



PARLIAMENT  
OF AUSTRALIA

## HEARING PROGRAM

### Budget Estimates 2022–23 Legal and Constitutional Affairs Legislation Committee

Friday, 28 October – Tuesday, 08 November 2022

Main Committee Room (MCR), Parliament House, Canberra

Times listed are indicative only



#### Hearing location

Main Committee Room (MCR),  
Parliament House, Canberra  
Waiting room: Committee Room 1S2



#### Committee members

Senator Nita Green, Chair  
Senator Paul Scarr, Deputy Chair  
Senator Raff Ciccone  
Senator Helen Polley  
Senator David Shoebridge  
Senator Alex Antic



#### Broadcasts of proceedings

Television channel 110  
Radio 92.7  
[https://www.aph.gov.au/Watch Read Listen](https://www.aph.gov.au/Watch_Read_Listen)

#### Ministers attending

#### Secretariat

Sophie Dunstone, Committee Secretary  
Mervyn Piesse, Estimates Officer



#### Contact

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#### Committee rooms

Main Committee Room (MCR): (02) 6277 5840  
Committee Room 1S2: (02) 6277 5849

Friday, 28 October

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## Attorney-General's Portfolio

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| 9.00am | Inspector-General of Intelligence and Security |
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## Home Affairs Portfolio

|         |  |
|---------|--|
| 9.30am  | National Emergency Management Agency   |
| 11.00am | Morning tea  |
| 11.15am | Department of Home Affairs (incl. Australian Border Force)<br>Cross-portfolio, corporate and general matters   |
| 11.45am | Outcome 1: Protect Australia from national security and criminal threats, and support national resilience, through effective national coordination, policy and strategy development and regional cooperation<br>Program 1.1: Transport Security<br>Program 1.2: National Security and Resilience<br>Program 1.3: Cyber Security<br>Program 1.4: Counter Terrorism<br>Program 1.5: Regional Cooperation<br>Program 1.6: Emergency Management (Transferred to NEMA 1 September 2022) |
| 1.15pm  | Lunch  |
| 2.15pm  | Outcome 2: Support a prosperous and united Australia through effective coordination and delivery of immigration and social cohesion policies and programs<br>Program 2.1: Migration<br>Program 2.2: Visas<br>Program 2.3: Refugee, Humanitarian, Settlement and Migrant Services<br>Program 2.4: UMA Offshore Management<br>Program 2.5: Multicultural Affairs and Citizenship   |
| 3.15pm  | Afternoon tea  |
| 3.30pm  | Outcome 3: Advance a prosperous and secure Australia through trade and travel facilitation and modernisation, and effective customs, immigration, maritime and enforcement activities across the border continuum<br>Program 3.1: Trade Facilitation and Industry Engagement<br>Program 3.2: Border Management<br>Program 3.3: Border-Revenue Collection<br>Program 3.4: Border Enforcement<br>Program 3.5: Onshore Compliance and Detention                                       |



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|--------|---|
| 4.30pm | Australian Security Intelligence Organisation |
| 5.00pm | Adjournment                                   |

## Monday, 07 November

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### Attorney-General's Portfolio

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|---------|--|
| 9.00am  | <b>Attorney-General's Department</b><br>Cross-portfolio, corporate and general matters   |
| 10.00am | Morning tea  |
| 10.15am | Justice and Communities Group – Encompassing: First Nations and Justice Policy Division (Criminal Justice Reform Taskforce, Native Title and Priority Reforms Branch, Office of Constitutional Law Branch, Legal Assistance Branch); Courts, Tribunals and Commercial Division (Courts and Tribunals Branch, Judicial Commission Taskforce, Commercial and Copyright Law Branch); and Children and Families Division (Family Law Branch, Family Safety Branch, National Office for Child Safety)                   |
| 11.15am | Integrity and International Group – Encompassing: Integrity Frameworks Division (Fraud Prevention & Anti-Corruption Branch, Information Law Branch, Transparency and Administrative Law Branch); International Law and Human Rights Division (Office of International Law, Human Rights Branch, Modern Slavery and Human Trafficking Branch); and Legal Services and Royal Commissions Division (Royal Commissions Branch, Office of Legal Services Coordination, Office of Corporate Counsel)                     |
| 12.15pm | Lunch  |
| 1.15pm  | National Security and Criminal Justice Group – Encompassing: International and Security Cooperation Division (International Cooperation Unit, Cyber and Cross Border Data Policy Branch, Government and Major Event Security Branch); Criminal Justice Division (Criminal Law Policy Branch, Transnational Crime Branch, Electronic Surveillance Branch); and Security and Counter-Terrorism Division (Security Law and Policy Branch, High Risk Terrorist Offenders Branch, National Security Information Branch) |
| 2.15pm  | Enabling Services Group - Encompassing: Strategy and Governance, Human Resources, Data and Behavioural Insights; Corporate Services Division (AGS Finance, Business Operations, Financial Services); and Information Division (Digital Solutions, ICT Operations, Innovation and Engagement)   |
| 2.45pm  | Australian Government Solicitor Group – Encompassing: Office of the AGS COO; Office of General Counsel; Dispute Resolution; and Commercial*  |
| 3.15pm  | Afternoon tea  |

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| 3.30pm  | Administrative Appeals Tribunal   |
| 4.00pm  | Australian Law Reform Commission  |
| 4.30pm  | Federal Circuit and Family Court of Australia   |
| 5.00pm  | Independent National Security Legislation Monitor   |
| 5.30pm  | Office of the Australian Information Commissioner   |
| 6.00pm  | <b>Australian Human Rights Commission</b><br>Emeritus Professor Rosalind Croucher AM, President<br>Dr Ben Gauntlett, Disability Discrimination Commissioner<br>Ms Kate Jenkins, Sex Discrimination Commissioner<br>Ms June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner<br>Ms Lorraine Finlay, Human Rights Commissioner<br>The Hon Dr Kay Patterson AO, Age Discrimination Commissioner |
| 7.00pm  | Dinner  |
| 8.00pm  | Australian Criminal Intelligence Commission and Australian Institute of Criminology   |
| 8.30pm  | Commonwealth Director of Public Prosecutions  |
| 9.00pm  | Tea   |
| 9.15pm  | Australian Commission for Law Enforcement Integrity   |
| 10.00pm | Commonwealth Ombudsman  |
| 10.30pm | Office of Parliamentary Counsel   |
| 11.00pm | Adjournment   |

Tuesday, 08 November

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## Attorney-General's Portfolio

|         |   |
|---------|---|
| 9.00am  | Australian Federal Police   |
| 10.30am | Morning tea   |
| 10.45am | Australian Transaction Reports and Analysis Centre (AUSTRAC)                              |
| 11.15am | Australian Financial Security Authority   |
| 11.30am | Office of the Special Investigator  |
| 12.00pm | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability |
| 12.30pm | Royal Commission into Defence and Veteran Suicide   |
| 1.00pm  | Adjournment   |

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# BRIEFS

| <b>BRIEF TITLE</b>  | <b>Owner</b>   |
|---|----------------|
| AMSA Dolphin Dive   | FSA            |
| Department of Home Affairs - Villawood                      | FSA            |
| Services Australia - Robodebt                               | FSA            |
| NDIS Taskforce  | FSA            |
| COVID-19 Payment referrals                                  | FSA            |
| WHS prosecution of the Department of Defence (Williamstown) | FSA            |
| Medifraud   | FSA            |
| Prosecution of David McBride and Referral of Daniel Oakes   | OCNS           |
| Prosecution of Witness K and Bernard Collaery               | OCNS           |
| Counter Foreign Interference Prosecution                    | OCNS           |
| Operation POLO (Civil Proceedings)                          | OCNS           |
| CDPP Matters Affected by LAWYER X                           | OCNS           |
| War Crimes Prosecutions                                     | OCNS           |
| Banking Royal Commission                                    | SFCC           |
| Serious Financial Crime Taskforce                           | SFCC           |
| Expansion of the Federal Court's criminal jurisdiction      | SFCC           |
| Prosecution of Clive Palmer for Corporations Act            | SFCC           |
| Banking Cartel Prosecution (Op Deacon)                      | SFCC           |
| Illicit Tobacco Taskforce                                   | SFCC/HEBP      |
| Prosecution of BOYLE (Ex-ATO)                               | SFCC           |
| Prosecution of Peter GREGG (ASIC Brief)                     | SFCC           |
| Operation Imaret  | HEBP           |
| Commonwealth Child Sex Offence Prosecutions                 | HEBP           |
| Prosecution of Facebook                                     | HEBP           |
| Human Trafficking (DAVIS)                                   | HEBP           |
| Key Statistics  | LCP            |
| Death of Queen Elizabeth II                                 | LCP            |
| CDPP Workforce Profile                                      | ESG (Fiona)    |
| CDPP Labour Hire, Contractors and Consultants               | ESG (Fiona)    |
| Budget Measures   | ESG (Steven B) |
| Cybersecurity   | ESG (Paul R)   |
| Key Office Holders Renumeration                             | ESG (Fiona)    |

# FSA

| BRIEF TITLE   | Owner | PDMS Record number (PDR) |
|---|-------|--------------------------|
| AMSA Dolphin Dive   | FSA   | SB22-900145              |
| Department of Home Affairs - Villawood                      | FSA   | SB22-900146              |
| Services Australia - Robodebt                               | FSA   | SB22-900159              |
| NDIS Taskforce  | FSA   | SB22-900162              |
| COVID-19 Payment referrals                                  | FSA   | SB22-900163              |
| WHS prosecution of the Department of Defence (Williamstown) | FSA   | SB22-900177              |
| Medifraud   | FSA   | SB22-900193              |





## CURRENT ISSUE

*Prosecution regarding death of Mr Damien Mills and Dolphin Dive Freemantle*

## KEY FACTS AND RESPONSES

*Has the CDPP received a brief from AMSA with respect to the death of Mr Damien Mills?*

- No, the CDPP has not received a brief of evidence in relation to the death of Mr. Damien Mills.
- On 7 January 2016, the CDPP provided written pre-brief advice to AMSA dealing with a specific aspect of the investigation into the Dolphin Dive Fremantle operations, and allegations surrounding the vessel 'Pia Rebecca'. This did not relate to the death of Mr. Mills. A brief of evidence was not provided.
- During 2019 the CDPP had some engagement with the Senate Standing Committee on Rural and Regional Affairs and Transport Inquiry.
- On 1 May 2019, AMSA provided the CDPP with material relating to issues surrounding commercial passenger vessels run by Dolphin Dive and alleged failings by its operator.
  - This material did not relate to the death of Mr. Mills. This material relates to events subsequent to Mr. Mills' death, namely conduct alleged to have occurred between November and December 2014.
- AMSA subsequently provided a brief of evidence in November 2019.
- The CDPP sought additional evidence and this was provided by AMSA between August - September 2020.

*Has the CDPP assessed this material?*

- The CDPP has assessed the material in accordance with the Prosecution Policy of the Commonwealth and determined that a prosecution should commence against the operator of the commercial vessels, Mr. Daniel Lippiatt, with respect to alleged conduct with marine safety inspectors. Namely, that Mr. Lippiatt provided to Marine Safety Inspectors from the Western Australia Department of Transport, who were Commonwealth Public Officials by virtue of their appointment as inspectors, documents which were forged or which falsely attested to safety measures taken on his vessels.
- On 23 April 2021, Mr. Lippiatt entered pleas of not guilty to all charges:
  - one offence contrary to section 135.1(7) of the Criminal Code (Cth) (dishonestly influencing a Commonwealth public official);

- relating to provision of a signed declaration on 4 November 2014 that defects on board the Pia Rebecca had been repaired;
- six offences contrary to section 145.1(1) of the Criminal Code (Cth) (using a forged document to dishonestly influence a Commonwealth Public Official)

relating to:

- provision of an RFD Australia Pty Ltd Certificate of Re-Inspection for a 25 person life raft on board the vessel Pia Rebecca (7 November 2014);
- provision of a WA Fire Protection Marine Fire System Annual Test Certificate in relation to the vessel Pia Rebecca (7 November 2014);
- provision of a WA Fire Protection Certificate of Inspection and Maintenance in relation to the vessel Pia Rebecca (7 November 2014)
- provision of a WA Fire Protection Marine Fire System Annual Test Certificate in relation to the vessel Takashi (10 November 2014);
- provision of a RFD Australia Pty Ltd Certificate of Re-Inspection for a 10 person life raft on board the vessel Takashi (10 November 2014);
- provision of a RFD Australia Pty Ltd Certificate of Re-Inspection for a 16 person life raft on board *the vessel Takashi (10 November 2014)*.
- The matter has been listed for a 12-day trial in the Perth District Court between 8 August and 23 August 2023.
- The matter is next in Court on 9 March 2023 in the Perth District Court for mention in the General Duties List.

Contact Officer: s22  
 Telephone: s47F  
 Last updated: 24 October 2022

SES: Roberta Devereaux  
 Mobile Number: s47F

## ADDITIONAL INFORMATION

*Mr Damien Mills disappeared from a charter vessel, the 'Ten Sixty Six' on its return voyage from Rottnest Island on 31 October 2014.*

**Previous Estimates:** The CDPP was questioned regarding this matter at the Additional Senate Estimates Hearing held 19 February 2019 – see [transcript](#) at pp. 31-32. As a result of this questioning, on 29 March 2019 the CDPP provided a response to [QON #AE19-015](#) in which it was confirmed:

- (i) The CDPP did not receive a brief in relation to the death of Mr Mills;
- (ii) The CDPP provided written pre-brief advice to AMSA dealing with a specific aspect of the investigation into the Dolphin Dive Fremantle operations, and allegations surrounding the vessel 'Pia Rebecca'



**The Pia Rebecca advice:** On 7 January 2016 the CDPD provided written pre-brief advice to AMSA dealing with a specific aspect of the investigation into the Dolphin Dive Fremantle operations, and allegations surrounding the vessel 'Pia Rebecca'. Specifically, AMSA were seeking advice in relation to allegations surrounding the provision of alleged false documents to Maritime Safety Inspectors.

The pre-brief advice provided by the CDPD highlighted issues for AMSA's further consideration. Our advice noted that without a full brief of evidence being provided, it was not possible to give any definitive advice as to the likelihood of there being reasonable prospects of obtaining a conviction.

**Senate Inquiry** – The Senate Rural, Regional Affairs and Transport Committee conducted an [Inquiry into AMSA's performance](#). The CDPD has engaged with the inquiry.

- On 21 March 2019, the [first public hearing](#) was held. Witnesses from the WA Police and WA Department of Transport appeared before the Inquiry. The Dept. of Transport gave evidence that AMSA had contacted them via telephone and informed them that the CDPD had advised 'there was no public interest in pursuing charges' in the Damien Mills matter.
- On 28 March 2019, the CDPD responded to a number of questions raised by the Committee. The letter confirmed:
  - (i) A review of the CDPD's records shows there was no written or oral communication between the CDPD and AMSA regarding possible prosecution of any individual or company for events relating to the death of Mr Damien Mills on 31 October 2014.
  - (ii) The CDPD received material relating to matters arising subsequent to the Damien Mills incident. That material dealt with a specific aspect of the investigation into the Dolphin Dive Fremantle operations relating to alleged false responses to notices issued by AMSA including a summary of facts and an email from AMSA requesting advice. Consequently, on 7 January 2016, the CDPD provided written pre-brief advice to AMSA dealing with allegations surrounding the vessel Pia Rebecca;
  - (iii) There was nothing on CDPD files to suggest that the incident concerning the death of Mr Mills, and potential offences relating to that incident, were ever raised with the CDPD for the purpose of seeking advice, including advice about the prospects of conviction. There was nothing to suggest the CDPD advised AMSA (either orally or in writing) to not send a brief to the CDPD with respect to the incident concerning the death of Mr Mills and allegations regarding headcounts.
- On 1 April 2019, the [second public hearing](#) was held. At this hearing, AMSA undertook to provide the Committee with a copy of the 'brief' they had prepared regarding Dolphin Dive Fremantle operations.
- On 16 April 2019, the CDPD attended a private hearing held by the Committee in Brisbane.
- On 1 August 2019, the CDPD confirmed with the Committee that a 'partial brief' had been provided by AMSA and was being actively considered by the CDPD. The CDPD noted that the 'partial brief' provided was not in regards to the death of Mr Damien Mills.
- On 25 September 2019, the third public hearing was held. At this hearing, AMSA advised that an investigation into the *Ten Sixty Six* vessel had been opened, and a 'brief' had been referred

to the CDPP (we have recorded this as a 'pre-brief'). AMSA also informed the Committee that the CDPP had sought advice from Counsel with respect to the 'brief' referred.

- In June 2020 the Committee released its [report](#) noting AMSA's recent further investigations into Dolphin Dive and the master of the 1066 and that AMSA are seeking prosecution assessment by CDPP.
- On 1 October 2020 the CDPP responded to an inquiry from Ben Wholagan on behalf of Senator Glenn Sterle:

Dear Mr Wholagan

Thank you for your inquiry and the CDPP refers to your email below inquiring in relation to a brief of evidence concerning Mr Daniel Lippiatt.

A brief of evidence is being considered by the CDPP in accordance with the Prosecution Policy of the Commonwealth. The CDPP notes that the brief provided is not in regards to the death of Mr Damien Mills.

The CDPP also notes that this Office prosecutes alleged offences and does not have any investigative function or capacity.

Regards

CDPP Inquiries

- On 25 February 2021 James Carter returned a phone call from Senator Glenn Sterle. During this conversation the CDPP confirmed with the Senator that charges were proceeding and that the matter would be in court on 26 March 2021. The CDPP advised the Senator that our Office had been in contact with Ms Mills and provided her with this information. The CDPP reiterated that the charges did not relate to the death of Mr Mills.

## ATTACHMENTS

N/A

# QONS RELATING TO AMSA DOLPHIN DIVE

## **Question on notice no. 15**

**Portfolio question number: AE19-015**

### **2018-19 Additional estimates**

#### **Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Barry O'Sullivan:** asked the Commonwealth Director of Public Prosecutions on 19 February 2019

Senator O'SULLIVAN: I thank my colleagues for their indulgence. I know what it's like to sit in a committee and then to have someone blow in for two minutes. I will just take a minute to ground my questions. There was an event in Western Australia where there was a tragic loss of life by a passenger on a charter that went from Perth to one of the near islands. The police conducted an investigation. There was a coronial hearing. AMSA, who is the Australian Maritime Safety Authority, were involved. In evidence given by the head of AMSA yesterday-and there is no need to bore you with our interest in this in terms of how he arrived at a decision-he decided, he said, not to send a brief to the CDPP, despite being encouraged to do so by the police after the result of their investigation. Prima facie there are some breaches of maritime law involved, but here is the burden of why I've come down just to ask you a single question. In previous evidence he suggested that he decided not to either collate a brief or forward it to the CDPP after conversations with them. We will explore this further, but that would suggest that they had no material before them-no artefacts, no exhibits, no photographs, no statements, nothing-and yet he said, and I imagine it was oral advice from them from oral discussions, not to bother sending a brief because it had no prospect. I know you can't answer definitively on this, but would you find that unusual and would it offend the practice of your office? I'm happy for you to take it on notice, both the specific burden of the question plus a general one. I felt that it would be unlikely that the CDPP would afford oral advice as a result of an oral conversation when there was material that could well be examined and weighed up by them in terms of the prospect of a prosecution?

Ms McNaughton: That does sound unusual, if I could indicate that in general terms. But Ms Pavleka, the Commonwealth solicitor, has specific knowledge, or at least in general terms, about the matter.

Ms Pavleka: We have looked into this matter, because we were aware that there was another committee that had an interest in it. So, we were able to retrieve our file on that particular matter. And we could find nothing on our file that suggested that we had given any advice about the strength of prospects in relation to that matter. We couldn't see that we had a summary of facts, any sort of briefing note. We certainly didn't have a brief of evidence. Essentially the Commonwealth DPP was approached for advice in relation to that particular defendant, but on other matters-not on the matter that is of interest to your committee.

Senator O'SULLIVAN: So, we've got a hearing-and I won't labour from here, Chair-are you able to instigate an interrogation of your WA office more thoroughly beyond this? That's your scope of knowledge.

Ms Pavleka: It was actually not our WA office; it was our Townsville office, because they have a specialisation around maritime law, so that was the particular office that

we sought advice from. Indeed, the two Commonwealth DPP officers who were involved in that matter have now left the DPP, and we took the opportunity to contact them and test their memories on it. Essentially we're in the position we are today, which I've just outlined to the committee, that-

Senator O'SULLIVAN: All right. Well, I might have my office brief your office on the events of these hearings, and you might want to monitor it and between us we'll see whether we can't unravel what doesn't even seem to be a mystery to me, but we'll see how it goes.

Senator Reynolds: Senator O'Sullivan, just taking my ministerial hat off for one minute and putting on my senator for Western Australia hat: thank you very much for raising that issue, because it's something I am very conscious of, and I agree with everything you said. It is something that needs redress. So, thank you.

CHAIR: Senator O'Sullivan, I know nothing of what you're talking about, but the lawyers from the Townsville office who gave the advice you said have now left the employ of the DPP?

Ms McNaughton: Yes, but it was about a different matter. It was an entirely different issue to the one that Senator O'Sullivan raised.

CHAIR: Okay, but I understood you to say to Senator O'Sullivan that advice was given verbally, unusually, and it was given by the Townsville office-

Ms McNaughton: No. With respect, that's not what the evidence was.

Ms Pavleka: Just to clarify: this particular organisation, this particular

Ms Pavleka: Just to clarify: this particular organisation, this particular charter company-there was some advice that was provided in relation to some maritime matters in relation to that particular entity, but not advice in relation to the particular matter that is of interest to Senator O'Sullivan.

Senator O'SULLIVAN: So, it's some other, unrelated, issue.

CHAIR: I've no idea about the incident.

Senator O'SULLIVAN: In fact, it reinforces my position. They have a brief on other matters. They don't have a brief on this matter.

Ms McNaughton: And it was not oral advice, either.

Ms Pavleka: It was written advice. And perhaps I should just say, for completeness, that the only thing we could see on our file that touched on the incident with which your committee is concerned was essentially some oral context to why we were receiving a referral in relation to the other matter, that essentially the investigation into the other matters had been kicked off by what had happened in relation to the death of Mr Mills.

Senator O'SULLIVAN: Are you able to take on notice to provide me with that documentation, with that brief? Is there a problem with that?

Ms Pavleka: I'd have to-

Senator O'SULLIVAN: You can take it on notice.

Ms Pavleka: Yes, I'll take it on notice.

Senator O'SULLIVAN: The contact with your office was from AMSA?

Ms Pavleka: It was with AMSA. We had no contact at all with the Western Australia Water Police, who I believe investigated the death.

Senator O'SULLIVAN: Thank you. I appreciate the opportunity.

**Answer —**

The CDPP confirms that the incident concerning the death of Mr Mills, and potential offences directly relating to that incident, were never raised with the CDPP for the purpose of seeking advice, including advice about the prospects of conviction. The CDPP did not receive a brief in relation to that incident and the 'head count' issue which is of interest to the Rural and Regional Affairs and Transport Legislation Committee.

The CDPP advises that the Australian Maritime Safety Authority (AMSA) provided the CDPP with a small amount of material relating to matters arising subsequent to the Mr Mills incident, namely alleged incidents involving Dolphin Dive Centre occurring on or after 2 November 2014. That material dealt with a specific aspect of the investigation into the Dolphin Dive Centre operations, and allegations surrounding the vessel Pia Rebecca. The CDPP was not provided with a brief of evidence in relation to the Pia Rebecca matter. On 4 December 2015 CDPP received a summary of facts and an email from AMSA summarising the issues for advice.

On 7 January 2016, the CDPP provided written pre-brief advice to AMSA dealing with allegations surrounding the vessel Pia Rebecca. The letter was provided within the framework of legal advice given by the Commonwealth DPP to another Commonwealth agency. Such correspondence is confidential, and it would not be appropriate to provide legal advice to the Committee.



## CURRENT ISSUE

*Prosecution relating to Villawood Detention Centre.*

## KEY FACTS AND RESPONSES

*Have charges been laid regarding WHS concerns at Villawood Detention Centre?*

- On 16 December 2020, the CDPP received a brief of evidence from Comcare relating to the circumstances surrounding a fatality that occurred at Villawood Immigration Detention Centre on 4 March 2019.
- The CDPP has assessed the material in accordance with the *Prosecution Policy of the Commonwealth* and determined that a prosecution should commence against International Health & Medical Services Pty Ltd ('IHMS') and the Commonwealth of Australia, through its responsible agency the Department of Home Affairs ('DHA').
- It is alleged that DHA and IHMS each failed to provide and maintain a safe system of work at the Detention Centre as part of their health and safety duties that extend to detainees; and failed to provide necessary training, information, instruction and supervision in relation to the mental health care for the detainees at the Detention Centre.
- Charges were filed on 3 March 2021:
  - International Health & Medical Services Pty Ltd and the Commonwealth of Australia, through its responsible agency the Department of Home Affairs (DHA), are each charged with 2 counts of failure to comply with a health and safety duty, exposing one or more individuals to a risk of death or serious injury contrary to section 32, section 19(2) and section 19(3)(c) or s19(3)(f) of the *Work Health and Safety Act 2011* (Cth). The risk was a risk of suicide or serious self-harm.
- The matter has been listed for a four-week hearing between 17 April and 12 May 2023, however a three-day stay application hearing is listed between 7 and 9 November 2022 in the Downing Centre Local Court.
- As the matter is before the court it would be inappropriate for me to comment further.

Contact Officer: s22  
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Last updated: 24 October 2022

SES: Roberta Devereaux  
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## ADDITIONAL INFORMATION

- On Monday 4 March 2019, Mr Milad Abdulrahim Aljaberi committed suicide s47F at Villawood Detention Centre.
- **Comcare media release:** On 10 March 2021, Comcare issued a [press release](#) noting that charges had been laid (**Attachment A**).

## ATTACHMENTS

**Attachment A** – Comcare media release 10 March 2021 – WHS charges over detention centre death



## **Attachment A – Comcare media release 10 March 2021 – WHS charges over detention centre death**

### **WHS charges over detention centre death (Media release)**

10 March 2021

The Department of Home Affairs and its healthcare provider International Health and Medical Services (IHMS) have been charged with breaching Commonwealth work health and safety laws over the death of a man in immigration detention.

Following an investigation by regulator Comcare, the Commonwealth Director of Public Prosecutions has filed two charges each against Home Affairs and IHMS alleging they failed in their duties under the federal Work Health and Safety Act 2011 (WHS Act).

The charges relate to an incident on 4 March 2019 where a 26-year-old Iraqi national took his own life at Sydney's Villawood Immigration Detention Centre.

It is alleged that Home Affairs and IHMS failed to provide and maintain a safe system of work at the facility as part of their health and safety duties that extend to detainees.

It is also alleged that Home Affairs and IHMS failed to provide necessary training, information and supervision to mental health staff in relation to their care for the detainee.

Each charge is a Category 2 offence under the WHS Act, carrying a maximum penalty of \$1.5 million.

The matter is listed for mention in Sydney's Downing Centre Local Court on 27 April 2021.

#### **Media Contact:**

media@comcare.gov.au

0478 305 675



## CURRENT ISSUE

CDPP's involvement with the 'Robodebt'-affected matters and whether there have been any referrals from Services Australia – Centrelink and subsequent prosecutions that were affected.

## KEY FACTS AND RESPONSES

- The Online Compliance Intervention or, as it is colloquially known, 'Robodebt' is an averaging process by which data from the Australian Tax Office was matched with income reported to Centrelink by welfare recipients. Centrelink used the information from the ATO and averaged it over multiple fortnights to determine a debt.
- The CDPP did not prosecute any people for any debt that arose as a consequence of 'Robodebt'.
- Alleged benefits fraud matters referred to the CDPP are based on verified employer income evidence and bank statements. These prosecutions are based on income earned in specific fortnights rather than averaged amounts.
- The CDPP received inquiries from persons as to whether their matter was affected by 'Robodebt'. The CDPP has reviewed those matters and found that they were not affected, as they were not based on annualised income.
- The *Social Security Administration Act* provides for annualised income to be utilised in very limited circumstances relating to self-employment and charges in this limited situation may be brought where there is a risk of loss.

Contact Officer: s22  
Telephone: s47F  
Last updated: 12 October 2022

SES: Roberta Devereaux  
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## ADDITIONAL INFORMATION

- The government has agreed to reimburse PAYG welfare recipients who incurred a debt based on the use of averaging of ATO data from this scheme.
- This follows consent orders in the Federal Court of Australia in the case of *Deanna Amato –v Commonwealth of Australia* (VID611/2019) that the demand for payment of the debt in that matter was not validly made because the information before the decision-maker was not capable of satisfying the decision-maker that a debt was owed.

- A class action commenced in respect of debts raised using 'Robodebt'. In accordance with orders of the Federal Court, Services Australia have issued approx. 700,000 notices to persons affected by 'Robodebt' advising them that they are a member of the 'Robodebt' (Social Security Debt Collection) Class Action (VID 1252/2019).
- On 1 June 2021, the Federal Court of Australia made orders approving the settlement of Income Compliance Program ('Robodebt') class action.
- On 13 September 2021, Services Australia consulted the CDPP in relation to a number of options to refund members of the class who have relevant debts. None of the options presented appeared to have any direct impact on any criminal conviction that had been imposed by a Court. There is the potential that a refund may be a triggering event for some people to lodge an appeal.
- On 18 August 2022 the [Royal Commission into the Robodebt Scheme](#) was established. Ms Catherine Holmes AC SC was appointed as the Royal Commissioner with a report due by 18 April 2023.

## ATTACHMENTS

N/A



## CURRENT ISSUE

*CDPP's involvement in the prosecution of fraudulent claims for COVID-19 related stimulus and support payments.*

## KEY FACTS AND RESPONSES

- The CDPP is liaising with partner agencies regarding the investigation and prosecution of fraudulent claims for COVID-19 related stimulus and support payments.
- CDPP records indicate that since June 2020, and as at 10 October 2022, we have received 113 referrals from 4 agencies:
  - 91 referrals from Services Australia; and
  - 10 referrals from the AFP and ATO (Taskforce IRIS)
  - 6 referrals from the AFP and Services Australia (Taskforce Integrity)
  - 6 referrals from NSW Police
- The 113 referrals concern alleged fraudulent claims for:
  - JobSeeker and JobKeeper Payments;
  - Coronavirus Supplement;
  - Economic Support Payment;
  - National Health Emergency Crisis Payment;
  - Pandemic Leave Disaster Payment;
  - COVID19 Disaster Payment, and
  - Early release of superannuation funds.
- Briefs of evidence referred in 15 matters are currently being assessed.
- Charges for a range of fraud and dishonesty offences have been laid in relation to 98 people.
- Some accused have made allegedly fraudulent claims for multiple payments and/or were using multiple identities; or have re-directed payments from legitimate recipients into fraudulent bank accounts.



- The prosecutions of 51 defendants have been completed. Sentences imposed have included actual terms of imprisonment as well as other orders such as community service and release on recognizance subject to conditions.
- 16 matters have been charged in the summary jurisdiction and are progressing through the Magistrates and Local courts.
- 5 matters are at the committal stage, while 6 matters have been committed and are progressing through the Superior Courts.
- District Court trials have been listed in relation to 4 matters in 2023.
- The CDPP anticipates that there will further referrals of COVID19 related stimulus and support payment fraud and will continue to provide pre-brief advice when requested.

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Last updated: 12 October

SES: Roberta Devereaux  
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## ATTACHMENTS

N/A



## CURRENT ISSUE

*CDPP's involvement in the prosecution of fraud perpetrated by NDIS service providers, carers and scheme participants referred by the NDIS Taskforce.*

## KEY FACTS AND RESPONSES

- The CDPP is an advisory member of the National Disability Insurance Scheme (NDIS) Fraud Taskforce.
- The Taskforce investigates matters and refers briefs of evidence to the CDPP.
- CDPP records indicate that, as at 24 October 2022, there are 22 active matters referred by the NDIA and/or AFP. There are 3 active pre-brief referrals, and one matter that is in brief assessment.
- Charges have been laid in 18 matters, with 2 matters to be dealt with summarily. Of the balance of matters in Superior Courts, 10 are in committal phase, 4 matters are in Trial phase and 2 matters have been listed for sentence.
- Since the establishment of the Taskforce, 12 prosecutions referred have been completed, including matters referred under Op Apus in Sydney and Op Cetus in Melbourne
- Sentences of imprisonment have been imposed in all 12 prosecutions (4 to be served by way of Intensive Corrections Orders).
- In July 2022, the NDIA contacted CDPP as a stakeholder at the behest of the Minister of the NDIS and Government Services to provide indicative costs of prosecuting NDIS fraud. The Minister proposed establishing a new Fraud Fusion Taskforce with new member agencies to join AFP and NDIA. Those agencies are the ACIC, AUSTRAC, ASIC, ATO, SA, CDPP and the NDIS Commission.
- The CDPP will continue to provide assistance and support to both the current Taskforce and the proposed Fraud Fusion Taskforce.

Contact Officer: s22  
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Last updated: 24 October 2022

SES: Roberta Devereaux  
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# ADDITIONAL INFORMATION

## Background

- On 24 July 2018, the Government announced the establishment of a dedicated Taskforce to tackle fraud committed against the NDIS. The NDIS Fraud Taskforce is a joint operation involving Services Australia (formerly known as the Department of Human Services), the National Disability Insurance Agency (NDIA) and the Australian Federal Police (AFP).

## Sentences imposed to date (all guilty pleas)

- Mohamed OMAR:** 2x s.135.1(3) dishonestly causing a loss offence (incl. attempt) and 2x dealing in proceeds of crime offences (s.400.4(1) and s.400.6(1)) – provider fraud – \$455,435.83 (\$370,336.41 obtained and \$84,099.42 attempted) – 11/07/19 sentence: 4 years with a non-parole period (NPP) of 2 years and 6 months.
- Note:** There is an active suppression order in place with respect to victims involved. Information in this briefing is not subject to the suppression order.
- Operation Apus** – 6 defendants – conspiracy to defraud (s.135.4(1)) – provider fraud – \$1.56 million (including attempts):
  - Alaedine RIFAI** – 18/09/20 sentence: 4 years and 6 months, 3 years NPP
  - Amal HILMI** – 18/09/20 sentence: 4 years and 6 months, 2 years and 9 months NPP
  - Mostafa HILMI** – 30/04/21 sentence: 3 years, release after serving 2 years (\$200 recognisance to be of good behaviour for 12 months)
  - Alhassane HILMI** – 30/04/21 sentence: 3 years, release after serving 2 years (\$200 recognisance to be of good behaviour for 12 months)
  - Sumaiah AL SHAKHSHIR** – 30/04/21 sentence: 2 years ICO (treatment condition)
  - Michelle ROSS** – 10/08/2021 sentence: 2 years ICO (treatment condition).
- Operation Cetus: Mitchell John LANDRY** – provider fraud – 1x 135.1(5) and 1x attempt 135.1(5) & 11.1(1) – \$342,940.51 obtained and \$156,388.42 attempted – 05/07/2021 sentence: 3 years, release after serving 16 months (\$5,000 recognisance to be of good behaviour for 3 years). Amount defrauded fully repaid.
- Cary WHITE** – 5x obtaining financial advantage by deception (s.134.2(1)) – carer fraud – \$41,767.83 – 26/05/21 sentence: 21 months' imprisonment, release after serving 3 months (\$1,000 recognisance to be of good behaviour for 2 years). POCA orders under s.48(1) made in relation to property (power boats) obtained as a result of the offending.
- Gazwan SHAHROUK** - 2 x 400.6(1) dealing with proceeds of crime – dealt with monies obtained by provider fraud committed by associates. 14/9/22 sentence: aggregate 9 months ICO.

- **Jugurtha ZAFRANE** – 1 x 400.6(2) dealing with proceeds of crime – dealt with monies obtained by provider fraud.26/7/22 sentence: 5 months ICO (treatment condition).
- **Joanne ROGERS** – 2 v obtaining financial advantage by deception (s.134.2(1)) – carer fraud - \$97,589.90 – 25/8/22 sentence: aggregate 2 years 6 months' imprisonment, release after serving 4 months (\$1000 recognisance to be of good behaviour 3 years). Reparation of \$50,000 ordered.

## ATTACHMENTS

N/A





## CURRENT ISSUE

*Prosecution relating to RAAF Base Williamtown*

## KEY FACTS AND RESPONSES

*Have charges been laid regarding the WHS concerns at RAAF Base Williamtown*

- On 9 March 2022, the CDPP received a brief of evidence referred by Comcare relating to the circumstances surrounding the suicide of s47F at Williamtown on 28 July 2020.
- The CDPP assessed the material in accordance with the Prosecution Policy of the Commonwealth and determined that a prosecution should commence against the Commonwealth of Australia, through its responsible agency the Department of Defence ('DOD').
- It is alleged that DOD failed to provide and maintain a safe system of work at Williamtown as part of their health and safety duties to workers by failing to manage risks in their performance management processes including providing necessary information, training, instruction and supervision relating to mental health care for workers at Williamtown.
- Charges were filed on 27 July 2022. The Commonwealth of Australia, through its responsible agency DOD, is charged with:
  - 3 counts of failure to comply with a health and safety duty, exposing one or more individuals to a risk of death, serious injury or illness contrary to sections 32 and 33 of the Work Health and Safety Act 2011 (Cth). The relevant risk was a risk of suicide.
- The matter is next in court on 16 January 2023 in Maitland Local Court.
- As the matter is before the court it would be inappropriate for me to comment further.
- Contact Officer: s22 SES: Roberta Devereaux  
s22  
Telephone: s47F Mobile Number: s47F  
Last updated: 24 October 2022

## ADDITIONAL INFORMATION

- On 28 July 2020, s47F committed suicide s47F at Williamstown whilst at work. He enlisted in the RAAF on s47F  
[REDACTED]
- As a result of a complaint made by s47F to the Director in writing, Roberta Devereaux met with s47F on 3 August 2022 to discuss the charges. The meeting was via Zoom.
- **Comcare media release:** On 9 August 2022, Comcare issued a press release noting that charges had been laid (see **Attachment A**).
- The Attorney-General's Department contacted CDPP on 29 August 2022 and advised that the Royal Commission into Defence and Veteran Suicide were interested in engaging with CDPP regarding the DOD being charged under the WHS Act. To date we have not been approached by the Royal Commission.

## ATTACHMENTS

*Attachment A – Comcare Media Release 9 August 2022*

## **Attachment A – Comcare Media Release 9 August 2022**

### **Defence charged over death of RAAF member (Media release)**

9 August 2022

The Department of Defence has been charged with breaching Commonwealth work health and safety laws for allegedly failing to manage psychological risks in relation to the death of a worker.

Following a Comcare investigation, the Commonwealth Director of Public Prosecutions has filed three charges in the NSW Local Court at Maitland alleging Defence failed in its primary duty under the federal *Work Health and Safety Act 2011* (WHS Act).

The worker, a Royal Australian Air Force technician at Williamtown near Newcastle, took his own life while on duty at the base on 28 July 2020.

It is alleged Defence breached its health and safety duty under section 19(1) of the WHS Act by failing to provide, so far as reasonably practicable:

- Safe systems of work
- Necessary training to workers
- Information necessary to protect all persons from risks to their health and safety

All charges relate to alleged failures in managing risks to psychological health and safety during the administration of Defence workplace policies and procedures.

The three criminal charges consist of:

- One Category 2 offence, carrying a maximum penalty of \$1.5 million
- Two Category 3 offences, each carrying a maximum penalty of \$500,000

The matter is listed for first mention in the Maitland Local Court on 29 September 2022.

#### **Media Contact:**

[media@comcare.gov.au](mailto:media@comcare.gov.au)

0478 305 675





## CURRENT ISSUE

*The prevalence of Service Provider Fraud upon the MBS and PBS*

## KEY FACTS AND RESPONSES

- Substantial sums are paid through the Medicare Benefits Scheme ('MBS') and the Pharmaceutical Benefits Scheme ('PBS') annually. Claims are lodged electronically. The availability of electronic claiming has enabled false claims to be made more quickly and easily. This can result in frauds of greater quantum.
- The CDPP receives referrals from the Department of Health ('DoH') resulting from investigations into alleged medifraud committed by providers such as:
  - Doctors;
  - Pharmacists;
  - Diagnostic imaging services;
  - Psychologists;
  - Employees (such as receptionists and practice managers).
- We note that service providers are increasingly using corporate structures as a vehicle.
- As at 24 October 2022, the CDPP holds 40 active matters that fall into this type of medifraud:
  - 4 referrals are in pre-brief;
  - 10 referrals are in brief assessment;
  - 26 referrals are currently in Court.
- Sentences for these types of fraud ranged from a section 19B bond to terms of imprisonment with actual custody. There was a single matter dealt with summarily which resulted in an acquittal of a Doctor (s47F) due to difficulties with proving the veracity of Department claims data at hearing. The quantum of the fraud was some \$36,000.
- Since May 2021, 19 matters have been finalised where the offender was either a Doctor, Pharmacist, Psychologist, Physiologist or an employee of a medical practice:
  - 1 matter was an acquittal (s47F);
  - 2 matters were section 19B bonds (the quantum of fraud was \$10,629 and \$2,992 respectively);

- 1 matter was a section 20(1)(a) bond (quantum of fraud was \$10,558.45);
- 2 matters had fines imposed as well as restitution orders (\$1500 & \$2500; restitution of \$15,467 and \$13,179 respectively);
- 4 matters had ICO/CCO's imposed (2 x ICO; 2 x CCO);
- 4 matters had terms of imprisonment but with a release forthwith (quantum of fraud ranged from \$2952.15 (Sophie TOONE) to \$178,548.70 (Erin WATERS));
- 5 matters had terms of imprisonment with actual custody (quantum of fraud ranged from \$46,781.08 (David BREWSTER) to \$19.3 million (Hamza ZOGHBI)).

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 Last updated: 24 October 2022

SES: Roberta Devereaux

Mobile Number: s47F

## ADDITIONAL INFORMATION

- Generally fraudulent claims by service providers are achieved through one or more of the following methods:
  - Claims for a more lucrative item number than the service actually provided such as by claiming a long consultation when only a standard consultation was provided. This practice is known as "up-coding". This type of offending is rarely if ever charged as it is very difficult to prove to the criminal standard.
  - Claims for an item number and description of a medical service not rendered.
  - Claims made on the basis that the practitioner rendered the service, when in fact a nurse or medical assistant rendered the service. This type of offending is difficult to prove to the criminal standard.
  - PBS claims for medication not supplied by pharmacies.

### Emerging issues for prosecution of medifraud

#### ***Service providers committing fraud using corporate entities as a vehicle***

- Following the movement of corporate entities into the health care space, there have been a number of referrals to the CDDP involving individuals who own or are employed at a high level within a company that is a service provider, where the company is being used as a vehicle to commit medifraud.
- This type of offending is often more sophisticated and complex and involves significantly higher quantum.
- Practitioners employed or contracted by a company on a fixed wage usually assign their Medicare payment to the practice. This usually means that the practitioner has no control over the batching and issuing of Medicare claims. Claims are usually generated by using the information in the practice management software.
- The increased complexity, largely arising due to the loss of the link between the claim and the payment, presents additional challenges for DoH investigators and requires greater investigative resources and capability.



- s47E(d) [REDACTED]
- The prosecution of these matters is also often more difficult. They can often involve allegations against more than one defendant and require the use of extension of criminal liability provisions including conspiracy or joint commission. Among other things, this requires sufficient evidence to prove an agreement to the requisite standard which may be lacking in some referrals.
- Such prosecutions are also extensively litigated, with the defendant's often well resourced. Prosecutions can run for a number of years and delay can prejudice the prosecution, for example key witnesses may be unavailable at trial, which may be years after the offending.

### Telehealth claiming

There has been an increase in claims for services provided via telehealth. Although claims can only be made for services rendered within Australia, there have been a number of matters involving allegations of telehealth services that were purportedly provided while the doctor was overseas at the time of the claim. If it cannot be established that the service was never provided (which arises often in matters where vulnerable patients are targeted) it can be difficult to establish the fault element to the requisite standard.

### COVID19

- As a result of COVID, there have been measures put in place, such as, no longer requiring a patient signature on prescriptions, which decreases accountability.

### Challenges

*Human Services (Medicare) Act 1973: legislative limitations impacting upon the investigation and prosecution of medifrauds*

s37(1)(a); s47E(d) [REDACTED]

- I [REDACTED]
- I [REDACTED]
- I [REDACTED]

s37(1)(a); 47E(d)



## ATTACHMENTS

N/A

# OCNS

| BRIEF TITLE   | Owner | PDMS Record number (PDR) |
|---|-------|--------------------------|
| Prosecution of David McBride and Referral of Daniel Oakes | OCNS  | SB22-900148              |
| Prosecution of Witness K and Bernard Collaery             | OCNS  | SB22-900149              |
| Counter Foreign Interference Prosecution                  | OCNS  | SB22-900150              |
| Operation POLO (Civil Proceedings)                        | OCNS  | SB22-900151              |
| CDPP Matters Affected by LAWYER X                         | OCNS  | SB22-900152              |
| War Crimes Prosecutions                                   | OCNS  | SB22-900153              |





## CURRENT ISSUE

David McBride was charged with various federal offences relating to the removal of classified documents from the Department of Defence, the provision of those documents to unauthorised persons and the publication of related information. A brief of evidence was also referred in relation to journalist Daniel Oakes, but a prosecution has not been commenced.

## KEY FACTS AND RESPONSES

- Charges on indictment filed 11 October 2019
  - 1 x theft contrary to s 131.1(1) of the *Criminal Code*, relating to removal of documents from various Department of Defence facilities between about 1 December 2013 and about 26 February 2018
  - 3 x communicating military information contrary to s 73A(1) of the *Defence Act 1901*, relating to communicating to 3 unauthorised users between about 1 August 2014 and about 31 December 2015 (x 2 users) & between about 2 May 2016 and about 11 July 2017 (x 1 user)
  - 1 x unauthorised disclosure of information contrary to s 70 of the *Crimes Act 1914*, relating to publishing information, which came into his knowledge by virtue of being a Commonwealth officer, on a website between about 4 April 2016 and about 31 May 2016.
- Status of prosecution
  - Mr McBride has pleaded not guilty to all charges and has waived his right to committal. Mr McBride was committed to stand trial in the ACT Supreme Court on 30 May 2019.
  - The *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) has been invoked and several pre-trial hearings have occurred.
  - Mr McBride is seeking protection from prosecution under the *Public Interest Disclosure Act 2013* (Cth). The hearing of Mr McBride's claim for immunity under that Act was scheduled to commence on 29 September 2020, with the trial to commence 16 November 2020, subject to the outcome of the immunity claim. On 1 September 2020, these listings were vacated by agreement with Mr McBride given the impact of COVID-19 and the location of counsel and solicitors in more than one State.
  - The hearing of the immunity claim was then listed for 6 days from 20 September 2021 but was again vacated following an application by Mr McBride due to COVID restrictions in NSW and security restrictions preventing Mr McBride's counsel from accessing the brief and

preparing their case. The CDPP did not oppose the hearing being vacated. The hearing was relisted to 27 October 2022 for 4 to 5 days.

- On 27 October 2022, at the commencement of the hearing, Mr McBride indicated that the claim for immunity would be discontinued, and filed a notice of discontinuance later that day. Accordingly, the matter will now proceed to trial.
- Mr McBride indicated that the reason for the discontinuance was that if related claims for public interest immunity by the Commonwealth, relating to redactions in the prosecution brief of evidence against Mr McBride, were to be upheld then Mr McBride would be deprived of the evidence of two academics he intended to call as expert witnesses.
- The Commonwealth's public interest immunity claim had not been determined by the Court at the time Mr McBride withdrew his claim. Likewise, while the CDPP filed objections to the expert evidence sought to be relied on by Mr McBride on the basis of its non-compliance with hearsay, opinion and relevance rules, the Court had not determined the objection at the time Mr McBride withdrew his claim.
- The matter is next in court for a directions hearing on 10 November 2022.
- Total cost of prosecution as at 10 October 2022:
  - \$187,928.00 external costs.
- Was the Attorney-General's consent sought to commence the prosecution?
  - Pursuant to a direction issued on 19 September 2019 under s 8 of the *DPP Act 1983* (Cth), the Attorney-General's consent is only required to prosecute these offences where the defendant is a journalist and the conduct alleged relates to their work in a professional capacity as a journalist. Mr McBride is not a journalist and as such the Attorney-General's consent is not required.
- There have been various media reports suggesting that the prosecution against Mr McBride should be discontinued. What is the CDPP's response to this?
  - The *Prosecution Policy of the Commonwealth* underpins all of the decisions made by the CDPP throughout the prosecution process and promotes consistency in decision making. It is a public document and applies to all Commonwealth prosecutions.
  - The *Prosecution Policy* outlines the relevant factors and considerations which are taken into account when our prosecutors are exercising their discretion. The Policy also serves to inform the public and practitioners of the principles which guide the decisions made by the CDPP.
  - The *Prosecution Policy* provides a two-stage test that must be satisfied before a prosecution is commenced:
    - (a) there must be sufficient evidence to prosecute the case; and
    - (b) it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.

- In determining whether there is sufficient evidence to prosecute a case the CDPP must be satisfied that there is prima facie evidence of the elements of the offence and a reasonable prospect of obtaining a conviction. The existence of a prima facie case is not sufficient
- Having been satisfied that there is sufficient evidence to justify the initiation or continuation of a prosecution, the prosecutor must then consider whether the public interest requires a prosecution to be pursued. In determining whether this is the case, prosecutors will consider all of the provable facts and all of the surrounding circumstances. Paragraph 2.10 of the *Prosecution Policy* contains a non-exhaustive list of matters that may arise for consideration in determining whether the public interest requires a prosecution.
- A range of factors were considered in assessing whether the public interest required a prosecution to be commenced in this matter, including the role of whistle-blowers and public interest journalism in Australia's democracy.
- As Mr McBride is presently before the courts, it is not appropriate for the CDPP to comment further.

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Last updated: 2 November 2022

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Mobile Number:

## ADDITIONAL INFORMATION

- Will any journalists be charged in relation to this matter?
  - The CDPP received a brief of evidence in relation to journalist Daniel Oakes in relation to three potential charges. The brief of evidence was assessed in accordance with the *Prosecution Policy of the Commonwealth* and it was determined that there was a reasonable prospect of conviction in relation to two charges.
  - Having been satisfied that there was sufficient evidence to justify the initiation of a prosecution, the prosecutor then considered whether the public interest required a prosecution to be pursued.
  - Paragraph 2.10 of the *Prosecution Policy* contains a non-exhaustive list of matters that may arise for consideration in determining whether the public interest requires a prosecution. A range of factors were considered in assessing whether the public interest required a prosecution to be commenced in relation to Mr Oakes, including the role of public interest journalism. After careful consideration of a range of factors, it was determined that the public interest did not require a prosecution.
  - Noting the related matter of Mr McBride is currently before the courts, it is not appropriate for the CDPP to comment further.

- When assessing a brief of evidence, does the CDPP consider ‘freedom of the press’ to be a relevant public interest consideration?
  - Paragraph 2.10 of the *Prosecution Policy* provides a non-exhaustive list of factors which may arise for consideration, including the seriousness of the offending, degree of culpability, and any mitigating and aggravating factors. Paragraph 2.10(u) of the *Prosecution Policy* also refers to:

“... the necessity to maintain public confidence in the rule of law and the administration of justice through the institutions of democratic governance including the Parliament and the Courts”.
- What about other protections for journalists?
  - The framing of offences and any applicable defences involves issues of policy, which is more appropriately a matter for Government to address.
  - Some statutory schemes provide specific protections to journalists. A defence is provided in relation to the unauthorised disclosure of information offences contained in Part 5.6 of the *Criminal Code*, making it a defence for those who are engaged in the business of reporting news in the public interest.
  - If the offending involved an alleged public interest disclosure, the circumstances and protections provided by the *Public Interest Disclosure Act 2013* (Cth) may apply.
  - Some offences require the consent of the Attorney-General to prosecute. For example, section 123.5(1) of the *Criminal Code* provides that the Attorney-General’s consent is required to commence a prosecution for an offence contained within Part 5.6 of the *Code* (that Part contains secrecy offences that criminalise unauthorised disclosures of information).
  - A direction signed by the Attorney-General on 19 September 2019 under s 8 of the *DPP Act* provides that the CDPP must first seek the Attorney’s consent to proceed with a prosecution with respect to:
    - : s 35P of the *Australian Security Intelligence Organisation Act 1979*
    - : ss 3ZZHA, 15HK, 15HL and 70 of the *Crimes Act 1914*
    - : ss 131.1 and 132.1 of the *Criminal Code*
    - : s 73A of the *Defence Act 1903*
- Has the CDPP prosecuted journalists in the past? In relation to what offences?
  - There have been referrals in relation to the potential prosecution of journalists in the past. These have been few in number. These have included matters relating to breaching non-publication orders, contempt and obtaining unauthorised access to information.
- Was public interest immunity claimed by the Commonwealth in relation to the brief against Mr McBride?



- Due to the nature of the proceedings, the brief of evidence, including evidence that was filed for Mr McBride's claim for immunity, contained extremely sensitive information over which the Commonwealth, represented by the Australian Government Solicitor, claimed public interest immunity and therefore sought to redact the relevant documents. The public interest immunity claims have been the subject of refinement throughout the course of the proceedings.
- Did the CDPP object to evidence relied on by Mr McBride for his immunity claim?
  - On 14 October 2022, the CDPP served on Mr McBride a list of objections to the evidence Mr McBride proposed to rely on in respect of his claim for immunity under the *Public Interest Disclosure Act 2013* (Cth). The CDPP objected to parts of two affidavits of Mr McBride and two expert reports prepared by academics. The objections were on the basis of the evidence being contrary to rules on hearsay, opinion, relevance and other evidentiary grounds.
  - The Court had not made a determination as to those objections at the time of Mr McBride withdrawing his claim.
- Why did Mr McBride discontinue his claim for immunity under the *Public Interest Disclosure Act 2013* (Cth)?
  - On 27 October 2022, Mr McBride withdrew his claim for immunity under the *Public Interest Disclosure Act 2013* (Cth) and at the hearing, referred to two reasons for the withdrawal:
  - First, Mr McBride referred to the public interest immunity claims made by the Commonwealth and disputed whether the notification of the claim to the parties was sufficient or whether it needed to be established by application to the Court following an objection by any party. However, Mr McBride withdrew his claim for immunity under the *Public Disclosure Act* before requiring the Commonwealth to establish the public interest immunity claim.
  - Second, Mr McBride also referred to objections made by the CDPP to parts of the affidavits and reports of two academics (Professor Fernandes and Professor Brown) upon which he relied. As noted, the Court had not made a determination as to those objections at the time of Mr McBride withdrawing his claim.



## CURRENT ISSUE

Witness K and Bernard Collaery were charged with offences relating to communicating ASIS information contrary to the *Intelligence Services Act 2001* (Cth). Witness K entered a guilty plea and has been sentenced. Mr Collaery's matter has been discontinued by the Attorney-General.

## KEY FACTS AND RESPONSES

- Status of prosecution
  - Witness K: on 17-18 June 2021, Witness K pleaded guilty. On 18 June 2021, the ACT Magistrates' Court sentenced him to 3 months' imprisonment, released forthwith on a \$1000 recognisance and a 12-month good behaviour bond. The matter is finalised.
  - Collaery: on 6 August 2019, Collaery was committed to stand trial in the ACT Supreme Court. On 26 June 2020, Mossop J made *NSI Act* protective orders, which Mr Collaery appealed. On 6 October 2021, the ACT Court of Appeal allowed the appeal and remitted the matter back to Mossop J. On 7 July 2022, Attorney-General Mark Dreyfus declined to proceed further in the prosecution. On 8 July 2022, consequential court orders were made vacating future hearing dates.
  - The decision to decline to proceed further against Mr Collaery was made by the Attorney-General under section 71(1) of the *Judiciary Act*, and all questions about that decision should be directed to the Attorney-General.
- Public interest immunity
  - Due to the sensitive nature of these proceedings, the CDPP is unable to make comment on these matters beyond the information set out below.
  - If claiming public interest immunity, the basis for the claim should be identified where possible. One example might be that the disclosure of the material could reasonably be expected to damage Australia's national security. Other grounds may be that the disclosure would prejudice the enforcement of a law or prejudice the fair trial of a person.
- Charges
  - Witness K was charged with conspiring to communicate ASIS information, contrary to section 11.5 of the Criminal Code and section 39 of the *Intelligence Services Act 2001*.
  - Bernard Collaery was charged with conspiring to communicate ASIS information, contrary to section 11.5 of the Criminal Code and section 39 of the *Intelligence Services Act 2001*; and with communicating ASIS information contrary to section 39 of the *Intelligence Services Act 2001*.



- Why did the CDPP proceed with these prosecutions?
  - The CDPP reviewed a brief of evidence supplied by AFP and determined, in accordance with the Prosecution Policy of the Commonwealth, that these prosecutions should be commenced.
  - Offences under the *Intelligence Services Act 2001* require the consent of the Attorney-General. The CDPP wrote to the then-Attorney-General and sought his consent, which was granted on 11 May 2018. Thereafter the prosecutions were commenced. The case against Collaery was discontinued when the current Attorney-General declined to proceed further.
- Were the matters being heard in secret?
  - The *National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act)* was applied to both proceedings by the CDPP. The *NSI Act* provides the court with the power to make orders necessary to protect national security information whilst also ensuring that an accused person receives a fair trial.
  - To date, some hearings in the Collaery proceeding relating to an application for *NSI Act* orders and subpoenaed material have been conducted in closed court. Most of the Witness K proceedings have been conducted in open court, other than parts of his sentencing hearing – though the sentence itself and the reasons were given in open court.
- Why was there delay in the proceedings?
  - These are complex matters.
  - All filing orders have been complied with in a timely fashion by the prosecution.
  - Some delay in 2020 and 2021 was the result of the COVID-19 pandemic and resulting travel restrictions.
  - Collaery's appeal of the *NSI Act* orders had to be resolved before the matter could progress.
- What was the total cost of the prosecution as at 10 October 2022?
  - Witness K: \$72,228.00 external costs.
  - Collaery: \$214,761.00 external costs.

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 Last updated: 12 October 2022

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## ADDITIONAL INFORMATION

- Key procedural history of Witness K prosecution
  - On 6 August 2019 Witness K advised the ACT Magistrates' Court that he intended to plead guilty to the offence, on the basis that it would proceed summarily.
  - On 14 October 2019 the CDPP served a harm statement on Witness K, as facilitated by interim NSI Act orders made 8 October 2019. On 28 October 2019, the CDPP served on Witness K a draft statement of facts. On 12 January 2021, the CDPP provided Witness K with a revised statement of facts incorporating relevant sections of the harm statement.
  - On 15 November 2019 the ABC made an application to the Court challenging the Magistrate's power to make a closed court order under s22 of the *NSI Act* and the need for such orders. On the same day, a plea hearing was fixed for 28-30 April 2020 but was later adjourned on the application of Witness K as travel restrictions had limited their ability to prepare for the plea.
  - On 29 March 2021 s22 *NSI Act* orders were made. The CDPP indicated it wished to keep proceedings as open as possible and the orders did not provide for the court to be completely closed for the proceeding.
  - On 17-18 June 2021, the plea hearing took place and Witness K was sentenced.
- Key procedural history of Mr Collaery's prosecution
  - On 6 August 2019, Mr Collaery waived committal and was committed to stand trial in the ACT Supreme Court.
  - On 12 September 2019, the Crown filed an indictment, case statement and other trial documents. A defence questionnaire in response was served on 30 October 2019.
  - On 25-29 May 2020, a s27 *NSI Act* hearing took place to consider AGD's contested application for s31 orders to protect NSI evidence to be led at the hearing. On 26 June 2020, Mossop J ruled that orders, consistent with AGD's earlier issued *NSI Act* certificate, should be made.
  - On 3 August 2020, Mr Collaery filed a notice of appeal against the decision of Mossop J.
  - On 30 September 2020 submissions on contested public interest immunity claims over material produced pursuant to defence subpoenas to various parties were heard by Mossop J. The CDPP was not the subject of any subpoena and did not act on behalf of any party. On 16 October 2020, the PII claims were upheld.
  - On 22 January 2021, Mr Collaery issued subpoenas on DFAT and DPM&C. On 16 February 2021 DFAT and DPM&C filed applications to set aside these subpoenas. On 22 April 2021 some material was ordered to be produced. On 17 May 2021, PII claims were heard and the decision reserved. Production of further subpoena material was adjourned to 21 October 2021.



