



General charging policy in social security fraud matters

Instruction Number: 6

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As with all Commonwealth Prosecutions, decisions in relation to the choice of charges and the mode of trial for social security fraud matters should be made in accordance with the *Prosecution Policy of the Commonwealth*. The following provides guidance in the application of the Policy to social security fraud matters:

1. Charges should be laid under the appropriate offence provision in the Criminal Code, the *Social Security (Administration) Act 1999* or the *Crimes Act 1914*. In accordance with paragraphs 2.19 and 2.20 of the *Prosecution Policy of the Commonwealth*, the appropriate charge is the one which adequately reflects the nature and extent of the criminal conduct disclosed by the evidence and which will provide the court with an appropriate basis for sentence.
2. There is no continued preference for summary charges under the *Social Security (Administration) Act 1999* instead of summary charges under the *Criminal Code*.
3. Omissions should be charged in accordance with Practice Group Instruction 1.

Whether a matter should be dealt with summarily or on indictment

4. In accordance with the *Prosecution Policy of the Commonwealth*, more serious offending should be charged with an indictable offence and proceed on indictment. Indicia of more serious offending in relation to social security fraud include:
 - a. the claim for benefit was false from the outset;
 - b. a large amount (more than \$60,000 or \$70,000) was obtained from the offending;
 - c. a long period of offending;
 - d. dual or multiple claims for benefits;
 - e. use of forged documentation, a false address or a false or misleading identity;
 - f. significant income received by the defendant or his or her spouse or substantial assets acquired over the relevant period; and
 - g. previous convictions for dishonesty, particularly for similar offences.
5. Internal fraud, namely fraud committed by a person working within the Department of Human Services and who uses their position to perpetrate the fraud, would normally be regarded as serious offending and proceed on indictment, unless prosecuting on indictment would not be in the public interest in the particular circumstances of the case.
6. The decision as to whether a matter proceeds on indictment or is dealt with summarily should be made in accordance with paragraphs 6.11, 6.12 and 6.13 of the *Prosecution Policy of the Commonwealth*.

Summary charges

7. The CDPP will charge the defendant with obtaining a financial advantage under s135.2 of the *Criminal Code* where the offence is less serious and where this would be the appropriate charge.

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8. For offences that occurred before 16 January 2003, it is necessary to prove that the defendant was reckless as to whether the other person was a Commonwealth entity (the Code was amended from 16 January 2003 to apply absolute liability to this element). In such cases, a charge under s215 of the *Social Security (Administration) Act 1999* may be appropriate.
 9. False statement offences may be charged under s212, s213 or s214 of the *Social Security (Administration) Act 1999* or under s136.1, s137.1 or s137.2 of the *Criminal Code*. However, where a false statement has resulted in the obtaining of a financial advantage, the appropriate charge would generally be under s135.2. Such a charge more accurately reflects the nature of the criminal conduct and results in fewer charges where there are multiple false statements, as it is possible to charge as a course of conduct. It is noted that in order to prove the Code false statement offences (except for an offence against s136.1(4)), it is necessary to prove that the defendant knew that the statement was false or misleading. However, the *Social Security (Administration) Act 1999* offences only require proof that the defendant was reckless as to whether the statement was false or misleading.

Indictable charges

10. The CDPP will charge the defendant with obtaining a financial advantage by deception under s134.2 of the *Criminal Code* where the offence is more serious and where this would be the appropriate charge.
11. The CDPP will charge the defendant with dishonesty under s135.1 of the *Criminal Code* where appropriate, for example if the defendant received numerous payments over a lengthy period and it would not be practical to prosecute sufficient charges under s134.2 of the *Criminal Code* to reflect the criminality of the offence. When a charge is laid under s135.1, the case officer should document on the file why this charge was laid.

Redirected payment matters

12. Where the defendant has obtained a financial advantage by causing another person's Centrelink payment to be redirected, charges should generally focus on the fraud rather than the modification of data. Charges under s135.2 or s134.2 of the *Criminal Code* may be appropriate, depending on the seriousness of the offending.

Variable reporting

13. Charges should be laid where there is variable reporting in accordance with Practice Group Instruction 9.

Number of charges

14. See Practice Group Instruction 9.

Charging in different time periods

15. The below table sets out the main available offences in each relevant time period:

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Offences occurred	Offence to charge, if sufficient evidence
A. Less serious offence	
Prior to 2 October 2001	1. Unharmonised false statement offences SS(A) Act (s212, s213, s214); or 2. Unharmonised s215 SS(A) Act
2 October 2001 to 15 January 2003	1. Harmonised false statement offences SS(A) Act (s212, s213, s214); 2. Criminal Code false statement offences (s136.1, s137.1, s137.2) 3. Harmonised s215 SS(A) Act; or 4. S135.2 Criminal Code
From 16 January 2003	1. Harmonised false statement offences SS(A) Act; or 2. Amended s135.2 Criminal Code
B. More Serious Offence	
Prior to 24 May 2001	1. S29B Crimes Act 2. S29D Crimes Act 3. Any other relevant Crimes Act offences
After 24 May 2001	1. S134.2 (obtaining a financial advantage by deception) Criminal Code; or 2. S135.1 (general dishonesty) Criminal Code (Note: use s135.1(5) if the offence is committed by omissions)

16. In cases where the offending started prior to 24 May 2001 and continued after that date, the CDPP will charge the defendant with the relevant *Crimes Act* offence for the period up until 23 May 2001 and the relevant *Criminal Code* offence from 24 May 2001. The defendant's conduct for the purposes of the *Criminal Code* offence is the state of affairs constituted by the conduct the subject of the *Crimes Act* offence.



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