



## Ex officio indictments

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### Contents

Power under the DPP Act .....	1
• Section 6(2A) .....	1
• Section 6(2B) .....	1
• Section 6(2C) .....	2
• Section 6(2D) .....	2
2. Who can make the decision .....	2
• Section 6(2A) .....	2
• Section 6(2B)(a) .....	3
• Section 6(2B)(b) .....	3
• Section 6(2C) .....	3
• Section 6(2D) .....	3
3 Prosecution Policy Considerations.....	4

### Power under the DPP Act

Under the DPP Act there are the following 4 situations in which the Director can present an indictment in relation to a matter that a person has not been committed to trial:

- **Section 6(2A)**

S6(2A) allows the Director to prosecute by indictment with the consent of the accused where there has been no preliminary hearing. This may occur where an accused wants to “fast track” a plea of guilty by by-passing proceedings for commitment for sentence before a magistrate.

- **Section 6(2B)**

Whether or not the Director institutes a prosecution on indictment for any of the offences for which an accused was committed for trial, he may include a count in an indictment for a Commonwealth offence:

- on which the accused was examined but not committed for trial (s6(2B)(a)), or

- where evidence was disclosed at committal of an offence on which the accused was not examined (s6(2B)(b)).

- **Section 6(2C)**

The Director must be satisfied that:

- the facts and evidence disclosed in the committal proceedings for the State or Territory offence also disclose a Commonwealth offence and,
- based on those facts and evidence the accused could have been committed in respect of the Commonwealth offence.

This power is available where a committal hearing discloses that a Commonwealth offence is the more appropriate offence to proceed to trial on indictment.

However, section 6(2C) of the DPP Act is not available if a magistrate has been requested but, after examining the facts or evidence said to disclose the commission of a Commonwealth offence, has refused to commit that person for trial for any Commonwealth offence. In those circumstances it is necessary to rely on section 6(2D) (Gillis v Cth DPP 121 ALR 107).

- **Section 6(2D)**

This is the power to file an indictment where no committal hearing has taken place, or where a committal hearing was held and the accused was not committed on any charge at all.

## 2. Who can make the decision

- **Section 6(2A)**

Persons authorised to exercise this power on behalf of the Director are the occupants of SES Band 1, 2 and 3 and SES (Specialist) Band 1 positions.

However, a decision under section 6(2A) must be referred to the Director if the matter is politically sensitive, the decision could be considered contentious or the Director has previously indicated he should be consulted in relation to the decision.

If the Director is being asked to make the decision, material should be prepared setting out the issues and a recommendation and sent to either Legal, Practice Management and Policy Branch or Commercial, International and Counter Terrorism Branch in Head Office.

- **Section 6(2B)(a)**

Any proposal to present an indictment in reliance on section 6(2B)(a) must be referred to the Director for his decision.

The Director should be provided with material setting out the issues and a recommendation which is sent to either Legal, Practice Management and Policy Branch or Commercial, International and Counter Terrorism Branch in Head Office.

- **Section 6(2B)(b)**

The Director has authorised the occupants of SES Band 1, 2 and 3 positions to exercise his power under section 6(2B)(b)

However, a decision under section 6(2B) must be referred to the Director if:

- The offence or offences would be substantially different in number and/or kind to the offence or offences for which the person was committed for trial;
- the matter is politically sensitive;
- the decision could be considered contentious; or
- the Director has previously indicated he should be consulted in relation to the decision.

If the Director is being asked to make the decision, material should be prepared setting out the issues and a recommendation and sent to either Legal, Practice Management and Policy Branch or Commercial, International and Counter Terrorism Branch in Head Office.

- **Section 6(2C)**

Persons authorised to exercise this power on behalf of the Director are the occupants of SES Band 1, 2 and 3 and SES (Specialist) Band 1 positions

However, a decision under section 6(2C) must be referred to the Director if the matter is politically sensitive, the decision could be considered contentious or the Director has previously indicated he should be consulted in relation to the decision.

If the Director is being asked to make the decision, material should be prepared setting out the issues and a recommendation and sent to either Legal, Practice Management and Policy Branch or Commercial, International and Counter Terrorism Branch in Head Office.

- **Section 6(2D)**

Only the Director can make a decision under section 6(2D). The Director should be provided with material setting out the issues and a recommendation which is sent to either Legal, Practice Management and Policy Branch or Commercial, International and Counter Terrorism Branch in Head Office.

### **3 Prosecution Policy Considerations**

There are considerations for providing an ex officio indictment from paragraph 6.28 to 6.32 of the Prosecution Policy of the Commonwealth. These issues should be addressed in any material provided to the Director in relation to making such a decision.