- On 17 May 2021, the ACT Court of Appeal heard Mr Collaery's appeal against the NSI Act orders made by Mossop J. On 6 October 2021, the ACT Court of Appeal allowed the appeal and remitted the matter back to Mossop J. Those reasons of the Court of Appeal are contained in the "Remittal Judgement". The Attorney-General then filed an application to restrict the public disclosure of certain information contained in the "Remittal Judgement" and on 5 November 2021, the Court of Appeal granted that application in part. The reasons of the Court of Appeal are contained in the "Redaction Judgement".
- On 24 December 2021 the defence filed a s78B notice stating that the Attorney-General being granted leave to rely on "court-only" evidence would lead to an incurable unfairness in the proceeding of a type that would infringe Chapter III of the Constitution.
- On 9 February 2022 an application by the Attorney-General to rely on "court-only" evidence was heard. On 11 March 2022 Mossop J ruled that "court-only" material could be relied upon at the remittal hearing, and that special counsel could be appointed as a contradictor to that process. The Chapter III argument was rejected on the basis that it did not add anything to the general law that, overall, procedural fairness is accorded to the defendant.
- On 18 March 2022 Mossop J made orders enabling Mr Collaery to respond to certain parts of the "court-only" material and set out a process for the appointment of special counsel.
- On 26 and 27 April 2022, applications were heard to set aside subpoenas issued by Mr Collaery's legal representatives on ASIO, ASIS, DFAT, ONI and DPM&C. On 16 May 2022, judgment was delivered on the legitimate forensic purpose of the subpoenas. Appeal of that judgment was listed for 25 July 2022.
- On 26 May 2022, the trial was listed for 24 October 2022.
- On 7 July 2022, Attorney-General Mark Dreyfus declined to proceed further in the prosecution under s 71(1) of the *Judiciary Act*.
- On 8 July 2022, orders were made vacating the future hearing dates and setting aside the subpoenas.
- Contact from Senator Rex Patrick
  - On 21 January 2022 Senator Patrick filed an application for access to the open affidavits relied upon by defence at the s 27 NSI Act hearing (the McCarthy, Whealy, Barrie, Gusmao, Ramos-Horta and Evans open affidavits).
  - This material is unclassified and on the court file. The parties (AGS, defence, prosecution) consented to the application and the AGS arranged for copies to be delivered to the Senator.
  - It does not appear Senator Patrick has received any of the material relied upon by the AGS in support of the NSI Act orders.
- CDP response to previous queries

- On 23 October 2018 during Estimates, Senator McKim asked why the CDPP sought advice from Wendy Abraham QC and whether “one ramification of this prosecution might be to dissuade intelligence officers from reporting matters that they believe constitute criminal offences”.
- : On 10 January 2019, the Attorney-General made a PII claim over the reasons why legal advice was sought and the content of the advice. It would not be appropriate to make any further comment.
- In November 2018, Senator Patrick wrote to AGD alleging that model litigant obligations had not been complied with. The complaint related to a short delay in the service of a notice issued under s24 of the *NSI Act*.
- : The s 24 notice was provided to AGD by the CDPP at 4pm on 1 November 2018. The CDPP served it on the defendants at 3:39pm on 6 November 2018. All parties to the proceedings were aware that the service of an s24 notice was pending, as it had been foreshadowed in the orders of the court and in previous correspondence from the CDPP.
- : The model litigant obligations under the *Legal Services Directions 2017* do not apply to criminal prosecutions. However, in accordance with the *Prosecution Policy of the Commonwealth*, the CDPP endeavours to conduct itself at all times in a manner that maintains, promotes and defends the interests of justice, and ensures fairness to defendants in the conduct of criminal proceedings.
- In January 2019, Senator Patrick made comments quoted in a [media report](#) criticising the timing of service of the brief of evidence. Senator Patrick alleged the informant served the brief on the evening of 21 December 2018 knowing the defendants would need to file a ‘brief in reply’ within seven working days.
- : The prosecution and informant endeavoured to serve the brief of evidence as soon as possible following the issue of a s26 *NSI Act* certificate on 19 December 2018. The brief was delivered to representatives of Mr Collaery at an agreed time and place after hours on 21 December 2018. Due to the sensitive nature of the brief, it had to be delivered by hand by an AFP officer who flew with it from Canberra to Sydney.
- : There was not, and never was, an order in place for the defence to file a ‘brief in reply’ within seven days of receiving the prosecution’s brief of evidence.
- : The Court had previously ordered that the parties were to agree on proposed orders for the future progress of the matter seven days after service of the s26 certificate. However, the deadline for preparing proposed consent orders was subsequently extended with the consent of all parties.
- On 27 May 2021 during Estimates, Senator Carr asked about delay in Witness K’s plea hearing and whether affidavits that were being used in international proceedings in The Hague were required before the sentencing proceedings could proceed.
- : The CDPP provided a written answer: The Witness K sentence hearing is ready to proceed. An affidavit sought by Witness K in February 2021, which had been filed in

proceedings before the Permanent Court of Arbitration (PCA) Arbitral Panel in the Arbitration under the Timor Sea Treaty (Timor-Leste v Australia), was provided to Witness K by the Commonwealth on 18 May 2021.

- On 15 February 2022 during Estimates, Senator Patrick stated that he would provide a document which he requested the CDPP consider in respect of the decision to prosecute Mr Collaery. On 2 March 2022, the CDPP received the document from Senator Patrick.
  - : On 9 March 2022, the CDPP responded as follows: *The CDPP has received the document from the Committee and is giving it careful consideration.*
- On 26 July 2022 following Estimates, Senator Jacqui Lambie asked to be provided the outcome of the careful consideration being undertaken in relation to the public interest in prosecuting Bernard Collaery.
  - : On 26 August 2022, the CDPP responded as follows: *The document provided did not change the CDPP's assessment.*

**QONS RELATING TO COLLAERY**

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**ATTORNEY-GENERAL'S PORTFOLIO**

**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-SBE21-011 - Matters considered in decision to prosecute Mr Collaery**

**Senator Nick McKim asked the following question on 26 October 2021:**

Senator McKIM: I'm happy for you to take this next question on notice so you can think about it and have some time to consider it. Could you please provide the committee with a list of which of those matters you do believe are relevant in your consideration of whether it is in the public interest to continue with Mr Collaery's prosecution? Could you also please provide the committee, on notice, with any other considerations that you have applied that are not listed in that non-exhaustive list?

Ms McNaughton: As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.

Senator McKIM: Alright. I look forward to you providing a detailed claim for public interest immunity in writing so that it can be considered by this committee and, potentially, the Senate, ultimately. On the face of it, I can't see how you justifying that it is in the public interest to continue this prosecution could possibly compromise, in any way, proceedings before the court. So I do look forward to you providing that public interest immunity claim in writing.

**The response to the honourable senator's question is as follows:**

The Commonwealth Director of Public Prosecutions has claimed public interest immunity over the issues in this question by way of letter to the Chair on 9 December 2021.





CDPP

Australia's Federal Prosecution Service

Sarah McNaughton SC  
Director

Commonwealth Director  
of Public Prosecutions

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9 December 2021

Senator the Hon Sarah Henderson  
Chair  
Legal and Constitutional Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600  
By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator,

**LCC-SBE21-011 - Matters considered in decision to continue with Mr Collaery's prosecution**

I write to you in relation to the following questions taken on notice on 26 October 2021 during the Supplementary Budget Estimates hearing of the Senate Legal and Constitutional Affairs Legislation Committee.

At the hearing I took the following questions on notice from Senator Nick McKim:

***Senator McKIM:** I'm happy for you to take this next question on notice so you can think about it and have some time to consider it. Could you please provide the committee with a list of which of those matters you do believe are relevant in your consideration of whether it is in the public interest to continue with Mr Collaery's prosecution? Could you also please provide the committee, on notice, with any other considerations that you have applied that are not listed in that non-exhaustive list?*

***Ms McNaughton:** As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.*

I claim public interest immunity over the answers to these questions as they relate to active legal proceedings currently before the Supreme Court of the Australian Capital Territory and involve matters of legal professional privilege and national security.

The *Director of Public Prosecutions Act 1983* provides for the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. It

also ensures that there is a separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system.

The assessment of whether the public interest requires a prosecution to be pursued is conducted in accordance with the Prosecution Policy of the Commonwealth. Paragraph 2.10 of the Prosecution Policy sets out a non-exhaustive range of factors that may be considered when determining whether the public interest requires a prosecution. Any application of these factors to a given matter necessarily involves careful consideration of the available evidence and the whole of the surrounding circumstances.

Whilst I can assure the Committee that all relevant matters were considered in making my decision to commence and continue the prosecution of Mr Collaery, I am of the view that the questions posed by Senator McKim are likely to illicit an answer which goes to matters which will be in issue at the criminal trial of Mr Collaery. Mr Collaery is presently awaiting trial before a jury in the Supreme Court of the Australian Capital Territory. In these circumstances I am particularly mindful of the need to ensure that Mr Collaery receives a fair trial and that nothing is published in the lead up to that trial would contravene the sub-judice convention. As you know, this convention aims to ensure that nothing is published in the lead up to a criminal trial which is likely to interfere with the proper administration of justice, influence potential jurors or prejudice parties or potential witnesses.


In addition, the CDPP's decision to prosecute in accordance with the Prosecution Policy of the Commonwealth involves legal decision-making and advice which is protected by legal professional privilege. It is not in the public interest to disclose this advice. It is essential that privileged legal advice provided in the course of CDPP decision-making remains confidential. Access by the CDPP to confidential legal advice is critical to the making of sound decisions.

Finally, I note that this particular prosecution involves the consideration of security classified evidence the release of which may damage Australia's national security. This evidence is presently the subject of separate but related legal proceedings before the High Court and the Supreme Court of the Australian Capital Territory.

These are generally accepted grounds for making a public interest immunity claim as recognised in the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters at 4.6.1 in paragraphs (a), (d) and (g).

In these circumstances, I regret that I am unable to assist the Committee further in relation to this inquiry.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'S. McNaughton', written in a cursive style.

Sarah McNaughton SC  
Commonwealth Director of Public Prosecutions

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**ADDITIONAL ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-AE22-061 - Mr Collaery**

**Senator Rex Patrick asked the following question on 15 February 2022:**

Senator PATRICK: I might send you a copy. We might get it to you through the committee first. I presume at any point in time you can look at a prosecution and decide to abandon it on public policy grounds. Is that a possibility?

Ms McNaughton: As you're aware, yes, in the prosecution policy of the Commonwealth there is a nonexhaustive list of public interest factors mentioned. Yes, we do constantly review our matters as to whether or not other matters might have come to our attention which would mean that we would come to a different view on public policy, for instance.

Senator PATRICK: In relation to this, Senator Carr asked some questions two estimates ago trying to canvass whether or not you had canvassed that aspect of this before the prosecution was commenced. The answer was, in essence, no. It wasn't something that was considered. So it is in that vein that I ask you to perhaps have a look at that and maybe take that on notice as to whether that changes your view in respect of your decision made thus far to prosecute.

Ms McNaughton: I gleaned from that that you will be sending me something and would like me to take that into account.

Senator PATRICK: Yes, and perhaps respond to the committee as to your views in respect of the public interest decision that you had to make.

**The response to the honourable senator's question is as follows:**

The CDPP has received the document from the Committee and is giving it careful consideration.

## SENATE QUESTION

QUESTION NUMBER: 15

Jacqui Lambie asked the following question, upon notice, on 26 July 2022.

Please update the answer to Estimates question on notice LCC-BE21-022 asked by Senator Carr at 2021-2022 Budget estimates hearing of the Legal and Constitutional Affairs Legislation Committee.  
Please provide the outcome of the 'careful consideration' being undertaken in relation to the public interest in prosecuting Bernard Collaery - see Estimates question on notice LCC-AE22-061.

**Senator the Hon Murry Watt** – The Hon Mark Dreyfus QC MP has provided the following answer to the senator's question:

**The response to the honourable senator's question is as follows:**

Up to and including 6 August 2019, when the prosecution of Mr Collaery and Witness K proceeded jointly, there were 6 hearings in the prosecution.

From 7 August 2019 to 4 August 2022 there have been:

- 47 hearings in the prosecution of Mr Collaery
- 17 hearings in the prosecution of Witness K.

The numbers provided above include case management, procedural, trial hearings, judgment deliveries and, for Witness K, sentencing hearing.

The document provided did not change the CDPP's assessment.



## CURRENT ISSUE

On 5 November 2020 Di-Sanh Duong was arrested and charged with 'preparing for a foreign interference offence', contrary to section 92.4 of the *Criminal Code*. It is the first time this offence provision has been used.

## KEY FACTS AND RESPONSES

- Public interest immunity
  - Due to the sensitive nature of these proceedings and the fact that a criminal trial is pending, the CDPP is unable to make comment on this matter beyond the information set out below.
  - If claiming public interest immunity, the basis for the claim should be identified where possible. One example might be that the disclosure of the material could reasonably be expected to damage Australia's national security. Other grounds may be that the disclosure would prejudice the enforcement of a law or prejudice the fair trial of a person.
- Key events
  - On 5 November 2020 Duong was arrested, charged and released on bail (bail not opposed).
  - On 10 February 2021 the CDPP issued a notice under s 6 of the *NSI Act*, applying the Act to the proceedings.
  - On 12 April 2021 a brief of evidence was served and filed with redactions of NSI materials.
  - On 20 September 2021 the Court made orders under s 22 of the *NSI Act* enabling an updated brief with NSI materials to be served.
  - On 17 May 2022 the Attorney-General gave consent to prosecute and the contested committal commenced.
  - On 28 July 2022 Duong was committed to stand trial in the County Court of Victoria.
  - Next in court for hearing on *National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act)* orders on 28 October 2022 and directions hearing on 24 February 2023.
- Total cost of prosecution as at 10 October 2022:
  - \$71,698.00 external costs.

Contact Officer: s22  
Telephone: s47F  
Last updated: 12 October 2022

SES: David Bahlen/Emily Sheales  
Mobile Number: (Emily) s47F



## ADDITIONAL INFORMATION

- Full procedural history of prosecution with further details
  - On 5 November 2020 Di-Sanh Duong was arrested and charged. Mr Duong was released on bail (bail not opposed). At a filing hearing conducted before the Melbourne Magistrates' Court on 5 November 2020 the Court ordered that the matter be listed for a committal mention on 11 March 2021 and that a brief of evidence be served by 28 January 2021.
  - On 5 November 2020 at a filing hearing, the prosecution applied for and was granted an extension of time in which to serve the brief of evidence.
  - On 15 February 2021 the matter was listed for a special mention before the Melbourne Magistrates' Court. With the consent of the parties, the committal mention date was vacated, the matter listed for a committal mention on 6 May 2021 and an order was made that the brief of evidence to be served by 25 March 2021.
  - On 25 March 2021 the prosecution filed an application for extension of time to serve the hand up brief, to 12 April 2021. The prosecution served a detailed summary of facts on the defendant with redactions of NSI.
  - On 6 April 2021 the matter was listed for mention in the Melbourne Magistrates' Court. The prosecution application for extension of time to serve the hand up brief was not opposed. The brief was ordered to be served by 12 April 2021. Media access to the application affidavit and charge sheet with personal information and NSI redacted was granted. The committal mention date of 6 May 2021 was vacated and the matter was listed for a committal mention on 26 May 2021.
  - On 12 April 2021 the brief of evidence was served and filed with redactions of NSI materials.
  - On 26 May 2021 the matter was administratively adjourned to 13 July 2021.
  - On 13 July 2021 the matter was adjourned to 7 September 2021.
  - On 7 September 2021 the matter was listed for a committal hearing on 15-17 March 2022 and for a special mention on 1 February 2022.
  - On 10 September 2021 an application was made for orders under s 22 of the *NSI Act*. The application was adjourned to 20 September 2021.
  - On 20 September 2021 Magistrate Wakeling made orders under s 22 of the *NSI Act* enabling an updated brief with NSI materials to be served.
  - On 1 February 2022 the prosecution updated the Court on the security arrangements required for the committal, including the allocation of courtroom in the County Court building to allow witnesses secure entry and exit from the courtroom. Magistrate Wakeling listed the matter for a further mention on 16 February 2022.
  - On 16 February 2022 the committal was relisted for 17-19 May 2022.

- On 17 May 2022 the Attorney-General provided consent to prosecute.
- On 17-19 May 2022 the contested committal began but did not conclude.
- On 28-29 June 2022 public interest immunity claims were heard over subpoenas directed at ASIO and AFP.
- On 30 June 2022 the court set aside the ASIO and AFP subpoenas.
- On 4 July 2022 the contested committal concluded and the decision to commit was adjourned to 28 July 2022.
- On 28 July 2022 Duong was committed for trial to the County Court of Victoria and pleaded not guilty.
- On 25 August 2022 an initial directions hearing took place and the matter was identified for placement into the Long Trials list for case management.
- On 16 September 2022 a directions hearing took place and orders were made to file the prosecution opening and indictment by 16 December 2022, and file a defence response by 10 February 2022 ahead of a further directions hearing on 24 February 2022.
- A hearing for NSI Act orders is listed for 28 October 2022.



## CURRENT ISSUE

On 26 February 2021, Michael Le issued civil proceedings against current and former CDPP staff, counsel and police investigators in the Supreme Court of Western Australia claiming malicious prosecution arising out of the Operation Polo prosecution.

## KEY FACTS AND RESPONSES

- Public interest immunity (if claiming)
  - The CDPP is unable to answer questions relating to this matter as it would prejudice the impartial adjudication of the civil proceedings before the Supreme Court of WA.
- The writ of summons
  - The writ of summons names both current and past CDPP staff as well as CDPP counsel and police investigators. The writ alleges vicarious liability by the CDPP and the Commonwealth of Australia for the actions by its staff.
  - Mr Le is claiming that the prosecution for offences under ss11.2A and 400.3(1) of the *Criminal Code* and s233E(3) of the *Migration Act 1958* (Cth) were commenced and continued with malice and without reasonable and probable cause. He is claiming an amount of damages which was quantified in the course of a confidential mediation.
- Current status
  - On 21 April 2021 the Statement of Claim was filed. On 9 June 2021, the Commonwealth defendants made an application to strike parts of the Statement of Claim out. On 2 December 2021, the Court struck out the entirety of the Statement. On 22 December 2021, the plaintiff filed an amended Statement of Claim. On 11 January 2022, the Court awarded the maximum permitted scale costs to the Commonwealth for the strike out application.
  - On 3 February 2022 a mediation took place but there was no settlement. On 23 March 2022 a private mediation session took place and again, no settlement was reached, but a further a mediation session will be scheduled after the plaintiff files a further amended Statement of Claim.
  - On 8 February 2022 at a directions hearing, the Court ordered the parties to confer in respect of the further amended Statement of Claim. That conferral took place on 16 February 2022.
  - Also at the 8 February 2022 hearing, the defendants were also ordered to file any strike out application and submissions by 1 March, with the plaintiff to reply by 14 March. This was later extended by consent to 11 March and 25 March 2022 respectively.



- On 6 October 2022, the Plaintiff filed a minute of proposed second substituted statement of claim with the WA Supreme Court, along with a minute of proposed orders that the application for leave to amend the Plaintiff's statement of claim filed on 22 December 2021 be listed on a date after 24 November 2022.
- AGS and counsel are considering the second substituted statement of claim.

Contact Officer: s22  
 Telephone: s47F  
 Last updated: 7 October 2022

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## ADDITIONAL INFORMATION

- Background to criminal proceedings
  - Operation Polo was an investigation of numerous offenders for money laundering and *Migration Act* offences. The prosecution of the matter was split into two trials reflecting two separate money laundering streams operated by two distinct corporate entities.
  - The investigation was a joint-agency responsibility between nine agencies. The initial investigation was the responsibility of WA Police but later involved other agencies, including AFP, ABF, ATO, AUSTRAC, ACCC and ACIC.
  - An application for permanent stay in the proceedings arose following a jury discharge in a related trial involving the same accused (Indictment 293 of 2016).
  - That trial was aborted following the Crown's late disclosure of a large volume of telephone intercept material. This material was largely collected by WA Police and was not held by AFP.
  - The aborted trial was at Week 30 at the time of the jury discharge. The trial was lengthened by the defence stepping back from an agreement that continuity would not be in issue.
  - The CDPP subsequently discontinued the prosecution of that indictment but sought a further retrial of the accused on Indictment 294 of 2016. The accused sought a permanent stay of the remaining proceedings on the basis that further prosecution was oppressive, he could not receive a fair trial and a stay was required to maintain public confidence in the Court.
- Outcome of application for a permanent stay
  - On 24 January 2019, the District Court of WA granted a permanent stay of counts 2-26 and a conditional stay of Count 1 on Indictment 294 of 2016. His Honour made the further prosecution of the sole remaining count on the indictment subject to conditions which required the Crown to:
    - : Pay the legal costs of the accused with respect to both previous trials and reimburse the Court for the interpreter costs incurred in previous trials;

- : Review and report to the Court on the processes undertaken by AFP and WA Police in relation to monitoring and analysis of telephone intercept material; and
- : Serve a certificate signed by the Director of WA CDPP office that disclosure was complete and a certificate confirming all relevant interstate and overseas Crown witnesses had provided an undertaking to give evidence in the further trial.
- On 21 February 2019, the Director discontinued the remaining prosecution of Indictment 294 of 2016, bringing the prosecution of all Operation Polo matters to an end.
- The Director determined that the prosecution would be unable to meet the conditions ordered by the court for the prosecution to continue.





## CURRENT ISSUE

The CDPP is the respondent to eight current appeals in the Victorian Court of Appeal in matters affected by "Lawyer X". Each appeal arises from the involvement of Nicola Gobbo, who was a registered informer with Victoria Police between 2005 and 2009 whilst practising as a criminal defence barrister.

## KEY FACTS AND RESPONSES

- Current appeals
  - Rob Karam, Francesco Madafferi, Saverio Zirilli, Salvatore Agresta, Carmelo Falanga, Pasquale Barbaro, John Higgs, Giovanni Polimeni
- Timeline
  - None of the current appeals have yet been listed for hearing. Several are at the stage of document production and exchange of written cases.
  - The most chronologically advanced is the appeal of Mr Karam, which is presently before the Trial Division for factual findings ahead of the appeal hearing.
- Concluded appeals
  - Tony Mokbel: On 15 December 2020, following a concession by the CDPP that the conviction should be quashed, the Victorian Court of Appeal quashed the conviction. On 16 April 2021, the Court ordered a re-trial. On 19 April 2021, the CDPP filed a discontinuance, concluding the matter.
  - Jan Visser: on 18 December 2021, the Victorian Court of Appeal dismissed the appeal. On 22 February 2021, Mr Visser filed an application for special leave to appeal to the High Court of Australia. On 17 June 2021, the High Court of Australia dismissed the application, concluding the matter.
- Resources
  - Very considerable resources have been, and will continue to be, devoted by the CDPP to managing these complex and demanding appeals.

Contact Officer: s22  
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Last updated: 30 September 2022

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Mobile Number:

## ADDITIONAL INFORMATION

- Background
  - Following preparation of a confidential Independent Broad-based Anti-corruption Commission (IBAC) report, the then Victorian DPP formed the view that he had disclosure obligations in relation to the prosecutions where Ms Gobbo had some involvement.
  - Victoria Police and Ms Gobbo sought to prevent disclosure, claiming PII over the information. The judge at first instance and the Victorian Court of Appeal ruled in favour of disclosure.
  - Upon becoming aware of the issue, the CDPP also formed the view that that disclosure obligations arose in relation to certain Commonwealth prosecutions. The CDPP intervened in the Court of Appeal in support of the Victorian DPP's position.
  - Special leave to appeal was initially granted to allow Ms Gobbo to appeal to the High Court, however on 5 November 2018 special leave was revoked by the High Court, allowing public disclosure of the judgment on 3 December 2018.
  - Ms Gobbo's identity was made public on 1 March 2019.
- Royal Commission into the Management of Police Informants
  - Over a period of approximately 18 months the CDPP assisted the Royal Commission with the provision of information and documentation relating to prosecutions involving Nicola Gobbo. This involved searches of CDPP data bases, liaison with the AFP and Victoria Police and the manual review of a large volume of files.
  - Since December 2018, the CDPP has made disclosures to a number of individuals in connection with the matters being investigated by the Royal Commission.
  - The Commissioner's final report was submitted to the Governor of Victoria and tabled in Victorian Parliament on 30 November 2020. It is now available to the public on the Commission's website.
  - The report makes no adverse findings against the CDPP or that any CDPP cases have been affected or that there has been a miscarriage of justice in any CDPP cases.





## CURRENT ISSUE

The Office of the Special Investigator (OSI) was established in response to the Afghanistan Inquiry and the release of the report by Justice Brereton. The OSI will consider the matters raised by the Afghanistan Inquiry and will, where appropriate, investigate allegations of serious criminal wrongdoing with a view to referring briefs of evidence to the CDPP.

## KEY FACTS AND RESPONSES

- Receipt of referrals from the AFP or the OSI
  - The CDPP is unable to answer questions about the status of any war crimes referrals as there is a claim of public interest immunity.
  - The basis for the claim is that disclosure of the information requested would prejudice an ongoing police investigation.
- Resourcing
  - The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI.
  - An Assistant Director and a Prosecution Team Leader have been appointed to oversight this work, liaise with the OSI, make an assessment of future CDPP resourcing requirements and ensure CDPP lawyers are appropriately trained.
  - Twenty-one prosecutors from the CDPP have completed a preliminary specialised war crimes training program in preparation to undertake war crimes prosecutions. A further training program focusing on managing complex prosecutions is scheduled for November 2022. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
  - The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan. The 2022-2023 budget announced that the CDPP would be provided with \$2.761 million to undertake its downstream war crimes prosecution work for the 2022-23 financial year.

Contact Officer: s22 [REDACTED]  
Telephone: s47F [REDACTED]  
Last updated: 5 October 2022

SES: David Bahlen/Emily Sheales  
Mobile Number: (Emily) s47F [REDACTED]

## ADDITIONAL INFORMATION

- OSI
  - The Hon Mark Weinberg AO QC has been appointed to the role of Special Investigator and Chris Moraitis has been appointed Director-General.
- Role of the CDPP in war crimes matters
  - The CDPP provides specialist legal services to support agencies investigating complex Federal criminal matters.
  - The CDPP has been engaged to assist the AFP in a number of war crimes related investigations and stands ready to assist and support the important work of the OSI as and when required.
  - Given these matters are the subject of ongoing investigation by police or potentially by the OSI, it would not be appropriate for the CDPP to comment further.
- Previous questions
  - On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions.
    - : The written answer: the CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
    - : Whilst the CDPP not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

# SFCC

| BRIEF TITLE  | Owner     | PDMS Record number (PDR) |
|--|-----------|--------------------------|
| Banking Royal Commission                               | SFCC      | SB22-900154              |
| Serious Financial Crime Taskforce                      | SFCC      | SB22-900155              |
| Expansion of the Federal Court's criminal jurisdiction | SFCC      | SB22-900156              |
| Prosecution of Clive Palmer for Corporations Act       | SFCC      | SB22-900157              |
| Banking Cartel Prosecution (Op Deacon)                 | SFCC      | SB22-900158              |
| Illicit Tobacco Taskforce                              | SFCC/HEBP | SB22-900160              |
| Prosecution of BOYLE (Ex-ATO)                          | SFCC      | SB22-900161              |
| Prosecution of Peter GREGG (ASIC Brief)                | SFCC      | SB22-900176              |





## CURRENT ISSUE

- The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was established on 14 December 2017. The Commission delivered its [final report](#) on 1 February 2019 and the [government has committed to taking action on all the Commission's recommendations](#). The Commission recommended that ASIC should adopt an approach to enforcement that takes, as its starting point, the question of whether a court should determine the consequences of a contravention (Recommendation 6.2).
- On 16 November 2018, the government announced that \$41.6 million would be provided to the CDPP over eight (8) years, broken up as follows:

|  |     | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 4 Year Sub-total | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total |
|--|-----|---------|---------|---------|---------|------------------|---------|---------|---------|---------|-------|
| Strengthening Enforcement Capability for Corporate Crime | \$m | 0.2     | 5.4     | 12.0    | 10.3    | 28.0             | 6.6     | 3.9     | 2.3     | 0.9     | 41.6  |
|  | ASL | 1       | 12      | 26      | 20      |                  | 12      | 7       | 3       | 1       |       |

- These resources are in addition to the CDPP's existing forward estimates and enable the CDPP to recruit more prosecutors and engage external counsel to meet an increase in workload.

## KEY FACTS AND RESPONSES

*Prosecutions commenced by CDPP based on findings from the Banking Royal Commission:*

- Nine (9) prosecutions have been commenced and of these, four (4) have been finalised. A summary of completed cases is available at **Attachment A**.
- There are currently five (5) matters before the Courts. A summary of these cases is available at **Attachment B**.
- The CDPP currently has one (1) matter of the type highlighted by the Royal Commission in brief assessment phase.

*How has the CDPP prepared for cases from the Banking Royal Commission and does it have enough resources to address these needs?*

- On 19 October 2018, ASIC advised the Parliamentary Joint Committee on Corporations and Financial Services it expected the number of criminal briefs referred to the CDPP to increase in the ensuing years, including referral of cases of the type considered by the Royal Commission.
- On 16 November 2018, the Government announced that \$41.6 million would be provided to the CDPP over eight (8) years.
- While managing considerable staff movement within the organisation, the CDPP is undertaking additional recruitment of prosecutors to ensure we are well placed to deal with the cases as they arrive. We will also engage with external counsel, involving them early in cases.
- There has also been an increased focus on pre-brief engagement and consultation with ASIC, to get an understanding of the timing and nature of incoming referrals.
- The CDPP has restructured its Sydney CFC branch, appointing two branch heads (SES1), both being responsible for managing work referred by ASIC. Lawyers within the branches also have responsibility for ASIC matters, including ones referable to the Banking Royal Commission.
- Corporate crime, including cases likely to arise from the Banking Royal Commission, is often complex and prosecutions take a long time to finalise.
- The early engagement with investigative agencies, as well as the early involvement of external counsel is particularly important in successfully prosecuting white collar crime.
- The use of prosecution teams in the CDPP's practice group model is designed to ensure lengthy prosecutions do not place a disproportionate strain on individuals and the CDPP's remaining case load.
- In preparation for referrals from ASIC arising from the Banking Royal Commission and with a view to proactively identifying and addressing any unique challenges presented by these referrals, the CDPP established a Banking Royal Commission Focus Group in late 2019. The Focus Group is comprised of CDPP representatives and ASIC representatives and meets to identify and resolve "pressure points" associated with such referrals.
- A number of training sessions have been delivered by ASIC experts to CDPP lawyers since early 2020 on concepts and issues which commonly arise in many BRC related referrals.

*Does the CDPP have sufficient resources to meet both referrals from the Royal Commission and its existing caseload?*

- Based on current referral patterns and the proposed pipeline of work from ASIC in relation to such referrals the CDPP's resourcing is adequate. However, this is constantly reviewed by the CDPP, particularly to have regard to any changes in ASIC's investigations, to ensure the resourcing is in line with the work likely to flow to the CDPP.
- The CDPP's work fluctuates and in response, we balance workloads and resources across our national practice groups within available funds.

- At no time does funding determine whether we prosecute a matter. The decision whether there is sufficient evidence to prosecute and whether it is in the public interest to do so is at all times made in accordance with the *Prosecution Policy of the Commonwealth*.

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## Attachments

**Attachment A** – Summary of finalised cases

**Attachment B** – Summary of cases before the courts

## Attachment A – Summary of finalised cases

| Matter Name                              | Date Finalised   | Details   |
|--|------------------|---|
| <b>COMMINSURE</b>                        | 28 November 2019 | <ul style="list-style-type: none"> <li>CommInsure was charged with 87 charges of hawking financial products, contrary to s992A of the <i>Corporations Act</i>.</li> <li>It was alleged that CommInsure did not give the customer the option of receiving, by way of oral communication, any information that was required to be included in the Product Disclosure Statement (PDS) for Simple Life insurance.</li> <li>In relation to 14 of the charges, CommInsure also failed to give the customer a PDS before they became bound to acquire Simple Life, and failed to clearly inform the customer of the importance of reading the PDS when making a decision to acquire Simple Life.</li> <li>CommInsure pleaded guilty to these charges and was sentenced on 28 November 2019 to a total fine of \$700,000.</li> </ul>  |
| <b>Pershing Securities Australia P/L</b> | 4 August 2020    | <ul style="list-style-type: none"> <li>Pershing was charged with one charge of contravening regulations relating to a client money account, contrary to ss.993C(1) of the <i>Corporations Act 2001</i> (Cth) and two charges of a licensee not paying money into an account as required, contrary to s.993B(1) of the Act.</li> <li>Pershing Securities Australia was sentenced to a fine of \$15,000 for the s.993C(1) charge and fined \$25,000 for the remaining charge, with the remaining ss.993B(1) charge taken into account in the sentencing pursuant to 16BA of the <i>Crimes Act (Cth) 1914</i>.</li> </ul>  |
| <b>Sam Henderson</b>                     | 20 October 2020  | <ul style="list-style-type: none"> <li>Henderson was charged with three (3) counts of engaging in dishonest conduct in relation to a financial service contrary to s.1041G of the <i>Corporations Act</i> and two counts of providing a defective disclosure document contrary to s.952D(2)(a)(ii) of the <i>Corporations Act</i>.</li> <li>Plea negotiations resulted in the defendant pleading guilty to one (1) offence contrary to s.1041G and two (2) offences contrary to s.952D(2)(a)(ii).</li> <li>For Sequences 1 and 2 (make defective financial services guides available: ss.952D of the Corporations Act): <ul style="list-style-type: none"> <li>Convicted without passing sentence pursuant to ss.20(1)(a) of the <i>Crimes Act 1914</i> (Cth) upon entering a recognizance, self, in the sum of \$1,000, to be of good behaviour for a period of two years.</li> <li>Pecuniary penalty of \$7,000 which is to be paid on or before 31 January 2021.</li> </ul> </li> <li>For Sequence 4 (dishonest conduct: s. 1041G of the Corporations Act): <ul style="list-style-type: none"> <li>Convicted without passing sentence pursuant to ss.20(1)(a) of the <i>Crimes Act 1914</i> (Cth) upon entering a recognizance, self, in the sum of \$1,000, to be of good behaviour for a period of two years.</li> <li>Pecuniary penalty of \$3,000 which is to be paid on or before 31 January 2021.</li> </ul> </li> </ul> |

|  |                    |   |
|--|--------------------|---|
| <b>Societe<br/>Generale<br/>Securities<br/>Australia Pty<br/>Ltd</b> | 20 October<br>2020 | <ul style="list-style-type: none"> <li>• Two charges (Sequences 1 &amp; 2) of receiving money for a financial service and not depositing that money into an account that satisfied the requirements of s.981B of the <i>Corporations Act 2001</i> (Cth), contrary to ss.993B(1) of the Act.</li> <li>• Two charges (Sequences 3 &amp; 4) of making payments out of an account maintained under s.981B of the <i>Corporations Act</i> not permitted by the <i>Corporations Regulations 2001</i> (Cth).</li> <li>• Sequence 1 concerned money that had been received from clients for financial services that had to be deposited into an approved bank account (ADI) within 24 hours. The client money was deposited into client segregated accounts (CSAs) but then transferred to accounts at the Hong Kong Branch of SocGen. These accounts were mistakenly designated by SocGen as CSAs but because SocGen Hong Kong was not either an ADI or approved foreign bank, the accounts that ultimately held the client money did not satisfy the requirements under the <i>Corporations Act</i>.</li> <li>• Sequence 2 was very similar to Sequence 1, the relevant difference being that the client money was deposited into accounts with various foreign banks that were neither ADIs or approved foreign banks in the UK, USA, South Korea, and Malaysia.</li> <li>• Sequence 3 related to withdrawals of client money from CSAs that were not permitted by the regulations, specifically duplicate payments of client money that had already been withdrawn for an approved purpose.</li> <li>• SocGen was convicted and fined a total of \$30,000.</li> </ul> |
|--|--------------------|---|



## Attachment B – Cases before the courts

| Matter Name  | Next in Court   | Details   |
|--|---|---|
| <b>Allianz Australia Insurance Ltd &amp; AWP Australia Ltd</b> | 22 May 2023<br>NSWSC<br><br>(Sentence)  | <ul style="list-style-type: none"> <li>On 18 December 2020, Allianz Australia Insurance Ltd was charged with 7 counts of disseminating information that was false or misleading in a material particular or materially misleading, and the information was likely to induce persons to acquire financial products, contrary to sections 1041E(1) and 1311(1) of the <i>Corporations Act 2001</i> (Cth). The offending is alleged to have taken place between 11 February 2016 and 6 June 2018.</li> <li>On the same date, AWP Australia Pty Ltd was charged with a single count of disseminating information that was false or misleading in a material particular or materially misleading, and the information was likely to induce persons to acquire financial products, contrary to sections 1041E(1) and 1311(1) of the <i>Corporations Act</i>. The offending is alleged to have taken place between 24 November 2016 and 12 June 2018.</li> <li>A Case Conference was held in respect to both matters on 7 July 2021. The matters proceeded for Mention on 10 August 2021 and were adjourned to 5 October 2021 following application made jointly by the parties, to allow for a further Case Conference to occur.</li> <li>Following a series of further adjournments to allow negotiations to continue between the parties, on 14 June 2022, pleas of guilty were entered on behalf of each defendant and the matters were committed to the NSWSC for sentence.</li> <li>Indictments were filed in the NSWSC on 5 August 2022, and a sentence date was fixed for 22-23 May 2023.</li> </ul> |
| <b>Members Equity Bank Limited</b>                             | TBC<br><br>Federal Court of Australia (Melbourne)<br><br>(Awaiting appeal judgment) | <ul style="list-style-type: none"> <li>On 19 May 2021, Members Equity Bank Ltd (ME Bank) was charged with: 44 offences of making a false or misleading representation as to the price of services contrary to s12DB(1)(g) and 12GB(1) of the <i>ASIC Act 2001</i> (Cth); 9 offences of failing to give written notice of a change in an annual percentage rate under a credit contract contrary to s65(1) of the <i>National Credit Code</i> (Cth) (<b>NCC</b>); and 9 offences of failing to give written notice of a change in a minimum repayment instalment amount under a credit contract contrary to s65(1) of the NCC.</li> <li>The ASIC Act charges relate to communications by ME Bank with home loan customers between September 2016 and September 2018. The NCC charges relate to ME Bank's failure to communicate with other customers between December 2016 and March 2018.</li> <li>The matter is to proceed summarily in the Federal Court before the Honourable Justice Mortimer.</li> <li>An application regarding the interpretation of s12GB(6) of the ASIC Act, including the applicable limitation period, proceeded on 3 November 2021. Judgment was delivered on 15 December 2021 in favour of defendant. The CDPP has determined that the Court's decision should be appealed and a Notice of Appeal was filed with the Court on 28 January 2021.</li> </ul>   |

|                                       |  |   |
|---------------------------------------|--|---|
|                                       |  | <ul style="list-style-type: none"> <li>The Appeal proceeded on 17 May 2022. Judgment is presently reserved.</li> </ul>  |
| <b>Commonwealth Bank of Australia</b> | <p>TBC</p> <p>Federal Court of Australia (Sydney)</p> <p>(Awaiting appeal judgment in Members Equity Bank)</p> | <ul style="list-style-type: none"> <li>On 16 October 2021, the Commonwealth Bank of Australia (ACN 123 123 124) (CBA) pleaded guilty to 30 offences contrary to section 12DB(1)(e) and s 12GB of the <i>ASIC Act 2001</i> (Cth) for having, in trade or commerce, in connection with the supply of financial services, made false or misleading representations that services had uses or benefits. Additionally, pursuant to s 16BA of the <i>Crimes Act 1914</i>, CBA also admitted its guilt and wished to have taken into account by the court on sentence an additional 135 offences against s 12DB(1)(e) of the <i>ASIC Act</i> (scheduled offences).</li> <li>Arguments on sentence were heard before Justice Bromwich on 29 October 2021. Judgment is currently reserved, and is not expected to be handed down until the appeal in Members Equity Bank Ltd (above) has been determined.</li> </ul> |
| <b>NGUYEN, Tai Thanh</b>              | <p>11 November 2022</p> <p>Adelaide Magistrates Court</p> <p>(Pre-trial conference)</p>                        | <ul style="list-style-type: none"> <li>On 4 May 2022, Tai Thanh NGUYEN was charged with 7 counts of falsifying company books contrary to s 1307(1) of the <i>Corporations Act 2001</i> (Cth). The Prosecution and Defence have consented to summary determination of the matter.</li> <li>The offending relates to the defendant, in the course of being an officer of Financial Wealth Advisers Pty Ltd, falsifying documents in a couple of ways, including by: <ul style="list-style-type: none"> <li>inserting his clients' signatures onto documents without their permission; and</li> <li>inserting his own name and signature as a witness when he did not witness the document being signed by the client(s).</li> </ul> </li> <li>The matter is listed for pre-trial conference before the Adelaide Magistrates' Court on 11 November 2022.</li> </ul>  |



## CURRENT ISSUE

The SFCT is an ATO-led joint agency taskforce, established on 1 July 2015. It brings together the knowledge, resources and experience of relevant law enforcement and regulatory agencies, including the CDPP, to identify and address the most serious and complex forms of financial crime.<sup>1</sup>

## KEY FACTS AND RESPONSES

### *Serious Financial Crime Joint Agency Taskforce*

- In December 2018, the Government announced funding of \$182.2 million over four (4) years from 2019 to 2023 for the SFCT's work to continue.
- On 26 June 2019, the heads of the various SFCT agencies signed a new MOU.
- The funding resulted in \$5m per year for four years allocated to the CDPP to complete prosecutions commenced under the auspices of *Project Wickenby* and the first SFCT, as well as to prosecute matters to be referred by the new taskforce, focusing on offshore tax evasion and illegal phoenix activity, as well as transnational and technology-enabled crime.
- A new policy proposal to extend the SFCT beyond 30 June 2023 has been presented to Treasury. Current indications are that the proposal will form part of the May Budget for 2023.

### *Current prosecutions referred to CDPP by SFCT*

- There are currently fifty-seven (57) Wickenby/SFCT matters with the CDPP, comprising of:
  - Fifty (50) matters before the courts at various stages of proceedings, including committal hearing, trial, sentence and appeal;
  - Two (2) matters that are in brief assessment phase; and
  - Four (4) matters that are the subject of pre-brief advice.
- Since 1 July 2015, ongoing matters commenced under Project Wickenby have been managed within the SFCT.

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<sup>1</sup> [Serious Financial Crime Taskforce | Australian Taxation Office \(ato.gov.au\)](https://ato.gov.au/serious-financial-crime-taskforce/)

*Wickenby/SFCT matters currently before the courts:*

- *Operation Elbrus (Cranston and others)* - of the sixteen (16) defendants charged, seven (7) are currently being prosecuted or to be prosecuted at trial.<sup>2</sup> A joint trial in relation to five co-accused is currently proceeding before the NSWSC, having commenced on 26 April 2022. The trial is likely to conclude in late November or early December. Separate trials for Mr Barrett and Mr Guilan are listed to commence on 6 February 2023 and 7 August 2023, respectively. **Of the finalised matters, eight (8) have resulted in conviction and sentence,**<sup>3</sup> and one has resulted in an acquittal.<sup>4</sup>
- *Operation Bordelon (George Alex and others)* – Fourteen (14) defendants face various charges arising out of or relating to a conspiracy to dishonestly cause a loss to the Commonwealth by diverting \$19.6 million in Pay-As-You-Go withholding tax and GST that should have been remitted to the ATO, and a conspiracy to knowingly deal with the proceeds of that crime. Eleven of those matters are listed for trial before the NSWSC commencing on 23 January 2023, with an estimate of 6-7 months. The remaining three defendants are listed for trial before the Sydney District Court commencing on 4 September 2023, with an estimate of 3-4 months.
- *Jonaton Kelu and Cedric Millner* – The matters have been committed for trial to the NSWSC and are listed for further directions hearing on 23 February 2022.
- *Robert Martorano and Steven Davies* - the accused have each been charged with a dishonesty offence in relation to alleged illegal phoenix activity, and additionally a charge of attempting to pervert the course of justice. The matters have been committed for trial to Parramatta District Court, commencing 8 May 2023, with an estimate of 3 weeks.
- *Jasmine Vella-Arpaci* – proceeded for committal hearing in the Melbourne Magistrates' Court on 9 April 2021. The accused was committed on three charges. On 26 November 2021, the accused entered a plea of guilty to each of the charges. The plea hearing commenced on 5 October 2022 before the Melbourne County Court and is currently part heard, with the matter next listed on 30 November 2022.
- *Emma Kate Kenney* – the accused has been charged with numerous fraud offences, including allegations of fraud involving the 'Covid-19 Superannuation Early Release Scheme'. On 28 January 2022, the accused entered a plea of not guilty to all charges and was committed for trial. The trial has been listed to commence before the Perth District Court on 16 November 2023, with an estimate of 16 days.
- *John Kinghorn* - the trial listing was vacated twice in 2020 due to pre-trial issues. The Crown appeal against the decision of the primary judge in *R v Kinghorn* as to the application of *R v Leach* [2019] 1 Qd R 459 (**R v Leach**), proceeded on 29 and 30 September 2021 in the NSWCCA. As part of pre-trial argument, her Honour had determined that the accusatorial principle and the companion rule had the effect that the accused's compulsory examination should not have been disseminated to investigators and prosecutors, and that the content of the examination was not admissible in the trial of the accused. On 21 December 2021 following the appeal hearing, judgment was unanimously in favour of the Crown. Kinghorn subsequently filed an application for special leave to appeal from the whole of the judgment of the NSWCCA. On 5 May 2022, the High Court heard and dismissed Kinghorn's special leave application, stating there was no reason to doubt the NSWCCA's decision given the statutory context in which the issues in the special leave application arose.

Extensive case management orders were made by her Honour Justice Adamson on 5 September 2022, and a new trial date was tentatively set for 31 July 2023 with an estimate of 9-10 weeks. The matter has been listed for further directions on 9 November 2022.

<sup>2</sup> Adam Cranston; Lauren Cranston; Dev Menon; Jason Onley; Patrick Willmott; Christopher Guilan; Stephen Barrett.

<sup>3</sup> s46(a) [redacted] Sevag Chalabian, s46(a) [redacted], Daniel Hausman, s46(a) [redacted] Paul O'Leary, s46(a) [redacted] and Daniel Rostankovski have all been convicted and sentenced. **Note that there are current non-publication orders in relation to each of those matters. The judgments are not to be disseminated outside of the CDPP.**

<sup>4</sup> Michael Cranston.



*Wickenby/SFCT matters that have been finalised and resulted in conviction and sentence since 1 July 2015:*

1. **s46(a)** [REDACTED]
2. **Jeffrey Conklin (NSW):** Conklin pleaded guilty to one count of defrauding the Commonwealth and one count of obtaining a financial advantage by deception. On 10 June 2016, Conklin was sentenced to five (5) years and nine (9) months' imprisonment with a NPP of two (2) and a half years. On 22 November 2017, Conklin's application for leave to appeal against conviction and sentence was refused.
3. **Anthony Dickson (NSW):** Dickson was found guilty of conspiring to dishonestly cause a loss to a Commonwealth entity and money laundering. The offending occurred over six (6) years and the intended loss to the Commonwealth was \$135M. On 20 March 2015, Dickson was sentenced to an aggregate sentence of 11 years' imprisonment with a NPP of seven (7) years. On 10 June 2016, the NSWCCA dismissed Dickson's conviction appeal and upheld the Crown's sentence appeal. Dickson was re-sentenced to an aggregate sentence of 14 years' imprisonment with a single NPP of nine (9) years and three (3) months. The HCA refused special leave to appeal.
4. **Michael Issakidis:** Dickson's co-accused was also found guilty of conspiring to dishonestly cause a loss to a Commonwealth entity and money laundering. He was sentenced to an aggregate period of ten (10) years and three (3) months' imprisonment commencing on 16 October 2017, with a NPP of seven (7) years and six (6) months. His appeal against conviction was dismissed by the NSWCCA on 20 December 2019.
5. **Vanda Gould:** in mid-2018, following trial, there was a directed verdict of not guilty on one (1) charge of giving false testimony and the jury was unable to reach a verdict on the other charge of attempting to pervert the course of justice. The matter proceeded to re-trial on 21 October 2019, with the jury returning a verdict of guilty on 26 November 2019. On 17 December 2020, Gould was sentenced to three (3) years and four (4) months imprisonment with a single NPP of one (1) year and eight (8) months. Gould subsequently sought leave to appeal against conviction. The matter proceeded for both an appeal against conviction and a Crown appeal against sentence on 7 April 2021 in the NSWCCA. On 10 May 2021, the conviction appeal was dismissed and the Crown severity appeal was upheld. Gould was resentenced to a total effective sentence of six (6) years imprisonment, comprising a NPP of 3 years and 6 months and a balance of term of 2 years and 6 months.
6. **s46(a)** [REDACTED]
7. **Daniel Hausman (Operation Elbrus)** **s46(a)** [REDACTED]
8. **s46(a)** [REDACTED]



s46(a)

9. **John Merity:** Merity pleaded guilty to authorising the making of false or misleading statements in documents submitted to ASIC. He was sentenced in the NSW District Court on 14 February 2020 to two (2) years' imprisonment to be released on 13 February 2021, upon entering a section 20(1)(b) *Crimes Act 1914* bond in the sum of \$1.00 to be of good behaviour for twelve (12) months.
10. **Paul O'Leary (Operation Elbrus):** s46(a)
11. s46(a)
12. **Timothy Pratten:** found guilty of seven (7) charges of obtaining financial advantage by deception, contrary to s134.2(1) of the *Criminal Code*. The offences occurred during the 2002/03-2008/09 financial years and enabled Pratten to evade taxes of more than \$2.2 million. On 29 April 2016, he was sentenced to an aggregate sentence of five (5) years' imprisonment with a NPP of two (2) years. A subsequent Crown appeal against sentence was allowed and Pratten was re-sentenced to imprisonment for six (6) years and four (4) months, with a NPP of three (3) years and nine (9) months. An appeal against conviction proceeded on 26 and 27 July 2021 in the NSWCCA and was unanimously dismissed on 25 October 2021.
13. **Michael Anthony Ray (Operation Spinel):** Ray pleaded guilty to one (1) charge of conspiracy with intent to obtain a gain contrary to section 135.4(1) of the *Criminal Code*, for his participation in a conspiracy to defraud the Commonwealth of more than \$5 million dollars through GST refunds. On 23 November 2020, Ray was sentenced in the Melbourne County Court to five (5) years imprisonment with a NPP of three (3) years.
14. **Daniel Rostankovski (Operation Elbrus):** s46(a)
15. **Steven Hui Xiao:** On 2 September 2015, Xiao pleaded guilty to two counts of insider trading following charge negotiations. On 11 March 2016, Xiao was sentenced to eight years and three months' imprisonment with a minimum NPP of five (5) and half years. Xiao's appeal against sentence was allowed and on 5 February 2018, he was resentenced to a total of seven (7) years' imprisonment with a NPP of four (4) years and six (6) months.

- **Jennifer Nairne:** the accused was arraigned on 22 January 2021. The matter was originally listed to proceed for trial on 6 March 2023 before the Sydney District Court, however on 29 April 2022, Ms Nairne entered pleas of guilty to one count of dishonestly influence public official, contrary to s135.1(7) of the *Criminal Code*, and one count of s145.1(1) of the *Code*. Following a sentence hearing on 29 July 2022, the offender was sentenced to a single, aggregate sentence of 2 years imprisonment to be served by way of ICO, with an additional condition requiring the offender to perform 150 hours of community service work (indicative sentence of 2 years imprisonment for each respective count).
- **Sevag Chalabian:** s46(a) [REDACTED]
- The Wickenby/SFCT matters that have resulted in acquittals are: **Ross Seller, Patrick McCarthy and Michael Cranston.**
- The matters quashed on appeal were **Raymond Osborne, Robert Agius and Anthony Castagna.**

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## CURRENT ISSUE

In early 2019, the Australian Government announced a proposal to expand the jurisdiction of the FCA, to include criminal prosecutions for corporate crime offences. The CDPP has provided extensive engagement to date on the draft Bill prepared by the AGD, *Federal Court of Australia Amendment (Extending Criminal Jurisdiction and Other Measures) Bill 2021*. In October 2022, the CDPP was advised that the Bill has recently received policy authority, and a draft has been released for wider public consultation. It is anticipated that the Bill will be introduced into Parliament in the 2022 Spring sitting.

## KEY FACTS AND RESPONSES

- On 23 March 2019, the Australian Government announced the jurisdiction of the Federal Court would be expanded to include corporate crime. This was followed by a joint media release by the Attorney-General and Treasurer announcing the devotion of resources for the planned expansion of the Federal Court's jurisdiction to deal in a timely manner with those who engage in financial sector criminal misconduct.
- The CDPP has continued to assist the Government to implement the proposed changes:
  - Prior to the initial announcement of the intention to expand the jurisdiction of the Federal Court, the CDPP provided information to the AGD as requested.
  - AGD set up a steering committee in 2019 involving members of its Department, the Federal Court, Treasury, ASIC and CDPP in relation to the design and implementation of the Federal Court's corporate crime jurisdiction. The committee has met a number of times.
  - In addition to participation in the committee, the CDPP has engaged in significant consultation with AGD outside of sessions via email.

### *What is the status of the Bill?*

- In August 2021, a draft Bill prepared by AGD, in the form of the *Federal Court of Australia Amendment (Extending Criminal Jurisdiction and Other Measures) Bill 2021* was shared with relevant stakeholders, including the CDPP, for feedback and input. The CDPP provided a response.
- It was originally anticipated that the Bill would be introduced in the Autumn 2022 sitting of Parliament, however this did not eventuate.<sup>1</sup>
- On 4 October 2022, the CDPP was advised that AGD has now received formal

<sup>1</sup> Note that the Prime Minister has not provided approval for release of an exposure draft for consultation which has contributed to the delay.

policy authority for the proposed measures in the Bill. An exposure draft has been made available for public comment on the AGD's website. The Bill was available for public comment until 31 October 2022.

*Does the CDPP agree it takes too long to prosecute white collar crimes?*

- Often the factors that delay these cases are beyond the immediate control of the Prosecution.
- The CDPP is committed to reducing delays, for example, through pre-brief engagement with partner agencies. This approach enables the CDPP to engage with investigators early in the process to provide feedback and guidance about what evidence is needed for potential briefs, identifying any likely evidentiary or legal issues and, where possible, offer proactive suggestions for ways to remedy these issues prior to resolution and referral.
- The CDPP is also increasingly focussed on the use of digital litigation support resources and databases when assessing large and complex briefs of evidence, again making the process more efficient.
- The CDPP has issued a National Legal Direction on 'Early Negotiation', to encourage the timely finalisation of prosecutions by pro-actively pursuing resolution prior to a contested hearing or trial.
- Case management by the courts is also an important aspect in minimising delays and the CDPP is committed to supporting such processes.

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## CURRENT ISSUE

Mr Palmer is currently facing two separate criminal prosecutions for offences contrary to the *Corporations Act* and the *Criminal Code* (Qld). On 20 October 2022, a permanent stay was granted by the Queensland Supreme Court in relation to civil proceedings instituted by Mr Palmer, seeking a permanent stay of both criminal prosecutions. Mr Palmer's applications for summary judgment to be issued in both matters were also dismissed.

## KEY FACTS AND RESPONSES

### Background:

- Palmer Leisure Coolum Pty Ltd (**PLC**) has been charged with publicly proposing to make a takeover bid for securities in Queensland North Pty Ltd and not making an offer for the securities within two months, contrary to section 631 of the *Corporations Act 2001*. Mr Clive Palmer (**Palmer**), who was at all times a director of PLC, has been charged with aiding, abetting counselling or procuring the company (**the PLC Matter**).
- In a separate matter, Palmer has been charged with two charges of fraud pursuant to s408C(1)(d) *Criminal Code* (Qld), and two charges of dishonestly using his position as a company director pursuant to s184(2)(a) of the *Corporations Act 2001*. It is alleged that Palmer, as the sole director of Mineralogy Pty Ltd (**Mineralogy**) and sole signatory to the bank account from which the relevant funds were disbursed, ultimately applied those funds to the Palmer United Party and companies connected to him, in breach of Facilities Deeds agreements in place between Mineralogy and other companies Sino Iron and Korean Steel. The quantum involved was \$12.167 million (**the Mineralogy/PUP Matter**).

### 2021/2022 Collateral Supreme Court Civil Proceedings – Abuse of Process:

#### **Civil applications:**

- On 1 June 2021, this office was served with a claim and statement of claim filed by Palmer and PLC naming the CDPP, ASIC and the Magistrates Court as defendants.
- The claim sought the following orders:
  - A declaration that the Commonwealth Criminal Proceeding is an abuse of process;
  - Further or alternatively, a declaration that the Commonwealth Criminal Proceeding would tend to bring the administration of justice into disrepute;
  - Further or alternatively, a declaration that the continuation of the Commonwealth Criminal Proceeding would tend to bring the administration of justice into disrepute;
  - An order that the Commonwealth Criminal Proceeding be permanently stayed;
  - An order restraining the CDPP from conducting the Commonwealth Criminal Proceeding.
- Additionally, on 3 July 2021, this office was served with a claim filed by Palmer related to the Mineralogy Matter, naming the CDPP, ASIC, the Magistrates' Court, and a Justice of the Peace as defendants.



- The claim sought orders including:
  - a) A declaration that the complaint is an abuse of process;
  - b) Further or alternatively, a declaration that the complaint would tend to bring the administration of justice into disrepute;
  - c) An order that the Proceeding be permanently stayed.
- An application to strike out each claim and statement of claim has been filed by the CDPP and ASIC. The Qld Attorney General has also filed a notice of intervention in these proceedings, also making an application to strike out the claim and statement of claim.
- A directions hearing proceeded in the Supreme Court of Queensland on 22 September 2021. A hearing of the claims and the respective applications to strike was listed for listed to proceed on 7 February 2022.
- In addition to the claim and statement of claim, an application for summary judgment was filed by Mr Palmer and PLC on 17 December 2021 and 4 January 2022 respectively.
- Additionally, an application for summary judgment was filed by Mr Palmer in relation to the Mineralogy matter on 13 December 2021. An amended application was filed on 14 January 2022.

#### **Outcome of 2021/2022 Collateral Civil Proceedings:**

- On 7 February 2022, the applications for summary judgment were heard in the Supreme Court of Queensland before Callaghan J, his Honour having decided that the applications for summary judgment should be determined prior the claims and respective applications to strike out that had originally been listed to proceed on that date.
- On 9 March 2022, his Honour provided reasons as to why he intends to dismiss the Plaintiff's applications for summary judgment, however he declined to make the orders on that date. Rather, his Honour indicated that the orders would be made at the time the strike-out applications were determined.
- The strike-out applications proceeded on 31 May 2022 and 1 June 2022. The Plaintiff's applications for leave to amend the statements of claim were also heard on this date.
- On 20 October 2022, his Honour delivered a draft judgment in relation to all applications. Justice Callaghan ordered a permanent stay of the civil proceedings commenced in the Supreme Court by Mr Palmer, finding it would be inappropriate in either case to exercise the Supreme Court's "supervisory jurisdiction".
- Mr Palmer's applications for summary judgment were dismissed.
- Justice Callaghan's judgment is marked "subject to amendment". Final orders will be made after the parties file submissions in relation to any further orders sought. Those submissions are due to be filed by 27 October 2022.

