for loss or outgoing under a deferred  
prosecution agreement..... 26-7

11

12 **14 After section 26-5**

13 Insert:

14 **26-7 Deferred prosecution agreement expenditure**

15 You cannot deduct under this Act a loss or outgoing incurred under  
16 a term of a deferred prosecution agreement that is in force under  
17 Part 3 of the *Director of Public Prosecutions Act 1983*.

18 **15 Application provision**

19 (1) The amendments made by this Part (other than item 12) apply in  
20 relation to the income year in which Part 1 of this Schedule commences  
21 and later income years.

22 (2) The amendment made by item 12 of this Part applies in relation to the  
23 tax period in which Part 1 of this Schedule commences and later tax  
24 periods.



1 **Part 3—Other consequential amendments**

2 *Administrative Decisions (Judicial Review) Act 1977*

3 **16 After paragraph (xa) of Schedule 1**

4 Insert:

5 (xaa) decisions under Part 3 of the *Director of Public Prosecutions*  
6 *Act 1983*;

7 *Crimes Act 1914*

8 **17 After paragraph 16A(2)(fa)**

9 Insert:

10 (fb) whether the person entered into a DPA (within the meaning  
11 of the *Director of Public Prosecutions Act 1983*) in relation  
12 to the offence and the extent to which the person has  
13 complied, or failed to comply, with the terms of the DPA;

14 **18 Application provision**

15 The amendments made by this Part apply in relation to conduct  
16 occurring before, on or after the commencement of this Part.

1 **Schedule 3—Amendments relating to**  
2 **dishonesty definitions in the Criminal**  
3 **Code**  
4

5 *Criminal Code Act 1995*

6 **1 Subsections 73.9(3) and 92A.1(2) of the *Criminal Code***

7 Repeal the subsections.

8 **2 Sections 130.3 and 470.2 of the *Criminal Code***

9 Repeal the sections.

10 **3 Section 474.1 of the *Criminal Code***

11 Repeal the section, substitute:

12 **474.1 Determination of dishonesty to be a matter for the trier of fact**

13 In a prosecution for an offence against this Subdivision, the  
14 determination of dishonesty is a matter for the trier of fact.

15 **4 Subsection 480.1(1) of the *Criminal Code* (definition of**  
16 ***dishonest*)**

17 Repeal the definition.

18 **5 Section 480.2 of the *Criminal Code***

19 Repeal the section, substitute:

20 **480.2 Determination of dishonesty to be a matter for the trier of fact**

21 In a prosecution for an offence against this Part, the determination  
22 of dishonesty is a matter for the trier of fact.

23 **6 Dictionary in the *Criminal Code***

24 Insert:

25 *dishonest* means dishonest according to the standards of ordinary  
26 people.

- 1 Note: The following provisions affect the meaning of *dishonest* in certain  
2 cases:  
3 (a) section 131.2 (theft);  
4 (b) subsection 134.1(5) (obtaining property by deception);  
5 (c) subsection 471.1(2) (theft of mail-receptacles, articles or postal  
6 messages);  
7 (d) subsection 474.47(8) (using a carriage service for inciting  
8 property damage, or theft, on agricultural land).

9 **7 Application provision**

10 The amendments made by this Schedule apply in relation to the  
11 commission of an offence for which dishonesty is an element, if the  
12 conduct constituting the commission of the offence occurs wholly on or  
13 after the commencement of this item.