



Evidence relating to Bank Statements in DHS Briefs of Evidence

Instruction Number: 10
Last Update: December 2015

1. Briefs of evidence referred by the Department of Human Services ("DHS") contain bank statements. These may have been acquired by the use of compulsory notices or the execution of a search warrant.
2. Bank statements may be made admissible by various means including:
 - a) evidence of their being lawfully obtained by notice, including evidence about the issue of the notice and obtaining of the statements, or;
 - b) evidence of the issue and execution of a search warrant and as to the obtaining of the statements pursuant to warrant or;
 - c) the tender of bankers' affidavits.
3. For 2(a) and (b) the following may be utilised:
 - i. reliance on s1305 of the Corporations Act 2001 in relation to the admissibility of a book kept by a corporation under a requirement of the Corporations Act 2001, or;
 - ii. admissibility as records of a business through reliance on business record provisions such as section 69 of the Evidence Act 1995 supported by relevant statements.
4. The CDPP will assess briefs of evidence referred that contain bank statements without witness statements about the provenance of the bank statements, ie. evidence as to the origin, seizure and subsequent possession of the bank statements, or bankers' affidavits.
5. A copy of the relevant notice or warrant should however be included in the brief to enable the CDPP to ascertain how the bank statements were obtained.
6. Briefs of evidence referred in relation to offences of fraud that have a maximum penalty of 5 years imprisonment or more should include a bankers' affidavit.
7. Where after assessment of a brief referred for an offence of less than 5 years the CDPP considers that an offence of 5 years or more should proceed, on advising DHS of this the CDPP will request that a bankers' affidavit be obtained.
8. In most instances the CDPP expects that bankers' affidavits will not be required in defended DHS matters, apart from those referred to in (6) above, however there may be circumstances where obtaining these is the most appropriate course. Where this is the case the CDPP will liaise with DHS.

Issued: December 2015

9. These circumstances include where the banking institution has provided other documents that are not self-explanatory and require, for example, explanation about the bank's processes. Documents such as credit card applications, account opening forms, and or loan documents generally require explanation.
10. Where a matter is to be defended and where bankers' affidavits have not been provided, the CDPP will liaise with DHS as to any additional evidence that is required, such as:
- a) witness statements evidencing the issue of a notice and the obtaining of the statements by the relevant DHS officer
 - b) witness statements evidencing the issue and execution of a search warrant by the relevant AFP officer or;
 - c) bankers' affidavits.



James Carter
Deputy Director
Revenue and Benefits Fraud
4/12/2015