### **2019/2020 Collateral Civil Proceedings:**

- On 19 September 2019, Palmer and PLC filed a claim in the Supreme Court of Queensland for declarations in relation to the PLC Matter, including an order that the proceedings were an abuse of process. Following hearing, on 23 January 2019, the plaintiff's claims were set aside, and the statements of claim were struck out – principally on the ground that the application interfered with or fragmented the course of criminal proceedings.
- On 4 June 2019, Palmer appealed against the decision of the Supreme Court. Judgment was delivered on 17 March 2020 dismissing the appeals with costs.
- Palmer subsequently made Special Leave Applications to the High Court which were dismissed on 5 August 2020 on the papers with costs being ordered.
- Whilst the 2021/2022 claim in relation to the PLC Matter seeks similar orders to the claims struck out in 2019, there is a distinction in terms of the basis of the orders that were sought.

### **Status of Criminal Prosecutions:**

- Both the PLC and Mineralogy/PUP matters have been adjourned for mention before the Brisbane Magistrates' Court on **2 December 2022** to allow Justice Callaghan to deliver final orders in the 2021/2022 collateral civil proceedings.

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## CURRENT ISSUE

On 29 October 2021 and 11 February 2022, the CDPP discontinued a number of prosecutions in relation to alleged cartel conduct by syndicate banks and related executives, arising from the ANZ institutional share placement in August 2015. The matters had initially been referred by ACCC.

## KEY FACTS AND RESPONSES

### Background:

- On 4 July 2017, a brief of evidence was referred by the ACCC for brief assessment, alleging cartel conduct by syndicate banks arising from an ANZ institutional share placement in August 2015. In June 2018, the CDPP laid charges against Citigroup, Deutsche Bank, ANZ and six senior banking executives (Itay Tuchman, Michael Ormaechea, John McLean, Michael Richardson, Stephen Roberts and Rick Moscatti).
- For a brief summary of the main allegations and underlying evidence, please see **page 4**.
- In December 2020, the matters were committed from the Local Court of NSW to the Federal Court for trial. A trial was later listed to commence in June 2022 for approximately 6 months.
- In February 2021, the CDPP filed an indictment in the Federal Court setting out charges against the accused in relation to three alleged cartel arrangements or understandings (the **February 2021 indictment**) (the 'Friday Understanding', the '5-7 % Understanding' and the 'Monday Understanding').
- In August 2021, following orders by the Federal Court,<sup>1</sup> the CDPP filed a revised indictment which reduced the number of charges to those relating to one arrangement or understanding (the '5-7% Understanding') and, in effect, withdrew the charges against Stephen Roberts (the **August 2021 indictment**).
- On 29 October 2021, the CDPP discontinued the charges against ANZ and Rick Moscatti.
- On 18 November 2021, following orders by the Federal Court,<sup>2</sup> the CDPP filed a revised indictment.
- In December 2021, the CDPP received submissions on behalf of each accused requesting that the CDPP exercise the power under s 9(4) of the *Director of Public Prosecutions Act 1983* (Cth) to decline to proceed further in their respective prosecutions.

<sup>1</sup> On 7 July 2021, the Federal Court made orders in relation to applications on behalf of the accused concerning the February 2021 indictment. The Federal Court directed the CDPP to file a new indictment which remedied the issues identified in the reasons for judgment: *CDPP v Citigroup Global Markets Australia Pty Limited (No 1 – Indictment)* [2021] FCA 757.

<sup>2</sup> On 3 November 2021, the Federal Court made orders in relation to applications on behalf of the accused concerning the August 2021 indictment. The Federal Court directed the CDPP to file a new indictment which remedied the issues identified in the reasons for judgment: *CDPP v Citigroup (No 5 - Indictment)* [2021] FCA 1345.

- On 11 February 2022, the CDPP declined to proceed further in the prosecution against the remaining two banks and six individuals.

### **Discontinuance:**

As set out in the CDPP's media release dated 11 February 2022:

- These prosecutions commenced in June 2018 following an investigation by the ACCC and a referral of a brief of evidence to the CDPP, and had been listed to proceed for trial in June 2022 with an estimated duration of 5-6 months.
- All decisions relating to the conduct of federal criminal prosecutions are made in accordance with the Prosecution Policy of the Commonwealth, including any decision to discontinue a prosecution already commenced. Prosecutors apply the Prosecution Policy of the Commonwealth at all stages of the prosecution process to ensure that proceedings continue to be adequately supported by admissible evidence and continue to be in the public interest.
- In these matters, following a further careful review of the evidence and consideration of detailed submissions received from the legal representatives acting for the accused, the Director determined that there were no longer reasonable prospects of conviction for the charges before the court. This resulted in the Director's decision to decline to proceed further in the proceedings against the accused in this complex matter.

### **Costs:**

- As at 14 February 2022, the CDPP has not received any application for costs and its view is that costs cannot be awarded in the Federal Court in these circumstances (Section 23HE of the *Federal Court of Australia Act 1976* (Cth) provides that "*Nothing in this Act gives the Court power to award costs in indictable primary proceedings.*" These proceedings were indictable primary proceedings pursuant to s 23AB(1) and (2) of the Act).
- As at 10 October 2022, external expenses recorded by the CDPP in respect of the Operation Deacon prosecutions totalled \$1,546,470 (GST exclusive).

### **Question on Notice:**

- (1) On 15 February 2022 Senator Paul Scarr asked the following question at Additional Estimates:

*Senator SCARR: Ms McNaughton, I want to ask some questions about what's been referred to as the 'ANZ bank criminal cartel case'. ...*

*Senator SCARR: Finally, I'll leave this question on notice for you, and that is whether—and I'll give you an opportunity to reflect on it, perhaps—the CDPP is going to make a more fulsome statement at the appropriate time with its reflections and observations in relation to the case and provide it in a public forum for the public, who have a legitimate interest in this case, to reflect upon. Can I leave you with that question on notice, Ms McNaughton? Ms McNaughton: Yes. Thank you, Senator.*

- Via email on 9 March 2022 to AGD, **the CDPP advised as follows:**

*"The CDPP routinely reviews significant completed prosecutions to identify lessons learnt and will do so in these matters. Whilst there are often limitations on what can be stated publicly about such matters, a report of these matters will be included in the next CDPP Annual Report."<sup>3</sup>*

<sup>3</sup> Figures published in the CDPP Annual Report 2021-22.

**Status of review:**

- In consultation with the ACCC, the CDPP is in the process of conducting an internal review of the matter, focusing on the work conducted by the CDPP during the pre-brief, brief assessment, committal and pre-trial stages. The aims of this review are to identify lessons from this long running and difficult case, which can be applied constructively in future cartel (and other complex SFCC) matters.
- At present, the internal review is not yet finalised. No time frame has yet been set for completion of the review.
- In August, the CDPP conducted national internal training for prosecutors in this area, on strategies and early engagement avenues in managing complex litigation. Further training sessions will be conducted as the review continues.

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**Summary of allegations and key evidence:**

- The CDPP first laid criminal charges in June 2018 against ANZ Bank, Citigroup, Deutsche Bank and six executives, alleging cartel conduct in the period between 7 August and 30 September 2015, contrary to ss 44ZZRF(1) and 44ZZRG(1) of the *Competition and Consumer Act 2010* (Cth).
- The key allegations were as follows:
  - In July 2015, the Australian Prudential Regulation Authority increased the amount of capital certain authorised deposit-taking institutions, including ANZ, were required to hold.
  - In August 2015, to comply with this increased capital requirement, ANZ sought to raise approximately AU\$3 billion, comprising:
    - approximately \$AU2.5 billion by way of an institutional share placement; and
    - approximately AU\$500 million by way of a Share Purchase Plan offer.
  - On 6 August 2015, ANZ appointed J.P. Morgan Australia, Citigroup and Deutsche Bank to act as joint lead managers and underwriters in relation to the ANZ placement pursuant to an underwriting agreement in relation to the funds raised.
  - The outcome of the ANZ Placement was that not all ANZ Shares being issued in the placement were allocated to institutional investors (**Residual ANZ Shares**).
  - The underwriting agreement required the three investment banks, in their capacity as underwriters to subscribe or procure subscriptions for the Residual ANZ Shares in their respective proportions.
  - Once the Investment Banks acquired their respective proportions of the Residual ANZ Shares, they were not subject to any ongoing obligations to ANZ or each other pursuant to the Underwriting Agreement. They were by this time, in competition with each other.
  - In order to manage their respective risk positions on ANZ shares and prevent downward pressure on the price of ANZ shares in the market, the investment banks agreed on a co-ordinated trading strategy between Friday 7 August 2015 and Saturday 8 August 2015.
  - The alleged CAU was that each investment bank would restrict or limit the way it reduced its net position in ANZ Shares by selling no more on each trading day than 5% to 7% of the average daily volume of ANZ Shares traded on the market that day (the **5-7% Understanding**).
  - Evidence in support of 5-7% Understanding included recorded calls, contemporaneous notes of calls taken by participants, evidence from employees of the three investment banks and ANZ given to the ACCC and to ASIC under compulsory powers, and evidence from J.P. Morgan indemnified witnesses. This evidence supported the following key conversations and events:
    - Calls between representatives of ANZ, and representatives from each of the investment banks on Friday 7 August 2015, referring to “*look[ing] after it together... want[ing] relevant parties together*”; the need “*to be coordinated*” in their approach “*where possible on a legal basis*”.
    - Emails sent on Friday 7 August 2015 between the investment banks.
    - Phone conference between representatives from ANZ and each of the investment banks on Friday 7 August 2015 at 10am in which each of the investment banks agreed they would not directly or indirectly alter their net position in ANZ shares for the remainder of

that day; they would allow facilitation trades in ANZ shares; and they would allow hedges. The agreement was encouraged by MOSCATI (ANZ).

- Phone conference between representatives from each of the investment banks on Friday 7 August 2015 at 5pm, in which they discussed further coordinating their trading strategy and that they had been encouraged to agree on a trading strategy by ANZ.
- Conference call between the investment banks on Saturday at 10.38am, during which they reached an arrangement or understanding on how the investment banks would gradually and in a co-ordinated way reduce their respective risk positions on ANZ shares.
- Conference call between ANZ and the investment banks on Saturday at 11.01am, and subsequent emails and calls confirming the 5-7% Understanding.
- Conference call between the investment banks on Monday 10 August 2015 at 9am, in which the investment banks again determined to stay out of the market that day and not reduce their respective net positions in ANZ shares.
- Conference call on 10 August 2015 at 4.30pm between the investment banks, in which it was decided the investment banks would start selling their ANZ share positions in accordance with the 5-7% Understanding from Tuesday onwards.
- Emails and telephone calls over the course of the proceeding weeks until 28 August 2015, confirming that the investment banks gave effect to the terms of the 5-7% Understanding.

## R v Moyle

**Date of sentence:** 15 December 2021<sup>2</sup>

**Court:** South Australian Court of Appeal

**Partner agencies:** South Australia Police and AFP

**Outcome:** Geoffrey Moyle was sentenced on appeal to 12 years' imprisonment, with a non-parole period of 7 years.

The offending involved Moyle engaging in sexual acts with girls aged between 10 and 14 years old between 2002 and 2005 in Cambodia, where he was living and working for international development agencies. Moyle took photos and video footage of the offending conduct. In January 2020 Moyle pleaded guilty to 9 Commonwealth child sex offences, including 5 counts of engaging in sexual conduct with a child under 16 years outside of Australia and 4 counts of engaging in sexual intercourse with a child under 16 years outside of Australia. Moyle was also charged with 2 further state offences of possession of child exploitation material.

The maximum penalty for the sexual conduct offences was 12 years' imprisonment and for the sexual intercourse offences was 17 years' imprisonment. Moyle received a 20% reduction on sentence on account of his guilty pleas. On 17 September 2021 Moyle was sentenced by the Adelaide District Court to 8 years, 9 months and 19 days' imprisonment.

The Director appealed the sentence imposed in the District Court, arguing the sentence was manifestly inadequate. The South Australian Court of Appeal found that the sentence did not adequately reflect the seriousness of the offending and that it failed to recognise the harm caused to the many victims.

The court held that the sentence imposed for the Commonwealth offences was '*...so substantially below the range of sentences warranted by the offending as to require correction to maintain proper sentencing standards*'.

The court set aside the original sentence and imposed a sentence of 12 years imprisonment with a non-parole period of 7 years. As Chief Justice Kourakis and Justices Lovell and Doyle stated, '*Mr Moyle's participation in the commercial exploitation of children played its part in supporting the ongoing trade of those who peddle in the misery of children.*'

## Citigroup Global Markets Australia Pty Limited and others (Operation Deacon)

On 11 February 2022 the Director announced her decision to decline to further proceed in the criminal prosecutions of Citigroup Global Markets Australia Pty Limited, Deutsche Bank AG and 4 senior banking executives for cartel offences arising from an ANZ institutional share placement in August 2015. The prosecutions were very complex, in part due to the highly technical nature of many of the elements that needed to be proved to establish criminal liability.

These prosecutions commenced in June 2018 following an investigation and referral to CDPP by the Australian Competition and Consumer Commission and had been listed to proceed for trial in June 2022 with an estimated duration of 5 to 6 months.

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<sup>2</sup> Resentenced on appeal.

All decisions relating to the conduct of federal criminal prosecutions are made in accordance with the prosecution policy, including any decision to discontinue a prosecution already commenced. Prosecutors apply the prosecution policy at all stages of the prosecution process to ensure that proceedings continue to be adequately supported by admissible evidence and continue to be in the public interest.

In these matters, following a further careful review of the evidence and consideration of detailed submissions received from the legal representatives acting for the accused, the Director determined that there were no longer reasonable prospects of conviction for the charges before the court. This resulted in the Director's decision to decline to proceed further in the proceedings against the accused in this complex matter.

## R v Choi, Chan Han

**Date of sentence:** 23 July 2021

**Court:** Supreme Court of New South Wales

**Partner agency:** AFP

**Outcome:** Chan Han Choi was sentenced to 3 years and 6 months' imprisonment, having pleaded guilty during his trial to breaching sanctions imposed on the Democratic People's Republic of Korea (North Korea).

This was the first prosecution in Australia for breaching North Korean sanctions. The defendant contravened the United Nations sanctions regime by brokering a service for the sale of arms and related material and tactical inertial measurement units from North Korea and the sale of refined petroleum products to North Korea. Additionally, by brokering a service for the sale of coal from North Korea to Indonesia and the sale of pig iron from North Korea to South Korea, the defendant also breached Australia's autonomous sanctions regime.

Mr Choi was arrested by the AFP on 16 December 2017. The investigation involved police gathering a significant quantity of evidence, including evidence from witnesses in Australia and the United States of America with expertise in nuclear weapons and North Korea's missile programs, sanctions evasion activities, the types and components of missiles and coal and pig iron products. The investigation uncovered Mr Choi's connections with various associates in North Korea, China and Russia.

In sentencing the defendant, the Court found that Mr Choi was brokering the sale of 'Man-Portable Air Defence systems' surface to air missiles which can be fired from a person's shoulder or from a launcher mounted on a vehicle and can shoot down aeroplanes at lower altitudes. The purpose of this and other military equipment was to kill people and destroy equipment and infrastructure. The Court was also satisfied that, although none of the transactions came to fruition, the cessation of the negotiations was not due to any voluntary act by the defendant, finding the defendant acted deliberately, motivated by personal gain and by a desire to undermine a sanctions regime designed to put pressure on the North Korean government to comply with international law. Although none of the transactions that Mr Choi brokered were completed and thus there was no actual injury, loss or damage caused by Mr Choi's conduct, the potential damage was significant.





## CURRENT ISSUE

- CDPP's participation in the Illicit Tobacco Taskforce (**ITTF**) and the prosecution of offences related to loss of Commonwealth revenue arising out of the importation and dealing of illegal tobacco.

## KEY FACTS AND RESPONSES

- The CDPP is an advisory member of the ITTF.
- The CDPP is an advisory member of the ITTF.
- The ITTF investigates matters and refers briefs of evidence to the CDPP.
- Based on CDPP records as at 20 October 2022, we have received 58 matters from members of the ITTF:
  - 16 referrals in the FY 2019;
  - 11 referrals in the FY 2020;
  - 10 referrals in the FY 2021;
  - 20 referrals in the FY 2022; and
  - 1 referral in the 2022/2023 financial year to date.
- The ABF has referred 44 matters, the State and Territory police forces have referred 7 matters, the ATO has referred 5 matters and the AFP has referred 2 matters.
- 1 referral is in pre-brief phase, 7 referrals are suspended in brief assessment phase pending replies to further requisitions and two matters have warrants issued (*Khaldoun TALEB and Kong Hooi YEAP*).
- 26 ITTF prosecutions have been completed. 20 matters were prosecuted under the *Customs Act 1901* (Cth), 1 matter was prosecuted under the *Excise Act 1901* (Cth) and 5 matters were prosecuted under the *Taxation Administration Act 1953* (Cth).
- 13 offenders were sentenced to full-time imprisonment; 3 offenders were sentenced to imprisonment and released forthwith and 5 offenders received intensive correction or community correction orders.
- There are 16 ITTF matters currently before the courts.
- The CDPP continues to provide pre-brief and other support to the Taskforce.

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## ADDITIONAL INFORMATION

- On 1 July 2018, the ITTF was established to protect Commonwealth revenue and effectively target, disrupt and dismantle serious actors and organised crime syndicates that deal in illicit tobacco.
- The ABF-led Taskforce members include the ABF, Department of Home Affairs, the Australian Criminal Intelligence Commission, the Australian Transaction Reports and Analysis Centre, the ATO and the CDPP.

## ATTACHMENTS

N/A



## CURRENT ISSUE

The prosecution of Mr Richard Boyle, former ATO officer, has attracted significant Senate and media scrutiny including a focus on the role and actions of this Office. A civil trial to determine an application by Mr Boyle under s 10 of the *Public Interest Disclosure Act 2013* ('PID Act') commenced on 4 October 2022 before the District Court of South Australia. It concluded on 19 October 2022. The decision was reserved.

## KEY FACTS AND RESPONSES

- A brief of evidence was referred to the CDPP by the ATO in relation to a former ATO officer, Richard Boyle, on about 17 July 2018.
- The brief was assessed in accordance with the Prosecution Policy of the Commonwealth and Mr Boyle was initially charged with 66 offences.
- The Commonwealth offences relate to the alleged recording and disclosure of protected taxation information and tax file numbers that were acquired by Mr Boyle whilst he was a taxation officer. The State offences relate to the alleged use by Mr Boyle of a listening device to record private conversations without the consent of the parties to those conversations.
- Charges were filed in the Adelaide Magistrates Court on 7 January 2019.
- The matter was first heard in the Adelaide Magistrates Court on 1 March 2019.
- Mr Boyle entered pleas of not guilty to all 66 counts on 5 May 2020 and was committed to the District Court of South Australia for trial.
- An indictment was filed with the District Court on 1 July 2020 alleging 24 counts, 7 of which are State offences.
- Mr Boyle was arraigned in the Adelaide District Court on 11 September 2020 and confirmed his not guilty pleas.
- The CDPP had consented to all matters being determined in the summary jurisdiction. Mr Boyle elected to have the matters heard in the District Court of South Australia.
- On 9 September 2020, the CDPP received a request made by Mr Boyle to discontinue all charges.



- The request was considered by the CDPP. Publicly available publications and releases were reviewed as part of that consideration, including:
  - the Senate Economics Legislation Committee Order for the Production of Documents (OPD) – Australian Taxation Office; and
  - Senate Economics Legislation Committee Report June 2020 - Performance of the Inspector General of Taxation.
- The CDPP also considered a submission Mr Boyle made to the ATO which purported to be a public interest disclosure. This submission was provided to the CDPP by Mr Boyle on 9 November 2020.
- The CDPP determined to proceed with all charges on 26 March 2021 and notified the defendant on that same date.
- The trial was listed to commence on 6 September 2021 for 4 weeks. This date was vacated on 9 August 2021, and the trial was relisted to commence on 4 October 2022.
- On 18 May 2022, Mr Boyle filed an Originating Application in the District Court of South Australia, seeking an order that he be declared immune in relation to the criminal charges by virtue of s 10 of the PID Act.
- A civil trial in relation to the PID proceedings was listed to commence on 25 July 2022, however, the date was vacated for COVID-19 related reasons. Consequently:
  - the civil trial to determine the PID issue was adjourned to 4 October 2022 with an estimate of 4 weeks. The trial commenced on 4 October 2022 before the District Court of South Australia and concluded on 19 October 2022. The decision was reserved.
  - the criminal trial was relisted to commence on 3 October 2023, pending the outcome of the PID hearing.
- On 3 August 2022, the CDPP filed a written application seeking a suppression order in relation to certain material in the PID proceedings pursuant to s69A(1)(a) of the *Evidence Act 1929* (SA), on the basis that publishing certain evidence and admissions made by Mr Boyle in the civil proceedings, which were inadmissible in the criminal proceedings, would constitute special circumstances giving rise to the threat of prejudice to the proper administration of justice. A suppression order was also sought under s 69A(1)(b) which replicated an existing suppression order made in the criminal proceedings in relation to the taxpayer information the subject of certain of the offences.
- On 5 August 2022, representatives for GNM Australia Pty Ltd filed written submissions opposing the Crown's application.
- On 12 September 2022, the CDPP filed written submissions in respect of its application.



- On 15 September 2022, written submissions were filed on behalf of Mr Boyle opposing the application for a suppression order on the basis that “no sufficient threat of prejudice to Mr Boyle’s criminal trial exists to justify the making of the orders sought”.
- In light of the position taken by Mr Boyle, and the fact that the criminal trial had been relisted for 3 October 2023 (rather than the original listing, a matter of weeks after the PID hearing), the Crown formed the view that the public interest in open justice outweighed any potential prejudice to Mr Boyle in the criminal proceedings, and withdrew its application for suppression orders in relation to the PID hearing.
- A suppression order pursuant to s 69 in relation to the affected taxpayers names or any other information reasonably identifying them was made to replace the previous suppression order.

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# ADDITIONAL INFORMATION

## Commonwealth offences

- **6 counts** of ‘making a record of protected information’ contrary to section 355-25(1)(b)(i) of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (‘TAA’);
- **2 counts** of recording another person’s tax file number, contrary to section 8WB(1)(a) TAA;
- **1 count** of ‘disclosing protected information to another entity’, contrary to section 355-25(1)(b)(ii) of Schedule 1 of the TAA;
- **6 counts** of attempting to ‘disclose protected information to another entity’, contrary to section 355-25(1)(b)(ii) of Schedule 1 of the TAA and section 11.1(1) of the *Criminal Code*;
- **2 counts** of ‘attempting to divulge or communicate another person’s tax file number’, contrary to section 11.1(1) of the *Criminal Code* (Cth) and section 8WB(1)(c) of the TAA;

## State offences

- **7 counts** of ‘intentionally using a listening device to overhear, record, monitor or listen to private conversations without the consent, express or implied, of the parties to that conversation’, contrary to s.4 of the *Listening and Surveillance Devices Act 1975* (SA).

## Maximum penalties

- Each of the s.355-25 Schedule 1 of the TAA offences carry a maximum penalty of 2 years imprisonment.
- Each of the s.8WB TAA offences carry a maximum penalty of 100 penalty units (currently \$210) or imprisonment for 2 years, or both.
- The seven state offences carry a maximum penalty of \$10,000 or imprisonment for 2 years.
- Therefore, the combined possible penalty for all offences is:
  - 34 years imprisonment and/or a fine of \$382,800 for the Commonwealth offending;
  - 14 years imprisonment or a fine of \$70,000.00 for the state offending.

## Public Interest Disclosure

- On 16 July 2020, there was a Question on Notice asking about the cost of prosecution of Mr Boyle. We provided the answer that the total external legal cost recorded to 21 July 2020 by the CDPP in the prosecution of Mr Richard Boyle is \$36,779 (GST exclusive).
- As at 10 October 2022, the total external legal cost recorded by the CDPP in the prosecution of Mr Richard Boyle is \$141,232 (GST exclusive).

## **Richard Boyle**

### **Talking Points**

#### **What is happening with the prosecution of Mr Boyle?**

1. The hearing under the *Public Interest Disclosure Act 2013* before the South Australian District Court concluded on 19 October 2022 and the Judge has reserved her decision.
2. The hearing is to determine the claim by Mr Boyle that he is immune from prosecution because his alleged offending was part of his public interest disclosure.
3. Mr Boyle's trial is set to begin on 3 October 2023.

#### **Why did the CDPP seek a suppression order in relation to the PID hearing?**

1. The material that was to be disclosed during the PID hearings is inadmissible in any subsequent trial of the charges that Mr Boyle is facing.
2. The CDPP sought a suppression order over the material to be disclosed in the PID hearing so that the trial would not be adversely affected by the publication in the media.
3. The CDPP withdrew its application for a suppression order based on the submissions made by Mr Boyle's legal team that the disclosure of information would not prejudice his trial.

#### **Has the CDPP considered the prosecution of Mr Boyle in light of the PID hearing?**

1. As with all matters the prosecution of Mr Boyle is regularly reviewed in accordance with the *Prosecution Policy of the Commonwealth*.

#### **If found guilty, what penalty does Mr Boyle face?**

1. The offences that Mr Boyle currently faces have a maximum sentence of 2 years imprisonment.
2. Mr Boyle is facing a total of 24 counts.
3. In the event of a conviction on any count, the appropriate sentence is ultimately a matter for the court.

|          |   |
|----------|---|
| 6 Counts | 'making a record of protected information' contrary to section 355-25(1)(b)(i) of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth) ("TAA") |
| 2 counts | recording another person's tax file number, contrary to section 8WB(1)(a) TAA   |

|          |   |
|----------|---|
|          |   |
| 1 count  | 'disclosing protected information to another entity', contrary to section 355-25(1)(b)(ii) of Schedule 1 of the TAA   |
| 6 counts | attempting to 'disclose protected information to another entity', contrary to section 355-25(1)(b)(ii) of Schedule 1 of the TAA and section 11.1(1) of the Criminal Code  |
| 2 counts | of 'attempting to divulge or communicate another person's tax file number', contrary to and section 8WB(1)(c) of the TAA and section 11.1(1) of the Criminal Code (Cth)   |
| 7 counts | 'intentionally using a listening device to overhear, record, monitor or listen to private conversations without the consent, express or implied, of the parties to that conversation', contrary to s.4 of the <i>Listening and Surveillance Devices Act 1975</i> (SA) |



**QONS RELATING TO BOYLE**

**Question on notice no. 1**

**Portfolio question number: BE19-001**

**2019-20 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 4 April 2019

Senator PATRICK: I want to ask some questions about the matter involving Richard Boyle. I appreciate it's before the courts and I won't ask any question that goes to a question that is before the court; rather, I'm interested in the preliminaries to it. Are you able to give some advice as to from whom you received the brief?

Ms McNaughton: From the ATO.

Senator PATRICK: Can you give me some idea of the date that you received the brief and the date, having worked through your processes, you then decided to prosecute or instituted proceedings?

Ms McNaughton: I haven't come briefed with that particular knowledge. I could take that on notice.

**Answer —**

The brief of evidence was received from the ATO on 17 July 2018.

The decision was made to commence proceedings on 11 December 2018.

**Question on notice no. 99**

**Portfolio question number: LCC-BE21-099**

**2021-22 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 27 May 2021

Senator PATRICK: On 27 October, 15 days later, that PID was rejected by the ATO. Mr Boyle then lodged a redacted version of his PID, public interest disclosure, to the IGT, the Inspector-General of Taxation, as a complaint. Are you aware of that?

Mr Bruckard: I might have to take that on notice. We are generally aware of the fact that the PID was made, but I might need to take the exact detail on notice.

**Answer —**

Please see the attached answer.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**BUDGET ESTIMATES 2021-22**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-BE21-99 - My Boyle PID**

**Senator Rex Patrick asked the following question on 27 May 2021:**

Senator PATRICK: On 27 October, 15 days later, that PID was rejected by the ATO. Mr Boyle then lodged a redacted version of his PID, public interest disclosure, to the IGT, the Inspector-General of Taxation, as a complaint. Are you aware of that?

Mr Bruckard: I might have to take that on notice. We are generally aware of the fact that the PID was made, but I might need to take the exact detail on notice.

**The response to the honourable senator's question is as follows:**

Yes.



**Question on notice no. 100**

**Portfolio question number: LCC-BE21-100**

**2021-22 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 27 May 2021

Senator PATRICK: Okay. In the context of the decision to prosecute Richard Boyle and the documentation associated with that, was the effect of that prosecution on whistleblowing considered more broadly? If I were able to look into that document, would I find something on that topic?

Mr Bruckard: We constantly review the cases we have before the court. On occasions, defendants, or their legal representatives, write to us and provide us with fresh material, and ask us to review the case. On other occasions, we'll conduct that review on our own motion if we become aware of relevant information which would impact on our decision to continue the prosecution.

In this case, it has been reviewed and it wasN

Senator PATRICK: But from that perspective of the chilling effect on other whistleblowers?

Mr Bruckard: It was certainly reviewed, conscious of the fact that there had been material around the PID which had been ventilated in the Senate report.

Senator PATRICK: But that's not the same thing as I talked about. That's about a defect in the PID processing. I'm just talking about in generalN

Mr Bruckard: Sorry, Senator. It goes to the question as to whether we're aware of the PID, effectively, and the process. As to the broader question of whether our decision would have a chilling effect: I'd probably have to take that on notice, as to whether that was discussed in detail in any of the submissions that were prepared by our lawyers.

Senator PATRICK: Alright. If it wasn't, maybe I can just suggest that it should be. I'll leave it at that. Thank you.

**Answer —**

Please see the attached answer.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**BUDGET ESTIMATES 2021-22**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-BE21-100 - Mr Boyle - Chilling effect on whistleblowing**

**Senator Rex Patrick asked the following question on 27 May 2021:**

Senator PATRICK: Okay. In the context of the decision to prosecute Richard Boyle and the documentation associated with that, was the effect of that prosecution on whistleblowing considered more broadly? If I were able to look into that document, would I find something on that topic?

Mr Bruckard: We constantly review the cases we have before the court. On occasions, defendants, or their legal representatives, write to us and provide us with fresh material, and ask us to review the case. On other occasions, we'll conduct that review on our own motion if we become aware of relevant information which would impact on our decision to continue the prosecution. In this case, it has been reviewed and it was—

Senator PATRICK: But from that perspective of the chilling effect on other whistleblowers?

Mr Bruckard: It was certainly reviewed, conscious of the fact that there had been material around the PID which had been ventilated in the Senate report.

Senator PATRICK: But that's not the same thing as I talked about. That's about a defect in the PID processing. I'm just talking about in general—

Mr Bruckard: Sorry, Senator. It goes to the question as to whether we're aware of the PID, effectively, and the process. As to the broader question of whether our decision would have a chilling effect: I'd probably have to take that on notice, as to whether that was discussed in detail in any of the submissions that were prepared by our lawyers.

Senator PATRICK: Alright. If it wasn't, maybe I can just suggest that it should be. I'll leave it at that. Thank you.

**The response to the honourable senator's question is as follows:**

The decision to prosecute Mr Boyle was made in accordance with the Prosecution Policy of the Commonwealth. The fact that Mr Boyle made a Public Interest Disclosure and claims to be a whistle blower has been taken into consideration.



## CURRENT ISSUE

The prosecution of Mr Peter Gregg, former Chief Financial Officer of Leighton Holdings Ltd (**LHL**), has attracted recent media scrutiny in an article published by The Australian (10/09/22), including a focus on the role and actions of this Office. Mr Gregg was found guilty following trial on 11 December 2018 of two offences contrary to s 1307(1) of the *Corporations Act 2001* (Cth). Mr Gregg was subsequently acquitted, following a successful appeal against conviction and sentence before the NSWCCA.<sup>1</sup>

## KEY FACTS AND RESPONSES

- A brief of evidence was referred to the CDPP by ASIC in relation to the former CFO of LHL, Peter Gregg, on about 11 May 2016.
- The brief was assessed in accordance with the Prosecution Policy of the Commonwealth and Mr Gregg was charged with two (2) offences relating to the alleged falsification of books, contrary to s1307(1) of the *Corporations Act 2001* (Cth). The maximum penalty for this offence at the relevant time was two (2) years imprisonment and/or a fine of 100 penalty units.
- The first count concerned a written payment instruction (**the Payment Instruction**) from Mr Gregg in August 2011 to LHL's treasury department directing that two payments totalling USD\$15 million be made to Asian Global Projects and Trading FZE (**Asian Global**), a company incorporated in the United Arab Emirates.
- The Payment Instruction directed that USD\$12.5 million be paid for the purpose of 'marketing and advisory' services and that USD\$2.5 million be paid as a 'loan'. The Crown alleged that the Payment Instruction was false because either one or both of the purposes stipulated in the Payment Instruction were false, in that the payments were not made for the stipulated purposes.
- The second count concerned a written agreement between LHL (executed by Mr Gregg on its behalf) and Asian Global in December 2011 (but backdated to August 2011) for the provision of steel procurement services by Asian Global. The Crown alleged that the agreement was false as it was a 'sham' agreement – that is, an agreement which has the form or appearance of a legally effective document but is really one which the relevant parties intend should not have its apparent or indeed any legal consequence.<sup>2</sup>
- The matter was first mentioned in the Downing Centre Local Court on 31 January 2017.

<sup>1</sup> *Gregg v R* [2020] NSWCCA 245. Judgment delivered on 30 September 2020.

<sup>2</sup> *Sharrment Pty Ltd v Official Trustee in Bankruptcy* (1988) 18 FCR 449; *Equuscorp Pty Ltd v Glengallan Investments Pty Ltd* (2004) 218 CLR 471.

- Mr Gregg entered pleas of not guilty to both counts on 14 March 2017 and the matter was committed to the District Court of New South Wales for a joint trial with co-accused, Russell Waugh.
- A joint indictment was filed by the Crown on 9 May 2017.
- The **trial** commenced on 22 October 2018 before his Honour Lakatos DCJ SC and ran for five and a half weeks. On 11 December 2018, the jury found Mr Gregg guilty of both counts alleged against him on the indictment (Counts 1 and 2).
- The co-accused, Russell John Waugh, who stood trial on a single count of aiding and abetting the applicant in relation to Count 2, was acquitted.
- On 29 August 2019, Mr Gregg was **sentenced** by Lakatos DCJ SC to a term of imprisonment of 12 months on Count 1, and 2 years on Count 2, to be served by way of an Intensive Correction Order. Mr Gregg was also disqualified from managing corporations for five years.
- Mr Gregg filed a Notice of Appeal and Grounds of Appeal in relation to conviction and sentence in the NSWCCA on 5 September 2019
- The **appeal** was heard before the NSWCCA on 22-24 April 2020, before their Honours Bathurst CJ, Hoeben CJ and CL and Leeming JA.
- On 30 September 2020, the court delivered **judgment** allowing the appeal, quashing the verdict of guilty on each count of the indictment dated 9 May 2017 and entering a verdict of acquittal on each count (*Gregg v R* [2020] NSWCCA 245).
- A summary of the Court's findings can be found in the Headnote to the judgment at p7-12. In short, the Court determined that:
  - The trial judge erred in not admitting certain documentary evidence (the Global Business Overview Presentation Document);
  - The change to the Crown case in Closing Address, that to find guilt the jury could be satisfied of falsity of either of the purposes of the payment instruction, rather than both, was oppressive and resulted in a miscarriage of justice;
  - The jury directions on Count 2, specifically the definition of "false" and a direction that Mr Khemka was the relevant party for proving the sham, were affected by errors of law;
  - Certain jury directions had the effect of reversing the onus of proof on the Crown and placing a positive burden on the appellant;
  - A substantial miscarriage of justice arose from a series of rhetorical questions posed in the course of the prosecutor's closing address to the jury.
  - Some parts of the judge's written summary of the parties' respective cases provided to the jury did not provide a fair and balanced summary.



- The verdicts ultimately reached by the jury, taking into account all the evidence, were unreasonable and should be set aside.
- On Saturday 10 September 2022, an article entitled “ASIC wronged me: Gregg hits back after belated acquittal” written by journalist Tansy Harcourt, was published in the Weekend Australian. The article does not mention the CDPP, but is critical of the ASIC investigation and powers of the regulator and mentions the outcome of the prosecution including the appeal and subsequent acquittals.

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Last updated: 28 October 2022

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# HEBP

| BRIEF TITLE                                 | Owner     | PDMS Record number (PDR) |
|---|-----------|--------------------------|
| Illicit Tobacco Taskforce                   | SFCC/HEBP | SB22-900160              |
| Operation Imaret                            | HEBP      | SB22-900165              |
| Commonwealth Child Sex Offence Prosecutions | HEBP      | SB22-900166              |
| Prosecution of Facebook                     | HEBP      | SB22-900167              |



## CURRENT ISSUE

- This matter arises out of a public inquiry conducted by the NSW Independent Commission Against Corruption (ICAC) into the conduct of Daryl MAGUIRE MP. Between March and April 2021, the Australian Border Force (ABF) referred a brief of evidence against four suspects, including MAGUIRE, for offences contrary to s234(1)(c) of the *Migration Act 1958* (Cth) relating to the provision of false or misleading information to the Department of Home Affairs in various business sponsor nomination applications.
- MAGUIRE and Maggie LOGAN, also known as Maggie WANG (WANG) have both been charged.

## KEY FACTS AND RESPONSES

- It is alleged that MAGUIRE used his network of contacts to identify and recruit business sponsors and establish a business relationship with Maggie LOGAN, also known as Maggie WANG (WANG), to assist in the facilitation of a visa sponsorship scheme by providing immigration assistance to businesses predominantly located in the Riverina area of New South Wales. WANG engaged Yueming HAO (also known as Monica HAO (HAO)), a Registered Migration Agent, to lodge visa sponsorship applications on behalf of businesses. It is alleged that the false information provided on the sponsorship applications included that the nominated employment position involved full-time employment for a period of at least two years.
- It is also alleged that Shaun DUFFY, Managing Director of Wagga Wagga business Great Southern Electrical Pty Ltd, received payments totalling \$45,000 for sponsoring a foreign national to stay in Australia, contrary to s 245AR(1) of the *Migration Act 1958* (Cth).

### When is the CDPP going to charge Mr Maguire and/or his associates?

- I confirm that the CDPP received a brief of evidence s37(1)(a) [REDACTED]

- s42 [REDACTED]



- On Friday 4 November 2022, WANG was charged with twelve (12) offences of causing to be furnished for official purposes of the Commonwealth, a document in connexion with an application for a visa permitting a non-citizen to remain in Australia, containing statements or information that was false or misleading in a material particular, contrary to s 234(1) of the *Migration Act 1958* (Cth). The maximum penalty for this offence is 10 years' imprisonment and/or fine of 1,000 penalty units, when dealt with on indictment. WANG has been granted conditional bail to appear before the Downing Centre Local Court on Tuesday, 29 November 2022.
- On Monday, 7 November 2022, MAGUIRE was charged with one (1) offence of conspiring with Maggie Sining Logan (née Wang) to cause to be furnished for official purposes of the Commonwealth, documents in connexion with applications for visas permitting non-citizens to remain in Australia, containing statements or information that was false or misleading in a material particular, contrary to s 11.5(1) of the *Criminal Code* (Cth) and s 234(1) of the *Migration Act 1958* (Cth). The maximum penalty for this offence is 10 years' imprisonment and/or fine of 1,000 penalty units, when dealt with on indictment. This matter is listed before the Downing Centre Local Court on Tuesday, 29 November 2022.

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Last updated: 7 November 2022

SES: Chris Choi  
Mobile Number: s47F

## ATTACHMENTS

N/A





## How many people did CDPP prosecute for Commonwealth child sex offences in 2018-2019 and 2019-2020, 2020-2021 and 2021-2022? How many were convicted? <sup>1</sup>

- The number of prosecutions commenced and number of defendants convicted by financial year is as follows:

| Financial Year | # Prosecutions commenced by Defendant | # Defendants convicted |
|----------------|---------------------------------------|------------------------|
| 2019           | 222                                   | 199                    |
| 2020           | 334                                   | 202                    |
| 2021           | 383                                   | 219                    |
| 2022           | 384                                   | 306                    |

## Have you seen an increase in Commonwealth child sex offences being prosecuted?

- There has been increase in Commonwealth child sex offences being prosecuted. The average number of prosecutions commenced each month is as follows:

| Financial Year | # Prosecutions commenced per month (avg) |
|----------------|--|
| 2019           | 19                                       |
| 2020           | 28                                       |
| 2021           | 32                                       |
| 2022           | 32                                       |

- Compared to the average number of prosecutions commenced per month in the 2019 financial year, there was a 68% increase in the average number of prosecutions commenced per month in the 2021 and 2022 financial years. In the last three months of the 2023 financial year, the average number of prosecutions commenced per month has increased to 40 prosecutions per month which is a further 25% increase from the last financial year's figures.

## Do many of these matters result in convictions?

- We have a very high conviction rate for Commonwealth child sex offence prosecutions. For example, in the FY 2022, the conviction rate for Commonwealth child sex offence prosecutions was 98.71%.<sup>2</sup> In most matters, the prosecution is able to rely on strong and irrefutable evidence from the offenders' own computers and mobile phones.

<sup>1</sup> Data derived from CDPP database reports on 10 November 2020, 17 March 2021, 21 April 2021, 15 September 2021, and 10 October 2022. A prosecution commenced in one financial year may be completed in a different financial year.

<sup>2</sup> 306 convictions and 4 acquittals.

## Has the response to Covid-19 affected the prosecution of Commonwealth child sex offences?

- As noted at [3] above, the number of matters prosecuted by the CDPP continues to increase. This reflects an increase in offending in the community throughout the pandemic and the continued detection, investigation and prosecution of Commonwealth child sex offences despite the periods of lockdown in various state and territories.

## Have sentences changed following the introduction of mandatory minimum head sentences and other recent legislative reform?

- The significant amendments brought in by the *Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Act 2020* (Cth), including the mandatory minimum head sentences, only apply to offences committed after 23 June 2020.
- 49 matters affected by the mandatory minimum head sentences have resulted in finalised sentences. 42 of these offenders were subject to the mandatory minimum penalties because they were recidivists, previously convicted of a prescribed child sexual abuse offence and 8<sup>3</sup> of these offenders were sentenced for the most serious Commonwealth child sex offences which carry mandatory minimum penalties, including for first time offenders.
- Sentences imposed for applicable offences have generally increased under the mandatory minimum sentencing regime.
- See list of sentence outcomes from page 4.

## Has there been an increase in the number of defendants refused bail since the presumption against bail was introduced?

- CDPP are unable to comment about whether there has been a change in bail decisions or change in bail conditions if bail is granted.
- A new presumption against bail now applies to persons charged with the most serious of the Commonwealth child sex offences or for other offences where the person has been previously convicted of a child sexual abuse offence. Since 23 June 2020, the person must not be granted bail unless the defendant can satisfy the court that circumstances exist to grant bail. The court must state and record its reasons if it decides to grant bail.

## Has CDPP seen an increase in the seriousness of these crimes?

- The CDPP has seen some extremely serious offending referred in recent times including matters involving large numbers of victims overseas or material of the most depraved kind. For instance:
  - Geoffrey MOYLE was a successful Director's appeal in the South Australia Supreme Court of Appeal involving historical overseas child sex offences. On 17 September 2021, MOYLE was sentenced to imprisonment for 8 years 9 months 19 days for the Commonwealth offences at the Adelaide District Court. On 22 June 2022, MOYLE was **resentenced on appeal to imprisonment for 14 with a non-parole period of 7 years**. The recently appointed Justice Crowley, (at the time of Queen's Counsel), appeared for the Director.

<sup>3</sup> One offender was also a recidivist.

- In June 2021, at the Sydney District Court, Peter Andrew HANSEN (ex-priest, former lawyer and Labor party figure) was convicted and sentenced for overseas child sex offences that occurred between 2014 and 2018. The offending involved HANSEN paying 9 victims, aged 10-14 years, in the Philippines and engaging in various sexual activity, including sexual intercourse, with those victims. HANSEN also produced child pornography material depicting himself engaging in sexual activity with the child victims. HANSEN was also convicted for producing further child pornography material depicting children he met with in Vietnam. HANSEN was **sentenced to imprisonment for 17 years with a non-parole period of 12 years for the Commonwealth offences.**
- CDPD has seen an overall increase in the number of referrals for Commonwealth child sex offences. The volume and depravity of child abuse material accessed by offenders continues to increase.

### **Are all of these matters prosecuted by CDPD investigated by the Australian Federal Police?**

- CDPD receives briefs of evidence for Commonwealth child sex offences from State and Territory Police, Australian Border Force and Australian Federal Police. AFP refers around half of the cases. Some investigations are conducted by Joint Anti-Child Exploitation Teams (JACET), a joint initiative between the AFP and State and Territory Police.
- CDPD is actively involved with the Australian Centre to Counter Child Exploitation (ACCCE) to provide information about how their efforts to counter the online sexual exploitation of children can be advanced. This has included CDPD participation in legal dialogues, presentation of case studies and liaison about investigator's move to an internationally based categorisation system for child abuse material.

### **Are children prosecuted for Commonwealth child sex offences?**

- A small number of defendants who were under the age of 18 at the time of their alleged offending are prosecuted with Commonwealth child sex offences. The prosecution of a juvenile is a severe step and, in these cases, only occurs when the offending is serious. The Commonwealth Attorney-General's consent is required for the prosecution of juveniles for most Commonwealth child sex offences.
- All decisions by CDPD to commence or continue prosecutions are subject to the *Prosecution Policy of the Commonwealth*. This includes specific considerations for decisions on whether to prosecute children under 18, at clauses [2.15 – 2.18]. CDPD practice is that a decision about whether to prosecute a juvenile must be referred to the Director.

### **What is a Commonwealth child sex offence?**

- 'Commonwealth child sex offence' is defined in the *Crimes Act 1914* (Cth), but broadly speaking captures:
  - Child sex offences outside Australia;
  - Offences involving child abuse material outside Australia;
  - Carriage service (Online) offences involving child abuse material;
  - Carriage service (Online) offences involving sexual activity with a person under 16; and
  - Postal service offences of a similar kind.

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## ATTACHMENTS

Attachment A – Matters dealt with under sections 16AAA and 16AAB of the *Crimes Act 1914* (Cth)



**Att A. Matters dealt with under sections 16AAA and 16AAB of the *Crimes Act 1914* (Cth):**

|    | Offender's name                      | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date   | Total Effective Sentence*   |
|----|--------------------------------------|--|---|---|
| 1. | HURT,<br>Raymond<br>James Choi       | <ul style="list-style-type: none"><li>• <b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li><li>• 2 x s 474.22(1) - Using carriage service for child abuse material.</li></ul> | Appeal:<br>30/9/2022<br><br>First instance:<br>16/09/2021 | On appeal:<br>4 years and 8 months imprisonment; NPP<br>2 years and 2 months.<br><br>First instance:<br>5 years and 3 months imprisonment; NPP<br>2 years and 8 months. |
| 2. | GLASHEEN,<br>Richard William<br>John | <ul style="list-style-type: none"><li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li></ul>  | Appeal:<br>5/9/2022<br><br>First instance<br>10/08/2021   | On appeal:<br>3 years and 1 month imprisonment; NPP<br>2 years and 4 months.<br><br>First instance:<br>4 years imprisonment; NPP<br>2 years and 8 months.               |

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<sup>1</sup> Unless the Act is specified, the offences are under the *Criminal Code* (Cth).

|    | Offender's name        | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>  | Sentence Date | Total Effective Sentence*                                    |
|----|------------------------|---|---------------|--|
| 3. | BEGNELL, Daniel Joseph | <ul style="list-style-type: none"> <li>• <b>2 x s 474.24A(1) - Aggravated offence involving conduct on three or more occasions and two or more people;</b></li> <li>• <b>4 x s 474.23A(1) - Conduct for the purposes of an electronic service using for child abuse material;</b></li> <li>• 1 x s 474.19(1) - Using carriage service to transmit child pornography material;</li> <li>• 1 x s 474.22(1) - Using carriage service to transmit child abuse material;</li> <li>• 1 x s 474.23(1) - Supply child abuse material for Using through carriage service; and</li> <li>• 1 x s 474.22A(1) - Possessing or control child abuse material obtained or accessed using carriage service.</li> </ul> | 14/09/2022    | 9 years imprisonment NPP 5 years                             |
| 4. | HUNTER, Daniel Joseph  | <ul style="list-style-type: none"> <li>• 13 x s 474.22(1) - Using carriage service for child abuse material. Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i>: <ul style="list-style-type: none"> <li>○ 8 x s 474.22(1) Using carriage service for child abuse material.</li> </ul> </li> <li>• <b>1 x s 474.24A Using carriage service to transmit child abuse material on 3 or more occasions involving 2 or more people.</b> Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i>: <ul style="list-style-type: none"> <li>○ 1 x s 474.22(1) Using carriage service for child abuse material</li> </ul> </li> </ul>   | 9/09/2022     | 8 years and 6 months imprisonment; NPP 5 years and 6 months. |
| 5. | KNOPP, Kyle            | <ul style="list-style-type: none"> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender).</b></li> </ul>  | 1/09/2022     | 3 years and 6 months imprisonment; NPP 1 year and 8 months.  |
| 6. | JONES, Graham          | <ul style="list-style-type: none"> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender); and</b></li> <li>• 1 x 13(1) of the <i>Child Protection (Offenders Prohibition Orders) Act 2004</i> (NSW) - Contravention of prohibition order</li> </ul>   | 31/08/2022    | 4 years imprisonment; NPP 2 years and 8 months.              |

|     | Offender's name       | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>  | Sentence Date | Total Effective Sentence*   |
|-----|-----------------------|---|---------------|---|
| 7.  | LOWE, Travers George  | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>  | 30/08/2022    | Individual sentences of 6 years and 4 years imprisonment; NPP 1 year and 10 months. |
| 8.  | HAINES, Dallas        | <ul style="list-style-type: none"> <li>• <b>2 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• <b>1 x s 474.23(1) - Possessing, controlling, producing, supplying or obtaining child abuse material through carriage service;</b></li> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender); and</b></li> <li>• <b>1 x s 474.27A(1) - Using carriage service to transmit indecent communication to child under 16.</b></li> </ul> | 30/08/2022    | 3 years and 6 months imprisonment; NPP 1 year and 6 months.                         |
| 9.  | WATTS, Timothy        | <ul style="list-style-type: none"> <li>• <b>2 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>  | 29/08/2022    | 7 years and 6 months imprisonment; NPP 5 years and 2 months.                        |
| 10. | SARGENT, Andrew James | <ul style="list-style-type: none"> <li>• <b>1 x s 474.25A(1) - Using carriage service for sexual activity with person under 16 years of age; and</b></li> <li>• Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i>: <ul style="list-style-type: none"> <li>○ <b>1 x s 474.27A(1) - Using carriage service to transmit indecent communication to person under 16 years of age.</b></li> </ul> </li> </ul>   | 24/08/2022    | 4 years 6 months imprisonment; NPP 2 years and 3 months.                            |



|     | Offender's name | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>  | Sentence Date | Total Effective Sentence*  |
|-----|-----------------|---|---------------|--|
| 11. | WALKER, Travis  | <ul style="list-style-type: none"> <li>• <b>5 x s 474.27A(1) - Using carriage service to transmit indecent communication to child under 16;</b></li> <li>• 5 x s 474.27A(1) - Using carriage service to transmit indecent communication to child under 16;</li> <li>• 2 x s 46(1A) of the <i>Sex Offenders Registration Act 2004</i> (VIC) – Failing to comply with reporting conditions;</li> <li>• 5 x s 474.22(1) - Using carriage service for child abuse material;</li> <li>• <b>3 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• 2 x s 474.17(1) - Using carriage service to menace, harass or cause offence;</li> <li>• 1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service. Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i>: <ul style="list-style-type: none"> <li>○ 1 x s 474.22(1) Using carriage service for child abuse material;</li> </ul> </li> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender).</b> Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i> (Cth);</li> <li>• 1 x s 474.22(1) Using carriage service for child abuse material.</li> </ul> | 24/08/2022    | 5 years and 3 months imprisonment; NPP 2 years and 7 months.   |
| 12. | LAST, Anthony   | <ul style="list-style-type: none"> <li>• <b>2 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• <b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li>• 1 x s 228D of the <i>Criminal Code 2004</i> (QLD) - Possessing child exploitation material.</li> </ul>   | 23/08/2022    | 3 years imprisonment directed pursuant to s 20(1)(b) that he be released after serving 305 days imprisonment, upon entering into a recognisance in the amount of \$2000, good behaviour 3 years. |



|     | Offender's name     | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*   |
|-----|---------------------|--|---------------|---|
| 13. | CAPELL, Mark Rodney | <ul style="list-style-type: none"> <li>1 x s 125B of the <i>Criminal Code</i> (NT) - Possessing child abuse material;</li> <li><b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service;</b></li> <li><b>1 x s 474.27(1) - Using carriage service to "groom" persons under 16 years of age</b></li> <li><b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>1 x s 48 of the <i>Child Protection (Offender Reporting and Registration) Act 2004</i> (NT) - Failing to comply with reporting obligations</li> </ul>   | 19/08/2022    | 8 years imprisonment; NPP 4 years.  |
| 14. | LUCKHURST, Jason    | <ul style="list-style-type: none"> <li>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender); and</li> <li><b>1 x ss 11.1(1) and 474.25A(1) – Attempting to use a carriage service to engage in sexual activity with person under 16.</b></li> </ul>  | 17/08/2022    | 5 years and 8 months imprisonment; NPP 2 years and 7 months.                            |
| 15. | BRAY, Robert        | <ul style="list-style-type: none"> <li><b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>1 x s 169(1) of the <i>Serious Offenders Act 2018</i> (VIC) – Contravention of supervision order.</li> </ul>   | 10/08/2022    | 3 years and 3 months imprisonment; to be released after serving 18 months imprisonment. |
| 16. | TRINH, Martin       | <ul style="list-style-type: none"> <li>2 x s 474.19(1) Using carriage service for child pornography material;</li> <li>1 x s 474.27A(1) Using carriage service to transmit indecent communication to person under 16 years of age;</li> <li>3 x s 474.22(1) Using carriage service for child abuse material;</li> <li>1 x 51C(1) of the <i>Crimes Act 1958</i> (VIC) - Producing child abuse material;</li> <li><b>1 x s 474.25A(1) - Using carriage service for sexual activity with person under 16 years of age; and</b></li> <li>1 x s 474.22A(1) Possessing or controlling child abuse material obtained or accessed using carriage service.</li> </ul> | 21/07/2022    | 7 years and 6 months imprisonment; NPP 3 years and 9 months.                            |

|     | Offender's name           | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>  | Sentence Date | Total Effective Sentence*  |
|-----|---------------------------|---|---------------|--|
| 17. | McMASTER, Daniel John     | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22A - Possessing or control child; abuse material obtained or accessed using carriage service;</b></li> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>• 2 x s 17 of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) - Failing to comply with reporting obligations.</li> </ul>   | 17/06/2022    | 4 years and 9 months; NPP 3 years  |
| 18. | TAYLOR, Daniel Michael    | <ul style="list-style-type: none"> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender).</b></li> </ul>  | 17/06/2022    | 3 years imprisonment, directed pursuant to s 20(1)(b) that he be released after serving 18 months imprisonment, upon entering into a recognisance in the amount of \$1000, good behaviour 18 months. |
| 19. | BECCARIS, Martim Llewelyn | <ul style="list-style-type: none"> <li>• <b>2 x s 474.27AA(1) - Using carriage service to "groom" another person to make it easier to procure persons under 16 years of age (with the intention of making it easier to procure person (the child) to engage in sexual activity with the sender);</b></li> <li>• <b>2 x s 474.27A(1) - Using carriage service to transmit indecent communication to person under 16 years of age;</b></li> <li>• <b>2 x s 474.27(1) - Using carriage service to "groom" persons under 16 years of age;</b></li> <li>• <b>4 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>• 1 x s 48(1) of the <i>Child Protection (Offender Reporting and Registration) Act 2004</i> (Cth) - Failing to comply with reporting conditions.</li> </ul> | 16/06/2022    | 10 years and 10 months imprisonment; NPP 6 years and 6 months.   |

|     | Offender's name                 | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date  | Total Effective Sentence*   |
|-----|---------------------------------|--|--|---|
| 20. | GUMANA, Brendan                 | <ul style="list-style-type: none"> <li>• <b>2 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• <b>1 x ss 11.1(1) and 474.22(1) – Attempting to use a carriage service for child abuse material; and</b></li> <li>• 1 x s 48(1) of the <i>Child Protection (Offender Reporting and Registration) Act 2004</i> (NSW) -Failing to comply with reporting conditions.</li> </ul>   | 14/06/2022   | 4 years and 3 months imprisonment; NPP 2 years and 5 months.  |
| 21. | NEWTON, Tobi James              | <ul style="list-style-type: none"> <li>• <b>4 x ss 11.1(1) and s 474.25A(1) - Attempting to use a carriage service for sexual activity with person under 16 years of age;</b></li> <li>• <b>5 x s 474.25A(1) - Using carriage service for sexual activity with person under 16 years of age;</b></li> <li>• 1 x s 474.22(1) - Using carriage service for child abuse material;</li> <li>• 10 x s 228B(1) of the <i>Criminal Code</i> (QLD) - Making child exploitation material; and</li> <li>• 1 x s 474.22A - Possessing or controlling child abuse material obtained or accessed using carriage service.</li> </ul> | 9/06/2022  | Individual sentences of 12 months imprisonment, 2 years and 6 months imprisonment and 3 years imprisonment and directed pursuant to s 20(1)(b) that he be released after having served 5 months imprisonment upon entering into a conditional recognisance in the sum of \$500. |
| 22. | DELZOTTO, Enrico Robert Charles | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22A(1) - Possessing or control child abuse material obtained or accessed using carriage service; and</b></li> <li>• 1 x s 474.22(1) - Using carriage service to access child abuse material. Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i>: <ul style="list-style-type: none"> <li>○ 1 x s 474.19(1) - Using carriage service to access child pornography; and</li> </ul> </li> <li>• 1 x s 474.22(1) - Using carriage service to access child abuse material.</li> </ul>  | On Appeal: 6/06/2022<br><br>First instance: 25/06/2021 | On appeal: 4 years and 6 months imprisonment; NPP 3 years<br><br>First instance: 3 years and 3 months imprisonment; NPP 2 years and 2 months.   |



|     | Offender's name      | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>  | Sentence Date | Total Effective Sentence*  |
|-----|----------------------|---|---------------|--|
| 23. | GUTHRIE, Nathan John | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>• 3 x s 474.22(1) - Using carriage service for child abuse material.</li> </ul>   | 30/05/2022    | Individual sentences of 2 years and 6 months imprisonment (x2) and 3 years imprisonment (x2) and directed pursuant to s 20(1)(b) that he be released after having served 18 months imprisonment upon entering into a conditional recognisance in the sum of \$500. |
| 24. | WARD, Ronald Steven  | <ul style="list-style-type: none"> <li>• <b>3 x s 474.22(1) - Using carriage service for child abuse material.</b></li> <li>• Taken into account pursuant to s 16BA of the <i>Crimes Act 1914</i> (Cth): <ul style="list-style-type: none"> <li>○ 3 x s 474.22(1) - Using carriage service for child abuse material</li> </ul> </li> </ul>  | 17/05/2022    | 7 years and 3 months imprisonment; NPP 5 years.  |
| 25. | TOMLINSON, Kyle Adam | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>   | 13/05/2022    | 4 years imprisonment; NPP 2 years.   |
| 26. | WADAS, Andrew Jon    | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• 1 x s 13(1) of the <i>Child Protection (Offenders Prohibition Orders) Act 2004</i> (NSW) - Contravention of prohibition order; and</li> <li>• 1 x s 17(1) of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) - Failing to comply with reporting obligations.</li> </ul> | 6/05/2022     | 4 years and 8 months imprisonment; NPP 2 years and 8 months.   |



|     | Offender's name               | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*  |
|-----|-------------------------------|--|---------------|--|
| 27. | WHITCHURCH, Ian Boe           | <ul style="list-style-type: none"> <li>• <b>3 x s 474.22(1) - Using carriage service for child abuse material;</b></li> <li>• <b>1 x s 474.23(1) - Possessing, controlling, producing, supplying or obtaining child abuse material through carriage service;</b></li> <li>• <b>1 x s 474.22A Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li>• 1 x s 474.22(1) - Using carriage service for child abuse material; and</li> <li>• 1 x s 474.23(1) - Possessing, controlling, producing, supplying or obtaining child abuse material through carriage service.</li> </ul> | 6/05/2022     | 3 years 6 months imprisonment; NPP 20 months   |
| 28. | BALLINGER, Brendan            | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li>• <b>1 x s 474.22A - Possessing or controlling child abuse material obtained or accessed using carriage service.</b></li> </ul>  | 26/04/2022    | 3 years imprisonment, directed pursuant to s 20(1)(b) that he be released forthwith.                         |
| 29. | RAMSAY-FEENEY, Patrick        | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>  | 20/04/2022    | 3 years imprisonment, directed pursuant to s 20(1)(b) that he be released after serving 1 year and 8 months. |
| 30. | SPEECHLEY, Christopher Andrew | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>  | 8/04/2022     | 4 years and 6 months imprisonment; NPP 20 months.  |

|     | Offender's name         | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*   |
|-----|-------------------------|--|---------------|---|
| 31. | MCCALL, Jack            | <ul style="list-style-type: none"> <li>• <b>1 x s 474.25C(1)</b> - Using carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16;</li> <li>• <b>2 x s 474.27(1)</b> - Using carriage service to "groom" persons under 16 years of age (with the intention of making it easier to procure the recipient to engage in sexual activity with the sender);</li> <li>• <b>1 x s 474.22(1)</b> - Using carriage service for child abuse material;</li> <li>• 1 x s 13(1) of the <i>Child Protection (Offenders Prohibition Orders) Act 2004</i> (NSW) - Contravention of prohibition order; and</li> <li>• 1 x s 17(1) of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) - Failing to comply with reporting obligations.</li> </ul> | 24/03/2022    | 5 years imprisonment NPP 3 years.   |
| 32. | WARREN, Matthew Stephen | <ul style="list-style-type: none"> <li>• <b>3 x s 474.22(1)</b> - Using carriage for child abuse material;</li> <li>• <b>1 x s 474.27A(1)</b> - Using carriage service to transmit indecent communication to person under 16 years of age; and</li> <li>• <b>1 x s 474.22A</b> - Possessing or controlling child abuse material obtained or accessed using carriage service.</li> </ul>  | 24/03/2022    | 6 years and 9 months imprisonment; NPP.   |
| 33. | STILLER, Ronald Lindsay | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1)</b> - Using carriage service for child abuse material.</li> </ul>  | 23/03/2022    | 3 years and 6 months imprisonment; NPP 12 months.   |
| 34. | LOVEGROVE, Trevor       | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1)</b> - Using carriage service for child abuse material; and</li> <li>• <b>1 x s 474.27A(1)</b> - Using carriage service to transmit indecent communication to child under 16.</li> </ul>  | 8/03/2022     | 3 years imprisonment, directed pursuant to s 20(1)(b) that he be released forthwith upon entering into a recognisance in the amount of \$500, good behaviour 2 years. |

|     | Offender's name         | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*                                    |
|-----|-------------------------|--|---------------|--|
| 35. | CLAYTON, James Williams | <ul style="list-style-type: none"> <li>3 x ss 11.1(1) and 474.19(1) - Attempting to use carriage service to access child pornography material;</li> <li>1 x s 474.19(1) - Using carriage service to access child pornography material;</li> <li>1 x s 474.22(1) - Using carriage service for child abuse material;</li> <li>1 x ss 11.1(1) and 474.22(1) - Attempting to use carriage service to access child pornography material;</li> <li><b>1 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li><b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service.</b></li> </ul> | 3/02/2022     | 5 years and 6 months imprisonment; NPP 2 years.              |
| 36. | MINSON, Matthew         | <ul style="list-style-type: none"> <li><b>5 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li><b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>   | 2/02/2022     | 7 years and 5 months imprisonment; NPP 4 years 5 months.     |
| 37. | CANUTO, Solomon         | <ul style="list-style-type: none"> <li><b>1 x s 474.22(1) - Using carriage service to access child abuse material; and</b></li> <li>1 x s 17(1) of the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW) - Failing to comply with reporting obligations.</li> </ul>  | 9/12/2021     | 3 years 5 months 1 week imprisonment; NPP 18 months.         |
| 38. | DOLAN, Scott Leslie     | <ul style="list-style-type: none"> <li><b>2 x s 474.22(1) - Using carriage service to access child abuse material.</b></li> </ul>  | 8/12/2021     | 4 years imprisonment; NPP 2 years and 7 months.              |
| 39. | SENDECKY, Mark Andrew   | <ul style="list-style-type: none"> <li><b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service.</b></li> </ul>  | 26/11/2021    | 5 years imprisonment; NPP 3 years 9 months.                  |
| 40. | DAWITA, Lennon James    | <ul style="list-style-type: none"> <li>10 x s 50(1) of the <i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i> (QLD) - Failing to comply with reporting obligations;</li> <li><b>3 x s 474.22(1) - Using carriage service for child abuse material; and</b></li> <li><b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service.</b></li> </ul>   | 8/11/2021     | 6 years and 6 months imprisonment; NPP 2 years and 9 months. |



|     | Offender's name          | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*   |
|-----|--------------------------|--|---------------|---|
| 41. | NIDDRIE, Tristen         | <ul style="list-style-type: none"> <li>• <b>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender); and</b></li> <li>• <b>1 x s 474.25A(1) - Using carriage service for sexual activity with person under 16 years of age.</b></li> </ul>  | 8/11/2021     | 4 years and 3 months imprisonment; NPP 2 years and 2 months.                          |
| 42. | TELFER, Ross Kenneth     | <ul style="list-style-type: none"> <li>• <b>2 x s 474.27AA(1) - Using carriage service to "groom" another person to make it easier to procure persons under 16 years of age (with the intention of making it easier to procure person (the child) to engage in sexual activity with the sender)</b></li> </ul>   | 2/11/2021     | 7 years and 6 months imprisonment; NPP 5 years and 6 months.                          |
| 43. | SMITH, David Wayne       | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service; and</b></li> <li>• <b>1 x s 474.22(1) - Using carriage service for child abuse material.</b></li> </ul>   | 1/11/2021     | 4 years and 2 months imprisonment; NPP 2 years and 2 months.                          |
| 44. | LONG, Aaron James        | <ul style="list-style-type: none"> <li>• <b>1 x s 474.22(1) - Using carriage service to solicit child abuse material;</b></li> <li>• <b>2 x s 474.22(1) - Using carriage service to transmit child abuse material;</b></li> <li>• <b>1 x s 272.9(1) - Engaging in sexual activity with child outside Australia;</b></li> <li>• 1 x s 91H(2) of the <i>Crimes Act 1900</i> (NSW) - Producing child abuse material;</li> <li>• <b>1 x s 474.27AA(1) - Using carriage service to "groom" another person to make it easier to procure persons under 16 years of age (with the intention of making it easier to procure person (the child) to engage in sexual activity with the sender); and</b></li> <li>• 1 x s 91H(2) of the <i>Crimes Act 1900</i> (NSW) - Possessing child abuse material.</li> </ul> | 26/10/2021    | 7 years and 6 months imprisonment; NPP 4 years.                                       |
| 45. | PENDLEBURY, Andrew James | <ul style="list-style-type: none"> <li>• <b>1 x s 474.27(1) - Using carriage service to "groom" person believed to be under 16 years for sexual activity.</b></li> </ul>   | 22/09/2021    | 3 years imprisonment; to be released on a recognisance release order after 18 months. |



|     | Offender's name              | Offences (offences that are affected by ss 16AAA and 16AAB of the <i>Crimes Act 1914</i> (Cth) are in bold) <sup>1</sup>   | Sentence Date | Total Effective Sentence*   |
|-----|------------------------------|--|---------------|---|
| 46. | MAKKINK, Daniel Robert Josef | <ul style="list-style-type: none"> <li>1 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender).</li> </ul>  | 16/09/2021    | 4 years and 10 months imprisonment; NPP 3 years and 4 months.         |
| 47. | LARGE, Geoffrey Lyle         | <ul style="list-style-type: none"> <li>1 x s 474.22(1) - Using carriage service for child abuse material; and</li> <li>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service.</li> </ul>   | 20/08/2021    | 4 years and 6 months imprisonment; NPP 3 years, 3 months and 10 days. |
| 48. | MUNN, Matthew                | <ul style="list-style-type: none"> <li>2 x s 474.26(1) - Using carriage service to procure persons under 16 years of age (with the intention of procuring the recipient to engage in sexual activity with the sender).</li> </ul>  | 27/07/2021    | 6 years imprisonment; NPP 4 years and 6 months.                       |
| 49. | LUNSON, Collin               | <ul style="list-style-type: none"> <li>1 x s 474.22A(1) - Possessing or controlling child abuse material obtained or accessed using carriage service;</li> <li>1 x s 46(1A) of the <i>Sex Offenders Registration Act 2002</i> (VIC) - Failing to comply with reporting obligations; and</li> <li>1 x s 73(1) of the <i>Drugs, Poisons and controlled Substances Act 1981</i> (VIC) - Possessing drug of dependence.</li> </ul> | 9/07/2021     | 5 years and 6 months imprisonment; NPP 3 years and 6 months.          |

Notes:

\* The total Effective Sentence takes into account the relevant offence(s) as well as offences (if any) that were not affected by ss 16AAA or 16AAB of the *Crimes Act 1914* (Cth).



## CURRENT ISSUE

- On 3 February 2022, it was reported in the media that Dr Andrew Forrest AO had commenced a criminal prosecution of Facebook (now known as Meta Platforms, Inc or 'Meta') in the Magistrates Court of Western Australia for three offences of recklessly dealing in the proceed of crime, money or property worth \$1,000 or more contrary to s 400.7(2) of the *Criminal Code* (Cth) (**the Code**). The offence carries a maximum penalty for a corporation of a fine of \$126,000. The offences arise from advertisements in mid-2019 on Meta's site using Dr Forrest's name and image promoting fraudulent investment schemes.

## KEY FACTS AND RESPONSES

- In July 2021, my Office was asked to provide advice to the Attorney-General's Department (**the Department**) on the prospect of success of a prosecution of Meta based on material provided to the Department on Dr Forrest's behalf in February 2021. That advice was provided to the Department on 22 September 2021.
- Under s 16.1 of the Code the Attorney-General's consent was required as the alleged conduct occurred wholly overseas and the defendant was a foreign corporation. The Attorney-General provided her consent on 10 January 2022 following receipt of further information on Dr Forrest's behalf. The Attorney-General's letter noted that that should the matter be committed for trial, the CDPP would be required to take the matter over, and the conduct of the matter would be determined by the CDPP in accordance with the *Prosecution Policy of the Commonwealth*.
- On 26 August 2022, it was reported in the media that Meta's barrister Paul Yovich SC appeared before the Perth Magistrates Court and advised the company will be challenging the jurisdiction of the Court to hear the matter. The matter is next listed on 18 October 2022 for mention and 4 November 2022 for a hearing regarding question of jurisdiction.

### Is the CDPP involved in the prosecution of Meta/Facebook?

- The CDPP is not involved in the prosecution of Meta. The CDPP understands the prosecution is being undertaken by Dr Forrest AO. Under s 13 of the *Crimes Act 1914* any person can institute a prosecution for an offence against a law of the Commonwealth unless there is a specific contrary provision,

### Why is the CDPP not prosecuting Meta/Facebook?

- The CDPP ordinarily prosecutes offences on the basis of briefs of evidence provided by law enforcement agencies. The CDPP has not received such a brief of evidence. The CDPP does not have an investigative function.

### Has the CDPP been involved in this matter?

- In mid-2021, the CDPP was asked by the Attorney-General's Department to provide advice on an aspect of the matter. My Office provided that advice in September 2021.



**What was that advice?**

- Given the matter is before the court it is not appropriate that I disclose that advice.

**Will the CDPP become involved in this matter?**

- The prosecution can be carried on by Dr Forrest's representatives before the Magistrates Court. If the matter is resolved there, which it can be, my Office will not become involved unless I am requested to use my power to intervene, or it is apparent I should intervene. The issue of how I exercise my power to intervene is addressed in the *Prosecution Policy of the Commonwealth*.
- If the matter is committed for trial before a superior court, then any further step in the prosecution would have to be undertaken by my Office. My Office would assess the material then available and determine how to proceed in accordance with the *Prosecution Policy of the Commonwealth*.

**Is the CDPP involved in the ACCC action against Meta/Facebook?**

- In March of this year, the ACCC instituted proceedings against Meta for related conduct by Meta (the publishing of scam advertisements featuring prominent Australian public figures). The CDPP is not involved in the civil action commenced by ACCC. The civil action commenced by ACCC is separate to the criminal prosecution commenced by Dr Andrew Forrest AO. However, according to a media release from the ACCC, they refer to similar advertisements hosted on Meta.

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**ATTACHMENTS**

N/A



## CURRENT ISSUE

My Office continues to prosecute a steady stream of human trafficking and slavery matters investigated by the Australian Federal Police (AFP). These offences are contained in Divisions 270 and 271 of the *Criminal Code* (Cth). In appropriate cases, my office also provides advice to investigative agencies during an investigation before a brief of evidence is referred.

## KEY FACTS AND RESPONSES

Human trafficking, slavery and slavery-like offences under Divisions 270 and 271 of the *Criminal Code* (Cth) involve victims, already in Australia, who are subject to exploitative practices such as slavery, servitude, and forced labour. In addition to human trafficking and slavery offences, CDPP also prosecutes offenders for engaging in, or encouraging, sexual activity with children overseas contrary to offences in Division 272 of the *Criminal Code* (Cth).

A number of victims identified in matters referred to my office involve women working in the sex industry. These are normally prosecuted under the slavery provisions contained under s270.3 *Criminal Code* (Cth) or servitude provisions contained under section 270.5 *Criminal Code* (Cth). See **Attachment A** for case summaries. Increasingly, matters involve victims of other forms of labour exploitation including in the agricultural, construction and hospitality industries.

Human trafficking and slavery cases are very challenging to prosecute. They often involve complex relationships that span a considerable period of time and in circumstances where there is very limited independent evidence. The cooperation of suspected victims is essential to the investigation and prosecution of human trafficking and slavery-related offences. One impediment to prosecuting these offences can be the reluctance of people to give evidence which can be for a wide variety of reasons.

The CDPP presently carries a number of very complex and serious matters for prosecution, many involving the sexual exploitation of victims and very serious child sex offending, mainly overseas, with very large numbers of victims.

### **Commenced prosecutions**

Between 1 July 2020 and 30 June 2022, my Office commenced a total of 8 prosecutions for human trafficking and slavery-related offences.

*Table [A]: Human trafficking and slavery prosecutions commenced by financial years*

| PROSECUTIONS                                | FY 20 -21 |
|---|-----------|
| MALES PROSECUTED                            | 3         |
| FEMALES PROSECUTED                          | 2         |
| TOTAL PROSECUTIONS COMMENCED IN 2020 - 2021 | 5         |



| PROSECUTIONS                                | FY 21 -22 |
|---|-----------|
| MALES PROSECUTED                            | 2         |
| FEMALES PROSECUTED                          | 1         |
| TOTAL PROSECUTIONS COMMENCED IN 2021 - 2022 | 3         |

### ***Prosecutions before the courts***

As at 30 June 2022, there were 22 defendants currently before the courts<sup>1</sup> for offences contrary to Division 270 *Criminal Code* (Cth) for slavery and slavery-like offences (including forced labour and forced marriage) or Division 271 (Trafficking in Persons) *Criminal Code* (Cth).

*Table [C]: Human trafficking and slavery prosecutions before the courts*

#### **2020-21**

|              |           |
|--------------|-----------|
| Males        | 15        |
| Females      | 9         |
| <b>Total</b> | <b>24</b> |

#### **2021-22**

|              |           |
|--------------|-----------|
| Males        | 12        |
| Females      | 10        |
| <b>Total</b> | <b>22</b> |

### ***Convictions***

- Between 1 July 2021 and 30 June 2022, 8 human trafficking and slavery prosecutions were commenced, and 5 individuals were convicted of human trafficking and slavery and slavery like offences.
- From the criminalisation of human trafficking and slavery in 2004 until 30 June 2022, 31 people have been convicted for these types of offences.

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## ATTACHMENTS

- Attachment A: Case summaries of slavery or slavery-like matters involving sexual exploitation

## **Attachment A: Case summaries of slavery or slavery-like matters involving sexual exploitation**

### **Ho Kam HO and Kam Tin HO**

Kam Tin Ho and Ho Kam Ho were part of a sophisticated and well-organised scheme to bring Thai women to Australia to work in the sex industry. In the course of the scheme, the women were variously traded, possessed and used as items of property, thereby reducing them to the condition of slavery. In 2009, the defendants were convicted of possessing a slave contrary to subsection 270.3(1) of the Criminal Code. Ho Kam Ho was also convicted of an offence under subsection 31(1) of the Financial Transactions Reports Act 1988. In 2011, both defendants lodged appeals against conviction and sentence in the Victorian Court of Appeal. Their appeals were unsuccessful.

Source: [Trafficking in persons—IDC—fourth annual report—1 July 2011 to 30 June 2012 \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/trafficking-in-persons—idc—fourth-annual-report—1-july-2011-to-30-june-2012)

### **Kam Tin Ho and Sarisa Leech**

In 2003, KW, a 30-year-old Thai prostitute, met Sarisa Leech in Bangkok then came to Australia to work as a prostitute, her fare having been paid by others. She knew that her ticket and accommodation in Australia, as well as a visa, had been arranged for her. KW came to Australia on a short-stay visa on the basis that she would be attending a “team building seminar”. False documents attached to the visa application certified as to that intention. KW was told that these arrangements created a debt owed by her, to be paid off by her providing sexual services to 650 men in particular Melbourne brothels.

After arriving in Australia, KW was taken to an apartment in Fitzroy. She lived there with a woman known as “Lisa”. In the early stages she did not have a key to the apartment, and from time to time a man known as “Ben” brought food.

Later, Ms Leech also lived in the apartment with KW and Lisa. KW lived in the apartment for three months before she started working in the brothel to which she was assigned. When Ms Leech was there, KW would ask for her permission each time she went out of the apartment. The relationship between Ms Leech and KW was apparently friendly; Ms Leech assisted KW with the English language and showed her how to use public transport.

Part of the plan for KW involved obtaining a protection visa, thus extending her stay in Australia to enable her to work. Both Ms Leech and Kam Tin Ho assisted in this process. KW was required to learn a false story about why she was seeking the protection visa – in essence, that she had converted from Buddhism to Mormonism in Thailand and was afraid that she would be persecuted if she went back to Thailand. Without any real assistance from KW, except to sign documents containing untrue claims, KW’s application for the protection visa passed through several legal stages. The purpose of the application was to create delay while she worked in Melbourne.

Ms Leech told KW that she would be starting work. KW was given the name “Cindy” by Mr Ho, and began work at a brothel in South Melbourne. KW was told that Ms Leech, Mr Ho and Ben would supervise her. The arrangement in the brothel was that clients paid \$125 for half an hour of sexual services and that money was placed into a locked box by employees, including KW. She was told by Ms Leech that \$50 of the \$125 would be deducted from the debt she owed. KW was instructed to also place her passport there. KW said she never took her passport home, although she wanted to have her passport with her.

It took KW three or four months to pay off the debt she owed, and she kept her own record of the clients that she serviced. On a free day in the week and after she had paid off the debt, she was entitled to earn \$50 of \$125 herself from each customer.

Mr Ho's activities involved speaking to KW about clients' complaints about the service she provided. KW was told she needed to service the clients "quite nicely".

After the debt was paid KW asked whether she could stop working and was told she could not because there were no girls at the shop. KW worked in the brothel from 11am to 2am and would see as many as 16 customers during that time. When she was working, the premises were locked and she could not leave. Even when ill, KW continued to work in the brothel. When Ms Leech was in Thailand, she rang KW and told her that if she did not work she would be sent back to Thailand.

Once the debt was "paid", KW appeared to have more freedom to leave the apartment and had a key to the apartment.

Ms Leech and Mr Ho spoke with KW about how to deal with any questions that she might be asked. That process was repeated when Mr Ho called her again, suggesting that if there were problems she could complain, although he did not indicate to whom she should complain.

On 4 November 2009, Kam Tin Ho and Sarisa Leech were convicted in the Supreme Court of Victoria on two charges of possessing and exercising a power of ownership over a person under the slavery provisions of the Criminal Code.

Appeals against both conviction and sentence by Kam Tin Ho, Ho Kam Ho and Sarisa Leech were heard on 16 and 17 June 2011 in the Victorian Court of Appeal. The applications by Kam and Leech for leave to appeal against conviction were refused, whereas their applications for leave to appeal against sentence were granted. Leech was re-sentenced to three years and six months' imprisonment and Kam was resentenced to four years and six months' imprisonment.

#### Sources:

- [Report of the Anti-People Trafficking Interdepartmental Committee - May 2009 to June 2010 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)
- [Report of the Anti-People Trafficking Interdepartmental Committee - July 2010 to June 2011 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au);
- [Ho v The Queen; Leech v The Queen \[2011\] VSCA 344 \(11 November 2011\) \(austlii.edu.au\)](http://austlii.edu.au)

#### Matter of "K"

On 16 April 2013, Ms 'K' pleaded guilty to one count of trafficking in children contrary to subsection 271.4(1) of the Commonwealth Criminal Code Act 1995 (Criminal Code). Ms K also pleaded guilty to 19 charges under Queensland's Criminal Code Act 1899, including maintaining a sexual relationship with a child. Due to the number and gravity of the charges under Queensland criminal law, the CDPP referred the prosecution of the Commonwealth trafficking offence to the Queensland Director of Public Prosecutions (Queensland DPP).

The charges relate to Ms K's daughter, who was brought to Australia from Thailand in 2006 to reside permanently. Ms K's daughter was subsequently subjected to sexual exploitation in the illegal sex industry in Brisbane. Ms K's name is suppressed to protect the identity of her daughter.

Ms K was sentenced to nine years' imprisonment, with a non-parole period of four years. Justice David Boddice of the Queensland Supreme Court noted that Ms K's early pleas of guilty, remorse and cooperation with authorities were taken into account in determining her sentence. As at 30 June 2013, Ms K had appealed against her sentence. Ms K's de facto partner and six people who procured the victim for sexual services have also been charged with various offences by the Queensland DPP.

Ms K appealed against her sentence, and on 18 October 2013 it was reduced to seven years' imprisonment, with a non-parole period of three years and six months.



On 21 July 2014, Ms K's de-facto partner received a suspended sentence of two years' imprisonment in relation to one count of knowingly participating in the provision of prostitution under the Queensland Criminal Code. Three other males were also charged with multiple state child exploitation offences during the course of the investigation.

*Sources:*

- [Report of the Interdepartmental Committee on Human Trafficking and Slavery – July 2012 to June 2013 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)
- [Trafficking in Persons – The Australian Government Response – 1 July 2013 – 30 June 2014 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)
- [Trafficking in persons - The Australian Governments Response \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

## **Trevor McIvor and Kanokporn Tanuchit**

This case resulted in the first convictions for slavery in New South Wales. The defendant, Trevor McIvor, owned and co-managed with his wife, Kanokporn Tanuchit, a brothel called Marilyn's, in Fairfield. All five victims were recruited in Thailand to work in Australia between July 2004 and June 2006. Four of the five victims knew that they would be providing sexual services; one was given the false impression that she was coming to work as a masseuse. When the victims arrived at Marilyn's, the defendants enforced an artificial "debt contract" to repay an amount between \$35,000 and \$45,000 by servicing clients at the brothel. The evidence at trial revealed that the defendants forced all victims to work seven days a week, on average for 16 hours a day. Normally, for each sexual service performed the worker would be paid a portion of the full amount and the remainder went to the "house". However, the victims were paid cash on only one day of the week; the amount earned during the remainder of the week went to clearing their "debt".

During the victims' period of slavery, the defendants forced the victims to work and sleep in locked premises. The victims were not allowed to leave the brothel without being in the company of the defendants or a trusted associate. The defendants confiscated the victims' passports on their arrival and for a period of one to two months restricted their access to telephones by confiscating their mobile telephones and locking brothel telephones with a PIN code. The defendants forced the victims to work during their menstruation and during severe illnesses and infections.

These offences were discovered by the AFP when one of the victims (the one who thought she was to work as a masseuse) covertly obtained the telephone number of the Thai Consul-General and requested assistance.

Following a jury trial in the NSW District Court in 2007, the accused were each convicted of five counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code and five counts of intentionally exercising a power attaching to the right of ownership over a slave contrary to section 270.3(1)(a) of the Criminal Code.

Mr McIvor was sentenced to a total effective sentence of 12 years' imprisonment with a non-parole period of seven years and six months. Ms Tanuchit was sentenced to a total effective sentence of 11 years' imprisonment with a non-parole period of seven years.

On appeal to the NSW Court of Criminal Appeal in 2009, the convictions were set aside and retrials ordered on the basis that on a number of occasions the trial judge had instructed the jury in relation to the fault issue and the indicia of slavery in a way that may have confused the jury.

On 30 July 2010, following a retrial, Mr McIvor and Ms Tanuchit were found guilty on all counts. On 17 December 2010 they were sentenced at the NSW District Court by Judge John Williams. In total, Mr McIvor was sentenced to 12 years' imprisonment with a non-parole period of seven years and six months (the same penalty as was imposed after the first trial). Ms Tanuchit was sentenced to 12 years' imprisonment with a non-parole period of seven years.

Both Mr McIvor and Ms Tanuchit appealed their convictions again. On 14 June 2012, the appeals were to be heard in the NSW Court of Criminal Appeal, but the defendants withdrew their appeals, and the court dismissed them.

*Sources:*

- [Report of the Anti-People Trafficking Interdepartmental Committee - July 2010 to June 2011 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)
- [Trafficking in persons—IDC—fourth annual report—1 July 2011 to 30 June 2012 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

## **Watcharaporn NANTAHKUM**

On 11 April 2012, an Australian Capital Territory Supreme Court jury found Watcharaporn Nantahkhum guilty of one count of slavery contrary to subsection 270.3(1) of the Criminal Code, two counts (one being aggravated) of allowing a non-citizen to work in breach of a visa condition contrary to section 245AC of the Migration Act 1958 (Migration Act), two counts (one being aggravated) of allowing an unlawful non-citizen to work contrary to section 245AB of the Migration Act, and one count of attempting to pervert the course of justice contrary to section 43 of the Commonwealth Crimes Act 1914.

The slavery offence relates to a Thai woman recruited by Ms Nantahkhum to work as a sex worker in Canberra, under exploitative conditions. The woman was forced to pay off a debt to Ms Nantahkhum of \$43,000. Ms Nantahkhum also allowed the woman and another sex worker to work in contravention of their visa conditions and offered the woman money to keep quiet about her circumstances.

On 24 May 2012, Ms Nantahkhum was sentenced to eight years and ten months' imprisonment, with a non-parole period of four years and nine months. Ms Nantahkhum's appeal against her sentence was heard on 13 February 2013. On 25 October 2013 the appeal was allowed and Ms Nantahkhum was re-sentenced to six years and 10 months' imprisonment, with a non-parole period of three years and six months

*Source:* [Trafficking in Persons – The Australian Government Response – 1 July 2013 – 30 June 2014 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

## **Namthip Netthip**

Since May 2007, 12 Thai females have provided information to the AFP's HTT in relation to allegations of sexual servitude, people trafficking, deceptive recruiting and debt bondage originating in Thailand. Each of the complaints involved Namthip Netthip.

Ms Netthip was arrested in 2009. On 30 March 2010 at the Downing Centre Local Court in Sydney she pleaded guilty to knowingly conducting a business that involved the sexual servitude of 11 other persons between 30 August 2005 and 1 April 2008, contrary to section 270.6 of the Criminal Code. She also pleaded guilty to a number of immigration offences against section 234(1)(b) and (c) of the Migration Act for making false statements to immigration officials.

On 30 July 2010, NSW District Court Judge Helen Murrell handed down her decision on sentencing. In the reasons for decision, Judge Murrell considered the submissions made by counsel, sexual servitude precedents, the objective seriousness of the sexual servitude offence, the need for both general and specific deterrence, the early guilty plea and Ms Netthip's individual circumstances.

Ms Netthip was sentenced two years and three months' imprisonment (three years discounted by 25 per cent to reflect the guilty plea) with a non-parole period of 13 months for the sexual servitude offences, followed by a recognisance release order to be of good behaviour for 14 months. Judge Murrell considered the migration offences to be part and parcel of the sexual servitude offence and ordered Ms Netthip to be of good behaviour for three years and six months.

Ms Netthip's conviction is the first guilty plea submitted in relation to charges of people trafficking and sexual servitude, and highlights the advantage of having designated human trafficking teams who have specialist skills and knowledge to apply in an investigation.

Source: [Report of the Anti-People Trafficking Interdepartmental Committee - May 2009 to June 2010 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

### **Keith Dobie**

Keith Dobie was a hairdresser on the Gold Coast who owed personal debts. He recruited and organised four women from Thailand to come to Australia to work for him as prostitutes. He promised them easy money and good working conditions (choice of work hours, choice of work, time off) and paid for their air fares and visas. He provided false information to DIAC and the Australian Embassy in Thailand in support of the visa applications. He successfully recruited two women to work for him. He accommodated the women, sent a small amount of money to their families in Thailand, and gave them \$20 per day for food and toiletries. They were not free to choose when to work and whom to service. They were intimidated and pressured to work as much as they could. One complainant was made to have group sex when she did not want to.

Dobie was charged with two counts of people trafficking (deceptive recruitment) (s. 271.2(2B) of the Criminal Code; counts 1 and 2), one count of dealing in the proceeds of crime (s. 400.6(1) of the Criminal Code; count 3), and four counts of presenting a false document to immigration officials (s. 234(1)(a) of the Migration Act 1958 (Cth)).

On counts 1 and 2 contrary to section 271.2(2B) of the Criminal Code, there was a change of plea at trial after the Crown prosecutor's opening, from not guilty to guilty. Pleas of guilty to the other charges had been entered previously. Later in the proceedings, Dobie made an application to withdraw his guilty pleas; however, on the day of sentencing, his counsel agreed to the dismissal of that application. The sentencing judge considered the application to have been abandoned. On 23 December 2008, Dobie was convicted and sentenced for all the charges. He was sentenced to an effective term of five years imprisonment with a non-parole period of 22 months, as follows:

- Count 1 – 4 years imprisonment
- Count 2 – 4 years imprisonment (concurrent with count 1)
- Count 3 – 12 months imprisonment (concurrent with the counts 1 and 2)
- Count 4 – 12 months imprisonment (concurrent with counts 1 and 2)
- Count 5 – 12 months imprisonment (concurrent with counts 1 and 2)
- Count 6 – 12 months imprisonment (concurrent with count 7 but cumulatively upon counts 1 and 2)
- Count 7 – 12 months imprisonment (concurrent with count 6 but cumulatively upon counts 1 and 2).

Dobie subsequently made an application for leave to appeal against the sentence and an application for extension of time within which to appeal against his conviction. On 18 December 2009, the Queensland Court of Appeal handed down its judgment and in doing so refused the application for leave to appeal against sentence, granted the application for extension of time within which to appeal against conviction, and dismissed the appeal against conviction.

Source: [Report of the Anti-People Trafficking Interdepartmental Committee - May 2009 to June 2010 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

## **Johan SIEDERS & Somsri YOTCHOMCIN**

On 21 July 2006, Somsri Yotchomchin and Johan Sieders were each found guilty of one count of conducting a business, namely a brothel, which involved the sexual servitude of other persons contrary to section 270.6(2) of the Criminal Code. These were the first convictions in Australia for sexual servitude offences.

Four women were recruited in Thailand to come to Australia and work in the sex industry. The women agreed to come to Australia, and a complex process ensued whereby the recruiter obtained a tourist visa on the women's behalf for travel to Australia.

For this service, a debt was imposed that was to be paid off upon the women's arrival to Australia. The women travelled to Australia accompanied by an escort. Each of the women provided sexual services at brothels owned by the defendants. The women did not receive any payment for their services, and were told that their earnings would go directly towards paying off their 'debt'. Each woman was told that she owed a debt of about A\$45 000.

The Crown case was that the conditions in which the women were kept in Australia amounted to 'servitude' under section 270.6(2) of the Criminal Code. Yotchomchin and Sieders pleaded not guilty to the charges, and the trial commenced on 27 June 2006. The jury returned verdicts of guilty on 21 July 2006. On 8 December 2006, Sieders was sentenced to four years' imprisonment and Yotchomchin was sentenced to five years for conducting a brothel that involved the sexual servitude of other persons. Sieders and Yotchomchin lodged an appeal, which was heard in May 2008. The appeals were dismissed on 13 August 2008.

**Source:** [Report of the Anti-People Trafficking Interdepartmental Committee - January 2004 to April 2009 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

## **Wei TANG**

The defendant was charged with five counts of intentionally possessing a slave and five counts of intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, contrary to paragraph 270.3(1)(a) of the Criminal Code. The charges were in relation to five Thai women who had worked at a brothel in metropolitan Melbourne owned by the defendant.

While in Thailand each complainant entered into an agreement to come to Australia to work in the sex industry. The 'contract' required them to incur a debt of between A\$35 000 and A\$45 000 which they would pay off by servicing clients of the brothel. Upon their arrival in Australia, the complainants' passports were confiscated and kept at the brothel. According to the complainants, they were required to work at the brothel six days a week. Of the A\$110 earned in respect of each client, A\$50 was deducted from the debt. The remainder of the proceeds went to the brothel. The complainants were given the option of working on their 'free' day and of retaining the A\$50 per client that would otherwise be used to reduce their debt for that day. The complainants had restrictions placed on their freedom of movement whilst they were repaying their debts.

When the proceedings first commenced, Tang had two co-accused. One of those co-accused pleaded guilty to three counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the Criminal Code and two counts of engaging in slave trading contrary to section 270.3(1)(b) of the Code. This co-accused was originally sentenced to nine years' imprisonment with a non-parole period of three years. Following an appeal against sentence, the co-accused was sentenced to a total effective sentence of six years' imprisonment with a non-parole period of two years and six months. The reduction in sentence was a result of the co-accused's co-operation with authorities. That co-accused gave evidence at the trial for the Crown.

Tang and her second co-accused, Paul Pick, were first tried in April 2005. The jury in that trial was unable to reach a unanimous verdict in respect of any count in relation to Tang, and two of the counts in respect of Pick. The jury acquitted Pick of eight other charges. The CDPP filed a Notice of Discontinuance in respect of the two remaining counts against Pick on 9 June 2006.

As a result of Tang's first trial resulting in a hung jury, Tang was retried in April 2006. Her second trial resulted in a conviction on all charges. She was sentenced by the Victorian County Court for 10 years' imprisonment



with a non-parole period of six years. Tang appealed to the Victorian Court of Appeal. The Court of Appeal found that the evidence was capable of sustaining a conviction, but quashed Tang's convictions, set aside the sentence and ordered a re-trial on a finding that the trial judge had misdirected the jury on the fault elements of the offence. The CDPP was granted special leave to appeal to the High Court of Australia against the decision of the Court of Appeal. The defendant sought special leave to cross-appeal against the order for a new trial, arguing that the court should have ordered an acquittal. Her cross-appeal included a constitutional challenge against the validity of the antislavery laws in the Criminal Code (this challenge was later withdrawn). The Australian Human Rights Commission was also granted leave to appear as intervener and made submissions about the meaning of slavery. In August 2008, by a 6-1 majority, the High Court overturned the order of the Victorian Court of Appeal for a new trial, effectively reinstating Tang's slavery convictions. The High Court remitted her appeal on sentence to the Court of Appeal for consideration. In respect of the constitutional issue, the High Court held that Parliament had the power to make laws with respect to external affairs, in this case, by section 270 giving effect to Australia's obligations under the Slavery Convention. The Court of Appeal heard Tang's appeal against sentence on 5 February 2009.

On 17 August 2009, the court rejected all but one of the grounds of appeal against sentence and rejected the argument that the sentence imposed was manifestly excessive in the circumstances as they were known to the sentencing judge.

However, the court was satisfied that the effect of the sentence imposed was, impermissibly, to punish Wei Tang twice for the same conduct and that that sentencing error had the effect of reopening the sentencing discretion, which the court held must be exercised afresh by it. In resentencing, the court held that developments since sentence was first imposed gave rise to additional mitigating factors that were not known to the sentencing judge. Consequently, taking those matters into account, the court concluded that the total effective sentence should be nine years, with a non-parole period of five years.

This case is significant as it provides the first consideration by the High Court of the application of the general principles of criminal responsibility under Chapter 2 of the Criminal Code to the slavery offences under section 270.3(1).

#### Sources:

- [Report of the Anti-People Trafficking Interdepartmental Committee - January 2004 to April 2009 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)
- [Report of the Anti-People Trafficking Interdepartmental Committee - May 2009 to June 2010 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

### Chee Mei WONG

On 11 August 2010, Chee Mei Wong was charged with conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, organising or facilitating the entry of a person into Australia reckless as to whether the person will be exploited contrary to subsection 271.2(1B) of the Criminal Code, and several offences under the Migration Act. The charges relate to 11 women from Malaysia who worked for Ms Wong as sex workers under very harsh circumstances. Ms Wong was charged following the AFP's Operation Burlywood investigation into human trafficking, sexual servitude and migration-related offences, and committed for trial on 13 September 2011.

On 27 March 2013, Ms Wong was convicted of one count of conducting a business involving sexual servitude contrary to subsection 270.6(2) of the Criminal Code, four aggravated counts of allowing non-citizens to work in breach of their visa conditions contrary to subsection 245AC(2) of the Migration Act, and two counts of allowing non-citizens to work in breach of their visa conditions contrary to section 245AC of the Migration Act.

On 5 July 2013 Ms Wong was sentenced to six years' imprisonment, with a non-parole period of three years.

#### Sources:

- [Trafficking in persons—IDC—fourth annual report—1 July 2011 to 30 June 2012 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

- [Report of the Interdepartmental Committee on Human Trafficking and Slavery – July 2012 to June 2013 \(homeaffairs.gov.au\)](#)
- [Trafficking in Persons – The Australian Government Response – 1 July 2013 – 30 June 2014 \(homeaffairs.gov.au\)](#)

## **Lay Foon KHOO**

On 28 November 2017, Lay Foon Khoo was sentenced to three years and four months' jail, with a non-parole period of 18 months, backdated to start 11 August 2017, after being found guilty of trafficking a Malaysian woman for sex work in a Perth brothel.

The offender arranged for her friend to travel to Australia from Malaysia, but deceived her about the purpose of the trip. On 29 December 2015, the victim travelled to Perth where she was met at the airport by Khoo. The victim assumed she was going to stay with her, but instead was taken to a brothel in East Perth known as 'Sarah's Massage'.

Once inside, Khoo told the victim she owed her \$1,900 for immigration, flights and transport fees and she would have to do sex work in order to pay her this money back. Khoo also took the victim's passport.

Over the coming days the victim engaged in sex work and argued with Khoo using WeChat, telling her that she had tricked her into coming to Australia and asking for her passport back. Khoo then demanded a further \$10,000 from the victim and on 31 December 2015 took \$900 and a new Apple iPhone from her.

On 3 January 2016, the victim began talking to a friend in Malaysia via social media. He put her in touch with someone living in Australia who told her to leave the brothel immediately and go to the police.

The next morning the victim caught a taxi to the Perth Police Station where she was referred to the Australian Federal Police, who placed her in the Support for Trafficked People Program.

This matter was investigated and referred by the Australian Federal Police.

Source: [2017-18 Annual Report | Commonwealth Director of Public Prosecutions \(cdpp.gov.au\)](#)

## **Rungnapha KANBUT**

On 15 November 2019, Ms Rungnapha Kanbut (57) was sentenced to a term of imprisonment for slavery offences relating to two Thai women.

Following a five-and-a-half-week trial, a NSW District Court jury found Ms Kanbut guilty in May of two counts each of intentionally possessing a slave, exercising powers of ownership over a slave and dealing with the proceeds of crime. She was sentenced to eight years, two months and 30 days imprisonment, with a non-parole period of five years, two months and 29 days.

The two Thai women voluntarily came to Australia to do sex work in 2004-2005. Ms Kanbut confiscated their passports when they arrived in Sydney and told them they would need to pay off a \$45,000 debt. The women's travel to Australia was organised by a man they knew only as "Chang". Chang took naked photographs of them and threatened to post the photos on the internet if the women attempted to run away. The victims often had to work up to 12 hours a day at multiple Sydney brothels, with almost all of their earnings going towards their "debts".

An Australian Federal Police investigation led to Ms Kanbut's arrest in 2017 when she returned to Australia from overseas.

Ms Kanbut appealed both her conviction and sentence and on 31 August 2022, the matter was heard in the NSW Court of Criminal Appeal with judgment yet to be handed down.

Source: Internal CDDP case update and update from Principal Federal Prosecutor

# LCP

| BRIEF TITLE                 | OWNER | PDMS Record number (PDR) |
|-----------------------------|-------|--------------------------|
| Key Statistics              | LCP   | SB22-900174              |
| Death of Queen Elizabeth II | LCP   | SB22-900191              |



## Key Statistics

Brief No: SB22-900141

The following data has been extracted from National Matters Dashboard.

- Number of matters commenced in 2022-2023: **485**

NB: This data reflects the prosecutions commenced by litigation phase during the period of 01/07/2022-20/10/2022. This is ascertained through a report that identifies the start date of the first relevant litigation phase (i.e. summary, committal, trial, defence appeal or prosecution appeal) as being the commencement of the prosecution when the phase start date falls within the relevant period.

- Current referrals, matters on hand and matters closed compared to previous financial years: 2019/20, 2020/21, and 2021/22

|                       | 1 July 2019 –<br>30 June 2020 | 1 July 2020 -<br>30 June 2021 | 1 July 2021 –<br>30 June 2022 | 1 July 2022 – 20<br>October 2022 |
|-----------------------|-------------------------------|-------------------------------|-------------------------------|----------------------------------|
| Referrals *           | 2447                          | 2299                          | 2088                          | 599                              |
| Matters on<br>Hand**  | 3520 (as at<br>01/10/2020)    | 3469 (as at<br>04/05/2021)    | 3421 (as at<br>22/03/2022)    | 3127 (as at<br>20/10/2022)       |
| Matters<br>Closed *** | 2492                          | 2378                          | 2430                          | 803                              |

\*NB: Referrals - This data reflects all prosecution files received by the CDPP where the date received falls within the relevant financial year.

\*\*Matters on Hand - This data reflects files that were open at the above stated point in time. Open files are defined as active or suspended.

\*\*\*Matters Closed – This data reflects all prosecution files with a status of 'Closed' or 'Warrant Issued' where the file closed date falls within the relevant financial year. Please note that a closed file may subsequently be re-opened, for example, if a warrant is executed or if breach proceedings are referred when the CDPP conducted the original prosecution. This will result in some change to the matters closed numbers.

- Current matters on hand by complexity

|            | 1   | 2    | 3    | 4   | null |
|------------|-----|------|------|-----|------|
| Complexity | 133 | 1372 | 1179 | 432 | 11   |

NB: This data reflects complexity ratings for all current matters on hand as at 20/10/2022

Contact Officer: s22  
Telephone: s47F  
Last updated: 20/10/2022

SES: Mark de Crespigny  
Mobile Number: s47F



## ADDITIONAL INFORMATION

Additional 2022 Estimates Legal Statistic including Matters received, Matters completed, and Matters on Hand by Group, Branch and Complexity are attached.

### ATTACHMENTS

**Attachment A:** Data Summary by Branch Matters Received

**Attachment B:** Data Summary by Complexity

**Attachment C** Data Summary by Jurisdiction

**Attachment D:** Data Summary by Practice Group

**Attachment E:** Referring Agencies

CDPP BY BRANCH

MATTERS RECEIVED

| Count of file number | Column Labels      |              |              |                 |         |                        |              |              |            |       |     |              |             |                 |              |            |               |            |             |
|----------------------|--------------------|--------------|--------------|-----------------|---------|------------------------|--------------|--------------|------------|-------|-----|--------------|-------------|-----------------|--------------|------------|---------------|------------|-------------|
| FY                   | Financial Services | FSA Adelaide | FSA Brisbane | Canberra/Hobart | FSA TDC | Gov and Legal Services | EBP Brisbane | BP Melbourne | HEBP Perth | P Syd | Nat | IS Melbourne | OCNS Sydney | OCNS War Crimes | CC Melbourne | FCC Sydney | SFCC Sydney 2 | Unassigned | Grand Total |
| 2015/2016            | 0                  | 136          | 121          | 152             | 82      | 3                      | 50           | 130          | 61         | 133   | 63  | 43           | 138         | 2               | 113          | 32         | 62            | 1959       | 3280        |
| 2016/2017            | 1                  | 162          | 133          | 158             | 91      | 1                      | 55           | 157          | 64         | 92    | 51  | 88           | 108         | 4               | 103          | 62         | 55            | 1779       | 3164        |
| 2017/2018            | 0                  | 109          | 169          | 98              | 104     | 4                      | 104          | 127          | 111        | 103   | 39  | 92           | 99          | 2               | 167          | 60         | 80            | 1255       | 2723        |
| 2018/2019            | 0                  | 130          | 182          | 400             | 186     | 0                      | 175          | 158          | 224        | 359   | 3   | 73           | 39          | 0               | 275          | 157        | 98            | 124        | 2583        |
| 2019/2020            | 0                  | 124          | 172          | 292             | 277     | 0                      | 164          | 190          | 192        | 462   | 0   | 53           | 60          | 0               | 201          | 147        | 113           | 0          | 2447        |
| 2020/2021            | 0                  | 97           | 142          | 222             | 201     | 0                      | 188          | 199          | 148        | 444   | 1   | 78           | 106         | 0               | 169          | 169        | 131           | 4          | 2299        |
| 2021/2022            | 0                  | 78           | 144          | 305             | 185     | 0                      | 184          | 167          | 154        | 415   | 0   | 61           | 78          | 6               | 113          | 94         | 103           | 1          | 2088        |
| 2022/2023            | 0                  | 26           | 46           | 53              | 56      | 0                      | 57           | 61           | 58         | 112   | 0   | 19           | 21          | 2               | 33           | 28         | 27            | 0          | 599         |

The financial year is based on the file received date.  
Data extracted as at 20 October 2022. Date Received is between 1/07/2015 and 20/10/2022

MATTERS COMPLETED

| Count of file number | Column Labels      |              |              |                     |         |                        |               |                |            |               |            |              |                |             |                 |                |               |               |            |
|----------------------|--------------------|--------------|--------------|---------------------|---------|------------------------|---------------|----------------|------------|---------------|------------|--------------|----------------|-------------|-----------------|----------------|---------------|---------------|------------|
| FY                   | Financial Services | FSA Adelaide | FSA Brisbane | FSA Canberra/Hobart | FSA TDC | Gov and Legal Services | HEBP Brisbane | HEBP Melbourne | HEBP Perth | HEBP P Sydney | ICT Branch | LCP National | OCNS Melbourne | OCNS Sydney | OCNS War Crimes | SFCC Melbourne | SFCC Sydney 1 | SFCC Sydney 2 | Unassigned |
| 2015/2016            | 2                  | 82           | 119          | 66                  | 60      | 3                      | 33            | 91             | 16         | 88            | 5          | 74           | 22             | 80          | 9               | 113            | 52            | 33            | 2538       |
| 2016/2017            | 2                  | 169          | 148          | 164                 | 67      | 2                      | 43            | 129            | 75         | 149           | 0          | 67           | 57             | 111         | 6               | 95             | 53            | 56            | 2172       |
| 2017/2018            | 0                  | 162          | 125          | 169                 | 114     | 4                      | 64            | 155            | 55         | 74            | 0          | 47           | 63             | 105         | 13              | 83             | 67            | 54            | 1999       |
| 2018/2019            | 0                  | 124          | 117          | 188                 | 147     | 2                      | 126           | 96             | 121        | 90            | 0          | 45           | 83             | 66          | 1               | 120            | 69            | 70            | 1098       |
| 2019/2020            | 0                  | 131          | 117          | 282                 | 194     | 0                      | 162           | 122            | 189        | 336           | 0          | 17           | 65             | 66          | 1               | 208            | 156           | 82            | 364        |
| 2020/2021            | 0                  | 109          | 207          | 249                 | 253     | 2                      | 162           | 196            | 161        | 450           | 0          | 0            | 57             | 77          | 0               | 179            | 137           | 138           | 1          |
| 2021/2022            | 0                  | 126          | 153          | 317                 | 213     | 2                      | 172           | 183            | 168        | 414           | 0          | 2            | 62             | 62          | 1               | 265            | 157           | 129           | 4          |
| 2022/2023            | 0                  | 46           | 67           | 104                 | 56      | 0                      | 53            | 69             | 47         | 158           | 0          | 0            | 21             | 28          | 1               | 76             | 37            | 40            | 0          |

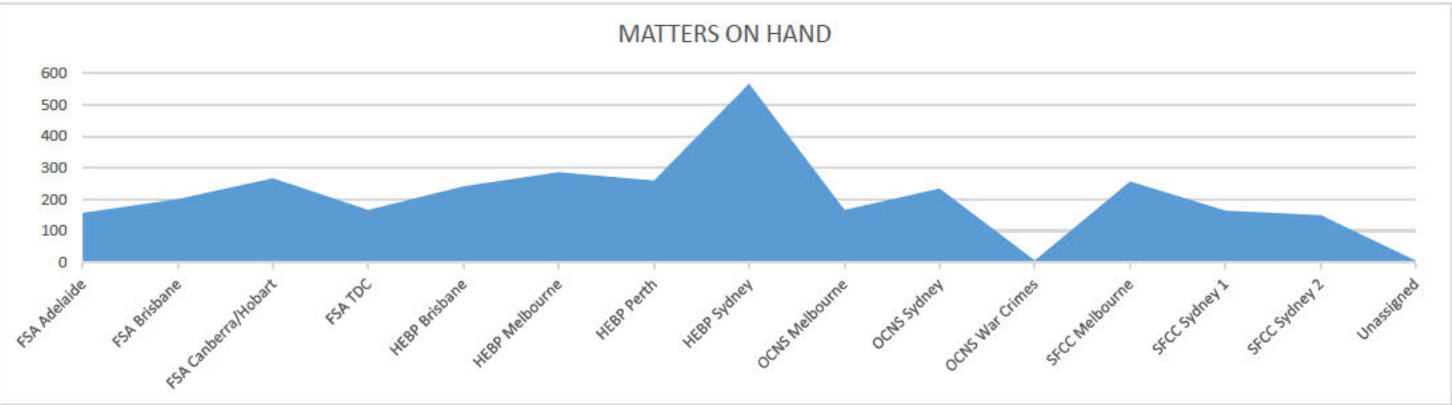
The financial year is based on the file closed date.  
Data extracted as at 20 October 2022. Date File Closed is between 1/07/2015 and 20/10/2022. File status includes 'Closed' and 'Warrant Issued'  
\* Note this is not based on matter finalised where latest principle court phase is used as the reporting population.

MATTERS ON HAND

| Date Reported | CFC/RBF Melbourne | CFC/RBF Sydney - 1 | CFC/RBF Sydney - 2 | IASA Adelaide | IASA Canberra/Hobart | IASA Townsville - Darwin - Cairns | IIE/HEBP Brisbane | IIE/HEBP Melbourne | IIE/HEBP Perth | IIE/HEBP P Sydney | OCCT Melbourne | OCCT Sydney | OCCT War crimes | RBF/CFC Brisbane | Unassigned | Total |
|---------------|-------------------|--------------------|--------------------|---------------|----------------------|-----------------------------------|-------------------|--------------------|----------------|-------------------|----------------|-------------|-----------------|------------------|------------|-------|
| 21/10/2021    | 382               | 199                | 168                | 179           | 332                  | 192                               | 236               | 270                | 282            | 595               | 160            | 208         | 2               | 233              | 6          | 3444  |
| 13/01/2022    | 355               | 190                | 185                | 195           | 322                  | 209                               | 226               | 284                | 280            | 645               | 175            | 221         | 3               | 236              | 6          | 3532  |
| 22/03/2022    | 331               | 182                | 171                | 174           | 317                  | 194                               | 225               | 288                | 273            | 620               | 164            | 224         | 5               | 249              | 4          | 3421  |

|            | FSA Adelaide | FSA Brisbane | FSA Canberra/Hobart | FSA TDC | HEBP Brisbane | HEBP Melbourne | HEBP Perth | HEBP Sydney | OCNS Melbourne | OCNS P Sydney | OCNS National | SFCC Melbourne | SFCC Sydney | SFCC Sydney 2 | Unassigned | Grand Total |
|------------|--------------|--------------|---------------------|---------|---------------|----------------|------------|-------------|----------------|---------------|---------------|----------------|-------------|---------------|------------|-------------|
| 20/10/2022 | 157          | 201          | 267                 | 166     | 241           | 286            | 260        | 566         | 166            | 234           | 6             | 257            | 164         | 150           | 6          | 3127        |

Matters on hand stats include active and suspended matters as at 20 Octoberber 2022 with the renamed branch names.  
\*Note - Other previous financial years snapshots not available for this category



CDPP BY COMPLEXITY

MATTERS RECEIVED

| Count of file number | Column Labels |      |     |     |      |             |
|----------------------|---------------|------|-----|-----|------|-------------|
| FY                   | 1             | 2    | 3   | 4   | NULL | Grand Total |
| 2015/2016            | 294           | 2367 | 539 | 80  | 0    | 3280        |
| 2016/2017            | 268           | 2286 | 464 | 146 | 0    | 3164        |
| 2017/2018            | 211           | 1899 | 430 | 183 | 0    | 2723        |
| 2018/2019            | 207           | 1737 | 470 | 169 | 0    | 2583        |
| 2019/2020            | 212           | 1605 | 501 | 129 | 0    | 2447        |
| 2020/2021            | 204           | 1316 | 599 | 180 | 0    | 2299        |
| 2021/2022            | 241           | 1178 | 566 | 103 | 0    | 2088        |
| 2022/2023            | 55            | 373  | 133 | 26  | 12   | 599         |

The financial year is based on the file received date.  
Data extracted as at 20 October 2022. Date Received is between 1/07/2015 and 20/10/2022

MATTERS COMPLETED

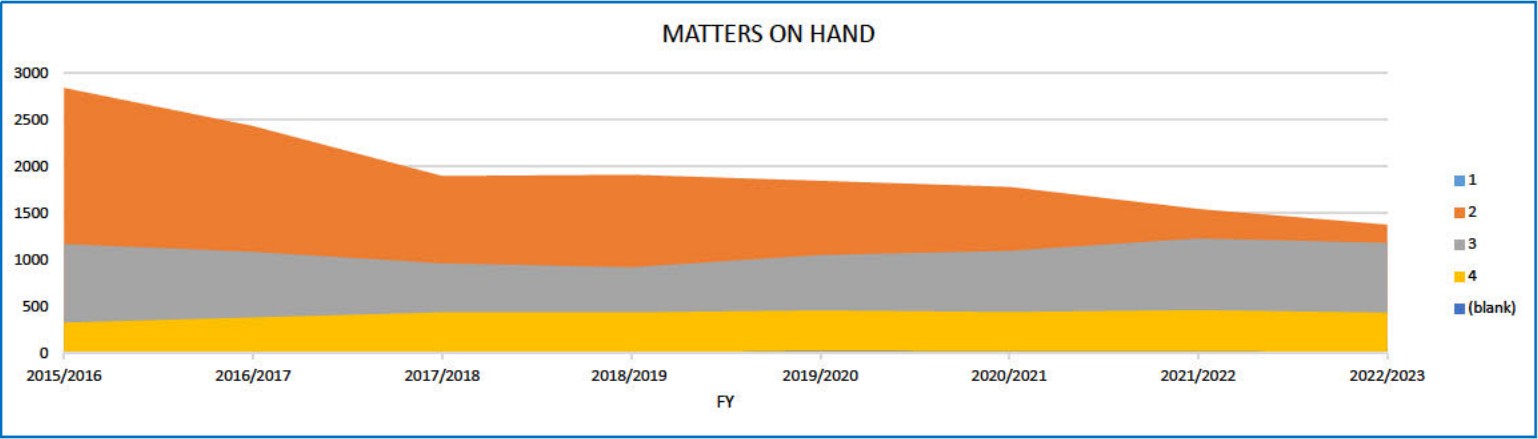
| Count of file number | Column Labels |      |     |     |      |             |
|----------------------|---------------|------|-----|-----|------|-------------|
| FY                   | 1             | 2    | 3   | 4   | NULL | Grand Total |
| 2015/2016            | 419           | 2455 | 538 | 74  | 0    | 3486        |
| 2016/2017            | 304           | 2656 | 528 | 77  | 0    | 3565        |
| 2017/2018            | 355           | 2375 | 513 | 110 | 0    | 3353        |
| 2018/2019            | 225           | 1722 | 479 | 137 | 0    | 2563        |
| 2019/2020            | 201           | 1689 | 458 | 144 | 0    | 2492        |
| 2020/2021            | 203           | 1566 | 452 | 157 | 0    | 2378        |
| 2021/2022            | 247           | 1448 | 577 | 158 | 0    | 2430        |
| 2022/2023            | 97            | 473  | 173 | 59  | 1    | 803         |

The financial year is based on the file closed date.  
Data extracted as at 20 October 2022. Date File Closed is between 1/07/2015 and 20/10/2022. File status includes 'Closed' and 'Warrant Issued'  
\* Note this is not based on matter finalised where latest principle court phase is used as the reporting population.

MATTERS ON HAND

| FY        | 1   | 2    | 3    | 4   | (blank) | Total |
|-----------|-----|------|------|-----|---------|-------|
| 2015/2016 | 323 | 2834 | 1163 | 327 | 0       | 4647  |
| 2016/2017 | 283 | 2426 | 1083 | 380 | 0       | 4172  |
| 2017/2018 | 136 | 1892 | 958  | 435 | 0       | 3421  |
| 2018/2019 | 130 | 1908 | 918  | 435 | 7       | 3398  |
| 2019/2020 | 144 | 1843 | 1049 | 458 | 26      | 3520  |
| 2020/2021 | 142 | 1777 | 1094 | 439 | 17      | 3469  |
| 2021/2022 | 174 | 1542 | 1224 | 460 | 21      | 3421  |
| 2022/2023 | 133 | 1372 | 1179 | 432 | 11      | 3127  |

2019/20 stats is as at 01 October 2020.  
2020/21 stats include active and suspended matters as at 04 May 2021 from CDPP National Matters Dashboard.  
2021/2022 stats include active and suspended matters as at 22 March 2022 from CDPP Natiaol Matters Dashboard.  
2022/2023 stats include active and suspended matters as at 20 October 2022 extracted from CUBE.  
Other previous financial years are snapshot of the data from last report.



CDPP BY JURISDICTION

MATTERS RECEIVED

| Count of file number | Column Labels |    |     |    |      |     |     |     |     |     |     |             |
|----------------------|---------------|----|-----|----|------|-----|-----|-----|-----|-----|-----|-------------|
| FY                   | ACT           | CI | COC | NI | NSW  | NT  | QLD | SA  | TAS | VIC | WA  | Grand Total |
| 2015/2016            | 129           | 2  | 0   | 0  | 1021 | 116 | 714 | 197 | 78  | 697 | 326 | 3280        |
| 2016/2017            | 104           | 0  | 0   | 0  | 955  | 186 | 641 | 215 | 69  | 691 | 303 | 3164        |
| 2017/2018            | 104           | 1  | 0   | 0  | 813  | 73  | 651 | 127 | 42  | 630 | 282 | 2723        |
| 2018/2019            | 91            | 8  | 6   | 33 | 835  | 48  | 535 | 124 | 60  | 591 | 252 | 2583        |
| 2019/2020            | 81            | 14 | 12  | 26 | 889  | 58  | 541 | 126 | 38  | 472 | 190 | 2447        |
| 2020/2021            | 52            | 9  | 5   | 39 | 936  | 39  | 463 | 101 | 24  | 480 | 151 | 2299        |
| 2021/2022            | 118           | 33 | 7   | 20 | 757  | 42  | 467 | 89  | 26  | 381 | 148 | 2088        |
| 2022/2023            | 24            | 4  | 1   | 13 | 205  | 13  | 130 | 26  | 3   | 118 | 62  | 599         |

The financial year is based on the file received date.  
Data extracted as at 20 October 2022. Date Received is between 1/07/2015 and 20/10/2022

MATTERS COMPLETED

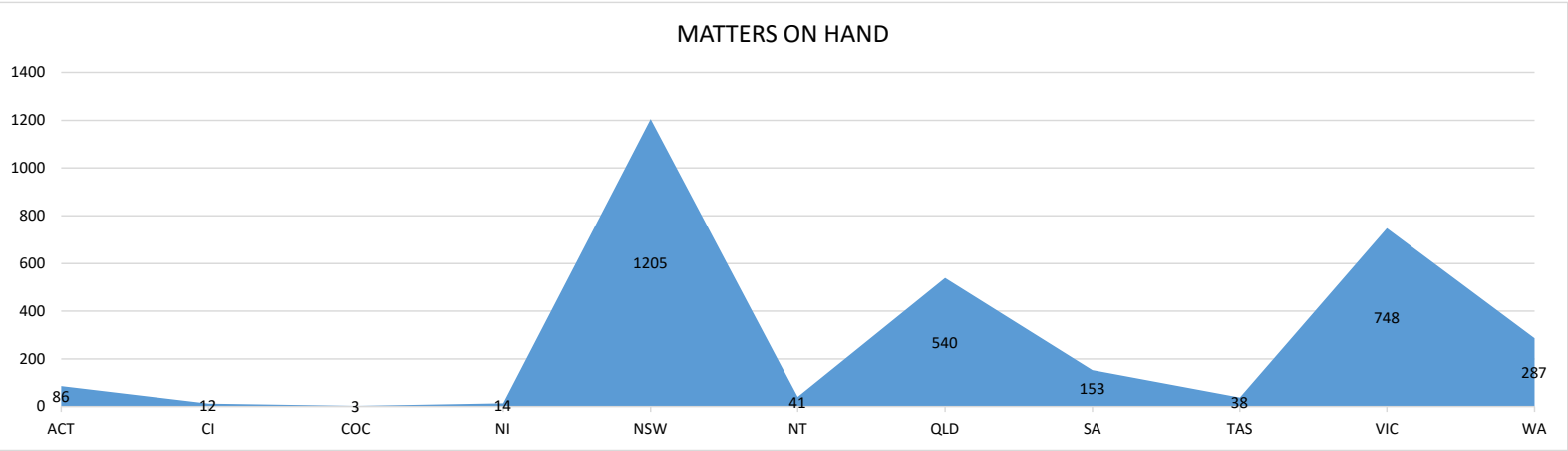
| Count of file number | Column Labels |    |     |    |      |     |     |     |     |     |     |             |
|----------------------|---------------|----|-----|----|------|-----|-----|-----|-----|-----|-----|-------------|
| FY                   | ACT           | CI | COC | NI | NSW  | NT  | QLD | SA  | TAS | VIC | WA  | Grand Total |
| 2015/2016            | 127           | 0  | 0   | 0  | 970  | 144 | 799 | 229 | 89  | 758 | 370 | 3486        |
| 2016/2017            | 132           | 2  | 0   | 0  | 1121 | 192 | 736 | 259 | 86  | 680 | 357 | 3565        |
| 2017/2018            | 140           | 1  | 0   | 0  | 1032 | 81  | 725 | 233 | 83  | 731 | 327 | 3353        |
| 2018/2019            | 87            | 5  | 3   | 23 | 722  | 44  | 598 | 140 | 81  | 605 | 255 | 2563        |
| 2019/2020            | 61            | 13 | 15  | 16 | 957  | 47  | 473 | 132 | 46  | 527 | 205 | 2492        |
| 2020/2021            | 71            | 7  | 3   | 48 | 894  | 46  | 553 | 116 | 29  | 451 | 160 | 2378        |
| 2021/2022            | 112           | 24 | 6   | 18 | 847  | 50  | 500 | 128 | 32  | 554 | 159 | 2430        |
| 2022/2023            | 31            | 7  | 1   | 12 | 281  | 16  | 158 | 50  | 15  | 181 | 51  | 803         |

The financial year is based on the file closed date.  
Data extracted as at 20 October 2022. Date File Closed is between 1/07/2015 and 20/10/2022. File status includes 'Closed' and 'Warrant Issued'  
\* Note this is not based on matter finalised where latest principle court phase is used as the reporting population.

MATTERS ON HAND (CURRENT FINANCIAL YEAR)

| Date Reported | ACT | CI | COC | NI | NSW  | NT | QLD | SA  | TAS | VIC | WA  | Grand Total |
|---------------|-----|----|-----|----|------|----|-----|-----|-----|-----|-----|-------------|
| 21/10/2021    | 81  | 21 | 3   | 14 | 1286 | 50 | 602 | 172 | 47  | 869 | 299 | 3444        |
| 13/01/2022    | 71  | 18 | 4   | 14 | 1335 | 60 | 611 | 188 | 44  | 876 | 311 | 3532        |
| 22/03/2022    | 69  | 12 | 7   | 13 | 1298 | 52 | 607 | 172 | 43  | 844 | 304 | 3421        |
| 19/09/2022    | 86  | 12 | 3   | 14 | 1205 | 41 | 540 | 153 | 38  | 748 | 287 | 3127        |

Matters on hand stats include active and suspended matters as at 20 October 2022  
\*Note -Other previous financial years snapshots not available for this category





CDPP BY PRACTICE GROUP

MATTERS RECEIVED

| Count of file number | Column Labels |      |      |      |             |
|----------------------|---------------|------|------|------|-------------|
| FY                   | FSA           | HEBP | OCNS | SFCC | Grand Total |
| 2015/2016            | 1823          | 1176 | 181  | 100  | 3280        |
| 2016/2017            | 1651          | 1165 | 176  | 172  | 3164        |
| 2017/2018            | 1379          | 997  | 180  | 167  | 2723        |
| 2018/2019            | 1248          | 1009 | 119  | 207  | 2583        |
| 2019/2020            | 1039          | 1121 | 123  | 164  | 2447        |
| 2020/2021            | 824           | 1080 | 229  | 166  | 2299        |
| 2021/2022            | 747           | 1011 | 167  | 163  | 2088        |
| 2022/2023            | 178           | 306  | 54   | 61   | 599         |

The financial year is based on the file received date.  
Data extracted as at 20 October 2022. Date Received is between 1/07/2015 and 20/10/2022

MATTERS COMPLETED

| Count of file number | Column Labels |      |      |      |            |             |
|----------------------|---------------|------|------|------|------------|-------------|
| FY                   | FSA           | HEBP | OCNS | SFCC | Unassigned | Grand Total |
| 2015/2016            | 2125          | 1100 | 134  | 114  | 13         | 3486        |
| 2016/2017            | 2204          | 1100 | 160  | 98   | 3          | 3565        |
| 2017/2018            | 1902          | 1149 | 179  | 122  | 1          | 3353        |
| 2018/2019            | 1310          | 951  | 136  | 166  | 0          | 2563        |
| 2019/2020            | 1106          | 1101 | 150  | 135  | 0          | 2492        |
| 2020/2021            | 1024          | 1056 | 145  | 153  | 0          | 2378        |
| 2021/2022            | 1061          | 1036 | 142  | 191  | 0          | 2430        |
| 2022/2023            | 320           | 364  | 56   | 63   | 0          | 803         |

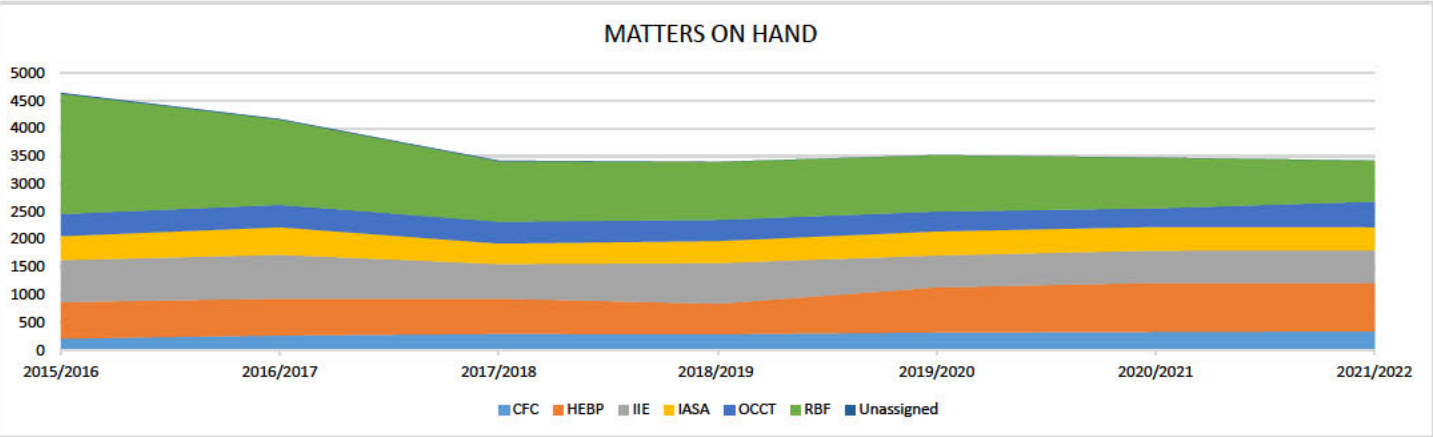
The financial year is based on the file closed date.  
Data extracted as at 20 October 2022.  
\* Note this is not based on matter finalised where latest principle court phase is used as the reporting population.

MATTERS ON HAND

| FY        | CFC | HEBP | IIE | IASA | OCCT | RBF  | Unassigned | Total |
|-----------|-----|------|-----|------|------|------|------------|-------|
| 2015/2016 | 210 | 658  | 754 | 435  | 398  | 2174 | 18         | 4647  |
| 2016/2017 | 265 | 665  | 791 | 497  | 401  | 1538 | 15         | 4172  |
| 2017/2018 | 295 | 636  | 622 | 371  | 395  | 1088 | 14         | 3421  |
| 2018/2019 | 290 | 546  | 736 | 396  | 381  | 1049 | 0          | 3398  |
| 2019/2020 | 319 | 813  | 578 | 432  | 356  | 1021 | 1          | 3520  |
| 2020/2021 | 328 | 883  | 586 | 426  | 337  | 909  | 0          | 3469  |
| 2021/2022 | 337 | 872  | 592 | 414  | 465  | 741  | 0          | 3421  |

| FY        | FSA | HEBP | OCNS | SFCC | Grand Total |
|-----------|-----|------|------|------|-------------|
| 2022/2023 | 812 | 1411 | 490  | 414  | 3127        |

2019/20 stats is as at 1 October 2020.  
2020/21 stats include active and suspended matters as at 04 May 2021 from CDPP National Matters Dashboard.  
2021/2022 stats include active and suspended matters as at 22 March 2022 from CDPP Matters Dashboard.  
2022/2023 Matters on hand stats include active and suspended matters as at 20 October 2022 with the new structure of practice groups.  
Other previous financial years are snapshot of the data from last report.



REFERRING AGENCY

| Count of file number   | Column Labels |           |           |           |           |           |           |           |             |
|--|---------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| Referring Agency   | 2015/2016     | 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 | 2020/2021 | 2021/2022 | 2022/2023 | Grand Total |
| Administrative Appeal Tribunal   | 0             | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 1           |
| AFP/ACLEI Joint Task Force   | 1             | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 2           |
| Attorney-General's Department  | 4             | 3         | 1         | 5         | 1         | 1         | 2         | 0         | 17          |
| Australian Border Force  | 129           | 159       | 112       | 138       | 76        | 85        | 74        | 15        | 788         |
| Australian Building and Construction Commission                          | 0             | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 1           |
| Australian Bureau of Statistics  | 0             | 10        | 33        | 0         | 0         | 0         | 16        | 0         | 59          |
| Australian Commission for Law Enforcement Integrity                      | 2             | 1         | 9         | 6         | 7         | 4         | 2         | 3         | 34          |
| Australian Communications and Media Authority                            | 1             | 1         | 4         | 2         | 1         | 0         | 1         | 0         | 10          |
| Australian Competition and Consumer Commission                           | 8             | 4         | 20        | 5         | 4         | 6         | 8         | 0         | 55          |
| Australian Criminal Intelligence Commission                              | 1             | 0         | 2         | 2         | 2         | 0         | 0         | 0         | 7           |
| Australian Electoral Commission  | 7             | 31        | 29        | 4         | 1         | 1         | 0         | 0         | 73          |
| Australian Federal Police  | 850           | 839       | 688       | 593       | 587       | 717       | 646       | 208       | 5128        |
| Australian Financial Security Authority                                  | 109           | 146       | 123       | 125       | 84        | 121       | 134       | 13        | 855         |
| Australian Fisheries Management Authority                                | 61            | 165       | 33        | 18        | 25        | 6         | 4         | 0         | 312         |
| Australian Government Solicitor  | 0             | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 1           |
| Australian Maritime Safety Authority                                     | 6             | 11        | 6         | 19        | 25        | 16        | 25        | 10        | 118         |
| Australian Pesticides and Veterinary Medicines Authority                 | 0             | 0         | 0         | 0         | 3         | 2         | 0         | 0         | 5           |
| Australian Postal Corporation  | 1             | 5         | 3         | 0         | 0         | 0         | 0         | 0         | 9           |
| Australian Securities and Investments Commission                         | 60            | 83        | 97        | 86        | 82        | 79        | 70        | 17        | 574         |
| Australian Skills Quality Authority                                      | 0             | 3         | 0         | 2         | 3         | 1         | 0         | 1         | 10          |
| Australian Small Business and Family Enterprise Ombudsman                | 0             | 0         | 1         | 2         | 0         | 0         | 0         | 0         | 3           |
| Australian Taxation Office   | 138           | 121       | 104       | 98        | 60        | 35        | 36        | 12        | 604         |
| Australian Trade Commission  | 1             | 2         | 1         | 4         | 0         | 0         | 0         | 0         | 8           |
| Christmas Island Police  | 0             | 0         | 0         | 1         | 0         | 0         | 0         | 0         | 1           |
| Civil Aviation Safety Authority  | 8             | 10        | 6         | 15        | 15        | 7         | 3         | 2         | 66          |
| Clean Energy Regulator   | 1             | 1         | 2         | 2         | 0         | 4         | 5         | 4         | 19          |
| COMCARE  | 1             | 10        | 6         | 20        | 7         | 7         | 3         | 2         | 56          |
| Commonwealth Director of Public Prosecutions                             | 2             | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 2           |
| Community Corrections Office   | 8             | 4         | 9         | 26        | 108       | 58        | 42        | 11        | 266         |
| Crime & Corruption Commission (QLD)                                      | 0             | 2         | 0         | 0         | 0         | 0         | 0         | 0         | 2           |
| Department of Agriculture, Fisheries and Forestry                        | 0             | 0         | 0         | 0         | 0         | 0         | 0         | 1         | 1           |
| Department of Agriculture, Water and the Environment                     | 43            | 51        | 33        | 43        | 39        | 13        | 14        | 0         | 236         |
| Department of Climate Change, Energy, the Environment and Water          | 0             | 0         | 0         | 0         | 0         | 0         | 0         | 1         | 1           |
| Department of Corrective Services  | 29            | 44        | 45        | 40        | 12        | 5         | 1         | 2         | 178         |
| Department of Defence  | 13            | 5         | 6         | 3         | 8         | 4         | 5         | 0         | 44          |
| Department of Economic Development, Jobs, Transport and Resources (VIC)  | 0             | 0         | 2         | 0         | 0         | 0         | 0         | 0         | 2           |
| Department of Education  | 0             | 0         | 0         | 1         | 5         | 0         | 0         | 0         | 6           |
| Department of Education, Skills and Employment                           | 8             | 22        | 13        | 13        | 0         | 8         | 6         | 1         | 71          |
| Department of Employment, Skills, Small and Family Business              | 0             | 0         | 0         | 0         | 1         | 0         | 0         | 0         | 1           |
| Department of Foreign Affairs and Trade                                  | 22            | 8         | 11        | 7         | 7         | 3         | 4         | 3         | 65          |
| Department of Health   | 36            | 33        | 14        | 13        | 23        | 27        | 15        | 5         | 166         |
| Department of Home Affairs   | 0             | 0         | 0         | 2         | 3         | 1         | 0         | 0         | 6           |
| Department of Immigration and Border Protection                          | 1             | 6         | 1         | 0         | 0         | 0         | 0         | 0         | 8           |
| Department of Industry, Science, Energy and Resources                    | 0             | 0         | 0         | 2         | 1         | 0         | 0         | 0         | 3           |
| Department of Infrastructure, Transport, Cities and Regional Development | 1             | 0         | 0         | 4         | 0         | 0         | 0         | 0         | 5           |
| Department of Justice (NSW)  | 0             | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 1           |
| Department of Justice and Community Safety Victoria                      | 33            | 6         | 40        | 24        | 12        | 4         | 2         | 0         | 121         |
| Department of Social Services  | 5             | 4         | 6         | 5         | 6         | 0         | 3         | 2         | 31          |
| Department of Sustainability & Environment VIC                           | 0             | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 1           |
| Department of Veterans' Affairs  | 0             | 2         | 0         | 3         | 0         | 0         | 0         | 0         | 5           |
| Director of Military Prosecution   | 0             | 0         | 0         | 1         | 0         | 0         | 2         | 0         | 3           |
| Director of National Parks   | 0             | 3         | 3         | 0         | 0         | 1         | 1         | 0         | 8           |
| Fair Work Australia  | 0             | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 1           |
| Fair Work Ombudsman  | 0             | 0         | 0         | 1         | 1         | 0         | 0         | 0         | 2           |
| Family Court of Australia  | 1             | 0         | 0         | 1         | 1         | 1         | 0         | 1         | 5           |
| Geoscience Australia   | 0             | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 1           |
| Great Barrier Reef Marine Park Authority                                 | 52            | 30        | 39        | 47        | 69        | 63        | 52        | 17        | 369         |
| Independant Commission Against Corruption                                | 0             | 0         | 0         | 1         | 0         | 0         | 0         | 0         | 1           |
| Individual Requester   | 0             | 0         | 0         | 1         | 0         | 0         | 0         | 3         | 4           |
| Inspector of Police Integrity Commission NSW                             | 2             | 0         | 0         | 0         | 0         | 0         | 0         | 0         | 2           |
| IP Australia   | 0             | 0         | 0         | 0         | 0         | 0         | 1         | 0         | 1           |
| Joint Counter Terrorism Team (JCTT)                                      | 3             | 0         | 0         | 8         | 8         | 5         | 0         | 2         | 26          |
| Law Enforcement Conduct Commission                                       | 0             | 0         | 0         | 0         | 0         | 1         | 0         | 0         | 1           |
| Law Enforcement Conduct Commission (NSW)                                 | 0             | 0         | 1         | 0         | 0         | 0         | 0         | 0         | 1           |
| National Disability Insurance Agency                                     | 0             | 0         | 0         | 8         | 7         | 6         | 11        | 4         | 36          |
| National Indigenous Australians Agency                                   | 0             | 0         | 0         | 0         | 3         | 0         | 5         | 0         | 8           |
| National Measurement Institute   | 7             | 2         | 1         | 3         | 1         | 1         | 0         | 0         | 15          |
| National Offshore Petroleum Safety and Environment Management Authority  | 0             | 1         | 0         | 2         | 3         | 0         | 0         | 0         | 6           |
| New South Wales Police Force   | 191           | 183       | 235       | 218       | 331       | 351       | 342       | 98        | 1949        |
| Northern Territory Police  | 20            | 14        | 11        | 3         | 25        | 11        | 24        | 7         | 115         |
| NSW Crime Commission   | 0             | 0         | 3         | 1         | 0         | 0         | 0         | 0         | 4           |
| NSW Police Integrity Commission  | 0             | 2         | 0         | 0         | 2         | 0         | 0         | 0         | 4           |
| Office of the Australian Information Commissioner                        | 0             | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 1           |
| Office of the Registrar of Indigenous Corporations                       | 44            | 36        | 2         | 25        | 5         | 0         | 0         | 0         | 112         |
| Office of the Special Investigator (OSI)                                 | 0             | 0         | 0         | 0         | 0         | 0         | 3         | 2         | 5           |
| Prime Minister and Cabinet   | 2             | 4         | 2         | 1         | 0         | 0         | 0         | 0         | 9           |
| Private Prosecution  | 1             | 1         | 5         | 8         | 4         | 0         | 7         | 0         | 26          |
| Probation & Parole Service   | 15            | 10        | 7         | 13        | 3         | 3         | 2         | 0         | 53          |
| Queensland Boating and Fisheries Patrol                                  | 0             | 10        | 1         | 0         | 0         | 0         | 0         | 0         | 11          |
| Queensland Police Service  | 100           | 104       | 115       | 131       | 106       | 121       | 127       | 23        | 827         |
| Royal Australian Navy  | 0             | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 1           |
| Services Australia   | 0             | 0         | 0         | 14        | 18        | 13        | 15        | 3         | 63          |
| Services Australia - Centrelink  | 1098          | 771       | 631       | 528       | 454       | 294       | 203       | 70        | 4049        |
| Services Australia - Child Support Agency                                | 10            | 2         | 4         | 1         | 4         | 2         | 2         | 0         | 25          |
| Services Australia - Medicare  | 3             | 5         | 40        | 89        | 38        | 62        | 18        | 10        | 265         |
| South Australia Police   | 32            | 40        | 32        | 27        | 22        | 11        | 8         | 2         | 174         |
| State DPP  | 4             | 6         | 11        | 1         | 0         | 0         | 0         | 0         | 22          |
| State Drugs & Crimes Commission - NSW                                    | 0             | 0         | 0         | 1         | 0         | 0         | 0         | 0         | 1           |
| Tasmania Police  | 7             | 6         | 5         | 18        | 5         | 2         | 10        | 2         | 55          |
| Therapeutic Goods Administration   | 6             | 0         | 4         | 5         | 9         | 2         | 3         | 0         | 29          |
| Victoria Police  | 68            | 97        | 71        | 75        | 96        | 128       | 120       | 36        | 691         |
| Western Australia Police   | 24            | 41        | 37        | 17        | 21        | 5         | 9         | 6         | 160         |
| Wine Australia   | 0             | 0         | 0         | 1         | 2         | 0         | 0         | 0         | 3           |
| Worksafe Victoria  | 0             | 1         | 0         | 0         | 0         | 0         | 0         | 0         | 1           |

The financial year is based on the file received date.  
Data extracted as at 20 October 2022. Date Received is between 1/07/2015 and 20/10/2022



## CDPP Legal Statistics as at 20 October 2022

- Current matters on hand: 3127
- Referrals

| 2019/20 | 2020/21 | 2021/22 | 2022/23 |
|---------|---------|---------|---------|
| 2447    | 2299    | 2088    | 599     |

- Referrals by previous financial years

|         |      |
|---------|------|
| 2019-20 | 2247 |
| 2020-21 | 2299 |
| 2021-22 | 2088 |
| 2022-23 | 599  |

For the 2021-22 financial year, referrals were received from 46 referring agencies.

Top 3 referring agencies represent more than 70%. These are: AFP (31%), State & Territory Police (31%) and Services Australia (10%). All others agency referrals make up 28%.

- Matters on hand by Practice Group:

|   |      |
|---|------|
| Fraud and Specialist Agencies (FSA)             | 812  |
| Serious Financial and Corporate Crime (SFCC)    | 414  |
| Organised Crime and National Security (OCNS)    | 490  |
| Human Exploitation and Border Protection (HEBP) | 1141 |
| Legal Capability and Performance (LCP)          |      |

- Matters on hand by Complexity

|              |            |
|--------------|------------|
| Complexity 1 | 133        |
| Complexity 2 | 1372       |
| Complexity 3 | 1179 (39%) |
| Complexity 4 | 432 (13%)  |

\* (51% are complex)

- Matters on hand by Jurisdiction

|     |      |
|-----|------|
| NSW | 1205 |
| VIC | 748  |
| QLD | 540  |

\* Remaining 634 (of 3127) are in the ACT, SA, TAS, NT, Christmas Island, Cocos Island and Norfolk Island.

- In 2021-22 there were 4330 matters before the courts involving 7927 charges. 1996 matters were finalised.

### Why did the CDPP fail to meet its target conviction rate of 70% for defended matters?

- CDPP's overall conviction rate for 2021-22 was 98%, which is well above its target of 90%.
- Conviction rate of 56%, for defended matters in 2021-22 is not indicative of a broader trend (see table).
- The CDPP reviews outcomes of its matters and draws on any learnings to ensure we continue to work towards achieving our conviction targets.
- The CDPP has not identified any systemic issues through our review for lower than targeted conviction rate for defended matters in 2021-22.
- During the pandemic a significantly smaller number of summary hearings and trials were heard – meaning a contrary outcome in a small number of cases can significantly skew the data.
- Commonwealth criminal law is complex and broad, ranging from serious online child exploitation through to counter terrorism and complex banking cartel matters.

| Financial Year | Total Defended Summary Convictions (Convictions + Acquittals) | Total Defended Summary conviction rate (%) | Total Defended Indictable Trial Convictions (Convictions + Acquittals) | Total Defended Trial conviction rate (%) | Total Defended Convictions (Convictions + Acquittals) | Total Defended conviction rate (%) |
|----------------|---|--|--|--|---|------------------------------------|
| 2017/2018      | 63 (78)   | 80.77%                                     | 65 (111)   | 58.56%                                   | 128 (189)   | 67.72%                             |
| 2018/2019      | 33 (48)   | 68.75%                                     | 79 (109)   | 72.48%                                   | 112 (157)   | 71.34%                             |
| 2019/2020      | 28 (35)   | 80%  | 53 (83)  | 63.85%                                   | 81 (118)  | 68.64%                             |
| 2020/2021      | 26 (32)   | 81.25%                                     | 28 (43)  | 65.12%                                   | 54 (75)   | 72%                                |
| 2021/2022      | 15 (27)   | 55.55%                                     | 29 (52)  | 55.77%                                   | 44 (79)   | 55.69%                             |





## CURRENT ISSUE

Impact of the death of Queen Elizabeth II on criminal proceedings.

## KEY FACTS AND RESPONSES

- It is important to recognise that all criminal proceedings commenced before courts on the death of the monarch continue, notwithstanding the death of the monarch.
- Federal criminal proceedings are brought in accordance with laws operating at the Federal and State/Territory levels. In some instances criminal process may refer to the monarch.
- Where criminal process refers to the monarch, in federal criminal proceedings where the court's jurisdiction has been enlivened, on the death of the monarch amendment is not required. However, depending on the circumstances involved, including the stage the matter is at, an amendment or a new filing might take place reflecting the new monarch.

Contact Officer: s47F  
Telephone: s47F  
Last updated: 29 September 2022

SES: James Carter  
Mobile Number: s47F

## ADDITIONAL INFORMATION

There are two bases why current Commonwealth criminal proceedings on indictment continue following the death of the Queen and why Commonwealth indictments do not require amendment where the court's jurisdiction has been enlivened.

1. Legislation dealing with the prosecution of Commonwealth criminal offences makes clear that the moving party in a prosecution is the CDPP rather than the Crown.
2. At common law the demise of the Crown had the effect of 'discontinuing legal processes and indictments, and causing other inconveniences' (see, eg, *Halsbury's Laws of England*, 3rd ed, vol 7, at [499]). However the common law position was reversed by s 4 of the *Demise of the Crown Act* 1702 (1 Anne c.2). S 4 provides:

No Writ Plea or Process or any other Proceeding upon any Indictment or Information for any Offence or Misdemeanor or any Writ Process or Proceeding for any Debt or Account that shall be due or to be made to Her Majesty Her Heirs or Successors for or concerning any Lands Tenements or other Revenue that shall belong to Her or Them that shall be depending at the Time of Her Majesties Demise (whom God long preserve) or of any of Her Heirs or Successors shall be discontinued or put without Day by reason of Her or any of Their Deaths or Demises **but shall continue and remain in full Force and Virtue to be proceeded upon notwithstanding any such Death or Demise.**

- Upon the foundation of the Australian colonies, English laws in force at the time of first settlement applied in each colony either by paramount force or (subject to local conditions) as part of the body of law ‘received’ or ‘inherited’ by the colony.
- This body of received or inherited law also applied (as applicable) to the Commonwealth upon federation.
- Alternatively, and to the same effect, courts exercising federal jurisdiction in a State or Territory apply the common law ‘as modified by the statute law in force in the State or Territory in which’ the jurisdiction is exercised (subject to any applicable Commonwealth law, of which there is none): s 80 Judiciary Act 1903. Accordingly, because the common law rule has been reversed in every State and Territory, first by s 4 of the Demise of the Crown Act and second (in at least some jurisdictions) by local law, that rule is not part of the common law applied by courts exercising federal jurisdiction.

## ATTACHMENTS

N/A

# ESG

| BRIEF TITLE                                   | Owner          | PDMS Record number (PDR) |
|---|----------------|--------------------------|
| CDPP Workforce Profile                        | ESG (Fiona)    | SB22-900168              |
| CDPP Labour Hire, Contractors and Consultants | ESG (Fiona)    | SB22-900169              |
| Budget Measures                               | ESG (Steven B) | SB22-900171              |
| Cybersecurity                                 | ESG (Paul R)   | SB22-900172              |
| Key Office Holders Renumeration               | ESG (Fiona)    | SB22-900173              |



# WORKFORCE PROFILE

Brief No: SB22-900168

## *CDPP Workforce Profile:*

As at 30 June 2022, the CDPP had a total headcount of 477. This comprised:

- 429 CDPP employees (excluding inoperative) (417.07 FTE)
  - 82.8% of our workforce are ongoing APS employees
  - 6.9% are non-ongoing APS employees
- 11 inoperative CDPP employees (2.3% of workforce)
- 37 labour hire workers (7.8% of workforce)

\*Percentage breakdown excludes Statutory Office Holder so will not add up to 100%.

Our legal workforce comprised 290 substantive staff.

As at 30 June 2022, our ASL was 402.87 against an ASL Cap of 430 and ASL affordability of 411.

The CDPP diversity demographics were:

- 0.91% Indigenous (4 Headcount)
- 4.09% staff with disability (18 Headcount)
- 5.68% staff from non-English speaking background (NESB) (25 Headcount)
- 15.68% staff born overseas (69 Headcount)
- 70.23% female (309 Headcount)
- 47.06% female representation at SES classification including the Director (8 Headcount)
- 10.23% part time (45 Headcount)

For the period 1 July 2021 – 30 June 2022, the CDPP had:

- 129 commencements (77 being legal staff)
- 108 separations (64 of these legal staff)
- An increase of 4.15% to our total workforce (see *Workforce by Function table*)

Attachment A – provides the staffing profile in detail

Attachment B - provides the legal workforce by branch and classification.

All figures are based on substantive headcount of 440<sup>1</sup> and:

- include the Director and inoperative employees, unless otherwise noted
- exclude service providers, consultants or secondments into the CDPP

<sup>1</sup>. This figure is one different to that reported in the Annual Report due to the inclusion of the Director. The Annual Report figure is 439.



## Attachment A

| Workforce Profile                            | Headcount<br>(30-Jun-22) | FTE<br>(30-Jun-22) | YTD 2021/22<br>CDPP average<br>staffing level<br>(ASL) | 2021/22 CDPP<br>ASL Cap |
|--|--------------------------|--------------------|--|-------------------------|
| CDPP (excluding inoperative and labour hire) | 429                      | 417.1              | 402.9  | 430                     |
| CDPP (excluding labour hire)                 | 440                      | 427.2              |  |                         |
| Labour hire                                  | 37                       |                    |  |                         |
| <b>Total Headcount</b>                       | <b>477</b>               |                    |  |                         |

*Staffing profile – as at 30 June 2022*

|   | Headcount | % of workforce (based on headcount) |
|---|-----------|-------------------------------------|
| Total headcount (CDPP excluding labour hire)          | 440       | -                                   |
| FTE (CDPP excluding inoperative and labour hire)      | 417.1     | -                                   |
| Indigenous  | 4         | 0.91%                               |
| Disability  | 18        | 4.09%                               |
| NESB1 <sup>2</sup>                                    | 25        | 5.68%                               |
| Employees born overseas                               | 69        | 15.68%                              |
| Female representation                                 | 309       | 70.23%                              |
| Male representation                                   | 131       | 29.77%                              |
| SES Female representation <sup>3</sup>                | 7         | 43.75%                              |
| Full time workforce                                   | 395       | 89.77%                              |
| Part time workforce                                   | 45        | 10.23%                              |
| Legal workforce – FP1, FP2, SFP and PFP (substantive) | 290       | -                                   |

<sup>2</sup> NESB 1 refers to people born overseas who arrived in Australia after the age of five and whose first language was not English

<sup>3</sup> Based on substantive classification and does not include the Director

*Commencements and separations 1 July 2021 – 30 June 2022*

|                         | Headcount | %     |
|-------------------------|-----------|-------|
| All Commencements       | 129       | 100%  |
| Legal Commencements     | 77        | 59.7% |
| Non-legal commencements | 52        | 40.3% |
| All Separations         | 108       | 100%  |
| Legal Separations       | 64        | 59.3% |
| Non-legal separations   | 44        | 40.7% |

*Workforce by function*

| Workforce by Function (including labour hire)    | 30-Jun-21 | 30-Jun-22 | Variance | % change |
|--|-----------|-----------|----------|----------|
| Enabling Services (ongoing and non-ongoing)      | 78        | 72        | -6       | -7.69%   |
| Enabling Services – labour hire                  | 15        | 25        | 10       | 66.67%   |
| Administrative Support (ongoing and non-ongoing) | 34        | 49        | 15       | 44.12%   |
| Administrative Support – labour hire             | 20        | 10        | -10      | -50.00%  |

|  |            |            |           |              |
|--|------------|------------|-----------|--------------|
| Legal (includes APS and ELs in legal practice groups)                | 284        | 284        | 0         | 0.00%        |
| Legal Support – labour hire  | 1          | 1          | 0         | 0.00%        |
| Legal Capability and Performance (includes labour hire) <sup>4</sup> | 4          | 19         | 15        | 375.00%      |
| Commonwealth Director and SES  | 22         | 17         | -5        | -22.73%      |
| <b>Total</b>   | <b>458</b> | <b>477</b> | <b>19</b> | <b>4.15%</b> |

<sup>4</sup> Previously named the Legal Business Improvement (LBI) branch. It is now part of a Group (LCP) and includes other functions from within the CDPP.

#### *CDPP workforce by employment type*

| <b>Workforce Profile</b> | <b>Headcount Percentage</b> | <b>Headcount</b> | <b>FTE</b>    |
|--------------------------|-----------------------------|------------------|---------------|
| Ongoing                  | 82.8%                       | 395              | 383.16        |
| Non-ongoing              | 6.9%                        | 33               | 32.91         |
| Statutory Office Holder  | 0.2%                        | 1                | 1             |
| Inoperative              | 2.3%                        | 11               | 10.1          |
| <b>Sub-Total</b>         | <b>92.2%</b>                | <b>440</b>       | <b>427.17</b> |
| Labour Hire              | 7.8%                        | 37               | -             |
| <b>Total</b>             | <b>100%</b>                 | <b>477</b>       | <b>427.17</b> |

#### *CDPP Staffing Profile by Classification*

| <b>Classification</b> | <b>Substantive Headcount 30 June 2021</b> | <b>Substantive Headcount 30 June 2022</b> | <b>Variance</b> | <b>% change</b> |
|-----------------------|---|---|-----------------|-----------------|
| DIR                   | 1   | 1   | 0               | 0%              |
| SES3                  | 1   | 1   | 0               | 0%              |
| SES2                  | 5   | 6   | 1               | 20%             |
| SES1                  | 15  | 9   | -6              | -40%            |
| PFP                   | 38  | 48  | 10              | 26%             |
| SFP                   | 99  | 96  | -3              | -3%             |
| FP2                   | 98  | 146                                       | 48              | 49%             |
| FP1 <sup>5</sup>      | 41  | 0   | -41             | -100%           |
| EL2                   | 15  | 15  | 0               | 0%              |
| EL1                   | 21  | 17  | -4              | -19%            |
| APS6                  | 24  | 27  | 3               | 13%             |
| APS5                  | 13  | 15  | 2               | 15%             |
| APS4                  | 29  | 29  | 0               | 0%              |
| APS3                  | 17  | 27  | 10              | 59%             |
| APS2                  | 1   | 1   | 0               | 0%              |
| APS1                  | 2   | 2   | 0               | 0%              |
| <b>Total</b>          | <b>420</b>                                | <b>440</b>                                | <b>20</b>       | <b>5%</b>       |

<sup>5</sup> CDPP no longer recruits FP1s.

### CDPP Engagements (FTE)

| Engagements (1 July 2021 to 30 June 2022) | Ongoing | Non-Ongoing | Total FTE |
|---|---------|-------------|-----------|
| Ongoing & non-ongoing APS                 | 96.88   | 31.91       | 128.79    |

### CDPP Separations

| Separations (1 July 2021 to 30 June 2022) | Separations | Rate  |
|---|-------------|-------|
| Ongoing & non-ongoing APS <sup>6</sup>    | 108         | 25.1% |

<sup>6</sup> This is based on the average CDPP employee headcount of 430 over the reporting period. The methodology used to calculate a rate over a financial year is based on the average of headcount as at 1 July 2021 (420) and 30 June 2022 (440). Therefore the average is 430.

| Reason for separation                     | Number | Percentage of separations |
|---|--------|---------------------------|
| Resignation from APS                      | 69     | 63.9%                     |
| Transfer to another APS agency            | 19     | 17.6%                     |
| Voluntary Redundancy                      | 1      | 0.9%                      |
| Early termination of non-ongoing contract | 2      | 1.9%                      |
| End of non-ongoing contract               | 1      | 0.9%                      |
| SES Retirement                            | 3      | 2.8%                      |
| Return to Home Agency                     | 4      | 3.7%                      |
| Deceased                                  | 2      | 1.9%                      |
| Retired from APS                          | 7      | 6.5%                      |

### CDPP Diversity profile

| Diversity                              | CDPP percentage | APS overall percentage <sup>7</sup> |
|--|-----------------|-------------------------------------|
| Indigenous                             | 0.9%            | 3.5%                                |
| Disability                             | 4.1%            | 4.7%                                |
| NESB <sup>8</sup>                      | 6.0%            | 14.9%                               |
| Employees born overseas                | 15.7%           | 18.5%                               |
| Female representation                  | 70.2%           | 60.4%                               |
| SES Female representation <sup>9</sup> | 43.8%           | 52.0%                               |
| Part time workforce                    | 10.2%           | 13.2%                               |

<sup>7</sup> Figures are as at 30 June 2022 (derived from the APS Employment Data 30 June 2022)

<sup>8</sup> NESB 1 refers to people born overseas who arrived in Australia after the age of five and whose first language was not English

<sup>9</sup> Based on substantive classification and does not include the Director

### Number of redundancies during the reporting period

1\*

Total value in dollar terms of all termination payments paid to existing staff during the reporting period:

**\$230,081.31**

Overtime or equivalent payments paid to staff during the reporting period:

**\$16753.08**

*Section 37 notices issued under the Public Service Act 1999 for the reporting period:*

**1\***

\*Both numbers are reflective of the same separation. Based on APSC advice to reflect s37 SES retirements under redundancies. A Section 37 notice is a retirement instrument made under the *Public Service Act 1999* to an SES employee.



**Attachment B***Legal Workforce by Branch and Classification – Substantive*

| <b>Legal Workforce by Branch and Classification</b> | <b>FP1</b> | <b>FP2</b> | <b>SFP</b> | <b>PFP</b> | <b>Total</b> |
|---|------------|------------|------------|------------|--------------|
| FSA Adelaide  |            | 6          | 6          | 3          | 15           |
| FSA Canberra/Hobart                                 |            | 16         | 7          | 2          | 25           |
| FSA Brisbane  |            | 10         | 9          | 4          | 23           |
| FSA TDC   |            | 6          | 2          | 2          | 10           |
| <b>FSA</b>  | <b>0</b>   | <b>38</b>  | <b>24</b>  | <b>11</b>  | <b>73</b>    |
| HEBP Sydney   |            | 26         | 10         | 6          | 42           |
| HEBP Brisbane                                       |            | 9          | 5          | 3          | 17           |
| HEBP Perth  |            | 12         | 7          | 1          | 20           |
| HEBP Melbourne                                      |            | 12         | 6          | 4          | 22           |
| <b>HEBP</b>   | <b>0</b>   | <b>59</b>  | <b>28</b>  | <b>14</b>  | <b>101</b>   |
| LCP National  |            |            | 4          | 2          | 6            |
| <b>LCP</b>  | <b>0</b>   | <b>0</b>   | <b>4</b>   | <b>2</b>   | <b>6</b>     |
| OCNS Executive                                      |            |            | 1          |            | 1            |
| OCNS Sydney   |            | 7          | 13         | 4          | 24           |
| OCNS Melbourne                                      |            | 3          | 9          | 2          | 14           |
| <b>OCNS</b>   | <b>0</b>   | <b>10</b>  | <b>23</b>  | <b>6</b>   | <b>39</b>    |
| SFCC Melbourne                                      |            | 12         | 7          | 5          | 24           |
| SFCC Sydney 2                                       |            | 13         | 5          | 5          | 23           |
| SFCC Sydney 1                                       |            | 14         | 5          | 5          | 24           |
| <b>SFCC</b>   | <b>0</b>   | <b>39</b>  | <b>17</b>  | <b>15</b>  | <b>71</b>    |
| <b>Total</b>  | <b>0</b>   | <b>146</b> | <b>96</b>  | <b>48</b>  | <b>290</b>   |

NB. This table includes 8 inoperative employees as at 30 June 2022, and 10 substantive legal employees who were acting at the SESB1 classification.

*Legal Workforce by Branch and Classification – Actual (includes placements and acting arrangements)*

| <b>Legal Workforce by Branch and Classification</b> | <b>FP1</b> | <b>FP2</b> | <b>SFP</b> | <b>PFP</b> | <b>Total</b> |
|---|------------|------------|------------|------------|--------------|
| FSA Executive                                       |            |            | 1          |            | 1            |
| FSA Adelaide  |            | 5          | 5          | 4          | 14           |
| FSA Canberra/Hobart                                 |            | 12         | 6          | 5          | 23           |
| FSA Brisbane  |            | 6          | 6          | 6          | 18           |
| FSA TDC   |            | 5          | 4          | 2          | 11           |
| <b>FSA Total</b>                                    | <b>0</b>   | <b>28</b>  | <b>22</b>  | <b>17</b>  | <b>67</b>    |
| HEBP Sydney   |            | 22         | 9          | 8          | 39           |
| HEBP Executive                                      |            |            | 2          |            | 2            |
| HEBP Brisbane                                       |            | 7          | 6          | 2          | 15           |
| HEBP Perth  |            | 11         | 5          | 4          | 20           |
| HEBP Melbourne                                      |            | 8          | 7          | 4          | 19           |
| <b>HEBP Total</b>                                   | <b>0</b>   | <b>48</b>  | <b>29</b>  | <b>18</b>  | <b>95</b>    |
| LCP National  |            |            | 7          | 6          | 13           |
| <b>LCP Total</b>                                    | <b>0</b>   |            | <b>7</b>   | <b>6</b>   | <b>13</b>    |
| OCNS Executive                                      |            |            | 1          |            | 1            |
| OCNS Sydney   |            | 4          | 13         | 4          | 21           |
| OCNS Melbourne                                      |            |            | 8          | 4          | 12           |
| OCNS War Crimes                                     |            |            |            | 1          | 1            |
| <b>OCNS Total</b>                                   | <b>0</b>   | <b>4</b>   | <b>22</b>  | <b>9</b>   | <b>35</b>    |
| SFCC Executive                                      |            |            | 1          |            | 1            |
| SFCC Melbourne                                      |            | 12         | 8          | 4          | 24           |
| SFCC Sydney 2                                       |            | 8          | 6          | 4          | 18           |
| SFCC Sydney 1                                       |            | 7          | 8          | 4          | 19           |
| <b>SFCC Total</b>                                   | <b>0</b>   | <b>27</b>  | <b>23</b>  | <b>12</b>  | <b>62</b>    |
| <b>Total</b>  | <b>0</b>   | <b>107</b> | <b>103</b> | <b>62</b>  | <b>272</b>   |

NB. This table excludes 8 inoperative employees and 10 substantive legal employees who were acting at the SESB1 classification.

|                            |                     |
|----------------------------|---------------------|
| Contact Officer: s22       | SES: Sabeena Oberoi |
| Telephone: s47F            | Mobile Number: s47F |
| Last updated: October 2022 |                     |

**Does the CDPP have a high attrition rate?**

- CDPP's attrition rate last financial year (2021-22) for the Legal Practice was around 23 per cent and the overall attrition rate was 25.0 per cent **(see Table 1 and 2)**.
- The current attrition rate reflects the highly competitive public and private sector labour market, particularly for legal skills.
- Consultation with other APS agencies suggests that a number of other agencies are also experiencing higher than usual attrition.
- The CDPP has put in place mitigation strategies to address this attrition.
- The CDPP launched a new Workforce Plan in August 2022.
  - It addresses key workforce risks and strategies to build and sustain a healthy, capable, agile and responsive workforce.
- The CDPP undertakes regular recruitment activity to ensure there is a sustainable pipeline of lawyers.
- It takes between 3 to 5 years for legal staff to be fully effective in dealing with complex prosecutions which is a significant proportion of the CDPP's current work.

***If asked:***

- The current financial year to date (July - October 2022) legal attrition rate is 10.5 per cent.
- If we continue at this rate, the CDPP is forecast to have a legal attrition rate of around 32 per cent.
- Additionally, 9.3 per cent non-legal staff have separated from the CDPP this financial year to date and if we continue at this rate, we forecast a non-legal attrition rate of around 28 per cent.

**Table 1: CDPP Legal Separation Rates by Classification**

|             | FP  |       | SFP |       | PFP |       | TOTAL |       |
|-------------|-----|-------|-----|-------|-----|-------|-------|-------|
| Fiscal Year | No. | %     | No. | %     | No. | %     | No.   | %     |
| 2016/17     | 13  | 11.3% | 12  | 10.5% | 10  | 23.0% | 35    | 12.6% |
| 2017/18     | 27  | 21.6% | 12  | 10.0% | 3   | 7.4%  | 41    | 14.8% |
| 2018/19     | 20  | 15.7% | 12  | 11.8% | 4   | 10.1% | 36    | 13.0% |
| 2019/20     | 16  | 11.3% | 13  | 13.2% | 4   | 10.4% | 33    | 11.9% |
| 2020/21     | 28  | 19.6% | 15  | 15.4% | 3   | 7.6%  | 46    | 16.5% |
| 2021/22     | 36  | 25.0% | 23  | 23.5% | 5   | 11.6% | 64    | 22.5% |

**Table 2: CDPP Overall Separation Rate**

|             | Total CDPP |       |
|-------------|------------|-------|
| Fiscal Year | No.        | %     |
| 2016/17     | 91         | 21.1% |
| 2017/18     | 91         | 21.8% |
| 2018/19     | 73         | 18.5% |
| 2019/20     | 53         | 12.8% |
| 2020/21     | 68         | 16.0% |
| 2021/22     | 108        | 25.0% |





## CURRENT ISSUE

As at 30 June 2022, the CDPP had:

- 37 labour hire workers;
- 33 contractors; and
- Consultancy details are published on page 58 of CDPP's 2021-22 annual report.

## KEY FACTS AND RESPONSES

- Labour hire costs for the period 1 July 2021 to 30 June 2022 totalled \$3.2 million (excl. GST). This is an increase of \$0.5 when compared to labour hire costs for the respective period 1 July 2020 to 30 June 2021 (\$2.7 million excl. GST).
- Contractor costs for the period 1 July 2021 to 30 June 2022 totalled \$4.4 million (excl. GST). This is an increase of \$1.6 million when compared to contractor costs for the respective period 1 July 2020 to 30 June 2021 (\$2.8 million excl. GST).
- Consultant costs for the period 1 July 2021 to 30 June 2022 totalled \$0.7 million (excl. GST). This is an increase of \$0.2 million when compared to consultant costs for the respective period 1 July 2020 to 30 June 2021 (\$0.5 million excl. GST).
  - Consultancy details are published on page 58 of CDPP's 2021-22 annual report.

|               | 2021-22     | 2020-21    | Movement   |
|---------------|-------------|------------|------------|
|               | \$'m        | \$'m       | \$'m       |
| Labour Hire   | 3.2         | 2.7        | 0.5        |
| Contractors   | 4.4         | 2.8        | 1.6        |
| Consultancies | 0.7         | 0.5        | 0.2        |
| Other*        | 2.2         | 2.1        | 0.1        |
| <b>Total</b>  | <b>10.5</b> | <b>8.1</b> | <b>2.4</b> |

\* made up of audit fees (internal and external), professional membership fees, professional development and training, etc.

## ADDITIONAL INFORMATION

- Labour hire workers are engaged to fill positions that would otherwise be filled on an ongoing or non-ongoing basis by an APS employee. They are engaged and paid via a third-party organisation which is generally a recruitment agency, through an existing government panel.
- Recruitment agencies put forward candidates for consideration with specified hourly charges. CDPP contract directly with the recruitment agency and have no visibility over the conditions or rates of pay received by individual contractors.

- Contractors relate to individuals with a specialist expertise that can generally not be sourced within the APS.
- Consultants are generally third-party organisations that provide professional, independent and/or expert advice and services.
- In the 2016-17 Budget, the Government made an ongoing commitment to maintain the size of the government sector to around or below the levels last recorded in 2006-07. In April 2017, the Department of Finance advised agencies that Portfolios are required to maintain their average staffing level (ASL) at or below their Portfolio ASL Caps.
- To ensure that the CDDP operates within its ASL cap while still delivering a high quality, ethical independent prosecution service for Australia, the agency has a small labour hire workforce to support our APS employees. These workers are mainly in our Administrative Legal Support and Finance business areas. No prosecutors are engaged through labour hire arrangements.
- CDDP is implementing a digital transformation program which will modernise its prosecution services and drive improved efficiencies. To successfully implement this program CDDP requires short term specialist expertise not generally available within the APS, including ICT specialists, project managers and change management expertise.
- This accounts for the increase in expenditure on contractors and consultants.

|  |                     |
|--|---------------------|
| Contact Officer: s22                           | SES: Sabeena Oberoi |
| Telephone: s47F<br>Last updated: November 2022 | Mobile Number: s47F |

## CURRENT ISSUE

CDPP revenue is a combination of ongoing appropriation (approx. \$93 million from 2025-26), terminating budget measures and memoranda of understanding with key partner agencies.

| <b>CDPP Revenue<br/>as published Oct PBS 2022-23</b> | <b>2022-23<br/>\$ million</b> | <b>2023-24<br/>\$ million</b> | <b>2024-25<br/>\$ million</b> | <b>2025-26<br/>\$ million</b> |
|--|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Revenue from Government                              | 94.6                          | 97.3                          | 97.2                          | 95.2                          |
| Prosecution Services                                 | 9.3                           | 4.3                           | 4.3                           | 4.3                           |
| Other Revenue  | 0.3                           | 0.3                           | 0.3                           | 0.3                           |
| <b>Total Revenue</b>                                 | <b>104.2</b>                  | <b>101.9</b>                  | <b>101.8</b>                  | <b>99.8</b>                   |

Several terminating budget measures and one memorandum of understanding currently cease on 30 June 2023 (refer **Attachment A**).

The CDPP continues to work closely with government and partner agencies throughout the budget process to extend existing funding and seek funding for new prosecution work as appropriate.

## KEY FACTS AND RESPONSES

- *Did the CDPP receive additional funding in the October 2022-23 Budget?*
- Yes, the CDPP received the following funding in the October 2022-23 Budget.
  - **Payment Measure – Attorney-General’s portfolio – additional resourcing:** \$22.654 million across 4 years (including \$2.877 million in capital funding). Operating funding is ongoing.

|                    | <b>2022-23</b> | <b>2023-24</b> | <b>2024-25</b> | <b>2025-26</b> | <b>Total</b>  |
|--------------------|----------------|----------------|----------------|----------------|---------------|
| Operating - \$m    | 2.382          | 5.736          | 5.804          | 5.855          | <b>19.777</b> |
| Capital - \$m      | 0.700          | 2.177          |                |                | <b>2.877</b>  |
| <b>Total - \$m</b> | <b>3.082</b>   | <b>7.913</b>   | <b>5.804</b>   | <b>5.855</b>   | <b>22.654</b> |
| ASL                | 5              | 5              | 5              | 5              | NA            |

This measure provides funding to increase the capability of the CDPP through development and support of the CDPP’s Digital Litigation Solution.

- **Payment Measure – Fraud fusion taskforce:** \$8.722 million across 4 years. Funding terminates 30 June 2026.

|                 | <b>2022-23</b> | <b>2023-24</b> | <b>2024-25</b> | <b>2025-26</b> | <b>Total</b> |
|-----------------|----------------|----------------|----------------|----------------|--------------|
| Operating - \$m | 0.730          | 3.366          | 3.230          | 1.396          | <b>8.722</b> |
| ASL             | 4              | 19             | 18             | 6              | NA           |

This measure provides funding for additional resources to prosecute referrals from National Disability Insurance Scheme – Fraud Fusion Taskforce.

- **Payment Measure – Establishing a National Anti-Corruption Commission:**  
\$1.572 million across 2024-25 and 2025-26.  
Funding is ongoing.

|                 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total |
|-----------------|---------|---------|---------|---------|-------|
| Operating - \$m | -       | -       | 0.551   | 1.021   | 1.572 |
| ASL             | -       | -       | 1.5     | 2.9     | NA    |

This measure provides funding for additional resources to undertake prosecutions of referrals as part of the proposed National Anti-Corruption Commission.

- *Did the CDPP contribute to savings in the October 2022-23 Budget?*
- Yes, the CDPP recorded the following savings measures in the October 2022-23 Budget. After savings, the October 2022-23 budget provided a net funding increase of \$2.001 million for the 2022-23 year.

- **Savings Measure – An Ambitious and Enduring APS Reform Plan.**

|                 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total   |
|-----------------|---------|---------|---------|---------|---------|
| Operating - \$m | (0.033) | (0.087) | (0.103) | -       | (0.223) |
| ASL             | -       | -       | -       | -       | NA      |

- **Savings Measure – Savings from External Labour and Savings from Advertising, Travel and Legal Expenses.**

|                 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total   |
|-----------------|---------|---------|---------|---------|---------|
| Operating - \$m | (1.778) | -       | -       | -       | (1.788) |
| ASL             | -       | -       | -       | -       | NA      |

Contact Officer: s22  
Telephone: s47F  
Last updated: 24 October 2022

SES: John Barnes  
Mobile Number: s47F

## ADDITIONAL INFORMATION

- The CDPP received the following funding in the pre-election 2022-23 Budget. These measures are included in CDPP's funding as published in both the pre-election 2022-23 PBS and the October 2022-23 PBS.
- **Payment Measure – Attorney-General's Portfolio – additional resourcing: \$15.680 million in operational funding across 4 years. Funding is ongoing.**

|                 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total  |
|-----------------|---------|---------|---------|---------|--------|
| Operating - \$m | 3.881   | 3.904   | 3.934   | 3.961   | 15.680 |
| ASL             | 27.0    | 27.0    | 27.0    | 27.0    | NA     |

This measure provides funding for an increase to the CDPP's prosecution workforce, creating a pipeline for the development of experienced Senior Federal Prosecutors to manage the CDPP's future forecast workload of complex matters.



- **Payment Measure** – Office of the Special Investigator – legal support: \$2.761 million total for the 2022-23 financial year. Made up of \$1.261 million in operational funding and \$1.500 million in capital funding.

|                   | 2022-23      | 2023-24 | 2024-25 | 2025-26 | Total        |
|-------------------|--------------|---------|---------|---------|--------------|
| Operating - \$m   | 1.261        | -       | -       | -       | <b>1.261</b> |
| Capital - \$m     | 1.500        | -       | -       | -       | <b>1.500</b> |
| <b>Total -\$m</b> | <b>2.761</b> | -       | -       | -       | <b>2.761</b> |
| ASL               | 3.9          | -       | -       | -       | NA           |

This measure provides funding for the CDDP to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

- **Payment Measure** – Strengthening Australia’s Arrangements for Managing Terrorist Offenders and Countering Violent Extremism: \$0.352 million in operational funding for the 2022-23 financial year.

|                 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | Total        |
|-----------------|---------|---------|---------|---------|--------------|
| Operating - \$m | 0.352   | -       | -       | -       | <b>0.352</b> |
| ASL             | 2.1     | -       | -       | -       | NA           |

- This measure involves funding to prosecute breaches in relation to the Extended Supervision Orders (ESO) scheme. The lead entity for this measure is the Department of Home Affairs.

## ATTACHMENTS

### Attachment A – Summary of Terminating Funding

Summary of CDDP Revenue - as at 2022-23 Budget (October 2022)

| Revenue   | Ongoing/Terminating | 2021-22     | 2022-23     | 2023-24     | 2024-25     | 2025-26    | Four Year Total |
|---|---------------------|-------------|-------------|-------------|-------------|------------|-----------------|
| <b>Base Appropriation - as at 2022-23 Budget (March 2022)</b>   | Ongoing             | 74,931,000  | 77,431,000  | 78,312,000  | 78,984,000  | 79,519,000 | 314,246,000     |
| <b>Terminating Appropriation - as at 2022-23 Budget (March 2022)</b>  |                     | 18,049,000  | 10,368,000  | 3,897,000   | 2,307,000   | 867,000    | 17,439,000      |
| Strengthening Enforcement Capability for Corporate Crime (Banking Royal Commission)                             | Terminating         | 10,054,000  | 6,279,000   | 3,897,000   | 2,307,000   | 867,000    | 13,350,000      |
| Enhancing Welfare Integrity Arrangements (Taskforce Integrity)  | Terminating         | 2,000,000   | 2,005,000   | -           | -           | -          | 2,005,000       |
| Countering Foreign Interference   | Terminating         | 1,757,000   | 1,859,000   | -           | -           | -          | 1,859,000       |
| Cross-border access to Serious Crimes Data (Cloud Act)  | Terminating         | 223,000     | 225,000     | -           | -           | -          | 225,000         |
| Black Economy - Cash Economy  | Terminating         | 2,943,000   | -           | -           | -           | -          | -               |
| Black Economy - Egregious Taxpayers   | Terminating         | 546,000     | -           | -           | -           | -          | -               |
| Strengthening Australia's Arrangements for Managing Terrorist Offenders and Countering Violent Extremism (HRT0) | Terminating         | 526,000     | -           | -           | -           | -          | -               |
| <b>Budget Measures - 2022-23 Budget (March 2022)</b>  |                     | -           | 5,494,000   | 3,904,000   | 3,934,000   | 3,961,000  | 17,293,000      |
| Attorney-General's portfolio – additional resourcing (Prosecutors)  | Ongoing             | -           | 3,881,000   | 3,904,000   | 3,934,000   | 3,961,000  | 15,680,000      |
| Office of the Special Investigator  | Terminating         | -           | 1,261,000   | -           | -           | -          | 1,261,000       |
| Strengthening Australia's Arrangements for Managing Terrorist Offenders and Countering Violent Extremism (HRT0) | Terminating         | -           | 352,000     | -           | -           | -          | 352,000         |
| <b>Total Appropriation - 2022-23 Budget (March 2022)</b>  |                     | 92,980,000  | 93,293,000  | 86,113,000  | 85,225,000  | 84,347,000 | 348,978,000     |
| <b>Budget Measures - 2022-23 Budget (October 2022)</b>  |                     | -           | 1,301,000   | 9,015,000   | 9,482,000   | 8,272,000  | 28,070,000      |
| Attorney-General's portfolio – additional resourcing (DLS)  | Ongoing             | -           | 2,382,000   | 5,736,000   | 5,804,000   | 5,855,000  | 19,777,000      |
| National Anti-Corruption Commission   | Ongoing             | -           | -           | -           | 551,000     | 1,021,000  | 1,572,000       |
| Fraud fusion taskforce  | Terminating         | -           | 730,000     | 3,366,000   | 3,230,000   | 1,396,000  | 8,722,000       |
| Savings - An Ambitious and Enduring APS Reform Plan   | Terminating         | -           | (1,778,000) | -           | -           | -          | (1,778,000)     |
| Savings - Savings from External Labour and Savings from Advertising, Travel and Legal Expenses                  | Terminating         | -           | (33,000)    | (87,000)    | (103,000)   | -          | (223,000)       |
| <b>Economic Parameter Adjustments - 2022-23 Budget (October 2022)</b>   | Various             | -           | -           | 2,122,000   | 2,459,000   | 2,620,000  | 7,201,000       |
| <b>Total Appropriations - as at 2022-23 Budget (October 2022)</b>   |                     | 92,980,000  | 94,594,000  | 97,250,000  | 97,166,000  | 95,239,000 | 384,249,000     |
| <b>Memoranda Of Understanding</b>   |                     | 10,178,000  | 9,278,000   | 4,278,000   | 4,278,000   | 4,278,000  | 22,112,000      |
| Goods and Services Tax (GST)  | Ongoing             | 3,350,000   | 3,350,000   | 3,350,000   | 3,350,000   | 3,350,000  | 13,400,000      |
| Illicit Tobacco Task Force  | Ongoing             | 508,000     | 508,000     | 508,000     | 508,000     | 508,000    | 2,032,000       |
| Norfolk Island  | Ongoing             | 420,000     | 420,000     | 420,000     | 420,000     | 420,000    | 1,680,000       |
| Serious Financial Crime Taskforce (SFCT)  | Terminating         | 5,000,000   | 5,000,000   | -           | -           | -          | 5,000,000       |
| Family Day Care   | Terminating         | 900,000     | -           | -           | -           | -          | -               |
| <b>Confiscated Assets Account (Proceeds of Crime Act)</b>   |                     | 2,163,000   | -           | -           | -           | -          | -               |
| <b>Other</b>  |                     | 279,000     | 332,000     | 332,000     | 332,000     | 332,000    | 1,328,000       |
| <b>Total Revenue - as at 2022-23 Budget (October 2022)</b>  |                     | 105,600,000 | 104,204,000 | 101,860,000 | 101,776,000 | 99,849,000 | 407,689,000     |

Summary of CDDP Capital Funding - as at 2022-23 Budget (October 2022)

| Capital   | Ongoing/Terminating | 2021-22   | 2022-23   | 2023-24   | 2024-25   | 2025-26   | Four Year Total |
|---|---------------------|-----------|-----------|-----------|-----------|-----------|-----------------|
| <b>Departmental Capital Budget</b>                                | Ongoing             | 1,845,000 | 1,861,000 | 1,913,000 | 1,938,000 | 1,955,000 | 7,667,000       |
| <b>Budget Measures - 2022-23 Budget (March 2022)</b>              |                     | -         | 1,500,000 | -         | -         | -         | 1,500,000       |
| Office of the Special Investigator                                | Terminating         | -         | 1,500,000 | -         | -         | -         | 1,500,000       |
| <b>Total Appropriation (as at March 2023 Budget)</b>              |                     | 1,845,000 | 3,361,000 | 1,913,000 | 1,938,000 | 1,955,000 | 9,167,000       |
| <b>Budget Measures - 2022-23 Budget (October 2022)</b>            |                     | -         | 700,000   | 2,177,000 | -         | -         | 2,877,000       |
| Attorney-General's portfolio – additional resourcing (DLS)        | Ongoing             | -         | 700,000   | 2,177,000 | -         | -         | 2,877,000       |
| <b>Total Appropriations - as at 2022-23 Budget (October 2022)</b> |                     | 1,845,000 | 4,061,000 | 4,090,000 | 1,938,000 | 1,955,000 | 12,044,000      |

### **CDPP Funding and 2022-23 Budget Measures**

#### **Does the CDPP have sufficient funding to deliver an effective prosecution service?**

1. The CDPP welcomes the funding provided in the 2022-23 Budget and considers funding is currently sufficient to deliver an effective Commonwealth prosecution service.
2. We have regular discussions with Government, the Attorney-General's Department, central agencies and our partner agencies regarding our resource requirements.

#### **What funding did CDPP receive in the 2022-23 Budget?**

The CDPP received an additional funding of **\$49.7M** (\$45.4M in Opex and \$4.3M in capital) over four years in the March and October 2022 Budget rounds

1. In the October Budget, the CDPP received funding of **\$30.9M** (\$28.1M Opex and \$2.8M) over four years for:
  - a. Attorney-General's Portfolio – additional resourcing (for DLS).
  - b. Fraud Fusion Taskforce (NDIA).
  - c. National Anti-Corruption Commission – establishment.

***I refer to page 366 of the 2022-23 (October) Portfolio Budget Statements.***

2. The CDPP received funding in the March Budget of **\$18.8M** (\$17.3M and \$1.5M) for:
  - a. Attorney-General's Portfolio – additional resourcing (additional prosecutors)
  - b. Office of the Special Investigator – Legal Support
  - c. Strengthening Australia's Arrangements for Managing Terrorist Offenders and Countering Violent Extremism

***I refer to page 319 of the 2022-23 (March) Portfolio Budget Statements.***

#### **What is the overall impact of Budget measures on the CDPP's funding?**

1. The CDPP total revenue for FY 2022-23 is \$104.2 as compared to 105.6 in FY2021-22
2. Due to a number of lapsing funding items, there has not been a significant increase in revenue between FY 2021-22 and FY 2022-23

#### **What has the CDPP done with the Banking Royal Commission funding?**

1. The CDPP utilised funding received for Strengthening Enforcement Capability for Corporate Crime to establish foundational capability for anticipated referrals.
2. Given the nature of prosecutorial activity, we need lead time to train staff and develop the required capability, especially for complex matters.
3. As we have not received the anticipated volume of referrals as yet, the CDPP has reported surplus over the last two financial years (\$8.5M, FY22 and \$9.2, FY22).

### **Measures Announced in October 2022 Budget**

#### **Attorney-General's Portfolio – Additional Resourcing**

- The Digital Litigation Solution (DLS) is a platform which provides for the effective management, review and analysis of evidential material, particularly in matters involving large volumes of documents and other data.
- This measure provides funding to establish an in-house DLS capability.

#### **Fraud Fusion Taskforce.**

- This measure provides funding to prosecute referrals from the Fraud Fusion Taskforce, initially in relation to the National Disability Insurance Scheme.

#### **National Anti-Corruption Commission**

- This measure provides funding to prosecute referrals resulting from the establishment of a National Anti-Corruption Commission – the funding commences in FY 2024-25.

#### **Office of the Special Investigator – Legal Support**

- This measure provides funding for the CDPP to assess and, where appropriate, prosecute allegations of war crimes committed by ADF personnel in Afghanistan referred to the CDPP.
- This measure includes a component of capital funding to ensure the CDPP has facilities suitable for management of these prosecutions and related evidence.

### **Measures Announced in March 2022 Budget**

#### **Attorney-General's Portfolio – Additional Resourcing (March Budget)**

- This measure provides funding for an increase to the CDPP's prosecution workforce, creating a pipeline for the development of experienced prosecutors to manage the CDPP's future forecast workload of complex matters.

#### **Strengthening Australia's Arrangements for Managing Terrorist Offenders and Countering Violent Extremism**

- This measure involves funding to prosecute breaches in relation to the Extended Supervision Orders (ESO) scheme





# CYBER SECURITY UPDATE

- CDPP takes cyber security very seriously and has a number of measures in place to ensure the security of its systems and information.
- CDPP manages its compliance with Australian Government Information Security Manual (ISM) Top Four and Essential Eight requirements in line with the self-assessment maturity model as set out in the Protective Security Policy Framework (PSPF).
- CDPP regularly raises staff awareness about cyber security and the importance of adopting secure practices. In particular, all CDPP staff receive cyber security awareness training at induction and encouraged annual cyber security training refreshers. Specific training is provided to executive level staff, Executive Assistants and privileged users.
- Cyber security briefing is provided to SES officers, in particular it's a regular agenda item at the Executive Leadership Group meetings.
- As part of its mitigation strategy, the CDPP also liaises regularly with cyber security experts, ICT vendors and government agencies
- Total Cyber Security spend:
  - 2019-20 - \$348,000
  - 2020 – 21 - \$1,954,000
  - 2021 – 22 - \$1,710,000, 26.56% of total IT spend.
  - 2022 - 23 - Estimate - \$1,900,000
  - CDPP receives no external or additional funding for cyber security
- CDPP monitors its cyber security posture to verify the resilience of current security controls. Assurance is also obtained through periodic vulnerability analysis via specialised software tools and review by independent 3rd parties.

|                                 |                     |
|---------------------------------|---------------------|
| Contact Officer: s22            | SES: Sabeena Oberoi |
| Telephone: s47F                 | Telephone: s47F     |
| Mobile: s47F                    | Mobile: s47F        |
| Last updated: 26 September 2022 |                     |



## CURRENT ISSUE

The total number of CDPP key management personnel (including the Statutory Officer holder) for the 2021-22 financial year is 9.

## KEY FACTS AND RESPONSES

| Period                     | Total key management personnel |
|----------------------------|--------------------------------|
| 1 July 2021 – 30 June 2022 | 9                              |

*Figures are based on position occupancy*

- Key management Personnel positions include the Director of Public Prosecutions, Commonwealth Solicitor for Public Prosecutions, Deputy Directors, Chief Corporate Officer and the Chief Financial Officer
- The aggregate total remuneration payable for key management personnel for the 2021/2022 financial year is \$3,062,149.

|   |                     |
|---|---------------------|
| Contact Officer: s22                            | SES: Sabeena Oberoi |
| Telephone: s47F<br>Last updated: September 2022 | Mobile Number: s47F |

## ATTACHMENTS

**Attachment A** – provides executive remuneration details for key management personnel.

## Executive Remuneration for Key Management Personnel:

| Name               | Position title                                 | Short-term benefits |         |                               | Post-employment benefits | Other long-term benefits |                          | Termination benefits | Total remuneration |
|--------------------|--|---------------------|---------|-------------------------------|--------------------------|--------------------------|--------------------------|----------------------|--------------------|
|                    |  | Base salary         | Bonuses | Other benefits and allowances |                          | Long service leave       | Other long-term benefits |                      |                    |
| McNaughton, Sarah  | Director                                       | \$480,987           | \$0     | \$2,274                       | \$59,746                 | \$11,855                 | \$0                      | \$0                  | \$554,862          |
| Bruckard, Scott    | Commonwealth Solicitor for Public Prosecutions | \$315,038           | \$0     | \$1,955                       | \$52,116                 | \$8,025                  | \$0                      | \$0                  | \$377,134          |
| Bahlen, David      | Deputy Director                                | \$37,542            | \$0     | \$248                         | \$5,786                  | \$836                    | \$0                      | \$0                  | \$44,412           |
| Carter, James      | Deputy Director                                | \$261,757           | \$0     | \$1,994                       | \$47,083                 | \$6,385                  | \$0                      | \$0                  | \$317,219          |
| De Crespigny, Mark | Deputy Director                                | \$264,777           | \$0     | \$1,744                       | \$46,196                 | \$6,385                  | \$0                      | \$0                  | \$319,102          |
| Devereaux, Roberta | Deputy Director                                | \$31,473            | \$0     | \$277                         | \$7,393                  | \$901                    | \$0                      | \$0                  | \$40,044           |
| Nott, Gina         | Deputy Director                                | \$190,124           | \$0     | \$1,701                       | \$25,265                 | \$4,099                  | \$0                      | \$0                  | \$221,189          |
| Philipson, Joanne  | Deputy Director                                | \$228,979           | \$0     | \$250                         | \$41,530                 | \$5,761                  | \$0                      | \$0                  | \$276,519          |
| Tchakerian, Berdj  | Deputy Director                                | \$254,479           | \$0     | \$1,955                       | \$46,196                 | \$6,385                  | \$0                      | \$0                  | \$309,015          |
| Oberoi, Sabeena    | Chief Corporate Officer                        | \$263,135           | \$0     | \$1,744                       | \$50,491                 | \$6,385                  | \$0                      | \$0                  | \$321,754          |
| Burggraaff, Steven | Chief Financial Officer                        | \$228,258           | \$0     | \$1,744                       | \$45,417                 | \$5,481                  | \$0                      | \$0                  | \$280,899          |

QONS



**QONS RELATING TO COLLAERY**

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**ATTORNEY-GENERAL'S PORTFOLIO**

**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-SBE21-011 - Matters considered in decision to prosecute Mr Collaery**

**Senator Nick McKim asked the following question on 26 October 2021:**

Senator McKIM: I'm happy for you to take this next question on notice so you can think about it and have some time to consider it. Could you please provide the committee with a list of which of those matters you do believe are relevant in your consideration of whether it is in the public interest to continue with Mr Collaery's prosecution? Could you also please provide the committee, on notice, with any other considerations that you have applied that are not listed in that non-exhaustive list?

Ms McNaughton: As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.

Senator McKIM: Alright. I look forward to you providing a detailed claim for public interest immunity in writing so that it can be considered by this committee and, potentially, the Senate, ultimately. On the face of it, I can't see how you justifying that it is in the public interest to continue this prosecution could possibly compromise, in any way, proceedings before the court. So I do look forward to you providing that public interest immunity claim in writing.

**The response to the honourable senator's question is as follows:**

The Commonwealth Director of Public Prosecutions has claimed public interest immunity over the issues in this question by way of letter to the Chair on 9 December 2021.



CDPP

Australia's Federal Prosecution Service

Sarah McNaughton SC  
Director

Commonwealth Director  
of Public Prosecutions

Level 11, 175 Liverpool Street  
Sydney NSW 2000

Telephone 02 6206 5666  
[www.cdpp.gov.au](http://www.cdpp.gov.au)

9 December 2021

Senator the Hon Sarah Henderson  
Chair  
Legal and Constitutional Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600  
By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator,

**LCC-SBE21-011 - Matters considered in decision to continue with Mr Collaery's prosecution**

I write to you in relation to the following questions taken on notice on 26 October 2021 during the Supplementary Budget Estimates hearing of the Senate Legal and Constitutional Affairs Legislation Committee.

At the hearing I took the following questions on notice from Senator Nick McKim:

***Senator McKIM:** I'm happy for you to take this next question on notice so you can think about it and have some time to consider it. Could you please provide the committee with a list of which of those matters you do believe are relevant in your consideration of whether it is in the public interest to continue with Mr Collaery's prosecution? Could you also please provide the committee, on notice, with any other considerations that you have applied that are not listed in that non-exhaustive list?*

***Ms McNaughton:** As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.*

I claim public interest immunity over the answers to these questions as they relate to active legal proceedings currently before the Supreme Court of the Australian Capital Territory and involve matters of legal professional privilege and national security.

The *Director of Public Prosecutions Act 1983* provides for the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. It

also ensures that there is a separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system.

The assessment of whether the public interest requires a prosecution to be pursued is conducted in accordance with the Prosecution Policy of the Commonwealth. Paragraph 2.10 of the Prosecution Policy sets out a non-exhaustive range of factors that may be considered when determining whether the public interest requires a prosecution. Any application of these factors to a given matter necessarily involves careful consideration of the available evidence and the whole of the surrounding circumstances.

Whilst I can assure the Committee that all relevant matters were considered in making my decision to commence and continue the prosecution of Mr Collaery, I am of the view that the questions posed by Senator McKim are likely to illicit an answer which goes to matters which will be in issue at the criminal trial of Mr Collaery. Mr Collaery is presently awaiting trial before a jury in the Supreme Court of the Australian Capital Territory. In these circumstances I am particularly mindful of the need to ensure that Mr Collaery receives a fair trial and that nothing is published in the lead up to that trial would contravene the sub-judice convention. As you know, this convention aims to ensure that nothing is published in the lead up to a criminal trial which is likely to interfere with the proper administration of justice, influence potential jurors or prejudice parties or potential witnesses.

In addition, the CDPP's decision to prosecute in accordance with the Prosecution Policy of the Commonwealth involves legal decision-making and advice which is protected by legal professional privilege. It is not in the public interest to disclose this advice. It is essential that privileged legal advice provided in the course of CDPP decision-making remains confidential. Access by the CDPP to confidential legal advice is critical to the making of sound decisions.

Finally, I note that this particular prosecution involves the consideration of security classified evidence the release of which may damage Australia's national security. This evidence is presently the subject of separate but related legal proceedings before the High Court and the Supreme Court of the Australian Capital Territory.

These are generally accepted grounds for making a public interest immunity claim as recognised in the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters at 4.6.1 in paragraphs (a), (d) and (g).

In these circumstances, I regret that I am unable to assist the Committee further in relation to this inquiry.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'S. McNaughton', written in a cursive style.

Sarah McNaughton SC  
Commonwealth Director of Public Prosecutions



**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**ADDITIONAL ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-AE22-061 - Mr Collaery**

**Senator Rex Patrick asked the following question on 15 February 2022:**

Senator PATRICK: I might send you a copy. We might get it to you through the committee first. I presume at any point in time you can look at a prosecution and decide to abandon it on public policy grounds. Is that a possibility?

Ms McNaughton: As you're aware, yes, in the prosecution policy of the Commonwealth there is a nonexhaustive list of public interest factors mentioned. Yes, we do constantly review our matters as to whether or not other matters might have come to our attention which would mean that we would come to a different view on public policy, for instance.

Senator PATRICK: In relation to this, Senator Carr asked some questions two estimates ago trying to canvass whether or not you had canvassed that aspect of this before the prosecution was commenced. The answer was, in essence, no. It wasn't something that was considered. So it is in that vein that I ask you to perhaps have a look at that and maybe take that on notice as to whether that changes your view in respect of your decision made thus far to prosecute.

Ms McNaughton: I gleaned from that that you will be sending me something and would like me to take that into account.

Senator PATRICK: Yes, and perhaps respond to the committee as to your views in respect of the public interest decision that you had to make.

**The response to the honourable senator's question is as follows:**

The CDPP has received the document from the Committee and is giving it careful consideration.

## SENATE QUESTION

QUESTION NUMBER: 15

Jacqui Lambie asked the following question, upon notice, on 26 July 2022.

Please update the answer to Estimates question on notice LCC-BE21-022 asked by Senator Carr at 2021-2022 Budget estimates hearing of the Legal and Constitutional Affairs Legislation Committee.  
Please provide the outcome of the 'careful consideration' being undertaken in relation to the public interest in prosecuting Bernard Collaery - see Estimates question on notice LCC-AE22-061.

**Senator the Hon Murry Watt** – The Hon Mark Dreyfus QC MP has provided the following answer to the senator's question:

**The response to the honourable senator's question is as follows:**

Up to and including 6 August 2019, when the prosecution of Mr Collaery and Witness K proceeded jointly, there were 6 hearings in the prosecution.

From 7 August 2019 to 4 August 2022 there have been:

- 47 hearings in the prosecution of Mr Collaery
- 17 hearings in the prosecution of Witness K.

The numbers provided above include case management, procedural, trial hearings, judgment deliveries and, for Witness K, sentencing hearing.

The document provided did not change the CDPP's assessment.

**QONS RELATING TO COLLAERY**

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**ATTORNEY-GENERAL'S PORTFOLIO**

**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

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Ms McNaughton: As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.

Senator McKIM: Alright. I look forward to you providing a detailed claim for public interest immunity in writing so that it can be considered by this committee and, potentially, the Senate, ultimately. On the face of it, I can't see how you justifying that it is in the public interest to continue this prosecution could possibly compromise, in any way, proceedings before the court. So I do look forward to you providing that public interest immunity claim in writing.

**The response to the honourable senator's question is as follows:**

The Commonwealth Director of Public Prosecutions has claimed public interest immunity over the issues in this question by way of letter to the Chair on 9 December 2021.





CDPP

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9 December 2021

Senator the Hon Sarah Henderson  
Chair  
Legal and Constitutional Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600  
By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator,

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At the hearing I took the following questions on notice from Senator Nick McKim:

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Yours sincerely,

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Commonwealth Director of Public Prosecutions

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**ADDITIONAL ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-AE22-061 - Mr Collaery**

**Senator Rex Patrick asked the following question on 15 February 2022:**

Senator PATRICK: I might send you a copy. We might get it to you through the committee first. I presume at any point in time you can look at a prosecution and decide to abandon it on public policy grounds. Is that a possibility?

Ms McNaughton: As you're aware, yes, in the prosecution policy of the Commonwealth there is a nonexhaustive list of public interest factors mentioned. Yes, we do constantly review our matters as to whether or not other matters might have come to our attention which would mean that we would come to a different view on public policy, for instance.

Senator PATRICK: In relation to this, Senator Carr asked some questions two estimates ago trying to canvass whether or not you had canvassed that aspect of this before the prosecution was commenced. The answer was, in essence, no. It wasn't something that was considered. So it is in that vein that I ask you to perhaps have a look at that and maybe take that on notice as to whether that changes your view in respect of your decision made thus far to prosecute.

Ms McNaughton: I gleaned from that that you will be sending me something and would like me to take that into account.

Senator PATRICK: Yes, and perhaps respond to the committee as to your views in respect of the public interest decision that you had to make.

**The response to the honourable senator's question is as follows:**

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QUESTION NUMBER: 15

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Please update the answer to Estimates question on notice LCC-BE21-022 asked by Senator Carr at 2021-2022 Budget estimates hearing of the Legal and Constitutional Affairs Legislation Committee.  
Please provide the outcome of the 'careful consideration' being undertaken in relation to the public interest in prosecuting Bernard Collaery - see Estimates question on notice LCC-AE22-061.

**Senator the Hon Murry Watt** – The Hon Mark Dreyfus QC MP has provided the following answer to the senator's question:

**The response to the honourable senator's question is as follows:**

Up to and including 6 August 2019, when the prosecution of Mr Collaery and Witness K proceeded jointly, there were 6 hearings in the prosecution.

From 7 August 2019 to 4 August 2022 there have been:

- 47 hearings in the prosecution of Mr Collaery
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The numbers provided above include case management, procedural, trial hearings, judgment deliveries and, for Witness K, sentencing hearing.

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**QONS ON ANZ BANK CARTEL**



**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**ADDITIONAL ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-AE22-060 - ANZ Bank cartel case**

**Senator Paul Scarr asked the following question on 15 February 2022:**

Senator SCARR: Ms McNaughton, I want to ask some questions about what's been referred to as the 'ANZ bank criminal cartel case'.

...

Senator SCARR: Finally, I'll leave this question on notice for you, and that is whether—and I'll give you an opportunity to reflect on it, perhaps—the CDPP is going to make a more fulsome statement at the appropriate time with its reflections and observations in relation to the case and provide it in a public forum for the public, who have a legitimate interest in this case, to reflect upon. Can I leave you with that question on notice, Ms McNaughton?

Ms McNaughton: Yes. Thank you, Senator.

**The response to the honourable senator's question is as follows:**

The CDPP routinely reviews significant completed prosecutions to identify lessons learnt and will do so in these matters. Whilst there are often limitations on what can be stated publicly about such matters, a report of these matters will be included in the next CDPP Annual Report.

**QONS ON 2020-21 STATISTICS**

**THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS**

**ATTORNEY-GENERAL'S PORTFOLIO**

**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-SBE21-012 - Number of matters prosecuted in 2020-21**

**Senator David Van asked the following question on 26 October 2021:**

Senator VAN: How many matters did the CDPP prosecute in the financial year 2020-21?

Ms McNaughton: I don't know that I've got those precise numbers with me, I'm afraid, Senator.

Senator VAN: Please take that one on notice, if that assists.

**The response to the honourable senator's question is as follows:**

The CDPP prosecuted 1890 matters in the 2020-2021 financial year.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**ATTORNEY-GENERAL'S PORTFOLIO**

**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-SBE21-013 - Referrals made to the CDPP in 2020-21**

**Senator David Van asked the following question on 26 October 2021:**

Senator VAN: How many referrals were made to the CDPP in 2020-21?

Ms McNaughton: I'd have to take that on notice. Organised crime and counterterrorism are two different crime types that we deal with together because they've got certain similar aspects to them.

**The response to the honourable senator's question is as follows:**

The CDPP received 2297 referrals the year 1 July 2020 – 30 June 2021.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**SUPPLEMENTARY BUDGET ESTIMATES 2021 - 2022**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-SBE21-015 - Current referrals and matters compared to previous financial year**

**Senator David Van asked the following question on 26 October 2021:**

Senator VAN: That's fine. Could you also take on notice how both the referrals and matters currently on foot compare to the previous financial year for me, please.

Ms McNaughton: Yes. Are you interested in the complexity, because we have noticed a change in complexity of the matters over a period of time. Reflecting I think a previous conversation today, numbers aren't necessarily reflective of the full picture.

Senator VAN: Is that something you want to comment on now, or is it something you will take on notice?

Ms McNaughton: We'll take it on notice. I'm just saying that, if we give numbers, numbers are not necessarily reflective of actual workload, because the complexity is changing.

Senator VAN: Okay. Thank you kindly. Thank you, Chair.

**The response to the honourable senator's question is as follows:**

The CDPP had the following referrals and matters on hand for the periods:

- 1 July 2019 - 30 June 2020
- 1 July 2020 - 30 June 2021

|           | 1 July 2019 - 30 June 2020 | 1 July 2020 - 30 June 2021 |
|-----------|----------------------------|----------------------------|
| Referrals | 2446                       | 2297                       |

|                 | As at 30 June 2020 | As at 30 June 2021 |
|-----------------|--------------------|--------------------|
| Matters on Hand | 3640               | 3489               |



**QONS RELATING TO BOYLE**

**Question on notice no. 1**

**Portfolio question number: BE19-001**

**2019-20 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 4 April 2019

Senator PATRICK: I want to ask some questions about the matter involving Richard Boyle. I appreciate it's before the courts and I won't ask any question that goes to a question that is before the court; rather, I'm interested in the preliminaries to it. Are you able to give some advice as to from whom you received the brief?

Ms McNaughton: From the ATO.

Senator PATRICK: Can you give me some idea of the date that you received the brief and the date, having worked through your processes, you then decided to prosecute or instituted proceedings?

Ms McNaughton: I haven't come briefed with that particular knowledge. I could take that on notice.

**Answer —**

The brief of evidence was received from the ATO on 17 July 2018.

The decision was made to commence proceedings on 11 December 2018.

**Question on notice no. 99**

**Portfolio question number: LCC-BE21-099**

**2021-22 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 27 May 2021

Senator PATRICK: On 27 October, 15 days later, that PID was rejected by the ATO. Mr Boyle then lodged a redacted version of his PID, public interest disclosure, to the IGT, the Inspector-General of Taxation, as a complaint. Are you aware of that?

Mr Bruckard: I might have to take that on notice. We are generally aware of the fact that the PID was made, but I might need to take the exact detail on notice.

**Answer —**

Please see the attached answer.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**BUDGET ESTIMATES 2021-22**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-BE21-99 - My Boyle PID**

**Senator Rex Patrick asked the following question on 27 May 2021:**

Senator PATRICK: On 27 October, 15 days later, that PID was rejected by the ATO. Mr Boyle then lodged a redacted version of his PID, public interest disclosure, to the IGT, the Inspector-General of Taxation, as a complaint. Are you aware of that?

Mr Bruckard: I might have to take that on notice. We are generally aware of the fact that the PID was made, but I might need to take the exact detail on notice.

**The response to the honourable senator's question is as follows:**

Yes.

**Question on notice no. 100**

**Portfolio question number: LCC-BE21-100**

**2021-22 Budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Rex Patrick:** asked the Commonwealth Director of Public Prosecutions on 27 May 2021

Senator PATRICK: Okay. In the context of the decision to prosecute Richard Boyle and the documentation associated with that, was the effect of that prosecution on whistleblowing considered more broadly? If I were able to look into that document, would I find something on that topic?

Mr Bruckard: We constantly review the cases we have before the court. On occasions, defendants, or their legal representatives, write to us and provide us with fresh material, and ask us to review the case. On other occasions, we'll conduct that review on our own motion if we become aware of relevant information which would impact on our decision to continue the prosecution.

In this case, it has been reviewed and it wasN

Senator PATRICK: But from that perspective of the chilling effect on other whistleblowers?

Mr Bruckard: It was certainly reviewed, conscious of the fact that there had been material around the PID which had been ventilated in the Senate report.

Senator PATRICK: But that's not the same thing as I talked about. That's about a defect in the PID processing. I'm just talking about in generalN

Mr Bruckard: Sorry, Senator. It goes to the question as to whether we're aware of the PID, effectively, and the process. As to the broader question of whether our decision would have a chilling effect: I'd probably have to take that on notice, as to whether that was discussed in detail in any of the submissions that were prepared by our lawyers.

Senator PATRICK: Alright. If it wasn't, maybe I can just suggest that it should be. I'll leave it at that. Thank you.

**Answer —**

Please see the attached answer.



**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**ATTORNEY-GENERAL'S PORTFOLIO**  
**BUDGET ESTIMATES 2021-22**

**PA-Commonwealth Director of Public Prosecutions**

**LCC-BE21-100 - Mr Boyle - Chilling effect on whistleblowing**

**Senator Rex Patrick asked the following question on 27 May 2021:**

Senator PATRICK: Okay. In the context of the decision to prosecute Richard Boyle and the documentation associated with that, was the effect of that prosecution on whistleblowing considered more broadly? If I were able to look into that document, would I find something on that topic?

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Senator PATRICK: But that's not the same thing as I talked about. That's about a defect in the PID processing. I'm just talking about in general—

Mr Bruckard: Sorry, Senator. It goes to the question as to whether we're aware of the PID, effectively, and the process. As to the broader question of whether our decision would have a chilling effect: I'd probably have to take that on notice, as to whether that was discussed in detail in any of the submissions that were prepared by our lawyers.

Senator PATRICK: Alright. If it wasn't, maybe I can just suggest that it should be. I'll leave it at that. Thank you.

**The response to the honourable senator's question is as follows:**

The decision to prosecute Mr Boyle was made in accordance with the Prosecution Policy of the Commonwealth. The fact that Mr Boyle made a Public Interest Disclosure and claims to be a whistle blower has been taken into consideration.

# QONS RELATING TO AMSA DOLPHIN DIVE

## **Question on notice no. 15**

**Portfolio question number: AE19-015**

### **2018-19 Additional estimates**

#### **Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Barry O'Sullivan:** asked the Commonwealth Director of Public Prosecutions on 19 February 2019

Senator O'SULLIVAN: I thank my colleagues for their indulgence. I know what it's like to sit in a committee and then to have someone blow in for two minutes. I will just take a minute to ground my questions. There was an event in Western Australia where there was a tragic loss of life by a passenger on a charter that went from Perth to one of the near islands. The police conducted an investigation. There was a coronial hearing. AMSA, who is the Australian Maritime Safety Authority, were involved. In evidence given by the head of AMSA yesterday-and there is no need to bore you with our interest in this in terms of how he arrived at a decision-he decided, he said, not to send a brief to the CDPP, despite being encouraged to do so by the police after the result of their investigation. Prima facie there are some breaches of maritime law involved, but here is the burden of why I've come down just to ask you a single question. In previous evidence he suggested that he decided not to either collate a brief or forward it to the CDPP after conversations with them. We will explore this further, but that would suggest that they had no material before them-no artefacts, no exhibits, no photographs, no statements, nothing-and yet he said, and I imagine it was oral advice from them from oral discussions, not to bother sending a brief because it had no prospect. I know you can't answer definitively on this, but would you find that unusual and would it offend the practice of your office? I'm happy for you to take it on notice, both the specific burden of the question plus a general one. I felt that it would be unlikely that the CDPP would afford oral advice as a result of an oral conversation when there was material that could well be examined and weighed up by them in terms of the prospect of a prosecution?

Ms McNaughton: That does sound unusual, if I could indicate that in general terms. But Ms Pavleka, the Commonwealth solicitor, has specific knowledge, or at least in general terms, about the matter.

Ms Pavleka: We have looked into this matter, because we were aware that there was another committee that had an interest in it. So, we were able to retrieve our file on that particular matter. And we could find nothing on our file that suggested that we had given any advice about the strength of prospects in relation to that matter. We couldn't see that we had a summary of facts, any sort of briefing note. We certainly didn't have a brief of evidence. Essentially the Commonwealth DPP was approached for advice in relation to that particular defendant, but on other matters-not on the matter that is of interest to your committee.

Senator O'SULLIVAN: So, we've got a hearing-and I won't labour from here, Chair-are you able to instigate an interrogation of your WA office more thoroughly beyond this? That's your scope of knowledge.

Ms Pavleka: It was actually not our WA office; it was our Townsville office, because they have a specialisation around maritime law, so that was the particular office that

we sought advice from. Indeed, the two Commonwealth DPP officers who were involved in that matter have now left the DPP, and we took the opportunity to contact them and test their memories on it. Essentially we're in the position we are today, which I've just outlined to the committee, that-

Senator O'SULLIVAN: All right. Well, I might have my office brief your office on the events of these hearings, and you might want to monitor it and between us we'll see whether we can't unravel what doesn't even seem to be a mystery to me, but we'll see how it goes.

Senator Reynolds: Senator O'Sullivan, just taking my ministerial hat off for one minute and putting on my senator for Western Australia hat: thank you very much for raising that issue, because it's something I am very conscious of, and I agree with everything you said. It is something that needs redress. So, thank you.

CHAIR: Senator O'Sullivan, I know nothing of what you're talking about, but the lawyers from the Townsville office who gave the advice you said have now left the employ of the DPP?

Ms McNaughton: Yes, but it was about a different matter. It was an entirely different issue to the one that Senator O'Sullivan raised.

CHAIR: Okay, but I understood you to say to Senator O'Sullivan that advice was given verbally, unusually, and it was given by the Townsville office-

Ms McNaughton: No. With respect, that's not what the evidence was.

Ms Pavleka: Just to clarify: this particular organisation, this particular

Ms Pavleka: Just to clarify: this particular organisation, this particular charter company-there was some advice that was provided in relation to some maritime matters in relation to that particular entity, but not advice in relation to the particular matter that is of interest to Senator O'Sullivan.

Senator O'SULLIVAN: So, it's some other, unrelated, issue.

CHAIR: I've no idea about the incident.

Senator O'SULLIVAN: In fact, it reinforces my position. They have a brief on other matters. They don't have a brief on this matter.

Ms McNaughton: And it was not oral advice, either.

Ms Pavleka: It was written advice. And perhaps I should just say, for completeness, that the only thing we could see on our file that touched on the incident with which your committee is concerned was essentially some oral context to why we were receiving a referral in relation to the other matter, that essentially the investigation into the other matters had been kicked off by what had happened in relation to the death of Mr Mills.

Senator O'SULLIVAN: Are you able to take on notice to provide me with that documentation, with that brief? Is there a problem with that?

Ms Pavleka: I'd have to-

Senator O'SULLIVAN: You can take it on notice.

Ms Pavleka: Yes, I'll take it on notice.

Senator O'SULLIVAN: The contact with your office was from AMSA?

Ms Pavleka: It was with AMSA. We had no contact at all with the Western Australia Water Police, who I believe investigated the death.

Senator O'SULLIVAN: Thank you. I appreciate the opportunity.

**Answer —**

The CDPP confirms that the incident concerning the death of Mr Mills, and potential offences directly relating to that incident, were never raised with the CDPP for the purpose of seeking advice, including advice about the prospects of conviction. The CDPP did not receive a brief in relation to that incident and the 'head count' issue which is of interest to the Rural and Regional Affairs and Transport Legislation Committee.

The CDPP advises that the Australian Maritime Safety Authority (AMSA) provided the CDPP with a small amount of material relating to matters arising subsequent to the Mr Mills incident, namely alleged incidents involving Dolphin Dive Centre occurring on or after 2 November 2014. That material dealt with a specific aspect of the investigation into the Dolphin Dive Centre operations, and allegations surrounding the vessel Pia Rebecca. The CDPP was not provided with a brief of evidence in relation to the Pia Rebecca matter. On 4 December 2015 CDPP received a summary of facts and an email from AMSA summarising the issues for advice.

On 7 January 2016, the CDPP provided written pre-brief advice to AMSA dealing with allegations surrounding the vessel Pia Rebecca. The letter was provided within the framework of legal advice given by the Commonwealth DPP to another Commonwealth agency. Such correspondence is confidential, and it would not be appropriate to provide legal advice to the Committee.



HANSARD



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

Public

MONDAY, 4 APRIL 2022

CANBERRA

BY AUTHORITY OF THE SENATE

**Senator Cash:** Again, Senator Carr, the nondisclosure obligations are consistent with the directions. We were not at the table in terms of the actual negotiations themselves. As I have pointed out to you, this is not unique to a particular government. The Labor Party has utilised confidentiality obligations previously.

**Senator KIM CARR:** Both those scandals, from my memory, were scandals involving the Liberal Party. But we won't go to that question. I am asking specifically here whether the women's lawyers say they are happy to have the information provided. That is on the public record. Perhaps I should table this.

**CHAIR:** What document are you reading from?

**Senator KIM CARR:** An article has been published by Jacqueline Maley.

**CHAIR:** Is it just a newspaper article?

**Senator KIM CARR:** A newspaper report. It asserts that is the case.

**CHAIR:** Senator Carr, I will stop you for one moment and remind you that the committee has accepted the PII claim. It is ultimately a matter for the Senate. I appreciate that you want to ask questions about this. I reiterate that the committee has accepted the validity of the PII claim.

**Senator KIM CARR:** Of course the committee is going to accept it. There's a government majority on this committee. Let's not be silly about this.

**CHAIR:** I am reminding you.

**Senator KIM CARR:** I am entitled to ask for the rationale behind it.

**CHAIR:** Of course, Senator Carr.

**Senator KIM CARR:** I'm having trouble following the rationale. I can't see one other than the protection of what has been a person who has been harassing women in the High Court. He has been a member of the High Court. He is only too happy to bring to question the motives, ethics and behaviour of many other people, including major political figures in the country, but has been found through this inquiry to have behaved in the most unethical and unprincipled way for many years and who is now being covered up by the government. I'm entitled to ask why.

**CHAIR:** Senator Carr, I ask you to not raise your voice. Please put your questions in an orderly way.

**Senator KIM CARR:** They are very orderly. Why is the government protecting this known sexual harasser and trying to prevent this information from becoming available to the public? After all, it is public money. Is there not a case here that this actually encourages people to behave very badly in high positions because they know that certain elements of the government are going to protect them?

**Senator Cash:** Senator Carr, I completely refute the premise of that question and the allegations in it. There was an investigation by Dr Vivienne Thom. There was an independent, non-statutory investigation into the allegations made by a number of former associates. The report had been provided to the High Court. It recommended changes to the court's workplace practices and procedures. Chief Justice Kiefel of the High Court has issued a public statement in response to the report's findings. Chief Justice Kiefel, on behalf of the High Court, apologised to the former associates. Again, what you've just put to the committee just is not sustained by the evidence.

**Senator KIM CARR:** On the contrary: the Chief Justice has made a statement with regard to it. Weren't you also required to make an apology as part of those orders? Isn't that the case?

**Senator Cash:** Again, Senator Carr, I understand on behalf of the Commonwealth—

**Senator KIM CARR:** That's right.

**Senator Cash:** Again, Senator Carr, you are saying that there is a protection racket occurring here. It's just not sustained by the evidence.

**Senator KIM CARR:** Accept it to this extent. Over a million dollars has been paid in compensation, it would appear. The victims of this harassment are happy to have this information made available to the public. I would have thought it's quite an important element here to explain what actually happens in these circumstances. The Commonwealth has insisted on confidentiality, on secrecy. It is the Commonwealth, not the women. That is the case, is it not, Attorney?

**Senator Cash:** Not in the way that you have put it, no, Senator Carr, it's not.

**Senator KIM CARR:** You then say to us that we've got to have some sort of realistic management of people's expectations. What does this message really send about the management of realistic expectations? What does it

send to the women who actually have the courage to bring forward a complaint against very powerful people to have this sort of cover-up occur?

**Senator Cash:** Again, there has been no cover-up. I think Ms Harvey has addressed this question and has addressed it several times. I understand that the article has just been tabled. I'm just looking at it.

**Senator KIM CARR:** What I have indicated—

**Senator Cash:** It clearly states:

The settlement signed by the three women did not prevent them from talking publicly about the details of their experiences with Heydon.

So, in the first instance, that goes to what I had previously raised. It also says:

It was reported to be a large sum the complainants were "very happy" with, according to their lawyer Josh Bornstein.

Again, Senator Carr, the way that you are characterising what has occurred is just not substantiated on the evidence.

**Senator KIM CARR:** So the issue remains: why is the Commonwealth keeping the settlement amount, the aggregate amount, secret on privacy grounds?

**Senator Cash:** That was answered by Ms Harvey in her first answer.

**Senator KIM CARR:** Why? That remains my question.

**CHAIR:** Senator Carr, you have asked this question on a number of occasions. Repetitive questioning is an issue. Do you have any other questions?

**Senator KIM CARR:** We have a known sexual predator who is costing the taxpayers an enormous amount of money. He is luxuriating on a very substantial judicial pension of hundreds of thousands of dollars a year paid for by the taxpayer. I would have thought we would have a right to expect that the government would actually reveal the amount of money they've paid in aggregate in terms of compensation for these three women.

**CHAIR:** Last question, Senator Carr.

**Senator KIM CARR:** It is a simple question. What part of that statement I have made is incorrect?

**Senator Cash:** Again, that has been asked on several occasions and answered by Ms Harvey.

**CHAIR:** Senator Carr, we need to move the call around.

**Senator VAN:** I have some questions about the increased funding to the CDPP. Do they go to you, Madam Secretary?

**Ms K Jones:** We will bring someone else to the table who can talk through that funding. It is one of the more significant injections of additional funding into the CDPP for quite some time.

**Senator VAN:** Thank you. Welcome back, Ms Chidgey. It's good to see you again. I believe my assertion is correct that there has been an increase in funding to the Commonwealth Department of Public Prosecutions. Is that correct?

**Ms Chidgey:** Thanks, Senator. That's correct. In the budget, the CDPP received \$15.7 million over four years and \$4 million each year from 2026-27 ongoing to increase particularly its skilled prosecutors and manage the increasingly complex workload they've got. I think in particular that will enable them to increase the number of their junior prosecutors by 27.

**Senator VAN:** Terrific. Why is this funding increase and what it's enabling important?

**Ms Chidgey:** Increasingly, the CDPP is working with law enforcement agencies on complex investigations that are more resource intensive. They are working across multiple agencies and they are transnational in nature. In terms of resourcing the CDPP to deal with those particularly complex prosecutions, this budget measure will make a significant difference to that.

**Senator VAN:** Can you talk us through what type of complex matters have seen this increase in the CDPP over the last 12 months or so?

**Ms Chidgey:** Amongst those are some of the international organised crime prosecutions as well as complex corporate criminal matters. I will see if my colleague Ms Field has further information.

**Ms Field:** The DPP has been increasingly focused on complex matters, including espionage, foreign interference and money laundering offences. It is anticipated that the highly complex cases will represent more than 50 per cent of their caseload by 2025.

**Senator VAN:** Fifty per cent?

**Ms Field:** That's correct.

**Senator VAN:** They are big, complex and quite important matters to keep Australians safe?

**Ms Field:** That's correct. The DPP really needs to get those junior prosecutors in place now so that by the time that caseload is apparent, they have sufficiently trained prosecutors to deal with those cases.

**Senator VAN:** Thank you very much.

**CHAIR:** I want to return to this issue of the settlement, Minister. In looking at the government guidelines in relation to official witnesses giving evidence, one ground on which a PII claim can be properly made is if it impacts on the impartial adjudication of a particular case.

**Senator Cash:** I think that is what Ms Harvey has been referring to in the evidence she has given.

**CHAIR:** Yes. There were a number of complainants in this matter.

**Senator Cash:** That is correct.

**CHAIR:** A very serious matter, of course.

**Senator Cash:** Correct.

**CHAIR:** There may well be other settlements. Therefore, my understanding is that the department is seeking not to prejudice the settlement of any other claims. Is that correct, Ms Jones?

**Senator Cash:** I'm more than happy if Ms Harvey would like to elaborate for you on that.

**Ms Harvey:** The Commonwealth was the party in this matter. So these were matters brought against the Commonwealth. For that reason, the Commonwealth wants to ensure that matters are dealt with on an individual basis. As I noted earlier, all legal claims are dealt with on the individual facts of the matter. That would be appropriate for any further claims of this nature that would come forward. For that reason, it is appropriate that the final amounts are not disclosed, given that they may set an expectation an applicant has that would not necessarily fit with the facts of their individual matter. I'm not talking about additional matters in this cohort. I'm talking about in the general sense.

**CHAIR:** Thank you very much. Very briefly, I want to touch on the additional budget funding for the actual department. Are you the best person to quickly address what those measures are, Ms Harvey?

**Ms K Jones:** Because it covers more broadly, I will ask our chief financial officer to come to the table.

**Mr Sharp:** Overall, the government announced \$230.5 million over five years for new measures for the portfolio and \$170.8 million over the five years to the department. Some of that is being paid to the states and territories through the Treasury. And \$112.7 million is paid over four years to portfolio entities. My colleague has already run through the women's safety measures. I am happy to go through them again, if you like, Senator, or I could touch on some of the other measures.

**CHAIR:** Some of the other measures that haven't been mentioned would be appreciated, Mr Sharp.

**Mr Sharp:** Excellent. Some of the significant ones to the portfolio was an additional \$70 million over two years to the Office of the Australian Information Commissioner to carry out its privacy functions. That was significant funding for them. There's also \$8.3 million over four years to assist small business, including for the Fair Work Commission, which was discussed earlier in the committee.

**CHAIR:** In what respect? Could you explain?

**Mr Sharp:** It's in relation to improving user experiences with the fair work system. That is covered by our colleagues at the other Senate committee. There is also in there additional funding to the Administrative Appeals Tribunal of \$1.6 million to be met from existing resources to help them with new case management solutions. In addition, we have also secured additional funding of \$6.7 million for both the department and the CDPP in relation to supporting the work arising out of the Office of the Special Investigator. We have also got \$3.6 million over four years with some ongoing funding for the OAIC to implement the government's response to the inquiry into the future directions for consumer data rights. There is an additional \$1.4 million over two years under the Commonwealth's deregulation agenda to implement document execution reforms that should potentially save small business and consumers about \$400 million per annum. Again, that goes to the other Senate committee.

**CHAIR:** I'm interested in that measure. It is quite revolutionary, isn't it, in terms of the efficiency for small business, particularly when many businesses have endured very difficult circumstances through the last couple of years? Are you able to explain in more detail how that would make a real difference for small businesses?

**Mr Sharp:** I don't have the detail of that at the moment. It was probably canvassed at the IR group. I don't know if any of my colleagues have that to hand.



**CHAIR:** In general terms, the improvements or the changes in document execution measures.

**Ms K Jones:** That measure is broadly part of the government's deregulation agenda. It is looking at everyday business for small and medium sized businesses in terms of statutory declarations or other official documentation. It probably hasn't really changed much over the last few hundred years. This is an opportunity to bring some of those processes into the digital age and reflects the way that businesses need to conduct their work with their clients. It also enables them to engage in those official processes in a more modern and digital way. Our assessment is that can potentially save hundreds of millions of dollars for small businesses and consumers through the digitisation of some of those processes.

**CHAIR:** Thank you very much, Ms Jones. We are continuing in cross-portfolio general and corporate matters. We will now move back to Labor senators. Senator Carr, you have some more questions?

**Senator KIM CARR:** Yes, I have. Ms Harvey, I want to pull up your previous answer in regard to this question of Mr Justice Heydon and the issue of managing unrealistic expectations. Are you suggesting that there is a deterrent effect in the Commonwealth's response here?

**Ms Harvey:** No. I am saying that the Commonwealth has an obligation to ensure that it is approaching each claim on the basis of the facts and circumstances of that claim and that the amount arrived at in settlement of a particular claim reflects those facts and circumstances. They will be unique in each claim.

**Senator KIM CARR:** Of course they would. I can't follow how that facilitates the management of expectations, as the letter that the Attorney sent to the committee suggests. How does that occur? It's normal legal process, isn't it, that the facts determine the outcome? Isn't that the principle in terms of the way in which our open judicial system operates?

**Ms Harvey:** If the claims that are brought are not necessarily litigated through the courts but are settled, which is often in the interests—

**Senator KIM CARR:** I am sorry. How silly of me. This is about managing the negotiations?

**CHAIR:** Senator Carr, I ask you to allow Ms Harvey to complete her answer.

**Ms Harvey:** There is an ability for claims to be settled out of courts, which is often in the interests of parties.

**Senator KIM CARR:** I got that. So you really are trying to manage the negotiations.

**CHAIR:** Senator Carr, I am going to ask you to hold there. I know you want to go through your questions quickly. Please allow the witness to complete her answer.

**Senator KIM CARR:** Sure.

**Ms Harvey:** In the claims that are made not through necessarily a formal litigation process, a range of factors goes into the final determination of those amounts. It is important that the Commonwealth does have the ability to approach each of those claims on their facts and the point where they are.

**Senator KIM CARR:** In the case of these particular women, their lawyers said in a press statement in February there had been a 'lengthy negotiation process reflecting the unusual circumstances of the case and an unfortunate delay by the Commonwealth' Is that right? Was there a delay by the Commonwealth in resolving these claims?

**Ms K Jones:** As we've discussed previously, the department itself was not a party to the negotiations.

**Senator KIM CARR:** I understand that. You are the client, in effect, here, aren't you?

**Ms K Jones:** No.

**Senator KIM CARR:** How do you describe your role in this?

**Ms K Jones:** The responsibility we have in the Office of Legal Services Coordination is to provide advice to the Attorney as to compliance with model litigant obligations and any advice about the appropriateness of a settlement.

**Senator KIM CARR:** Being a model litigant is the role of the Commonwealth as well, isn't it?

**Ms K Jones:** It is.

**Senator KIM CARR:** When did the negotiations actually commence for these three women?

**Senator Cash:** That might be better put to Comcover because that is an issue for Comcover as opposed to the Attorney-General's Department.

**Senator KIM CARR:** I am trying to establish whether or not the claims made by the women's lawyers are accurate with regard to a delayed process of negotiation.



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

Public

TUESDAY, 15 FEBRUARY 2022

CANBERRA

BY AUTHORITY OF THE SENATE

## **LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Tuesday, 15 February 2022**

**Members in attendance:** Senators Kim Carr, Cox, Grogan, Henderson, McAllister, McLachlan [by video link], Molan, Patrick, Rice, Scarr, Steele-John, Thorpe, Van, Waters and Watt

Ms Joanna Carey, Assistant Secretary, Engagement Branch

**Royal Commission into Defence and Veteran Suicide**

Mr James Popple, Official Secretary

**PORTFOLIO AGENCIES**

**Administrative Appeals Tribunal**

Mr Jamie Crew, Acting Registrar [by video link]

Mr Chris Matthies, Chief Legal Officer [by video link]

Ms Jacqueline Fredman, Chief Corporate Officer [by video link]

Ms Sobet Haddad, Senior Reviewer [by video link]

**Australian Human Rights Commission**

Professor Rosalind Croucher AM, President

Ms Leanne Smith, Chief Executive

Ms Kate Jenkins, Sex Discrimination Commissioner [by video link]

Ms June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner [by video link]

Dr Ben Gauntlett, Disability Discrimination Commissioner [by video link]

Mr Chin Tan, Race Discrimination Commissioner [by video link]

Ms Lorraine Finlay, Human Rights Commissioner

Ms Anne Hollonds, National Children's Commissioner [by video link]

Dr Kay Patterson, Age Discrimination Commissioner [by video link]

**Commonwealth Director of Public Prosecutions**

Ms Sarah McNaughton, Director [by video link]

Mr Scott Bruckard, Commonwealth Solicitor [by video link]

Mr James Carter, Deputy Director, International Assistance and Specialist Agencies

Ms Sabeena Oberoi, Chief Corporate Officer, Enabling Services Group

Mr Steve Burggraaff, Chief Financial Officer

**Federal Circuit and Family Court of Australia**

Mr David Pringle, Chief Executive Officer and Principal Registrar of the Federal Circuit Family Court of Australia [by video link]

Ms Virginia Wilson, Deputy Principal Registrar [by video link]

Ms Anne-Marie Rice, Senior Judicial Registrar and Executive Director Dispute Resolution [by video link]

Ms Lisa O'Neill, National Registrar Risk Policy and Family Violence [by video link]

Ms Janet Carmichael, Executive Director, Court Children's Services [by video link]

**Federal Court of Australia**

Ms Sia Lagos, Chief Executive Officer and Principal Registrar [by video link]

Mr Scott Tredwell, General Counsel and Acting Deputy Principal Registrar [by video link]

**National Native Title Tribunal**

Ms Christine Fewings, Native Title Registrar [by video link]

**High Court of Australia**

Ms Philippa Lynch, Chief Executive and Principal Registrar

Ms Margaret Baird, Chief Finance Officer

**National Archives of Australia**

Ms Yaso Arumugam, Acting Director-General

Mr Steven Fox, Assistant Director-General Collection Management

**Office of the Australian Information Commissioner**

Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner [by video link]

Ms Elizabeth Hampton, Acting Freedom of Information Commissioner [by video link]

**Senator KIM CARR:** It might be a little long.

**Senator Cash:** Is it a statement or a question?

**Senator KIM CARR:** It is a genuine question, because this really does come down to the issue of the discretion of the Attorney. As I understand it, it is the Attorney who makes decisions based on what you perceive to be in the national interest—the public interest, I should say; we have had this discussion about the difference between the public interest and the national interest. What I would like to know is, could you explain to us, what is the public interest in the ongoing approval of the decision to prosecute—

**CHAIR:** Senator Carr, sorry, I'm going to stop you there. I am just going to ask you, in relation to ongoing proceedings, not to make any comment in relation to the merits of the case. Up until now, you have spoken about the procedural matters. But in relation to the merits, if I can ask you to exercise care, please.

**Senator KIM CARR:** They are all procedural questions.

**CHAIR:** That is why we don't go to the merits of the case.

**Senator KIM CARR:** I would like to know how it is in the public interest for the ongoing approval of the prosecution, given the lack of progress in that prosecution with no trial date being set, noting the enormous and continuing expenditure of limited Commonwealth resources, as I say, in excess of \$4 million, and noting that these prosecutions relate to revelations about events alleged to have occurred 18 years ago, relating to allegations—

**CHAIR:** Senator Carr, I am going to stop you. I would ask you not to canvas the allegations.

**Senator Cash:** This is the issue we do have.

**Senator KIM CARR:** Let me just say this: it does go to the issue of the national interest.

**CHAIR:** Senator Carr, please, can I just ask you to pause. You have been very careful up until now, but if I could ask you not to canvas the allegations. Just confine your question to matters of procedure and the Attorney's powers, please.

**Senator KIM CARR:** My concerns go to the fact that these were allegations regarding senior members of the government of 18 years ago, and noting that after pleading guilty, the primary—

**CHAIR:** Senator Carr, I am going to rule the question out of order if you persist with stating the allegations. These are live proceedings before a court—

**Senator KIM CARR:** I have made my observations—

**CHAIR:** Many people might be aware of what the allegations are, but I would ask you not to repeat them in the committee at the moment, please.

**Senator KIM CARR:** After pleading guilty, the primary offender in these matters, Witness K, was given a three-month suspended sentence, which has already concluded; a 12-month good behaviour bond, which the ACT court acknowledged was when he unlawfully revealed confidential information about Australia's actions and East Timor—

**CHAIR:** Senator Carr, I have just asked you not to discuss any of the matters that are currently before the court. I understand that these have been canvassed in other forums, but the convention of this Senate is a very important one in relation to sub judice. The last thing that we would want as senators is for any of this evidence to be used in any manner that might prejudice current court proceedings. I think the Attorney and Mr Ng has—

**Senator KIM CARR:** Mr Collaery is—

**CHAIR:** Senator Carr, I am about to rule the question out of order, unless you can bring it back to matters of procedure and the Attorney's powers.

**CHAIR:** I am asking a question about the public interest here.

**Mr Ng:** If it would assist, I do regard that it would not be appropriate to talk about this question of the public interest because it does go to the matters at issue before the courts—

**Senator Cash:** Directly to the matters at issue.

**Ms Chidgey:** Senator, I think you might recall that the—

**Senator Cash:** Previous estimates we had this discussion—

**Ms Chidgey:** Commonwealth Director of Public Prosecutions would make a judgement about that and claimed public interest immunity—

**Senator KIM CARR:** Thank you very much. I understand that, but—



**CHAIR:** Senator Carr, I am sorry, that is your final question. We are going to move on—

**Senator KIM CARR:** No, I would just make the observation—

**CHAIR:** Senator Carr, I did give you—

**Senator KIM CARR:** This is a matter for ministerial discretion. It's not just a matter for the CDP.

**CHAIR:** Senator Carr, you don't have the call. I'm now going to give the call to Senator Thorpe.

**Senator THORPE:** Thank you, Chair. These questions around the ongoing torture in Australia. On the 20th of—

**CHAIR:** Sorry, just to remind you, you have six minutes. We are very anxious to move to AGS, so if you could make your questions very quick.

**Senator THORPE:** Torture in Australia—20 January 2022 was the deadline for the implementation of our obligations under OPCAT. The government has missed the deadline. Are you aware that your own hand-picked appointment to the Human Rights Commission has written:

The need for additional funding and the lack of an overarching national framework for implementation have been identified by some States as key stumbling blocks.

I table that document here for the secretariat.

**CHAIR:** Thank you, Senator Thorpe. Can I clarify which documents you are reading from, Senator Thorpe?

**Senator THORPE:** It is an ABC article.

**CHAIR:** Thank you.

**Ms Chidgey:** I don't have the article, but I can talk to some of the issues that you raise. In terms of the commencement of obligations, the Attorney-General wrote on the 20 December to the UN Subcommittee on Prevention of Torture to seek a further one-year extension for Australia to implement the optional protocol in accordance with article 24.2 of that convention, and that is, as I understand it, under consideration by the UN subcommittee. The Attorney-General has also written to all states and territories to notify them of that. The Attorney has discussed implementation at the most recent Meeting of Attorneys-General last year. The department continues to work with states and territories. The Commonwealth has also given additional funding to states and territories to enable them to implement the optional protocol. We have been working with them as well on an intergovernmental agreement about those arrangements, and I can take you through the states and territories that have already got—

**Senator THORPE:** Could you provide that on notice? My time's ticking down, and you're taking a lot of it.

**Ms Chidgey:** Yes, I'm happy to do that.

**Senator THORPE:** The Commonwealth has previously noted in question LCCAE 2050 that the initial focus of OPCAT will be on primary places of detention. How did the Commonwealth arrive at its list of primary places of detention? Who did you consult to make this decision?

**Ms Chidgey:** I might have to take on notice the work we did to arrive at that, but that list is based on the places where we've identified that the risk of harm is greatest like adult prisons, juvenile detention centres, police cells, certain closed psychiatric and disability units, and immigration facilities and military detention facilities. The discussions we've had with the states and territories is that the NPM network can consider over time the scope of other places that should be brought in and dealt with, but we will focus on those sets of areas.

**Senator THORPE:** Thank you. The Aged Care Quality and Safety Commission's serious incident response report for 1 April 2021 to 12 May 2021 found that there were 1,876 Priority 1 incidents, including 778 unreasonable uses of force, 149 unlawful sexual contacts and 448 cases of neglect. These mandatory notifications came from only 47 per cent of the total number of registered aged-care service providers. This is probably the tip of the iceberg. Why do you not consider aged-care facilities as places of primary detention?

**Ms Chidgey:** We're conscious of considering monitoring arrangements for aged-care facilities and secure dementia units where there's involuntary detention and looking at those over time. We intend to look at that in line with guidance that comes from the SPT, which talks about determining areas of priority and focus having regard to proportionality, and the idea is that you start with the key areas and expand over time. But, in terms of practical implementation, we have started with that list of greatest risk.

**Senator THORPE:** This government has failed elders across this country already. There's no regard for our old people right across this country, and we've seen that in the pandemic. We know that the government has already failed aged care—totally and utterly. When will you include aged care in the scope of the NPM?

**Senator PATRICK:** Okay. I might just move to the prosecution of Bernard Collaery. Chair, because there are two intersecting issues in relation to this particular trial: one relates to the closure of the court under the NSI Act, which is being conducted by the Attorney-General, and the other is the prosecution of Mr Collaery in respect of the criminal matter, it might be helpful to have someone from the attorney's department who might be familiar with this. In that regard, can the attorney give me the total cost that has been expended in that matter by the Commonwealth? I know there's a difference between the Commonwealth Director of Public Prosecutions and the Attorney-General.

**Senator Cash:** We do have the costs.

**Ms Chidgey:** Senator, could you repeat your question?

**Senator PATRICK:** The total costs for the Commonwealth—that would include the CDPP and the Attorney-General's Department—in relation to Regina versus Collaery.

**Ms Chidgey:** The costs I have don't go to internal agency costs, but I think we provided them earlier as well. I have the amounts that include external legal costs that have been incurred. The total Commonwealth external legal costs in the Collaery and witness K matters are \$4,232,569.

**Senator PATRICK:** Wow! They're certainly going up. I think the last time we got an answer it was \$3½ million.

**Ms Chidgey:** I should say that's as at 31 January.

**Senator PATRICK:** Sure. It's true that because this is a criminal matter there won't be any cost recovery whichever way the matter falls—is that right?

**Ms McNaughton:** Correct.

**Senator PATRICK:** These proceedings have managed to get to the High Court; I believe there's an application for special leave. It's not really related to a criminal matter; can someone give me an idea of what the Commonwealth is doing in respect of that? What's the Commonwealth seeking from the High Court?

**Ms Chidgey:** The issues in the High Court are the publication of the judgement of the ACT Supreme Court as the Court of Appeal, and the national security information in that judgement.

**Senator PATRICK:** Is it quite unusual? I don't think I've seen the executive seek to suppress a judicial officer in terms of a judgement—or am I wrong? Is there past jurisprudence around this?

**Ms Chidgey:** I can't comment on that.

**Senator PATRICK:** It does seem a bit extraordinary that the executive is seeking to censor a judgement, particularly of a superior court, the highest court in the ACT.

**Ms Chidgey:** What we're seeking from the High Court is for it to consider the application of the NSI Act and what would be appropriate in the circumstances. It will be a matter for that court to determine.

**Senator PATRICK:** Will the Attorney seek to close the High Court in relation to this matter?

**Ms Chidgey:** I think those issues are still being worked through about how that matter might proceed.

**Senator PATRICK:** Thank you. I'll go back to Ms McNaughton. To satisfy the chair, I've actually read through all the judgements—I think there are 10 of them, from memory—in respect of Justice Mossop's ruling, so there's lots of information in the public domain. Indeed, I have sought affidavits from the court, and the Commonwealth DPP were part of those proceedings, so they would be aware that I've done so.

**CHAIR:** Senator Patrick, can I just stop you there? The test of sub judice is not whether this information is in the public domain. It concerns questions which may involve a substantial danger of prejudice to proceedings, and merely discussing those matters in this forum may give rise to such prejudice.

**Senator PATRICK:** Sure. Ms McNaughton is an experienced prosecutor, so—

**CHAIR:** Yes, I know. I understand she's very experienced, but I'm the chair of this committee, and I am exercising a great deal of caution when it comes to sub judice, and therefore I would ask you to please exercise the same degree of caution. My responsibilities extend to chairing this committee, so I'd be most grateful if you could be very judicious on this matter.

**Senator PATRICK:** Thank you. I might just give a little example of where I'm trying to get to, to ease everyone's concern. If someone were charged with DUI—driving under the influence—one would expect the prosecutor to tender evidence related to the conduct of the person, but there would be preliminary evidence that would need to be filed—things like a calibration certificate for the alcohol-measuring device. Is it fair to say that

that's how you would typically do that? You'd front up to the court and say: 'It's calibrated. It was tested prior to going out and being used, and then Mr or Mrs X blew 0.05,' or whatever it is. There are some preliminaries—

**Ms McNaughton:** Those are not matters that are prosecuted by my office, so I don't quite know how I can assist you.

**Senator PATRICK:** I was just trying to give an example. In this instance, this matter involves—and the charges are well known—revealing an operation. This is my final question to you, and then I'll come back to the Attorney: are you satisfied in the conduct of this prosecution that all of the approvals necessary under the Intelligence Services Act were met? It's a bit like saying, 'Was the alcohol-measuring device calibrated?' It's a preliminary.

**Ms McNaughton:** A brief of evidence has been served in this matter, and it will proceed in the way that all matters that we have decided to commence will proceed. Yes, we are satisfied that there was a sufficient level of evidence, according to the Prosecution Policy of the Commonwealth, to bring the proceedings.

**CHAIR:** Senator Patrick, we are at 10 minutes, and I am going to share the call. Senator Scarr has indicated he has a few questions. I can return to you. I'm going to give the call to Senator Scarr.

**Senator SCARR:** Ms McNaughton, I want to ask some questions about what's been referred to as the 'ANZ bank criminal cartel case'. Could you explain to me the circumstances which led to the CDPP withdrawing or discontinuing proceedings in that case?

**Ms McNaughton:** As with all matters that my office prosecutes, they're always under constant review as to whether they continue to meet the Prosecution Policy of the Commonwealth. In this case, following a further careful review of the evidence and consideration of the detailed submissions received from solicitors acting for the accused, we concluded there were no longer reasonable prospects of conviction for the charges before the court. That resulted in the decision to decline to proceed further.

**Senator SCARR:** Do you have any observations or reflections in relation to how the CDPP managed that case?

**Ms McNaughton:** We dealt with it according to the principles with which we deal with all cases. As I said, we applied the prosecution policy at every stage, and that was the determination we made. I have no further reflections.

**Senator SCARR:** Do you have any reflections on the fact that the CDPP was ordered to file its indictment for a third time during the course of the proceedings?

**Ms McNaughton:** They are very complicated provisions, and it's unsurprising—in some ways—that it takes a bit of work for these highly complex provisions to precisely calibrate the indictment. In areas where there are novel and complex provisions, sometimes that can occur.

**Senator SCARR:** Is it correct that the judge hearing the case described it at one stage as a 'complete shemozzle'?

**Ms McNaughton:** He didn't describe the case as a 'complete shemozzle'. As I understood it, His Honour Justice Wigney was making an observation in relation to the indictment and the number of times the indictment had been [inaudible].

**Senator SCARR:** Doesn't the indictment in fact go to the heart of the case? Three years after the proceedings had been launched, the judge was actually reflecting on the fact that the indictment—if you want to call it 'the indictment'—was a complete shemozzle. He expressed his dissatisfaction, in essence, that the proceeding was in that situation so long after the proceeding had been instituted.

**Ms McNaughton:** As I indicated, he didn't say that the whole proceeding was a shemozzle; he was commenting on the indictment. And, in the course of commenting on the indictment, he also made the comment—these are not the precise words, but words to the effect—that it was hardly surprising, given the difficulty in the wording of the legislation itself. So there's a bit of context around it, but I don't resile from the fact that he did make those observations.

**Senator SCARR:** I'm trying to be—

**Ms McNaughton:** Polite?

**Senator SCARR:** I'm trying to use a velvet glove in this regard. There have been comments made by a number of the people who were the subjects of these criminal proceedings during the course of the week about the devastating impact the proceedings have had on their professional lives. They said that they've been in a state of suspended animation, as it were, from a professional perspective, for a number of years.

As I read the judge's remarks—you can characterise it as you like, certainly—there's no suggestion that the words 'complete shemuzzle' were not used in the context of this case. The case was discontinued against the ANZ and one of its senior executives. Then we get to a situation where it was discontinued against the other defendant. I'm giving you the opportunity to provide some objective reflections on whether any learnings came out of this for the benefit of the CDPP. To be frank, as a senator looking at this—and I haven't asked you how much has been spent in relation to these proceedings—it raises a number of fundamental questions in my mind. What reflections does the CDPP have in relation to the conduct of this case? Are you conducting any review, any debrief? Are you bringing in a third party, a senior counsel, to look at the conduct of the case to at least get some learnings from it?

**Ms McNaughton:** Indeed, senior counsel of various numbers in relation to both competition and crime have been involved in the prosecution side of the proceedings for a number of years. As to any learnings or review, certainly we will be looking closely at how this progressed. And certainly we will try to work out what learnings we can have from the conduct of the matter.

**Senator SCARR:** But from your perspective, you're not in a position to offer us any reflections such as, 'Gee, we could have done a better job on this', or 'Maybe there are some things we need to seriously consider in relation to this case'? I find that surprising, to be frank.

**Ms McNaughton:** We'll be looking closely at it. As you'd be aware, the matter concluded only late last week, and we will certainly be looking at the matter and what occurred in the course of the matter, looking at all the various inputs that we've had from very experienced counsel along the way and our own internal involvement. We will certainly be looking at all of that and seeking to take learnings from it.

**Senator SCARR:** Will you be making those learnings public? Will you be providing any transparency to the public in relation to a case which I assume has cost millions of dollars of taxpayers' money and has led to this situation where it's simply discontinued after the original proceedings were commenced in June 2018? It was a highly complicated case, which no doubt has cost taxpayers millions of dollars. Will you be providing any transparency with respect to those learnings and reflections after you have a reasonable period of time to undertake that process?

**Ms McNaughton:** The external costs to date that we've spent are not 'in the millions' but \$1.26 million or thereabouts. As appropriate, we will be reflecting on the matter. Just to put some context around it, this is not the only case that my office and indeed other prosecutors' offices have discontinued before finality. It is an appropriate and healthy indication of the prosecution policy of the Commonwealth and that being properly reviewed at every stage. So, we will see whether there is anything that is highly exceptional or unusual in the way this occurred. But, with all the matters we prosecute, we do them according to the prosecution policy of the Commonwealth. Clearly this is a matter that has attracted some attention amongst some of the community. I understand the interest in it by a portion of the community that's affected. But the way we approached it was the standard and regular way that we approach all our cases.

**Senator SCARR:** You referred to the external cost of \$1.26 million. Do you have a record of the internal cost?

**Ms McNaughton:** It's hard for us to calibrate our internal costs, given that our people work across more than one matter, so it's difficult for us to make a calculation that's particularly useful.

**Senator SCARR:** Finally, I'll leave this question on notice for you, and that is whether—and I'll give you an opportunity to reflect on it, perhaps—the CDPP is going to make a more fulsome statement at the appropriate time with its reflections and observations in relation to the case and provide it in a public forum for the public, who have a legitimate interest in this case, to reflect upon. Can I leave you with that question on notice, Ms McNaughton?

**Ms McNaughton:** Yes. Thank you, Senator.

**CHAIR:** Before I return to Senator Patrick, I want to put on the record the statement by the ACCC in relation to this matter on 11 February 2022. It's headed 'CDPP withdraws charges in bank criminal cartel case'. I guess one of their most relevant paragraphs is:

While there can be challenges involved in bringing criminal cartel prosecutions, particularly due to the complexity of the cartel laws, we will continue our efforts to deter, detect and dismantle cartels, and will continue to refer serious cartel conduct to the CDPP for its consideration. That is our role and we will continue to fulfil it, even though not all briefs of evidence given to the CDPP will result in the laying of charges or convictions.

**Senator SCARR:** Well I hope they do a better job next time, Chair.

**CHAIR:** And the ACCC did reference the fact that there have been:

... five successful criminal prosecutions of cartel conduct affecting Australian consumers, following ACCC investigations and CDPP prosecution under criminal cartel laws—

and that has resulted in penalties totalling \$83.5 million. I just wanted to add a little bit of context to that issue. I will now hand over to Senator Patrick.

**Senator PATRICK:** I'll just go back to my question, because I don't think you answered it. You answered a slightly different question, so I'll ask it again. Are you satisfied that approvals in relation to the operation that was carried out met the requirements of the intelligence services legislation? And this is a senator asking a prosecutor about their role. It's a genuine oversight question: are you satisfied?

**Ms McNaughton:** All I can indicate in terms of detail is that in bringing the case we are satisfied, to a prima facie and a reasonable prospect of conviction level, that all the elements are satisfied.

**Senator PATRICK:** I'm trying to avoid a complete shemozzle here where we head down a pathway and we haven't done—

**CHAIR:** Sorry. We're having a giggle over the use of the word 'shemozzle'. Sorry, Senator Patrick.

**Senator PATRICK:** I always benefit from Senator Scarr's contributions to the committee. Yes—so that we don't head down a pathway without having done the preliminaries properly. That's the question I'm asking you. It's the only question I'm going to ask you about this matter.

**Ms McNaughton:** The prosecution policy of the Commonwealth requires there to be a prima facie case and a reasonable prospect of conviction, and that the prosecution is in the public interest. Yes, we are satisfied that that test has been met.

**Senator PATRICK:** Thank you. I'll switch back to the Attorney now, and I might ask the chair to permit me to table a document, which I've provided to the secretariat. It's a statement that was made in the parliament of Timor-Leste. To give you some comfort, I tabled this in the Senate with the permission of the whips, including Senator Dean Smith. And I did undertake, because there was only a rough translation, to get an official translation of what was tabled in their parliament.

**CHAIR:** Senator Patrick, this is a committee which makes decisions quite independently from any other forum.

**Senator PATRICK:** Sure. I'm just trying to give you some comfort.

**CHAIR:** While that might give me some comfort, we need to assess the document on its merits, and this does seem to go very much to the heart of the substantive issues in the case—

**Senator Cash:** Correct.

**CHAIR:** and I would say to you that this, on its face—and I'm reading it very, very quickly—is not an appropriate document to be tabled.

**Senator PATRICK:** It's been with the secretariat for a couple of hours.

**Senator KIM CARR:** Madam Chair, I understand Senator Patrick has just said that this has already been tabled in the Senate.

**CHAIR:** Yes, I understand that, but I have not read the document. Senator Carr, it does seem to go to the substantive issues in the case.

**Senator KIM CARR:** Yes, but it's already been tabled in the Senate.

**CHAIR:** This committee makes decision on its own merits in terms of the information which comes before it.

**Senator KIM CARR:** But it's not above the Senate.

**CHAIR:** No, it's not above the Senate.

**Senator PATRICK:** You're trying to censor the Timor-Leste parliament, are you? Is that what you're trying to do?

**CHAIR:** No. What I'm—

**Senator PATRICK:** Because there may well be some international relations issues associated with this.

**CHAIR:** Senator Patrick, what I'm doing is—

**Senator PATRICK:** This went to the—

**CHAIR:** raising concerns about matters which may prejudice a trial currently before the court.

**Senator PATRICK:** But you're out of your depth, okay.

**CHAIR:** Excuse me, please do not reflect on me as chair. Now, it's—



**Senator PATRICK:** You're obsessed with this issue. We've got professional people in front of the table here. What this document says—

**CHAIR:** I'm obsessed with the issue of making sure that we don't prejudice trials that are currently—yes, I am; it's a very important issue.

**Senator PATRICK:** Dr Collaery faces trial for his contribution to the revelation of the Australian secret service—

**CHAIR:** Please do not go to the substantive issues in relation to this matter, Senator Patrick.

**Senator PATRICK:** operation for wire-tapping the East Timor government's [inaudible] office during the oil and gas negotiations—

**CHAIR:** Senator Patrick, you don't have the call, and I'm going to ask you to desist from raising these matters—

**Senator PATRICK:** These are matters that are public. Let me read some reported facts from the case.

**CHAIR:** Senator Patrick, we're going to suspend this hearing and we will go to a private meeting.

**Senator PATRICK:** It's tabled in the Senate. You're censoring a document from the Timor-Leste parliament—

#### **Proceedings suspended from 22:40 to 22:48**

**CHAIR:** To update all those present, we have just had a private meeting in relation to the document that Senator Patrick is seeking to table. The committee has made a decision to defer its consideration of the tabling of this document until it can obtain further advice.

We have discussed the nature of the questions that Senator Patrick wishes to raise, and he has assured us that it does not go to the substantive issues in relation to the case. I realise I am exercising a great deal of care in these matters. Senator Patrick has indicated that a very similar document has been tabled in the Senate but, being judicious in relation to these matters, we have deferred our consideration as to the tabling of this document until we can get further advice.

Thank you very much, Senator Patrick, for your cooperation on this matter. I will give the call to you.

**Senator PATRICK:** Ms McNaughton, are you aware that in the Timor-Leste parliament last week a document was tabled that basically expressed solidarity towards Mr Collaery in relation to these prosecutions? It very carefully danced around the idea as they don't want to interfere with the judicial proceedings in another country. But it is clear that the Timorese are quite disturbed by the prosecution. This is a question, which goes to the public interest, on an executive decision made by you. I'm just wondering if you are aware of what happened in the Timor-Leste parliament last week.

**Ms McNaughton:** Not until you mentioned it, no.

**Senator PATRICK:** I might send you a copy. We might get it to you through the committee first. I presume at any point in time you can look at a prosecution and decide to abandon it on public policy grounds. Is that a possibility?

**Ms McNaughton:** As you're aware, yes, in the prosecution policy of the Commonwealth there is a non-exhaustive list of public interest factors mentioned. Yes, we do constantly review our matters as to whether or not other matters might have come to our attention which would mean that we would come to a different view on public policy, for instance.

**Senator PATRICK:** In relation to this, Senator Carr asked some questions two estimates ago trying to canvass whether or not you had canvassed that aspect of this before the prosecution was commenced. The answer was, in essence, no. It wasn't something that was considered. So it is in that vein that I ask you to perhaps have a look at that and maybe take that on notice as to whether that changes your view in respect of your decision made thus far to prosecute.

**Ms McNaughton:** I gleaned from that that you will be sending me something and would like me to take that into account.

**Senator PATRICK:** Yes, and perhaps respond to the committee as to your views in respect of the public interest decision that you had to make.

**CHAIR:** Senator Patrick, just in relation to the provision of that document, it probably would be better for that to come through the committee.

**Senator PATRICK:** You don't want to own the document. You don't want it to be tabled. But now you are trying to—

**CHAIR:** No, I am just indicating that you providing the document to the CDPP would not be an act on behalf of the committee. But let's just consider the document, which we will do as soon as we possibly can, and then we will have some more clarity about that.

**Senator PATRICK:** If you decide to allow it to be tabled then I would, of course, let the committee send that to—

**CHAIR:** Absolutely. Thanks, Senator Patrick.

**Senator PATRICK:** I reserve my right if you don't.

**Senator KIM CARR:** If not, you have the one that was tabled in the Senate already.

**Senator PATRICK:** I do. That's true.

**CHAIR:** That's exactly right. You have various options up your sleeve. I'm just trying to make it clear where we are at the current point in time.

**Senator PATRICK:** Attorney, my next question is to you. My understanding is that prosecution requires your permission.

**Ms Chidgey:** The provisions that are relevant in this matter require the Attorney's consent, but that consent was given by the then Attorney-General and now it is a matter that is with the Commonwealth Director of Public Prosecutions.

**CHAIR:** The then Attorney General was Mr Porter, just to be clear.

**Ms Chidgey:** That's right.

**Senator PATRICK:** But there is nothing that stops the Attorney from withdrawing that consent?

**Ms Chidgey:** That would not be the process. There is a power to discontinue prosecutions, but, as the Attorney-General discussed earlier, it has never been exercised since it was established. It would be exceptional. The CDPP operates as an independent agency in making its decisions about continuing prosecutions.

**Senator PATRICK:** I just want to go sideways, then. The then Attorney-General, Christian Porter, issued a section 37 certificate to censor the Auditor-General. The new Attorney-General, Senator Cash, has withdrawn that certificate.

**CHAIR:** Sorry? Did you say 'to censor the Auditor-General'?

**Senator PATRICK:** The Auditor-General—that's correct. Amazingly, Christian Porter censored an Auditor-General's report.

**CHAIR:** In relation to this matter.

**Senator PATRICK:** No, a completely different matter.

**CHAIR:** Okay. I needed to clarify what we were talking about.

**Senator PATRICK:** Sure. That act doesn't talk about withdrawing or modifying.

**Ms Chidgey:** Senator, this is a different situation where criminal proceedings have now commenced. So that consent has been given at a point in time. The proceedings have now been commenced by the CDPP. The legislative mechanism in this matter is an exceptional power to discontinue prosecutions, but that has never been used.

**Senator PATRICK:** Well, just because it's never been used doesn't mean, again, that it can't be used. It's given to the Attorney by the parliament because the Attorney is the person ultimately responsible to the parliament for prosecutions.

I'll go to the Attorney. This issue clearly raises concerns in Timor-Leste, a friend of Australia's. We haven't treated them like a friend, but they are a friend now. International relations may well not be the bailiwick of the Director of Public Prosecutions, but it certainly would be in your sphere of exercise of power. Noting that—and you'll have to take it at face value or go and have a look at what was tabled in the Senate—the Timorese are incensed about this prosecution and that public interest is something that could bring about the exercise of that power that you have, is that something you would consider, or will you simply ignore the Timor-Leste government—or parliament, I should say.

**Senator Cash:** Again, I am obviously aware now, through your conversations, of the document that you have referred to. But, as the director has stated—and, Chair, as you have also stated—the legal proceedings remain on foot. That was a decision by the Commonwealth Director of Public Prosecutions. It would not be appropriate—I

know what you're trying to do, unfortunately, Senator Patrick, and you have tried this at previous Senate estimates hearings—to comment any further on the matter.

**Senator PATRICK:** This goes to a decision to prosecute. That is not a judicial decision. It's not something that the judiciary do; it's something the executive does. So you can't suggest that that's sub judice. That doesn't make any sense.

**Ms Chidgey:** Senator, I think the issue has arisen at previous estimates.

**CHAIR:** Correct.

**Ms Chidgey:** Any commentary about issues relating to the public interest in proceeding with any of those matters in detail risks prejudicing criminal proceedings.

**Senator PATRICK:** Well, do you know what? I'm actually concerned about our relationship with Timor-Leste, and I'm quite entitled to be concerned about that relationship. I put in an affidavit, in the AAT, from a learned professor who has deposed that the spying operation that took place in 2004 has caused the Timor-Leste government to look more favourably at relations with China. That's of considerable concern. I look at the argument in this particular matter before Justice Mossop. One of the reasons that you—you're adopting a 'neither confirm nor deny' position—

**CHAIR:** Senator Patrick, I'm just going to interrupt you here. I don't know what you're about to say, but I am concerned—

**Senator PATRICK:** Well, you can wait and hear what I've got to say. I'm not going to be silenced by you, Chair. I'm not going to be silenced by you. You don't have a role of censoring me.

**CHAIR:** Excuse me.

**Senator PATRICK:** If you've got a breach of a standing order, fine.

**CHAIR:** Excuse me Senator Patrick. This is not a question of silence; this is a question of asking you to comply with a very important convention.

**Senator PATRICK:** I am complying with it.

**CHAIR:** I'm just asking you to exercise a great deal of care—

**Senator PATRICK:** You don't have to ask it again and again and again.

**CHAIR:** so that you don't stray into the substantive issues in relation to this case.

**Senator PATRICK:** I'm talking about relations with Timor-Leste. This is a fairly significant matter.

**CHAIR:** Yes, I'm happy—

**Senator PATRICK:** I'm talking about the effect of this prosecution.

**CHAIR:** Yes, I'm happy for you to ask about that—

**Senator PATRICK:** And that's what I was asking.

**CHAIR:** but not in relation to the substantive allegations which are before the court, please.

**Senator PATRICK:** Well, anyone who wants to go and look at this can simply go and have a look at some of the reported facts in the case that are being discussed in the affidavits. Everyone says this operation didn't take place.

**CHAIR:** Yes. Can I just remind you, though, that just because something's in the public domain doesn't mean that it's not prejudicial?

**Senator PATRICK:** It's a bizarre call, and I'll tell you why. The fact that the operation took place is confirmed by the conduct of both countries post the event.

**CHAIR:** Do you have a question? It is now 11 o'clock. I'm obviously trying to wrap up the proceedings for today. I am very conscious of time. Could you please move to your question.

**Senator PATRICK:** Unfortunately, Chair, you've obstructed me all the way and it has chewed up a lot of time.

**CHAIR:** That is a reflection on the chair. I have not obstructed you. I have tried to deal with a very difficult issue and give you as much scope as I possibly can as chair of this committee. So could you please move to your questions. I am trying to work very hard with you.

**Senator PATRICK:** There were 60,000 Timorese who died supporting us in World War II. And what did we do? We went and stole their oil—the thing that was going to bring them out of poverty. They thought we were their friends.

**CHAIR:** Can I ask you to move to your question. We are going to need to finish for this evening.

**Senator PATRICK:** Okay. My question goes to the Attorney. With the knowledge that I've provided to you—and I'm happy to do it again by way of letter or simply by referring to you what was tabled in the Senate—with this new information, noting the sensitivities of the parliament of Timor-Leste, are you inclined to reconsider your position or does it not matter what they think?

**Senator Cash:** As the director has noted, the legal proceedings remain on foot—

**Senator PATRICK:** That's a no. You are going to ignore the Timor-Leste a parliament?

**Senator Cash:** and it would not be appropriate for me to comment on this matter any further.

**CHAIR:** Senator Patrick, could you allow the minister to complete the answer.

**Senator Cash:** I've completed my answer. It would not be appropriate for me to comment on this matter any further.

**Senator PATRICK:** Is that a public interest immunity claim?

**CHAIR:** We are now going to have to complete the proceedings for today.

**Senator PATRICK:** Well, I might invoke standing order 26(4), which means we will end up having a spill over. So just give me a couple more minutes. Minister, I've asked you the question—

**Senator Cash:** I've answered the question.

**Senator PATRICK:** No, you said it is not appropriate for you to answer. That's not a public interest immunity.

**CHAIR:** Senator Patrick, could I ask you to pause. You're looking for a couple more minutes?

**Senator PATRICK:** Yes, that's all.

**CHAIR:** Okay, thank you. I know this is difficult. I know this is something that means a lot to you—

**Senator Cash:** Senator Patrick, as you and I have previously discussed, given the additional information you have now referred to tonight, you are more than welcome to write to me.

**Senator PATRICK:** Okay, I will do that. Thank you. Thank you, Chair.

**CHAIR:** Thank you very much, Senator Patrick. I would like to thank the Commonwealth Director of Public Prosecutions and all the officers from the Attorney-General's Department for attending this evening and for your evidence. We very much appreciate it. That concludes today's proceedings. I'd like to thank the minister and the departmental officers for their attendance and Hansard, Broadcasting and secretariat staff. Is it the wish of the committee that the committee accept documents received during the day? Just to be very clear: that doesn't include the most recent document that was handed to the committee by Senator Patrick. There being no objection, it is so ordered. Witnesses are reminded that written responses to questions on notice should be provided to the secretariat by 5 pm on Friday, 25 February 2022. Thank you again.

**Committee adjourned at 23:03**



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

Public

TUESDAY, 26 OCTOBER 2021

CANBERRA

BY AUTHORITY OF THE SENATE



## **LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Tuesday, 26 October 2021**

**Members in attendance:** Senators Carr, Cox, Faruqi [by video link], Griff [by video link], Grogan, Henderson, McAllister, McKim [by audio link], Molan, Patrick, Rice, Scarr, Dean Smith, Steele-John [by video link], Thorpe [by video link], Van, Waters [by audio link] and Watt.

Ms Laura Sham, Assistant Secretary, Research, Data and Publications Branch [by video link]

**Royal Commission into Defence and Veteran Suicide**

Dr James Popple, Official Secretary [by video link]

**Administrative Appeals Tribunal**

Ms Sian Leathem, Registrar [by video link]

Mr Jamie Crew, National Director Tribunal Services [by video link]

Mr Chris Matthies, Chief Legal Officer [by video link]

Ms Jacqueline Fredman, Chief Corporate Officer [by video link]

Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority [by video link]

**Australian Commission for Law Enforcement Integrity**

Ms Jaala Hinchcliffe, Integrity Commissioner

Ms Judith Lind, Executive Director, Operations (Northern)

**Australian Financial Security Authority**

Mr Gavin McCosker, Acting Chief Executive, Inspector-General in Bankruptcy and Registrar of Personal Property Securities

Ms Joanna Stone, Chief Operating Officer

Mr Liam Demamiel, General Counsel

Mr Peter Edwards, Acting Deputy Chief Executive (Interstate)

Mr David Bergman, Official Receiver and National Manager Trustee Services (Interstate)

Mr Paul Shaw, National Manager Enforcement and Practitioner Supervision (Interstate)

Ms Amanda Rice, National Manager Strategy and Planning (Interstate)

**Australian Human Rights Commission**

Professor Rosalind Croucher AM, President [by video link]

Ms Julie O'Brien, Interim Chief Executive [by video link]

Ms Kate Jenkins, Sex Discrimination Commissioner [by video link]

Ms June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner [by video link]

Dr Ben Gauntlett, Disability Discrimination Commissioner [by video link]

Mr Chin Tan, Race Discrimination Commissioner [by video link]

**Australian Law Reform Commission (Interstate)**

The Hon. Justice Sarah Derrington, President (Interstate)

Mr Matt Corrigan, General Counsel (Interstate)

**Commonwealth Director of Public Prosecutions**

Ms Sarah McNaughton, Director (Interstate)

Mr Scott Bruckard, Acting Commonwealth Solicitor (Interstate)

Mr James Carter, Deputy Director, International Assistance and Specialist Agencies

Ms Sabeena Oberoi, Chief Corporate Officer, Enabling Services Group

Mr John Barnes, Acting Chief Financial Officer

**Federal Circuit and Family Court of Australia (Interstate)**

Mr David Pringle, Chief Executive Officer and Principal Registrar (Interstate)

Ms Virginia Wilson, Deputy Principal (Interstate)

Ms Anne-Marie Rice, Senior Judicial Registrar and Executive Director Dispute Resolution (Interstate)

Ms Lisa O'Neill, National Registrar Risk Policy and Family Violence (Interstate)

Ms Janet Carmichael, Executive Director Child Dispute Services (Interstate)

**Federal Court of Australia (Interstate)**

Ms Sia Lagos, Chief Executive Officer and Principal Registrar (Interstate)

Mrs Chris Fewings, Native Title Registrar (Interstate)

behind the scenes to make sure that we're in a position to pay people the correct amounts. You'll appreciate, when it comes to people's payments, we don't want to move until we're confident that the system is absolutely ready.

**CHAIR:** We've heard lots about remuneration from different members being paid different rates of pay. Can I just ask—I'm sure this is on the public record—what's the remuneration for you as the registrar?

**Ms Leathem:** I would have to get that provided to me. From memory, the total remuneration package is around \$415,000 per year.

**CHAIR:** Is that including superannuation?

**Ms Leathem:** Yes. It's a total remuneration package.

**CHAIR:** What term of appointment does that involve?

**Ms Leathem:** I was initially appointed for a five-year term, which is the maximum that applies under the AAT Act. Then in April of 2019, I had an extension of a two-year appointment, so the appointment ends in April of 2022.

**CHAIR:** And it's \$415,000 as a fixed rate per year, including superannuation?

**Ms Leathem:** It is \$415,680 total remuneration package, inclusive of super, yes.

**CHAIR:** Thank you very much. That brings to an end the committee's examination of the Administrative Appeals Tribunal. I want to thank all members of the tribunal, including the registrar, for your time this morning, and for your evidence.

#### **Proceedings suspended from 12:36 to 13:39**

#### **Commonwealth Director of Public Prosecutions**

**Senator KIM CARR:** I will pursue a couple of matters that I have raised on previous occasions concerning the Bernard Collaery issue and Witness K. I understand that it has been confirmed that the Commonwealth prosecution in this matter has now cost \$3,670,379.91; that's correct, isn't it?

**Ms McNaughton:** Not the prosecution, with respect. Our costs are quite different to that. Our internal costs are \$501,607 and our external costs are \$110,304.

**Senator KIM CARR:** Does the Commonwealth DPP consider that you have sufficient resources to investigate and proceed with all the prosecution briefs that come before you in a timely manner, as well as having sufficient contingency set aside for any major matters that may come before you requiring substantial additional resources?

**Ms McNaughton:** We don't investigate. Our role is to prosecute. In the short term we have sufficient resources. Some of our funding measures end at certain times, so there's a little bit of uncertainty there. They do normally get renewed, but we feel we have sufficient resources in the short term to do our work in a timely fashion.

**Senator KIM CARR:** It invariably means, though, that you have to set some priorities. Would that be a fair description?

**Ms McNaughton:** We have a target of 90 days for all our brief assessment matters, so we try to progress our matters as much as we can and not prioritise in that sense. We try to give all our matters priority.

**Senator KIM CARR:** They're all of equal priority, are they? Is that what you're suggesting?

**Ms McNaughton:** Because we are operating through the state and territory courts in the main, and to a small extent in the Federal Court, we clearly have court deadlines that we have to work towards. We clearly have issues such as terrorism matters et cetera which may have particular urgency at particular times. But we do try to conduct our duties in a fair and equal manner, yes.

**Senator KIM CARR:** I've been particularly concerned about the cases of Bernard Collaery and Witness K for some time. I notice that this month the ACT Court of Appeal overturned a ruling in that matter. Is it correct that the Commonwealth has intervened at several stages to argue for greater secrecy in the prosecution of Witness K and Bernard Collaery?

**Ms McNaughton:** It's very important to define what the Commonwealth means in this context. The Commonwealth DPP is my office. Then there's the Commonwealth attorney, and they have certainly intervened in relation to the issues of what is appropriate to keep out of the public sphere. So there are various aspects in matters involving national security which require an assessment as to what is appropriate and what is not appropriate.

**Senator KIM CARR:** Many commentators have suggested that the interventions, though, did in fact originate from the Attorney-General's office. Is that assessment correct?

**Ms McNaughton:** That's the role that they take in relation to matters under the National Security Information (Criminal and Civil Proceedings) Act 2004. And it's a role that is regularly performed in matters concerning national security, for example. It's certainly not unique to the Collaery and Witness K matter. Can I also footnote that Witness K has concluded, and—

**Senator KIM CARR:** I understand that. I've just noticed in the press reporting that, in the Collaery case: ... the court cited the importance of open justice in preventing 'political prosecutions', allowing scrutiny of prosecutors, and giving the public the ability to assess an accused's conduct.

Do you think that's a fair description of the court's ruling?

**Ms McNaughton:** That is part of the court's ruling, as I understand it. Well, it's part of the summary. I don't believe that the full ruling is public yet. It is our view, though, that the prosecution of Mr Collaery should be in the public eye as much as possible.

**Senator KIM CARR:** Sure. So you would agree with the principle of open justice? It's not an absolute requirement, but it is a vital principle in our justice system. Beyond that, it's essential to our concepts of democracy.

**Ms McNaughton:** It's a terribly important concept, and, of course there's a balance in all matters involving terrorism, national security or the like. There is a balance to be struck, and it's where that balance falls.

**Senator KIM CARR:** At the previous estimates, I raised some issues in regard to the prosecution policy of the Commonwealth DPP. The policy provides a two-stage test which must be satisfied for a prosecution to commence. The first is that there is sufficient evidence to prosecute the case, and the second is that the prosecution must be in the public interest. Do you recall that discussion at the last estimates, back in May?

**Ms McNaughton:** Yes. I wasn't present, but my colleague Mr Bruckard was. And, yes, I have heard that evidence.

**Senator KIM CARR:** I notice that the court decision spared Witness K a prison sentence. It was a three-month suspended sentence and a 12-month good behaviour order. The ACT court took into account that he was unlawfully revealing confidential information about Australia's action in East Timor, and Witness K, the magistrate said, was 'motivated by a desire for justice rather than for any personal gain'. Similar matters were, I think, canvassed in regard to Collaery defending himself against the charges. It's about understanding that Collaery is not the primary offender, and he's been charged only in relation to his actions in representing Witness K as his lawyer. That's correct, isn't it?

**Ms McNaughton:** It's hard to summarise it in as few words as those. I suppose it's proper to say that Collaery's involvement came about during the course of him being a lawyer in relation to Witness K.

**Senator KIM CARR:** Remember that we did canvass this whole issue about what is the nature of public interest in terms of your responsibility. The public interest must have been considered in this matter—you made that clear—but I think the office conceded that it did not consider the broader public interest in regard to prosecution and what damage it was doing to Australia's relations with East Timor. Would that be correct?

**Ms McNaughton:** Yes. Can I also reiterate—and I said this at a previous estimates as well—that the prosecution policy also contains clause 2.13:

... a decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the alleged offender or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

That's part of the prosecution policy, too.

**Senator KIM CARR:** I agree. You did also confirm, though, that it's possible for the Director of Public Prosecutions to discontinue a prosecution if it's no longer in the public interest to proceed. In fact, you're obliged to do so. Is that also correct?

**Ms McNaughton:** Absolutely, yes. That is correct.

**Senator KIM CARR:** I was wondering if we could go through that. I asked back in May for you to take on notice whether the Attorney-General, whose consent was required to commence these prosecutions, could also withdraw her consent in the prosecution of Mr Collaery, at which point it would cease. I don't recall—did we get an answer on that?

**Ms McNaughton:** The Attorney, I understand, provided an answer.

**Senator KIM CARR:** There was an answer, was there?

**Ms Chidgey:** Yes, we did provide an answer to that question.

**Senator KIM CARR:** Alright. I'll get our assistants here to dig that out for me. I just want to be clear about how this works, then. I'm just wondering how it remains in the public interest given these following propositions. I'll put these to you and you tell me. There's been a lack of progress in the prosecution, with no trial date apparently set, despite the prosecution having commenced almost three years ago now and there being dozens of hearings. There's been an enormous and continuing expenditure of limited Commonwealth resources on this matter, in excess of nearly \$5 million with the various costs involved. These prosecutions, in fact, go to matters concerning events that occurred 17 years ago and relate to allegations that implicate senior members of the Howard Liberal government in wrongdoing. Noting that, having pleaded guilty, the primary offender in these matters, Witness K, was given a three-month suspended sentence, which has already concluded, and a 12-month good behaviour bond, which the ACT court acknowledged when he unlawfully revealed confidential information about Australia's actions in East Timor. Witness K, it was stated, was motivated by a desire for justice rather than any personal gain. Noting that there's been no suggestion that Mr Collaery, who is a respected lawyer and former Deputy Chief Minister and Attorney-General in the Australian Capital Territory and who will turn 74 this year, poses any threat to the country. Given that the court found in relation to Witness K there was no suggestion Mr Collaery was motivated by personal gain in any of his actions, how is it that there's a continued public interest in the prosecution of Mr Collaery given those circumstances?

**Ms McNaughton:** First of all, with respect, I can't confirm some of those circumstances you've put. But I do accept that there is delay in this matter. Part of that delay is because of the particular nature of the matter involving national security matters and also the pandemic. So that has been some of the delay in the last few years. The matter of public interest is a complex one. It is one where a whole lot of matters are balanced by our office. We continue to review matters, whether or not they're in the public interest, and we have determined, on the material known to us and the seriousness of the alleged conduct, that it remains in the public interest to proceed. Given the matter is before the court, it's not appropriate for me to comment further.

**CHAIR:** Senator Carr, we will need to move to other senators. Could you perhaps wrap up with this last question?

**Senator KIM CARR:** I've asked the Attorney-General this. Given those circumstances, and given some of the other actions that the government's taken in regard to court action on robodebt and various other things, there's a remarkable double standard here, surely? How do you see it? Is there a continuing public interest served by ongoing prosecution in this matter?

**Senator Cash:** As the Commonwealth Director of Public Prosecutions has stated, the matter is currently still before the court, so we do need to be very careful in what we say. But you would be aware—because you have prosecuted this at a number of estimates and obviously you've made statements in the Senate as well—the CDPP considered the briefs of evidence and made an independent decision that a prosecution was appropriate having regard to the prosecution policy of the Commonwealth. In relation to your further question, I would refer you back to the evidence that has just been given by Ms McNaughton in her capacity as the Commonwealth Director of Public Prosecutions.

**CHAIR:** Thanks, Attorney. I give the call to Senator McKim, who is attending by video link.

**Senator McKIM:** Good afternoon to the witnesses. Ms McNaughton, I want to explore a similar issue to Senator Carr. I note that you've confirmed to Senator Carr that there is the capacity for the DPP to make a decision to discontinue a prosecution if it is in the public interest that that occur. Could you confirm, please, that in your consideration of that matter, you are considering all 24 criteria that are listed in regards to public interest in the prosecution policy?

**Ms McNaughton:** In relation to that, they're non-exhaustive matters, first of all. There are matters in addition to that which will always be taken into account. I don't know whether they all apply, so, we consider those matters which we believe are relevant.

**Senator McKIM:** I'm happy for you to take this next question on notice so you can think about it and have some time to consider it. Could you please provide the committee with a list of which of those matters you do



believe are relevant in your consideration of whether it is in the public interest to continue with Mr Collaery's prosecution? Could you also please provide the committee, on notice, with any other considerations that you have applied that are not listed in that non-exhaustive list?

**Ms McNaughton:** As we are all aware, this is a matter which is before the court. For me to start discussing various matters which go to my decision on whether or not to institute a prosecution, when the matter is before the courts as to whether or not the matter is made out, is, with respect, a matter where I would claim public interest immunity.

**Senator McKIM:** Alright. I look forward to you providing a detailed claim for public interest immunity in writing so that it can be considered by this committee and, potentially, the Senate, ultimately. On the face of it, I can't see how you justifying that it is in the public interest to continue this prosecution could possibly compromise, in any way, proceedings before the court. So I do look forward to you providing that public interest immunity claim in writing.

I want to put to you—and I may get the same response—the comments from the ACT Chief Justice when a ruling was made to overturn a decision of the trial judge that some of the relevant material in Mr Collaery's trial should remain classified. The Chief Justice of the ACT said:

... there was a very real risk of damage to public confidence in the administration of justice if the evidence could not be publicly disclosed.

Is public confidence in the administration of justice a consideration in assessing the public interest in this matter?

**Ms McNaughton:** Yes, of course it is. It's one of the many matters. There's a balance of a whole range of matters—non-exhaustive matters—which need to be considered. At the end of the day, it's a judgement call by those in my office making the decision. We balance a whole range of matters, including the seriousness of the offence and the need for deterrence, as well as other matters. There's a whole range of matters, Senator.

**Senator McKIM:** I do appreciate that there's a whole range of matters. I'm aware that there is a list of 24 in the prosecution policy and that that is a non-exhaustive list, and I accept that you will need to make judgement calls. What I'm trying to find out on behalf of the committee, so far unsuccessfully, is which specific issues you considered and how you could possibly come to the view that it is in the public interest to continue with Mr Collaery's prosecution? That's what I'm trying to find out, but you have made a public interest immunity claim, which means that I can't explore that any further in today's hearing. But, as I said, I look forward to reviewing the claim that you will make. I will ask, then, in relation to specific matters: is the sentence allocated to Witness K in an associated matter relevant to consideration of the public interest?

**Ms McNaughton:** Is the sentence in relation to Witness K relevant to our assessment of the public interest in continuing our prosecution against Mr Collaery? Is that your question?

**Senator McKIM:** Correct.

**Ms McNaughton:** That's one of the factors which it would be proper for us to factor into the very many factors, yes.

**Senator McKIM:** Attorney-General, does the Attorney-General, separate to the DPP, review the public interest in continuing with the prosecution of Mr Collaery on an ongoing basis?

**Senator Cash:** As I've stated, the Commonwealth Director of Public Prosecutions have considered the briefs of evidence and they have made an independent decision that a prosecution was appropriate, as the CDPP have stated, in accordance with the Prosecution Policy of the Commonwealth.

**Senator McKIM:** That wasn't my question, Attorney. My question was: do you, independent of the DPP, also consider whether it is in the public interest to continue with Mr Collaery's prosecution?

**Senator Cash:** The Commonwealth's position is clear, and I have advised the Senate committee previously of the Commonwealth's position. The Attorney-General's power to discontinue a prosecution is reserved for very unusual and exceptional circumstances. In fact, there has not been an intervention by any attorney-general since the establishment of the Commonwealth Director of Public Prosecutions, either under section 71(1), I believe it is, of the Judiciary Act 1903 or under the powers provided to the Attorney-General by section 8 of the Director of Public Prosecutions Act 1983. Again—I believe I did advise the committee of this last time—such an intervention would therefore be extraordinary and would necessarily, by its nature, represent political intervention in a process which, as I have articulated, has conventionally been one that is independent. If I go back to what I stated in response to both Senator Carr and now you, the CDPP themselves considered the brief of evidence, and they made an independent decision—taking into account everything that the CDPP herself has now referred to—that they would prosecute the matter.

**Senator McKIM:** I've asked you twice now, and twice you've just answered a completely different question, so I'm going to take that as a no.

**Senator Cash:** I think, Chair, I directly answered that question.

**Senator McKIM:** Can I ask you—

**CHAIR:** Senator McKim, I would ask that you not reflect on the Attorney in that way. The Attorney has answered the question as she sees fit.

**Senator McKIM:** She most emphatically hasn't answered the question. Can I ask, then: Attorney, is it the position of the government that the bugging of the Timor-Leste cabinet in 2004 did occur, or is it the position of the government that it did not occur?

**Senator Cash:** Senator McKim, as I have already stated, firstly, the matter is before the court, so we do need to be very careful with what we say. Secondly, this was an independent decision, after the CDPP had considered the briefs of evidence, made by the CDPP that prosecution was appropriate, having regard to the prosecution policy of the Commonwealth.

**Senator McKIM:** Attorney, is it the position of the government that the Australian government bugged the Timor Leste cabinet deliberations in 2004, or is it the position of the government that it did not bug the Timor Leste cabinet deliberations in 2004?

**Senator Cash:** Again, Chair, this is a matter that is currently live before the courts. I do not propose to comment any further than what I have already stated.

**Senator McKIM:** I'm going to take that as a claim for public interest immunity, so, once again, Attorney, I look forward to you substantiating that claim in writing.

**CHAIR:** Senator McKim, while I have great deference to senators, it's not a matter for you to make that determination or impose that on the Attorney, so I'll take that as a gratuitous comment. We've got one minute left before I need to go to other senators.

**Senator McKIM:** We can talk about that later, Chair, but the Attorney is refusing to answer a legitimate question—or at least a question—

**Senator Cash:** Chair, that's a complete mischaracterisation of my answer.

**Senator McKIM:** that needs to be taken as a claim for public interest immunity. But we can discuss that in a private committee meeting. I'm very comfortable with that.

**CHAIR:** That's not an accurate characterisation of the minister's response. Minister, do you want to add anything further to that?

**Senator Cash:** No. I've provided an answer to the question.

**CHAIR:** Senator McKim, do you have one last question?

**Senator McKIM:** No, Chair, I don't, because the minister is refusing to answer my questions.

**CHAIR:** Thanks very much, Senator McKim. Just before I go to Senator Van, Ms McNaughton, could you remind the committee and those who are listening, and for the purposes of *Hansard*, what this prosecution is about.

**Ms McNaughton:** In relation to Mr Collaery?

**CHAIR:** That's right.

**Ms McNaughton:** Yes. He has been charged with offences relating to communicating ASIS information contrary to the Intelligence Services Act.

**CHAIR:** Thanks very much, Ms McNaughton. Senator Van.

**Senator VAN:** Thank you, Chair. Ms McNaughton, does the CDPP make prosecution decisions independent of government?

**Ms McNaughton:** Yes.

**Senator VAN:** In the matter of Mr Collaery, did the CDPP make the decision to prosecute?

**Ms McNaughton:** Yes—subject to seeking the consent, as we're required to do under the legislation, from the Attorney, as a final step.

**Senator VAN:** How many matters did the CDPP prosecute in the financial year 2020-21?

**Ms McNaughton:** I don't know that I've got those precise numbers with me, I'm afraid, Senator.

**Senator VAN:** Please take that one on notice, if that assists.

**Ms McNaughton:** Yes.

**Senator VAN:** What are the different legal practice areas that the CDPP brings to a prosecution?

**Ms McNaughton:** I don't quite understand your question, Senator. I can indicate that my office is divided into a number of different practice groups and that they're broadly under different crime types. Is that what you're getting at, Senator?

**Senator VAN:** Yes.

**Ms McNaughton:** We've got Organised Crime and Counter Terrorism. We've got Revenue and Benefits Fraud. We've got Commercial, Financial and Corruption. We've got Human Exploitation and Border Protection and Illegal Imports and Exports. We've also got IASA, which stands for International Assistance and Specialist Agencies—our other, or miscellaneous, matters.

**Senator VAN:** Got it. Organised crime and counterterrorism are a key priority of the government and for the safety of our community.

**Ms McNaughton:** Yes.

**Senator VAN:** How many referrals were made to the CDPP in 2020-21?

**Ms McNaughton:** I'd have to take that on notice. Organised crime and counterterrorism are two different crime types that we deal with together because they've got certain similar aspects to them.

**Senator VAN:** Okay. How many matters does the CDPP currently have on hand?

**Ms McNaughton:** Again, unless one of my team can provide that to me quickly, I'd have to take that on notice; I'm sorry.

**Senator VAN:** That's fine. Could you also take on notice how both the referrals and matters currently on foot compare to the previous financial year for me, please.

**Ms McNaughton:** Yes. Are you interested in the complexity, because we have noticed a change in complexity of the matters over a period of time. Reflecting I think a previous conversation today, numbers aren't necessarily reflective of the full picture.

**Senator VAN:** Is that something you want to comment on now, or is it something you will take on notice?

**Ms McNaughton:** We'll take it on notice. I'm just saying that, if we give numbers, numbers are not necessarily reflective of actual workload, because the complexity is changing.

**Senator VAN:** Okay. Thank you kindly. Thank you, Chair.

**CHAIR:** Thank you very much, Senator Van. I'll just check whether any other senators are seeking the call. No? In that case, we might thank officers from the Commonwealth Director of Public Prosecutions. Ms McNaughton, thank you very much for your time and for your evidence today.

**Ms McNaughton:** Thank you, Chair.

#### **Australian Commission for Law Enforcement Integrity**

[14:11]

**CHAIR:** I now call officers from the Australian Commission for Law Enforcement Integrity. Good afternoon, Ms Hinchcliffe.

**Ms Hinchcliffe:** Good afternoon, Chair.

**CHAIR:** Do you have an opening statement?

**Ms Hinchcliffe:** Sorry, Chair, I do not have an opening statement.

**CHAIR:** Thank you. We will now go to questions from senators. Senator Watt.

**Senator WATT:** Sorry, I might be misunderstanding something here. Ms Hinchcliffe, I can see you're the Integrity Commissioner. I thought we were doing ACLEI.

**Ms Hinchcliffe:** Yes, that's right.

**Senator WATT:** You're handling ACLEI as well? Okay. Great. It's a while since I asked ACLEI questions.

**Ms Hinchcliffe:** Senator, I'm the Integrity Commissioner, and the agency that I head is ACLEI.

**Senator WATT:** There you go. The last time I was asking ACLEI questions, there was someone very different to you sitting in the chair, so forgive me for missing that.

I noticed in this year's budget that an amount of \$10 million—contingency reserve provision—had been transferred from the CIC, which I think stands for Commonwealth Integrity Commission, to ACLEI for the



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

**Estimates**

THURSDAY, 27 MAY 2021

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Thursday, 27 May 2021**

**Members in attendance:** Senators Antic, Canavan, Kim Carr, Ciccone, Henderson, Hughes, McAllister, Patrick, Pratt, Scarr, Small, Steele-John, Thorpe, Van.

**Commonwealth Director of Public Prosecutions**

Mr Scott Bruckard PSM, Acting Commonwealth Director of Public Prosecutions

Mr James Carter, Acting Commonwealth Solicitor for Public Prosecutions

Ms Sabeena Oberoi, Chief Corporate Officer

Mr Steven Burggraaf, Chief Financial Officer

**Family Court of Australia & Federal Circuit Court of Australia**

Mr David Pringle, Chief Executive Officer and Principal Registrar [by video link]

Ms Virginia Wilson, Deputy Principal Registrar and National Family Law Registrar [by video link]

Ms Anne-Marie Rice, Senior Registrar and Executive Director Dispute Resolution [by video link]

Ms Lisa O'Neill, National Registrar Risk Policy and Family Violence [by video link]

**Independent National Security Legislation Monitor**

Mr Grant Donaldson SC, Independent National Security Legislation Monitor [by video link]

**National Archives of Australia**

Mr David Fricker, Director-General

Ms Ruth Fenwick, Assistant Director-General

**Office of the Australian Information Commissioner**

Ms Angelene Falk, Australian Information Commissioner and Privacy Commissioner

Ms Elizabeth Hampton, Deputy Commissioner

**Office of the Commonwealth Ombudsman**

Mr Michael Manthorpe, Commonwealth Ombudsman

Ms Penny McKay, Deputy Commonwealth Ombudsman

Ms Lisa Collett, Chief Operating Officer

Mr David Fintan, Senior Assistant Ombudsman

**Committee met at 09:03**

**CHAIR (Senator Henderson):** I declare open this hearing of the Senate Legal and Constitutional Affairs Legislation Committee for the budget estimates. The Senate has referred to the committee the particulars of proposed expenditure for 2021-22 for the portfolios of Home Affairs and the Attorney-General and other related documents. These are budget estimates proceedings and the outcomes to be heard during today's estimates are from the Attorney-General's portfolio. The committee has set Friday 16 July 2021 as the date by which answers to questions on notice are to be returned. The committee has also decided that written questions on notice should be provided to the secretary by 5 pm on Friday 11 June 2021.

Under standing order 26, the committee must take evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten

**CHAIR:** Thank you very much, Senator Steele-John. There are no other senators who wish to ask questions of the Australian Human Rights Commission. So I want to be clear, Senator Steele-John, that you've finished your questions.

**Senator STEELE-JOHN:** I have finished.

**Senator KIM CARR:** That's the agreement we've made. He may not have finished his questions, but that's what we've agreed on.

**Senator STEELE-JOHN:** In fear of Senator Carr, I have concluded my questions.

**Senator Cash:** I hope that was not on the *Hansard* record, Senator Carr.

**CHAIR:** Thank you, Senator Carr, for helping in the time management of the committee.

**Senator KIM CARR:** We did make an undertaking we'd finish this evening.

**CHAIR:** We are running about an hour behind, and we're obviously very keen to catch up. But I want to thank Professor Croucher. You've got one thing to add. Yes, Professor.

**Prof. Croucher:** If I may, Chair, with indulgence. I have obtained the answer to Senator McAllister's question. The submissions have been open for one week now.

**CHAIR:** The submissions in relation to what issue?

**Prof. Croucher:** This is the Commonwealth Parliamentary Review. The submissions have been open for one week. As at 4.30 pm, we had received 41 submissions, and 121 interviews have been booked. It's an online booking form. So that's at 4.30 pm.

**Senator McALLISTER:** Thank you. Chair, may I just check with the minister whether she's tracked down Senator Stoker's current responsibilities.

**Senator Cash:** I have not been able to do that. I do apologise, Senator McAllister.

**CHAIR:** Professor Croucher, thanks so much to you and the commissioners of the Australian Human Rights Commission for appearing today. We very much appreciate your evidence and your time.

**Prof. Croucher:** Thank you.

#### **Commonwealth Director of Public Prosecutions**

[16:45]

**CHAIR:** Welcome. Do you have an opening statement?

**Mr Bruckard:** No.

**CHAIR:** Thank you so much for your time and attendance today. We will move to questions.

**Senator PATRICK:** I would like to table two documents that have already been tabled in the Senate chamber. I believe the witnesses have had an opportunity to look at these. Mr Bruckard, thank you for your attendance. I want to go to the matter of Richard Boyle, in which you are conducting a prosecution. I want to assure you that I don't intend to go to matters that are before the court. This relates to the executive decision to prosecute. I'm just trying to establish the public interest around decisions that have been made in relation to that.

**CHAIR:** Senator Patrick, thank you very much for that clarification. For the benefit of all senators—and Senator Patrick is observant of this principle—the practice of the committee and all committees is that the sub judice convention is intended to avoid debate or inquiry

which might cause civil or criminal proceedings currently before the courts to either miscarry or reach conclusions other than on the evidence presented in the case. So, Senator Patrick, just to make it clear, you are not going to the heart of any such proceedings?

**Senator PATRICK:** No.

**CHAIR:** You're asking questions of the Commonwealth DPP as to matters of decisions to prosecute?

**Senator PATRICK:** That's correct.

**CHAIR:** So it's really more on administrative decisions?

**Senator PATRICK:** Executive decisions.

**CHAIR:** Alright. Thanks very much.

**Senator PATRICK:** I just want to run through the sequence here. I've observed your guidelines in relation to prosecutions, and I can understand, with a little bit of knowledge as to the case that's before the court—again, without going to it—how it ticks all the boxes. Can I take you through a document that I tabled in the Senate. I just want to understand your awareness of these particular issues. On 12 October 2017 Richard Boyle, who worked for the ATO, lodged a public interest disclosure—so formally blew the whistle—on what he observed to be an unethical directive given by a senior leader in the debt business line of the ATO. It related to the issuing of garnishee notices and, effectively, the inappropriateness associated with that. Are you aware that a PID was lodged?

**Mr Bruckard:** Yes, we are.

**Senator PATRICK:** On 27 October, 15 days later, that PID was rejected by the ATO. Mr Boyle then lodged a redacted version of his PID, public interest disclosure, to the IGT, the Inspector-General of Taxation, as a complaint. Are you aware of that?

**Mr Bruckard:** I might have to take that on notice. We are generally aware of the fact that the PID was made, but I might need to take the exact detail on notice.

**Senator PATRICK:** Then, as a result of no action in that space—it's clearly public knowledge that the ABC ran a *Four Corners* program called 'Mongrel bunch of bastards', which aired on television and basically alleged that the ATO wasn't playing by the rules. Mr Boyle appeared on that program. I'm sure you're aware of that?

**Mr Bruckard:** I'm aware of it, but matters that relate to television programs are something which may or may not be relevant to the decision-making at the Commonwealth DPP.

**Senator PATRICK:** I understand. Then, on 4 January 2019, he was charged basically with copying and disclosing taxpayer information to the media; I don't want to go to anything around that, but that's a statement of fact. He is now before the court on a number of charges.

Following that, in May of that year the Inspector-General of Taxation released a review into the ATO's issuing of garnishee notices, stating inter alia:

Problems did arise in certain localised pockets with the issuing of *enduring* garnishee notices for a limited period, particularly so at the ATO's Adelaide local site ...

That was the finding of the IGT. In essence, the IGT found that there were problems in the very area that Mr Boyle had raised in his public interest disclosure.

Now I want to take you to the second document that I've provided, which is the outcome of a Senate committee. I will take you to paragraph 5 of that, the last sentence, and just summarise: 'The committee is concerned that the standard of the ATO's investigation could appear to the public to be superficial in addressing the serious concerns raised by ATO whistleblowers.' In effect, if we go back to the second step in my other letter—

**CHAIR:** Senator Patrick, I'm sorry; I'm trying to find that reference in the document.

**Senator PATRICK:** Paragraph 5.

**Senator Cash:** It's the last two lines.

**CHAIR:** Thank you.

**Senator PATRICK:** So the bottom line, just in summary, is: this is a guy that blew the whistle. He saw something going wrong. He has blown the whistle formally. The Senate has looked into this, and we now know that that was a superficial investigation. You'll see the comment I've put: 'But for the superficial nature of the ATO investigation, all the remaining steps would not have happened.'

My question goes to the public interest considerations in deciding to prosecute. Did the CDPP look at the scope of everything that happened, because the perception that any reasonable person would have is that Mr Boyle made a public interest disclosure that was rejected—we now know the ATO failed in its processing of his public interest disclosure. He then tried again with the IGT and failed again, and then went to the media. We know that there have been laws changed as a result of these actions. Indeed, the IGT has made findings that support his PID. Most people will look at it and say, 'This is a case where someone tried really hard to follow the rules, blew the whistle and ended up being prosecuted.'

**CHAIR:** Senator Patrick, you need to be very careful to distinguish between these issues and the case which is underway at the moment.

**Senator PATRICK:** Sure. I'm not going to the guilt or otherwise—

**CHAIR:** Can I just confirm: is this before a judge alone or before a judge and jury?

**Mr Bruckard:** It's listed for a 21-day jury trial commencing on 6 September 2021.

**CHAIR:** In what court?

**Mr Bruckard:** I think it's the District Court of South Australia.

**CHAIR:** On the basis that this is a District Court trial before judge and jury, I particularly ask you, Senator Patrick, to be very cautious about making any comment that might inadvertently influence any factual matter before the court.

**Senator KIM CARR:** Chair, in terms of the sub judice provisions, my understanding is that these proceedings can't be used in a court of law. Senator Patrick is entitled to ask questions which are to deal with—

**Senator PATRICK:** And I'm not going specifically to the charges. The charges are very different to what I'm talking about.

**CHAIR:** I understand that. You have made it very clear the basis on which you are asking the question. That's correct, Senator Carr; they can't be used as admissible evidence in the court—

**Senator Cash:** You're saying it could influence a jury or—



**CHAIR:** but what can happen is that reporting of these proceedings may influence a jury, particularly when it's not just a proceeding relating to matters of law. When it's a proceeding relating to matters of fact, and particularly before a jury, there is a higher risk. So I'm just asking Senator Patrick to be very cautious in that respect.

**Senator PATRICK:** Sure. Let's go very generically. I have put the facts out on the table. When the DPP considers the public interest—you could see the chilling effect that has on anyone standing by. They look and say, 'Someone has tried to do the right thing in a couple of different ways. It hasn't worked for them.' We now know there was a flaw in a particular process. Charges are then laid, and it looks to the layperson, the reasonable person, that someone who tried very hard to do the right thing and—in fact, raised an issue that, in the end, appeared to be present—it has a really big chilling effect. There would be no-one in Australia that looked at those facts and didn't think, 'I'm not going to whistleblow'. It actually has an effect on every Australian, and it's in that context I ask whether, in the decision to prosecute, the CDPP had regard to that aspect of the decision-making.

**Mr Bruckard:** Our focus has been with respect to the evidence in the matter. So the decision to prosecute in this case was based upon an assessment of the evidence applying the prosecution policy of the Commonwealth. So, applying the policy, it was determined that there was a prima facie case, that there was a reasonable prospect of conviction and that the prosecution was in the public interest.

**Senator PATRICK:** I might just direct this at the Attorney now. When you look at the rules that you operate to in the very narrow sense of perhaps allegations that were made and evidence that you've collected, there's a case to at least put to a judge and jury. But, Attorney, you can see in the broader perspective—and this is where your particular role comes into play—I refer you to section 71(1) of the Judiciary Act, which gives you a right to decline to proceed in a prosecution. I know that's a big step. I'll just point out what the Federal Court said in relation to that.

**CHAIR:** Senator Patrick, when you refer to 'you', we just have to be cognisant that you are referring to the position of the Attorney-General, given that the Attorney—

**Senator Cash:** Correct, it's the position of the Attorney-General. Correct.

**CHAIR:** has been in this current role for six weeks.

**Senator PATRICK:** Yes. Absolutely.

**CHAIR:** So I just want to clarify that.

**Senator PATRICK:** Noting she did a law degree in the UK, I prefer 'Lord Chancellor', but we will stick with the Attorney-General. Attorney, in the 1984 Federal Court case *Re Evans; Ex parte Clyne*—I will read a couple of snippets: 'The Attorney-General, as first law officer, has always borne the ultimate responsibility'—

**CHAIR:** Sorry, I don't want to interrupt you, but, when you are referring to a particular case and reading out from the judgement—Attorney, do you need to refer to that judgement?

**Senator Cash:** I'm happy for Senator Patrick to put to put the paragraphs to me.

**CHAIR:** Okay. Thank you.

**Senator PATRICK:** I will just start that again: 'The Attorney-General, as first law officer, has always borne the ultimate responsibility for prosecution decisions and the legislation

enacted'—in this case they are referring England—to establish the DPP'. But that doesn't alter your position in relation to the fact that 'the Attorney may discharge his'—and, in your case, her—'ultimate responsibility to the parliament and to the people for the conduct of prosecutions'. So you have an overriding role—and I accept the bar is very, very high—and you could perhaps see in the circumstances of this particular case that the DPP has looked at this quite narrowly. Perhaps noting the significant chilling effect that this may have on the government's whistleblower policies, I wonder—and maybe it is something you might want to take on notice or something we have to take offline—whether it really is in the public interest to continue with this particular prosecution.

**Senator Cash:** I will take that as a comment from you, because, as you have noted and as the CDPP has articulated, the prosecution was brought because the Commonwealth Director of Public Prosecutions made an independent decision that the prosecution of this particular person is in accordance with the prosecution policy of the Commonwealth. You are also correct, though, in relation to section 71(1) of the Judiciary Act or section 8 of the Director of Public Prosecutions Act. You would also be aware of the fact that the exercise of these powers is reserved for very unusual and exceptional circumstances. I'm actually advised that section 71(1) of the Judiciary Act, which predates the CDPP, has not been used since the CDPP was established. I will consider further the issues you have raised, but they are the points I will make.

**Senator PATRICK:** It's just that you could really see how someone could look at what's happened here and simply say, 'No-one should ever blow the whistle again'. If someone makes a mistake in the PID process and doesn't do the investigation properly, they will end up going to jail. That's not what we want. I know how important, in the negotiations between you and Senator Xenophon, you regard whistleblowing as a feature that should exist within our organisations to avoid corruption and misconduct and a whole range of other things.

**Senator Cash:** I will take those as comments. Thank you, Senator Patrick.

**Senator PATRICK:** I understand you said you will at least consider what I have put to you today.

**Senator Cash:** I will have a look at what you have referred to, but I've made it very clear that the prosecution was brought because the Commonwealth Director of Public Prosecutions made an independent decision.

**Senator PATRICK:** Thank you very much.

**CHAIR:** Senator Scarr.

**Senator SCARR:** I have a couple of questions in relation to the same issue. Acting Director, I have a legal background as well, so I certainly respect your independence, and I congratulate you and your team on the wonderful service you provide to the people of Australia.

**Mr Bruckard:** Thank you, Senator.

**Senator SCARR:** I also want to speak in terms of some generalities in relation to the decision as to whether to prosecute or not to prosecute. As I understand from reading your policy, one of the factors you consider in making that decision is whether or not a prosecution could be counterproductive in all the circumstances. So, in that situation, is it relevant as a general rule to consider whether or not, for example, prosecuting someone who claims to be a

whistleblower could have a consequence of, to use Senator Patrick's terminology, a chilling effect on other public servants in a position where they see as unethical behaviour and want to bring that to the public's attention, to shine a bright light on it so that action is taken to try to address the situation. Is that the sort of thing you would typically weigh in terms of considering whether or not you should proceed with the prosecution?

**Mr Bruckard:** Certainly, the prosecution policy has a deliberately broad framework established for consideration of questions of public interest. There's a range of matters that are set out in the policy, but it's a non-exhaustive list. When prosecutors make that assessment, they'd be entitled to weigh up the sorts of factors that you've referred to in your question as to whether it would be, in the totality of the material and in the circumstances of the offending, in the public interest to proceed.

**Senator SCARR:** There's something else you might consider. As I understand it, you consider the impact on the victim of the potential crime. I don't want to be particular about this case—I'll tread the line—but in a whistleblower circumstance where there's private and confidential information relating to individuals and you have a government bureaucracy that's seeking to keep its information confidential but the person is actually accessing the information with the view, the intent and the motivation of helping individual citizens is that something that would be typically weighed up in the process? How do you weigh up the interests of the individual citizen, whose information has been stored and needs to be protected, and the interests of the bureaucracy or the government agency? Is that something you need to weigh up in terms of making that decision?

**Mr Bruckard:** Again I don't want to speak about the particular case because those very matters might be matters that are litigated in that prosecution. I think it's best that we take it out of that context. Certainly impacts on victims are very important to us in any decision whether to prosecute or not. At one extreme in our practice we see cases with victims of horrific child sex offending, for example, where the victim's interests in the matter are pretty significant—

**Senator SCARR:** Absolutely.

**Mr Bruckard:** At the other end of the spectrum there are—and some people might use the term 'victimless crime'—broader crimes that might have been committed on the revenue, for example. No two cases are the same, but our prosecutors are acutely aware of the subtle differences or the stark differences in some instances, and we apply the prosecution policy consistently in those circumstances.

**Senator SCARR:** In terms of considering all the relating surrounding circumstances—and I note that you said that you look at the broad ambit of circumstances and background—would you consider, if you had the benefit of considering at the time, government reform or change in policy that was made at least in part due to the attention that arose from the actions of someone who engaged in a particular conduct? If you look at the totality of circumstances from the act to the ultimate outcome, there has been a change in government policy in a particular regard. Let me put it this way: have you ever come across circumstances like that? I would have thought they would have been extraordinarily rare and limited in a great nature. Have you ever come across a circumstance like that?

**Mr Bruckard:** I can't say in my experience that I have, but the policy does talk about the obsolescence or obscurity of the law that is the subject of the decision whether or not to prosecute. We sometimes have laws that are on the statute books at the time but a subsequent change in the law might impact on our decision when we look at the offending that took place at the time, so that occurs. I can't say that I've had experience where a particular disclosure that is made impacts in the way that is put by the senator's question.

**Senator SCARR:** So would it be fair to say that then has elements of being an extraordinary case that wouldn't typically come before the CDPP in assessing those situations, a case where there has been some conduct but ultimately at the end of that conduct there has been policy reform, an announced change to law, to change a process to take account of what was uncovered through that act? Is it fair to say that that is a set of extraordinary circumstances?

**Mr Bruckard:** It would be an unusual case.

**Senator SCARR:** It would be a very unusual, rare and extraordinary case; would that be correct?

**Mr Bruckard:** In my experience it would be quite rare because I can't recall—

**Senator SCARR:** This of course leads to the next question as to how experienced you are. I know that, having elevated to the position you're now in, you must be extraordinarily experienced, Mr Bruckard. Could you outline the degree of your experience in terms of prosecution activities?

**Mr Bruckard:** Yes. I've been a prosecutor for about 33 years.

**Senator SCARR:** For 33 years!

**Mr Bruckard:** Yes, so I have a fair few runs on the board in that sense.

**Senator SCARR:** You have more runs on the board than Bradman!

**CHAIR:** That's a very big call!

**Senator SCARR:** I thank you for everything you do, and I wish you and your team all the best.

**CHAIR:** Senator Patrick.

**Senator PATRICK:** This is just in relation to that decision to go forward and prosecute. I presume that in any circumstance there is some report or documentation that's associated with any particular prosecution that you make?

**Mr Bruckard:** Yes, that's correct.

**Senator PATRICK:** Is that something that you ever share with the Attorney-General in terms of just understanding that the Attorney has an oversight role by way of statute in respect of prosecutions? Ultimately, she is responsible to the parliament for the carriage of that particular government activity.

**Mr Bruckard:** We prepare those documents and we apply the policy very carefully. But we also guard our independence as a very important—

**Senator PATRICK:** But do you accept that no independent authority acts without oversight? We framed our Constitution to avoid that.

**Mr Bruckard:** I understand that but, obviously, we're set up for the purpose of acting independently in relation to the decision—

**Senator PATRICK:** And I want you to be that too.

**Mr Bruckard:** about whether or not to prosecute. We generally don't provide material to the Attorney in relation to our decisions to prosecute. That's not something that we generally do.

**Senator PATRICK:** This will be specific to the case, and you may choose not to answer this: in the case of Richard Boyle, was one of the things that was documented—

**CHAIR:** Sorry, Senator Patrick—

**Senator PATRICK:** Can I at least ask the question?

**CHAIR:** As long as you're not disclosing any facts which might influence a jury in the question.

**Senator PATRICK:** Okay. In the context of the decision to prosecute Richard Boyle and the documentation associated with that, was the effect of that prosecution on whistleblowing considered more broadly? If I were able to look into that document, would I find something on that topic?

**Mr Bruckard:** We constantly review the cases we have before the court. On occasions, defendants, or their legal representatives, write to us and provide us with fresh material, and ask us to review the case. On other occasions, we'll conduct that review on our own motion if we become aware of relevant information which would impact on our decision to continue the prosecution.

In this case, it has been reviewed and it was—

**Senator PATRICK:** But from that perspective of the chilling effect on other whistleblowers?

**Mr Bruckard:** It was certainly reviewed, conscious of the fact that there had been material around the PID which had been ventilated in the Senate report.

**Senator PATRICK:** But that's not the same thing as I talked about. That's about a defect in the PID processing. I'm just talking about in general—

**Mr Bruckard:** Sorry, Senator. It goes to the question as to whether we're aware of the PID, effectively, and the process. As to the broader question of whether our decision would have a chilling effect: I'd probably have to take that on notice, as to whether that was discussed in detail in any of the submissions that were prepared by our lawyers.

**Senator PATRICK:** Alright. If it wasn't, maybe I can just suggest that it should be. I'll leave it at that. Thank you.

**CHAIR:** Senator Carr.

**Senator KIM CARR:** I don't have a legal background, so you may have to explain a few things to me. I'm interested in the Collaery case and witness K. I'm particularly concerned about these matters because, as I understand it, the prosecution policy of the CDPP is set out on your website and states that a two-stage process be satisfied for the prosecution to commence. One stage is that there is sufficient evidence for a prosecution case, and the second is that the prosecution has to be in the public interest.

**CHAIR:** Senator Carr, you're reading from which website? Could you clarify?

**Senator KIM CARR:** The CDPP website.

**CHAIR:** Thank you.

**Senator KIM CARR:** Am I correct?

**Mr Bruckard:** Yes.

**Senator KIM CARR:** What is the public interest in prosecuting Bernard Collaery and Witness K?

**Mr Bruckard:** We've applied the policy in those cases, and we've determined it is in the public interest to proceed with those prosecutions with Mr Collaery and Witness K.

**Senator KIM CARR:** That's not an explanation of what the public interest is. You've made a determination that there is a public interest. I'm asking a different question: what is the public interest?

**Mr Bruckard:** The public interest, according to our test, is a broad set of criteria that collectively go to the question of whether it's in the public interest to proceed with the prosecution. There are many matters that go to determining whether a prosecution should proceed on the basis of the public interest, and that's the criteria we apply.

**Senator KIM CARR:** Last June there was a secret court hearing regarding whether the trial of these men should be conducted in secret. As I understand it, this was being pursued by the government. I understand that last week the decision was appealed and the appeal was also conducted in secret. It was reported on ABC's *Media Watch* on Monday this week that the subject matter of the prosecutions that the government was seeking to suppress included allegations that the former Liberal Party foreign minister Mr Downer, and a former Liberal Party Attorney-General Mr George Brandis, approved the bugging of the East Timor cabinet room during sensitive commercial treaty negotiations—

**CHAIR:** Senator Carr, I'm not disputing your right to raise the matters, but you referred to a *Media Watch* report. Is it possible that we could distribute that? If you have a transcript, that would be preferable.

**Senator KIM CARR:** On this occasion, I will, because it serves another purpose. I don't agree with your interpretation of how things work here. Nonetheless, I will for this purpose.

**CHAIR:** Well, it is a practice that—

**Senator KIM CARR:** No, it's a practice that you have followed. It is not a practice that is generally followed.

**CHAIR:** It is very clearly set out in *Odgers' Australian Senate Practice*, that, where a witness is asked to respond to information contained in a document or in a transcript, they are provided with a copy of that document.

**Senator KIM CARR:** I'm making an observation here—

**Senator PATRICK:** Does that apply the other way, when they're reading from a brief?

**CHAIR:** Let's not get into a debate about this.

**Senator PATRICK:** I think it's relevant—to be even on each side.

**CHAIR:** Senator Carr, you have the call.



**Senator KIM CARR:** It's a reasonable point. I can recall that when I sat on the other side of the table, the briefs were very interesting. The material that I'd been seeking for many years was suddenly revealed to me! It's always an interesting thing. You're often surprised by what you discover when you get on the other side of the table, I have found! Particularly when you're representing another minister.

**CHAIR:** This issue is a matter of courtesy—

**Senator KIM CARR:** If you can let me finish, I'll try to get to the point here.

**CHAIR:** Senator Carr, if I could just clarify: this issue is a matter of courtesy, in that it would be unfair for witnesses to be required to answer questions when they don't have—

**Senator KIM CARR:** Let me finish the question, and you might be able to more accurately reflect on proceedings.

**CHAIR:** access to the document in question.

**Senator KIM CARR:** Look. I could finish the question and we could then deal with the matter.

**CHAIR:** Thank you, Senator Carr. You have the call.

**Senator KIM CARR:** Thank you. What was stated there was that matters are being attempted to be suppressed. They concern the actions of the previous government in relation to the bugging of the East Timor cabinet room in sensitive commercial negotiations. This was discussed in interviews on multiple ABC programs seven years ago, and those interviews are still available online in the world today; they're still online at the ABC. Now, that is the first point I want to make. Is it correct that the DPP has the power to discontinue a prosecution if it's no longer in the public interest to proceed?

**Mr Bruckard:** That's correct.

**Senator KIM CARR:** Is it also correct that the Attorney-General can withdraw her consent to these prosecutions?

**Mr Bruckard:** I might take that question on notice.

**Senator KIM CARR:** I'm just noting that there's been a lack of progress in these prosecutions. No trial date appears to have been set, despite the prosecution having been commenced three years ago and despite the fact that there have been dozens of hearings.

**Senator PATRICK:** And \$3.4 million spent.

**Senator KIM CARR:** Nearly \$4 million has been spent, including the department court costs, prosecution and police resources when considered. These prosecutions relate to events that allegedly occurred 17 years ago, and there's been no suggestion that either of the accused poses any threat to the public, particularly Mr Collaery, who's a respected lawyer and former Deputy Chief Minister and Attorney-General of the Australian Capital Territory and, I might add, will turn 77 this year. Could you explain why the public interest continues to be served by these prosecutions?

**Mr Bruckard:** With respect to the progress of the matters, the Witness K matter is fixed for a plea hearing in the ACT Magistrates Court on 3 and 4 June 2021, so that's coming to a resolution very soon.

**Senator PATRICK:** You've successfully worn them down.

**Senator KIM CARR:** No, let's just hang on. On that point, I understand that it's been held up by disagreements over whether there can be access to the affidavits used by East Timor in the international proceedings in The Hague, which the lawyers are arguing need to be before the court for the sentencing. Is that correct?

**Mr Bruckard:** My understanding is that the matters are expected to proceed on 3 and 4 June.

**Senator KIM CARR:** But is the proposition I've put to you correct—that, in fact, the affidavits that are being used in international proceedings in The Hague are required before the sentencing proceedings can, in fact, proceed?

**Mr Bruckard:** I'm not aware of that, but I'm happy to explore that on notice if you'd like me to.

**Senator KIM CARR:** If you wouldn't mind, I'd appreciate that. You can continue. I'm sorry I interrupted you, but I think that's important and it needs to be clarified.

**Mr Bruckard:** Yes. In terms of the matters of Mr Collaery, you'll be aware that we are awaiting judgement in that matter. It's been on appeal before the ACT Court of Appeal, and judgement's now pending. So there have been interlocutory appeals that have taken some time. Obviously, these matters have also been impacted by some of the delays that have been occasioned by the COVID-19 pandemic, and they're very complex matters.

**Senator KIM CARR:** Indeed, they are. It is ultimately a question of priority and, I'd put it to you, political priority. There are any number of substantive questions that relate to the unlawful diversion of taxpayers' money across the Commonwealth. If you want me to go through a few, I can. Why is it that this matter has the priority it's been given? Where's the priority given to robodebt, for instance? That's the situation around a number of matters. I could list a number of scandals of this government that involve matters that I would have thought were reasonable for prosecution. Why has this particular matter got such priority that we could devote resources of this type, over \$4 million, given so little progress has been made in the circumstances where you've got people of, I think, in the case of Mr Collaery, quite extraordinary distinction? Why is it?

**Mr Bruckard:** The costs you've referred to are not the costs of the prosecutions. We haven't spent anything like that. As of 14 May, the total external legal costs incurred by the DPP in the prosecution of Mr Collaery have been \$110,210. That's GST exclusive. The total external costs in relation to Witness K are in the vicinity of \$127,113. Those costs might pertain to the litigation costs of other parties. In terms of priorities and as to whether—

**Senator PATRICK:** That is grossly different to an answer that was provided to the Senate as to the taxpayers' resources paid. I wonder if there's a difference. Are you only referring to some number inside the DPP?

**Mr Bruckard:** That is correct.

**Senator KIM CARR:** That's what he's doing.

**Mr Bruckard:** I just wanted to make it clear in terms of the costs, what the costs of the prosecution—

**Senator KIM CARR:** I'm saying the cost to the Commonwealth is substantially higher than that. I don't think that in any way detracts from what appears to be a vindictive action

against these people. Someone wants to silence them for what is effectively whistleblowing activity in what appears to me to be an extraordinary action to bug a friendly nation involved with a commercial dispute. I don't see what the national interest could possibly be.

**Mr Bruckard:** Our decision to prosecute has been made very carefully in both of these matters based on assessment of the evidence that's been presented to us in the briefs of evidence.

**Senator PATRICK:** In relation to that, can I please jump in, Senator Carr?

**Senator KIM CARR:** Yes.

**CHAIR:** Senator Patrick, you have the call.

**Senator PATRICK:** I was in East Timor across a couple of visits, one of them a parliamentary visit, and it was very clear to me on the ground that the east Timorese were very, very upset with Australia and it has an effect on the way in which they view Australia. Mr Collaery and Witness K are heroes up there. I met with the president's chief of staff in relation to this particular issue. We have a situation where to our north the Chinese are investing significant amounts of money in East Timor. On their southern plateau, look at the freeways they're building, the powerlines they're building and the ports they're building in the north. Does the effect that this prosecution has on the East Timorese and their view towards perhaps other nations assisting them rather than Australia being considered in this prosecution in your consideration of public interest?

**Mr Bruckard:** Senator, we've made an assessment based on the evidence we have.

**Senator PATRICK:** This is a matter of public interest. The way in which the country of East Timor and the people of East Timor view us and, in fact, the way in which they engage other countries which may not be in our national interest. This is not just about evidence. This is a much, much bigger issue and it disturbs me if you're saying you haven't considered such factors moving forward with the prosecution.

**Mr Bruckard:** Our focus has been on the evidence.

**Senator PATRICK:** Not on the national interest. The evidence you're giving is you haven't considered this from a national interest perspective and, flowing from that, you haven't properly considered this from the public interest perspective.

**Mr Bruckard:** I dispute that. I think we have considered the evidence and we've considered the public interest and applied the policy.

**Senator PATRICK:** How did you consider the public interest, if you didn't consider the propositions that I've just put to you about how the East Timorese feel about Australia proceeding with this prosecution?

**Mr Bruckard:** I'm not sure that when we assess this case, we would have had evidence or had regard to how people in East Timor feel about the prosecutions. That probably would be a step beyond the scope of the matters that we would normally consider in determining whether—

**Senator PATRICK:** I accept that. But that's where it goes to the Attorney-General, who has that ultimate responsibility. The DPP have just indicated that they haven't considered the effect of this prosecution on our relations with East Timor and the effect that has on perhaps

the way they view co-operation with this country and, indeed, accepts support from other countries that are not within our interest?

**CHAIR:** Senator Patrick, I don't want to interrupt your chain of questions here, other than to clarify with the acting director of public—

**Senator Cash:** With all due respect, that is not the evidence that I understood the CDPP to give and if you could ensure—

**Senator PATRICK:** He was saying that wasn't considered and I accept that.

**Senator Cash:** There were some key words that were actually put in at the end of exactly what you just said, Senator Patrick.

**Senator PATRICK:** Perhaps you can repeat those for me.

**Senator Cash:** Perhaps Mr Bruckard could repeat them for you. It's his evidence.

**CHAIR:** Did you say there is some doubt. You said, 'I'm not sure that those matters were considered'. That's my recollection.

**Mr Bruckard:** These matters are before the court. So to dissect our examination of the public interest here might be awkward with the matters pending before the courts.

**Senator PATRICK:** I don't think the Senate can be constrained in such an important national matter that goes to our relationship with East Timor. We might end up spending billions and billions of dollars on additional defence equipment simply because East Timor turn somewhere else for support because they are disgusted about the way in which we are prosecuting two people who they view as heroes.

**CHAIR:** Senator Patrick, as I say, I'm not trying to interrupt your line of questioning here—

**Senator PATRICK:** You are doing a good job.

**CHAIR:** Just by way of clarification, in relation to the public interest test, is that a test that you only consider prior to launching proceedings or there is an ongoing obligation to consider the public interest throughout the duration of the proceedings? Could you just clarify that.

**Mr Bruckard:** That's correct. We apply the public interest test at the time we make a decision whether or not to commence a prosecution and then we keep the matter under review as it moves through the court system if we have decided to proceed with a prosecution.

**CHAIR:** So there's an ongoing obligation on you, the Commonwealth DPP, to continue to assess the public interest?

**Mr Bruckard:** That's correct. We do that as a matter of course to make sure that the ground hasn't changed beneath us, so to speak, and there's not new evidence that has emerged or we have become aware of personal circumstances and all that.

**Senator KIM CARR:** Can I bring you back to where I actually started this—

**CHAIR:** I think that Senator Patrick does have—

**Senator PATRICK:** No, that's fair. I was just—

**Senator KIM CARR:** You want an answer to your question?

**Senator PATRICK:** No, that's fair.

**CHAIR:** Alright, Senator Carr.

**Senator KIM CARR:** As I understood your statements to begin with, Mr Bruckard, the proposition you've put to us is that you consider the evidence and if there's a reasonable prospect of conviction based on the evidence that's available. Then there is the question, if sufficient evidence is available, whether the prosecution would actually be in the public interest. The public interest is a very broad concept. I would say that public interest in the normal meaning of that term would include diplomatic relations. It would include whether or not the public would appreciate whether interest is being well served by prosecuting people that actually acted as whistleblowers. I would have thought is a moral dimension to the public interest as well, isn't there?

**Mr Bruckard:** Obviously in these particular cases there's a need to obtain the consent of the Attorney and one imagines that, insofar as the Attorney determines whether or not to provide a consent to the prosecutions, there may be scope to consider those broader, bigger picture issues.

**Senator KIM CARR:** That's right. There is a political dimension. That's why the Attorney is there.

**Mr Bruckard:** These are offences that require the consent—

**Senator KIM CARR:** Of course they are. They are highly political events. That's why I have asked you, 'Can you have a position?' You said you can review it. Your ongoing consent issue does arise. You've taken on notice your position but also whether or not the Attorney can withdraw consent.

**Mr Bruckard:** That's correct.

**Senator KIM CARR:** In other words, can you change your mind?

**Mr Bruckard:** The DPP can certainly change our mind.

**Senator KIM CARR:** Yes, but can the government change its mind?

**Senator PATRICK:** Can the Attorney?

**Senator KIM CARR:** Can the political circumstances change, for instance?

**Senator PATRICK:** Sorry, Attorney—were you getting some advice then?

**Senator Cash:** No, I was not getting advice.

**Senator PATRICK:** Because Mr Anderson did say to me yesterday—

**CHAIR:** Senator Patrick, if I could take a couple of questions just for a moment. Senator Carr just said, Mr Bruckard, that he put to you that these were highly political events. Do you agree with that proposition?

**Mr Bruckard:** I think it was put that it was a highly political offence.

**CHAIR:** 'Offence'? Sorry, I heard—

**Mr Bruckard:** I'm not sure whether that's the senator's characterisation.

**Senator KIM CARR:** No, I'll use the term 'event'—that is, the circumstances. The allegation here is that information was provided to Timorese government and to journalists. That's the nub of it, isn't it?

**CHAIR:** I've just taken the call so I can seek a couple of clarifying matters. Do you agree with the position that Senator Carr has put to you—that these are highly political events? I'm asking in relation to your independence as the Commonwealth DPP.

**Mr Bruckard:** Probably the best way to answer that question is to say that when we made our decision in this case and in our continuing review of it, we didn't do that on the basis of political consequences of our decision-making. So the prosecution policy is very much focused on looking at the evidence and whether it's in the public interest.

**Senator KIM CARR:** But the public interest is inherently political.

**CHAIR:** Sorry, Senator Carr. I have the call at the moment, so I would like to make these—

**Mr Bruckard:** Chair, we don't make our decisions around prosecution based on whether we think it's going to be in the political interests of one group of people.

**Senator KIM CARR:** That's a different meaning of the word 'political'.

**CHAIR:** Sorry, I have the call at the moment. Mr Bruckard, in saying that you don't make a decision based on any political event, you exercise your discretion quite independently from the executive of any government, whether it's this government in power or any other government.

**Mr Bruckard:** That's very correct, yes. That's in our DNA as prosecutors.

**CHAIR:** And when you speak of the consent of the Attorney-General, can you describe what you mean by that? Do you mean by that that the Attorney has the discretion to not agree to your independent decision, or is it an active obligation that you must proactively seek her consent? Could you explain how your statutory obligation operates in relation to the Attorney's role?

**Mr Bruckard:** Certainly. Not all offences require the consent of the Attorney. There are a narrow basket of offences which the parliament has determined require the consent of the Attorney before the prosecution can proceed.

**CHAIR:** Can you describe the nature of those offences which require consent?

**Mr Bruckard:** There's a broad range. There are, for example, some child sex offences that might take place in relation to people who are below the age of 18. There are certain offences that take place outside of the jurisdiction of Australia which require consent. So there's a basket of offences, and some of those are structured in a way where you can imagine that there might be concerns that the Attorney would have about matters of international relations or alike, which are not front and centre insofar as our assessment of the evidence is concerned. So, in terms of the process, we get matters referred to us from investigative agencies, we apply the prosecution policy, we make a determination, and, if we think that there is a prima facie case and a reasonable prospect of conviction and that it is in the public interest, it's at that point that we go to the Attorney and seek the Attorney's consent to the prosecution.

**CHAIR:** Thanks, Mr Bruckard. Senator Carr, I will now give you the call.

**Senator KIM CARR:** Perhaps you could explain to me the difference between the public interest and the national interest.

**Mr Bruckard:** It depends what you mean by the 'national interest'.



**Senator KIM CARR:** No, I'm asking you to explain it to me. I put to you this is an inherently political process. You thought I meant party political. I haven't even mentioned that yet. I can go to that. There is clearly that element to this, but I'm saying there is a national interest question here that you have to assess and that the public interest and the national interest need to be assessed. The national interest is inherently a political determination. What is in the nation's interest is a political question.

**Mr Bruckard:** It's a bit hard for me to, in effect, answer that question without providing you with a more fulsome account of what the evidence is.

**Senator KIM CARR:** Yes, I know. That's why I've asked upfront why this is in the public interest to prosecute these people. That's why it's such an important question. And why is it all being done in secret?

**Mr Bruckard:** I don't believe it is all being done in secret. I don't think that's correct. The proceedings in witness K, for example, have all been heard in open court. There have been no closed court proceedings in the witness K matter, and we're hoping, of course, when the plea proceeds that it'll be able to proceed in open court. There may be some component of the material which will need to be heard in camera or the subject of closed submissions, but we're working through those issues with the court and with counsel for the defendant. In relation to Mr Collaery's matter, it hasn't yet gone to trial. The legal issues that are to be resolved relate to preliminary questions about the extent to which the court needs to be closed.

**Senator KIM CARR:** I don't think I can take that much further, but—

**CHAIR:** Alright, thanks very much.

**Senator KIM CARR:** I'm clearly indicating my profound disquiet of what's going on in this matter.

**CHAIR:** Thank you so much, Senator Carr.

**Senator KIM CARR:** Thank you very much.

**CHAIR:** That concludes the committee's examination of matters concerning Commonwealth Director of Public Prosecutions. Thank you so much for your time and your attendance today. You can leave the building, as they say!

#### **Office of the Australian Information Commissioner**

[17:41]

**CHAIR:** I now call officers from the Office of the Australian Information Commissioner to the table. We are running quite late now, and I do apologise to various witnesses who have been waiting. The plan is still to go to dinner at six o'clock and to resume at seven, but we are going to try and speed through things as much as we possibly can to catch up. Ms Falk, welcome to you and your officers. Do you have an opening statement?

**Ms Falk:** No, I do not.







**CHAIR:** We will proceed to questions.

**Senator SCARR:** Commissioner, in terms of the timing of processing of FOI Act applications, could you give us an update with respect to the current time that's taken on average? I appreciate that different claims under the act can have different levels of difficulty

Senators of the 47th Parliament and  
Members of the Legal and  
Constitutional Affairs Committee

# Legal and Constitutional Affairs Committee

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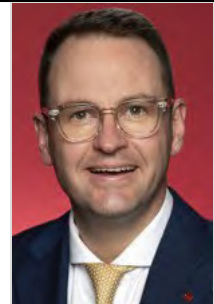
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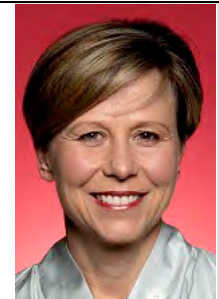
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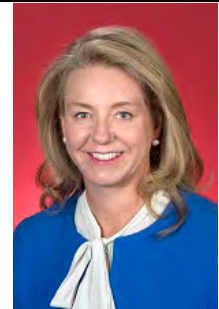
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# Media Pack

# Whistleblower David McBride withdraws civil case to fight charges in jury trial

28 October 2022 | Claire Fenwicke



Whistleblower David McBride has withdrawn his civil case in the ACT Supreme Court. Photo: Albert McKnight.

David McBride's legal team has withdrawn his bid to use the Public Interest Act to defend his whistleblowing of the Australian Defence Force (ADF) in the ACT Supreme Court.

He will now fight to clear his name at a jury trial, where he faces five charges stemming from giving information about alleged war crimes to ABC journalists.

He was charged in 2018 with three counts of breaching the Defence Act, one count of unauthorised disclosure of information and theft of Commonwealth property.

**READ ALSO** Bruce Lehrmann's alleged rape case ends in mistrial



His solicitor Mark Davis, from Xenophon Davis, said “extreme secrecy” had covered the entire case, making it impossible for them to access evidence and form a defence to be argued in court.

“The National Security Information Act removes from the courts a number of powers ... and imposes on the courts the authority of the Attorney-General’s office and the agencies it represents,” he said.

“The decision of what goes into legal proceedings [would usually be decided by the judge] ... that now belongs to a huddle of agencies.”



David McBride (second from left) was joined by whistleblower Bernard Collaery (centre), who had his charges dropped by the Attorney-General earlier this year. Photo: Claire Fenwicke.

Mr McBride’s counsel had hoped to bring two expert witnesses to argue their case; however, the Commonwealth Director of Public Prosecutions (CDPP) claimed Public Interest Immunity over those witnesses and some evidence as well.

Mr Davis described it as if they had walked up to the court with “two arms and two legs” and had each limb “cut off” as they entered.

“We lost two witnesses and we lost [access to] evidence, so why go ahead here?” he said.

“We’ll go to criminal proceedings with a jury of people and be heard on that basis.”

Mr McBride said while he was disappointed, he felt this proved the Public Interest Act had been “found wanting” when it came to protecting whistleblowers.

“It’s useless if you’re in the military because it involved intelligence information,” he said.

He felt a jury trial was his best chance to get the truth out and create change in the legislation.

“It’s a high-risk strategy ... [but] the only way we can change Australia for the better is by jury trial,” Mr McBride said.

“The public can decide who did their duty better.

“My conscience is quite clear.”

**READ ALSO** Bruce Lehrmann’s alleged rape case ends in mistrial

Mr Davis took aim at Attorney-General Mark Dreyfus for not intervening as he did for Bernard Collaery.

He said he didn’t agree with Mr Dreyfus’s stance he couldn’t do anything because it would be “inappropriate”.

“Give me a break,” Mr Davis said.

“We spend more time with Dreyfus’ people ... than we do with the prosecutor.”



David McBride's supporters rallied outside ACT Magistrates Court ahead of his hearing on 27 October. Photo: Albert McKnight.

While Human Rights Law Centre senior lawyer Kieran Pender said it was “unconscionable” for the Attorney-General to allow the prosecution to continue.

“The government’s last-minute national security intervention in this case has made it impossible for David McBride to succeed in his whistleblowing defence,” he said.

“It is a devastating blow for Australian democracy ... Whistleblowers should be protected, not prosecuted.”

He called on both the Attorney-General and CDPP to drop the charges.

“The Australian Government must then get on with fixing whistleblowing law and reckoning with Australia’s alleged war crimes in Afghanistan,” Mr Pender said.

A date was expected to be set for Mr McBride’s trial next year.

# **Businesses face up to \$50 million or 30 percent turnover in fines for unfair contract terms**

By [Nico Arboleda](#) on Nov 1, 2022 1:14PM



Parliament has passed a bill to impose the first-ever financial penalties for companies that have been found to have provided unfair contract terms.

The Treasury Laws Amendment (More Competition, Better Prices) Bill 2022, which passed both houses of Parliament last week, focused on the increase in maximum financial penalties for those who have breached the Competition and Consumer Act. The bill also added unfair contract terms to the Act.

The penalties of offending businesses will be the greatest of either \$50 million, three times the value of the "reasonably attributable" benefit obtained from the conduct - if the court can determine this - or 30 percent of adjusted turnover during the breach period.



The penalties will apply to businesses that have been found to include unfair contract terms in their standard form contracts with consumers and small businesses. The bill also expands coverage to more small business contracts, including small businesses which employ fewer than 100 persons or have an annual turnover of less than \$10 million, and will apply irrespective of the value of the contract.

“We have long highlighted the adverse consequences of unfair contract terms on consumers and small business, including franchisees, and suggested that they be outlawed and penalties are required to provide a stronger incentive for businesses to comply,” ACCC chair Gina Cass-Gottlieb said.

Before the bill, courts could declare specific terms of a contract unfair and therefore void, but were ultimately not prohibited so no penalties could be imposed.

In August, the Federal Court found that [Fujifilm Business Innovation Australia, formerly Fuji Xerox Australia, had unfair terms in its small business contracts](#). The court ordered the company to pay the ACCC some of its legal costs, but did not impose any further financial penalties at the time.

“Businesses have 12 months to review and update their standard form contracts before these penalties apply. These changes will improve small business and consumer confidence that they will not be taken advantage of when entering into or renewing standard form contracts in the future,” Cass-Gottlieb said.

“Many small business complaints about big business are about unfair contract terms and it will be an enormous boost to small businesses that there will be a far stronger deterrent against the use of such terms.”

The changes also clarify other aspects of the laws, including the definition of a “standard form contract”.

“Standard form contracts provide a cost-effective way for many businesses to contract with significant volumes of customers. However, by definition, these contracts are largely imposed on a ‘take it or leave it’ basis,” Cass-Gottlieb said.

“The unfair contract terms laws are vital to protect consumers and small businesses against terms in these contracts that take advantage of this imbalance in bargaining power. We are pleased that these laws have been strengthened.”

The penalties are also applicable to the wider Competition and Consumer Act, which was an increase from the original \$10 million and 10 percent of adjusted turnover during the breach period. Other penalties include \$2.5 million for individuals (up from \$500,000).

In addition to unfair contract terms, other offences covered by the penalties include unconscionable conduct, false or misleading representations, harassment and coercion, supplying products that do not comply with safety or information standards or that are covered by a safety ban and more. Also included are competition law breaches like cartel offences, the news media & digital platforms mandatory bargaining code provisions, the international liner cargo shipping provisions, and the prohibited conduct in the energy market provisions.

“The increase in penalties should serve as a strong deterrent message to companies that they must comply with their obligations to compete and not mislead or act unconscionably towards consumers,” Cass-Gottlieb said.

“These maximum penalty changes will allow the Courts to ensure that the penalties imposed for competition and consumer law breaches are not seen as a cost of doing business, but rather as a significant impost and something likely to raise the serious attention of owners or shareholders.”





28 OCT, 2022

## 'Injustice': Calls grow for Dreyfus to drop McBride charges

Canberra Times, Canberra

Page 1 of 1

## 'Injustice': Calls grow for Dreyfus to drop McBride charges

**Sarah Basford Canales, Toby Vue**

RULES designed to protect whistleblowers from jail time have been described as "useless" as a former military lawyer responsible for exposing war crime allegations faces a criminal trial.

Military whistleblower David McBride withdrew his application for protection from criminal prosecution on Thursday after the Commonwealth lodged a last-minute public interest immunity claim, effectively rendering his whistleblower defence nullified.

Experts and transparency advocates were dismayed by the news, calling it a "devastating blow for Australian democracy".

The outcome means the attention will turn to Attorney-General Mark Dreyfus, who has long conceded the protections are not fit for purpose and has vowed to overhaul the scheme.

Mr McBride, who said he was looking forward to proving he was a legitimate whistleblower in the eyes

of the law, admitted his disappointment on Thursday, adding the law was "useless".

"I was never really on trial this week, but the *Public Interest Disclosure Act* was and it has failed," he said.

McBride has pleaded not guilty to five charges after leaking classified documents about alleged war crimes committed by Australian defence personnel to the ABC, which were then published in the 2017 series *The*

*Afghan Files*.

Under the *Public Interest Disclosure Act*, first introduced by Mr Dreyfus in 2013, whistleblowers are immune from criminal prosecution.

Mr Dreyfus has flagged he will soon introduce reforms to overhaul the protections after years of tough criticism for being too legally complex and limited in offering support avenues.

A South Australian trial involving former Tax Office employee Richard Boyle is also underway arguing leaks to the media were consistent with the act and therefore immune from prosecution.

Mr McBride and Mr Boyle's trial coincide with the creation of the National Anti-Corruption Commission, which is expected to be in operation by mid-next year.

Independent for Kooyong Dr Monique Ryan said the anti-corruption watchdog couldn't go ahead without first addressing the critical issue of whistleblower protections.

The push is shared by others on the crossbench, including Greens senator David Shoebridge.

Kieran Pender, long-time whistleblower advocate and senior lawyer at the Human Rights Law Centre, said the pressure was now on Mr Dreyfus to show he supports whistleblowers.

"Mark Dreyfus has insisted that it was appropriate to let these cases play out in court, leaving these courageous whistleblowers to rely on a flawed shield in a law that he

admits is broken," he said.

"But now Dreyfus has denied even that shield to McBride. This is injustice of the highest order.

Mr Dreyfus has been contacted for comment.

# ‘Unconscionable’ for Cth to let prosecution of lawyer-turned-whistleblower go ahead

27 October 2022 • By Jessica Penny

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The case against army-lawyer-turned-whistleblower David McBride is proceeding to trial.

In a new development, ex-Australian Army lawyer David McBride has had to withdraw his defence after a claim was made on national security grounds.

In what was meant to be the first of a four-day hearing scheduled to commence yesterday (Thursday, 27 October), barristers for Mr McBride disclosed to the ACT Supreme Court that a last-minute public interest immunity claim made by a representative of the Commonwealth prevents Mr McBride's defence.

Mr McBride's whistleblowing defence is under the *Public Interest Disclosure Act* (PID), first enacted in Federal Parliament in 2013, which aims to protect whistleblowers and incentivise them to speak up.

The military lawyer served two tours in Afghanistan before his arrest in 2018, where he was charged with five counts, all relating to his alleged blowing the whistle to the *ABC* on Australian war crime allegations in Afghanistan.

These charges — to which he has pleaded not guilty — include the unauthorised disclosure of information and theft of Commonwealth property.

Senior lawyer at the Human Rights Law Centre (HRLC), Kieran Pender, said that the government's national security intervention is a "devastating blow for Australian democracy", particularly as independent inquiries have allegedly verified the wrongdoings Mr McBride spoke of.

"Last-minute legal interventions by the prosecutors and the federal government forced David McBride to abandon his whistleblowing defence. He will now face a jury trial for speaking up about war crimes alleged committed by Australian forces in Afghanistan," said Mr Pender.

"The use of a public interest immunity claim to prevent evidence being put before the court, in proceedings where the NSI Act had already been invoked to protect national security, raises real questions. The NSI Act was enacted to eliminate the need for public interest immunity claims to be made such circumstances."

"We repeat our call for the Commonwealth Director of Public Prosecutions and the Attorney-General to discontinue this prosecution. Whistleblowers should be protected, not punished."

The Commonwealth Director of Public Prosecutions (CDPP) can end Mr McBride's prosecution at any time, as previously seen with the recent dropping of Bernard Collaery's investigation. In the event that the CDPP doesn't exercise this right, the Attorney-General can discontinue a case under exceptional circumstances. It is here that the HRLC is calling on Attorney-General Mark Dreyfus.

The Attorney-General has previously conceded that current whistleblowing laws are no longer fit for purpose but has not made an attempt to interfere in the ongoing prosecution of both Mr McBride and ATO whistleblower Richard Boyle.

If convicted, both Mr Boyle and McBride could face significant prison time.

"Rather than prosecuting whistleblowers, the Australian government should get on with fixing whistleblowing law and reckoning with Australia's alleged war crimes in Afghanistan," Mr Pender concluded.

The *PID Act* has been awaiting reform since an independent review from 2016 revealed that the experience of whistleblowers protected under the act is widely considered to be "not happy". No changes have yet been made.

**Editor's note: A previous version of this story noted that it was the Attorney-General who had made the public interest immunity claim in relation to evidence in the proceedings. The claim was instead made by another representative of the Commonwealth of Australia. The Attorney-General is an interested party in the proceedings as a result of the operation of the *PID Act*. Reflecting on the correction of earlier assertions, Mr Pender said: "While this new information helps provide clarity regarding who was behind the decision to undermine David McBride's defence, it does not change the travesty of what has happened."**

# Dreyfus faces international pressure over whistleblowers

**Tom McIlroy** *Political reporter*



Nov 3, 2022 – 3.59pm

International transparency groups are pushing Attorney-General Mark Dreyfus to drop two high-profile whistleblower prosecutions, and have called for better protections for people speaking up against wrongdoing.

The cases of former Tax Office employee Richard Boyle and former military lawyer David McBride are the subject of a new campaign by advocacy group the Whistleblowing International Network.



Attorney-General Mark Dreyfus has been urged to address “injustice caused by these criminal prosecutions”. **Alex Ellinghausen**

More than 15 member organisations have signed a letter to Mr Dreyfus, calling for him to discontinue the two separate prosecutions, following his move to end the prosecution of lawyer and whistleblower Bernard Collaery.

Mr Boyle spoke publicly in 2018 about aggressive practices by the ATO, including hardline use of garnishee notices, used to claw back tax debts from individuals and business.

Mr McBride is being prosecuted over the alleged leaking a cache of documents detailing possible war crimes in Afghanistan.

“Urgent intervention is needed to address the injustice caused by these criminal prosecutions, to minimise the chilling effect of these cases and to fix Australia’s whistleblowing law to ensure such cases can never happen again,” the group said in a letter.

“As new whistleblower protection legislation has swept the globe in the last decade, Australia’s law has fallen dramatically behind international best practices.

“It is deeply unfair that the Australian government continues to condemn these whistleblowers to their fate, relying on a law that all agree is not fit for purpose.”

Signatories to the letter include Transparency International, Germany’s Whistleblower-Netzwerk and Britain’s SpeakOut SpeakUp. In Australia, the Human Rights Law Centre continues to campaign for the two men.

The advocates have told Mr Dreyfus Australia’s Public Interest Disclosure Act includes legal uncertainty about the scope of the immunity from civil and criminal liability. Changes should also resolve whether protections extend to the obtaining of evidence.

Mr McBride is facing five charges, including over the unauthorised disclosure of information, theft of Commonwealth property and breaching the Defence Act.

Facing a civil case in South Australia, Mr Boyle is seeking protection under the Public Interest Disclosure Act.

Mr Dreyfus has maintained the Collaery case was exceptional, and resisted calls to intervene in other prosecutions.





04 NOV, 2022

## AG can stop whistleblower prosecution

Canberra Times, Canberra

Page 1 of 2

# AG can stop whistleblower prosecution

**DAVID SHOEBRIDGE**

DAVID McBride may well go to jail.

This is the stark truth unless one person, the Commonwealth Attorney-General Mark Dreyfus, steps in to prevent a grave miscarriage of justice.

David McBride's crime is that he told the Australian public what he knew about alleged war crimes committed by Australian soldiers in Afghanistan.

For the crime of truth-telling he has been charged with four offences relating to breaching defence secrets and one count of unlawfully handling defence property.

Three of these offences have a maximum term of life imprisonment, one a maximum of two years and one a decade in jail.

McBride is a reluctant whistleblower military lawyer who put his career and his freedom on the line to do the right thing.

McBride wants justice for the Afghan victims of alleged war crimes committed by Australia soldiers and also for the tens of thousands of people serving in the Australian military who want the integrity of their organisation upheld and enforced.

McBride blew the whistle after he had been stonewalled internally. As a military lawyer in possession of damning evidence of apparent war crimes, McBride felt he had ethical and professional responsibilities to uphold.

When he first raised concerns inside the ADF command structure nothing was done. He then went to the Australian Federal Police with damning evidence suggesting some of the most serious imaginable crimes had been committed. Again nothing happened.

"I think it was swept under the carpet," McBride told reporters soon after he was charged.

"I eventually saw the police, they didn't do anything about it. Finally, I saw the press, and it was published on the ABC."

Thank goodness he did. His actions, to-

gether with those of other ADF whistleblowers, eventually lead to the Brereton Report into alleged war crimes by Australian Special Forces in Afghanistan.

That report found: "The nature and extent of the misconduct allegedly committed by ADF members on operations in Afghanistan is very confronting. The report discloses allegations of 39 unlawful killings by or involving ADF members ... The alleged victims were noncombatants or no longer combatants."

Now more than five years after McBride blew the whistle, almost two years after the Brereton report, the only person who has been prosecuted in relation to these alleged war crimes is David McBride.

And last week McBride's legal defence suffered an almost fatal blow, delivered by the new Labor government.

McBride's main defence to the charges was that he was protected by the Commonwealth Public Interest Disclosure Act (PID Act) that is meant to protect whistleblowers from any adverse action, including criminal charges, related to the whistleblowing.

To mount this defence McBride had two expert witness affidavits that, obviously, referred to and commented on the evidence he had given to the ABC.

He needed this evidence to establish that he had gone through the steps required in the PID Act to gain the protection and to show that there was a public interest in what he did.

The Attorney-General acting on behalf of the Commonwealth, objected to this evidence being admitted in the trial.

The Commonwealth claimed that it would disclose national security information and was therefore covered by public interest immunity.

This undercut McBride's entire PID Act defence and lead to him withdrawing it in dramatic scenes on the floor of the court.

The end result is McBride's prosecution sails on with no effective defence.

He faces a potential lifetime in prison for showing the courage to speak out against war crimes.





Attorney-general Mark Dreyfus. (AAP Image/Lucas Coch)

Whistleblowing International Network (WIN) [wrote to attorney-general Mark Dreyfus](#) on November 2 to express deep concern about the prosecutions of two whistleblowers, Richard Boyle and David McBride.

“Despite the clear intent of the prevailing legal framework, the prosecutions of Mr Boyle and Mr McBride — commenced and pursued for more than four years now — are proof that Australia’s PID Act has manifestly failed to fulfil its objectives,” the letter stated.

“These prosecutions actively and seriously discourage the making of public interest disclosures.”

[As previously reported by The Mandarin](#), Boyle is facing prosecution over his public revelations of unethical debt collection practices in the Australian Taxation Office.

McBride’s case involves the former Australian Army lawyer exposing alleged war crimes in Afghanistan.

The letter called for Dreyfus to intervene in the prosecutions of Boyle and McBride, to minimise the “chilling effect” of the cases.

Four demands were specified in the letter: for the Commonwealth Director of Public Prosecutions to explain how the two prosecutions are in the public interest, the reformation of disclosure provisions in federal whistleblowing laws, the establishment of a whistleblowing authority, and the reimbursement of Boyle and McBride’s legal fees.

The letter noted — and welcomed — Dreyfus’ commitments to reform the *Public Interest Disclosure Act*, but urged the attorney general to go further.

“If Australia proceeds to prosecute and imprison public officials who speak up about government wrongdoing, it will lose credibility on the world stage when it comes to transparency and accountability,” the letter concluded.

“We urge you to act immediately to avert these outcomes.”

Executive director of WIN Anna Myers signed the letter.

The letter was signed on behalf of: Article 19, Pištaljka, Protect, Xnet, Spain, GlobaLeaks, Transparency International Italy, Blueprint for Free Speech, SpeakOut SpeakUp, Centre for Free Expression, African Centre for Media & Information Literacy, Maison des Lanceurs d’Alert, The Signals Network, Whistleblower-Netzwerk (WBN), Transparency International, Campax, Transparency International Ireland, and Transparency International Australia.



# War crimes whistleblower to face prosecution

RT.com

28 Oct 2022, 22:13 GMT+10



**An ex-lawyer who exposed alleged killings by Australian troops in Afghanistan says he's ready for his case to be heard in court**

Former military lawyer David McBride, who revealed alleged war crimes committed by Australian special forces in Afghanistan, will be tried by a jury next year after his attempt to avoid prosecution under the country's whistleblower laws was thwarted by the government on Thursday.

Back in 2017, McBride shared information with the media about a series of alleged war crimes by Australian troops during their deployment in Afghanistan between 2007 and 2014. He said he went to the ABC broadcaster only after raising the issue internally and with the oversight agencies.

The Brereton inquiry, which stemmed from his leaks, found credible evidence to support the allegations of at least 39 murders of Afghan civilians by Australian special forces. In some cases, junior troops were told by commanders to shoot prisoners "in order to achieve the soldier's first kill," the report read.

Thursday's hearings at the Supreme Court of the Australian Capital Territory in Canberra reportedly lasted for just 15 minutes, instead of the planned four days.

McBride's legal team were looking to shield their client from prosecution under the Public Interest Disclosure Act, which had been around since 2013. However, they opted to withdraw their motion after the government's lawyers sought to suppress some of the evidence prepared by the defense under public interest immunity laws, arguing that the release of the data would be detrimental to national security.



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## International Business

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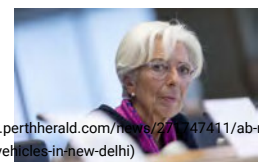
**Agenda of cryptocurrency regulation will be brought in G20 meeting: Finance minister**  
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New Delhi [India], November 1 (ANI) have not come out with any plan to regulate digital assets. The agenda ...

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(/news/273021515/ecb-set-for-further-rate-hikes-despite-recession-risk-lagarde)

This means that McBride's trial, which had been previously scheduled for 2023, will go forward. The former military lawyer faces five charges, including unauthorized disclosure of information, theft of commonwealth property and three counts of breaching the Defense Act. He has pleaded not guilty on all counts.

"The government played the national security card to the absolute hilt," McBride told journalists outside the court, adding that without the evidence of two key experts that was blocked, he had very little chance of success.

"But I did always want to do a trial. I think the issues will only be properly ventilated in a jury trial," he said.

The whistleblower's lawyer, Mark Davis, claimed the data in question was "not that controversial." Some might assume it was "identities of agents or codes," but it was nothing like that, he insisted. Much more sensitive materials had come before the court previously, Davis said, adding that the judge had the power to proceed with the hearing behind closed doors if necessary.

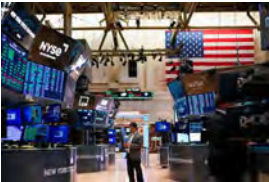
The use of national security laws by the Australian government is a "devastating blow" for democracy, Kieran Pender, a senior lawyer at the Human Rights Law Center said, calling on the authorities to "end this unjust case."

(RT.com (<https://www.rt.com>))

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Indian markets rally on sharp global cues  
(</news/273021320/indian-mark-rally-on-sharp-global-cues>)



Mumbai (Maharash [India], November 1 ( The Indian markets continued on their ra on Tuesday as SP B\$ Sensex surged ...



# Bill Shorten hits out at welfare fraudsters after a Taiwanese national was arrested in Sydney for allegedly making false claims

Minister for Government Services Bill Shorten has slammed the Taiwanese national who was arrested on Wednesday for allegedly making false claims of up to \$130,000 in COVID-19 relief payments.



**Lauren Evans** Digital Reporter

2 min read October 28, 2022 - 5:25PM

5 comments

Non-Indigenous people are using self-identification to claim "massive benefits" intended for Indigenous people, Metropolitan Local Aboriginal Land Council CEO Nathan Moran says. "We're aware of rampant fraud, identified fraud, proven fraud - certainly coming to light since 2016," he said. "It's a factual, proven thing...."

Minister for Government Services Bill Shorten has issued a "clear warning" for anyone attempting to steal from "vulnerable Australians" following a recent payment fraud.

The warning comes after a Taiwanese national was charged on Wednesday for allegedly making false claims of more than \$130,000 in COVID-19 disaster payments and pandemic leave payments.

The 34-year-old Sydney man was believed to be involved with a criminal syndicate stealing money through COVID-19 relief payments.

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Mr Shorten slammed those responsible for the alleged fraud and said "only scumbags steal from flood victims and taxpayers".

"Make no mistake – fleecing people of welfare payments is not only despicable, it's a sure ticket to prosecution," he said on Friday.

"This is taxpayer money designed to help Australians struggling with the impact of COVID-19. If you defraud the public purse you will be held to account.

"Services Australia and the AFP are working in lockstep with significant and sophisticated fraud detection capability, and I congratulate these agencies for their robust defence of our public funding."

Mr Shorten said Taskforce Integrity was a "shining example" of the effectiveness of interagency operations.

Taskforce Integrity is a joint Australian Federal Police and Services Australia initiative to identify and target serious criminal activity within the welfare system.

"The Government is committed to combating the scourge of fraudulent activity directed at taxpayer money. That's why we announced the Fraud Fusion Taskforce in this week's Budget," Mr Shorten said.

"Federal agencies are continuing to tighten the net on fraudsters and will no doubt keep catching and preventing criminals stealing public funds."

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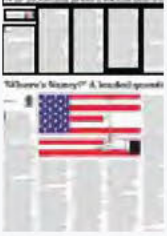
"Federal agencies are continuing to tighten the net on fraudsters and will no doubt keep catching and preventing criminals stealing public funds."

An investigation from Taskforce Integrity began when information indicated that payments were being made to false identities. Police alleged the syndicate was using the stolen identities, claiming payments in their names and moving the funds to bank accounts controlled by the criminal group.

AFP Detective Inspector Rachel Ball said the force was committed to finding the people and organisations taking advantage of Australia's welfare service.

"Fraud of Commonwealth programs is an area of key focus for the AFP and its partners, and we will be relentless in pursuing any people who seek to exploit our welfare system," she said on Thursday.





04 NOV, 2022

## Why protecting press freedom matters

Age, Melbourne

Page 1 of 1

# Why protecting press freedom matters

Annika Smethurst



Later this month more than 4 million Victorians will be asked to decide who will lead the state for the next four years. But they may be forced to do so without knowing all the facts.

On Wednesday, the state's anti-corruption watchdog applied for an interim injunction order against this masthead, preventing us from publishing information we think you deserve to know.

The Independent Broad-based Anti-corruption Commission made a hurried, after-hours application for the gag order after *The Age's* political reporter Paul Sakka submitted detailed questions.

To borrow a quote from Premier Daniel Andrews, "it's always a concern when the media is unable to publish a story they believe to be in the public interest".

That is not a quote from this week, but from 2014 when he was contesting the state election as opposition leader and Victoria Police had rushed to court seeking an injunction to stop the *Herald Sun* publishing any information about Lawyer X. "I don't think gag orders from courts that stop the media from reporting on these issues will give us the answers we need, so perhaps a royal commission is needed," he told 3AW at the time.

Andrews was right, the information was in the public interest, and four years later, as premier, he announced a royal commission into the Lawyer X scandal. It gave us, the voting public, a deeper insight into Victoria Police and the criminal justice system.

In Victoria, the role of IBAC, which has applied for the interim gag order, is to expose public sector corruption and police misconduct.

Its role is to investigate state and local government, police, parliament and the judiciary.

Given we are weeks from a state election, it was only right that *The Age* vigorously contest this injunction on behalf of its readers.

Courts, of course, must weigh up the competing rights and interests of all parties and can only do so using the laws governments have passed.

In fact, IBAC has had its own frustrations with its legislative framework, which has delayed the release of its findings into a Victorian property developer accused of paying bribes to local councillors. As revealed in *The Age*, IBAC Commissioner Robert Redlich has asked the government and opposition to consider amending the act to prevent findings becoming clogged in court.

Unfortunately, these legal rows don't necessarily give much weight to the rights of the voting public.

Comparatively, Australia still has strong and combative media and a

relatively free press. I say that as a journalist who knows all too well the limits of press freedom in this country after my own home was raided by police in 2019 for a story I believed was in the public interest.

In an environment where readers distrust the media, hyperbole about press freedom is unlikely to help. So, here are the facts. Australia has slid from 25 to 39 out of 180 countries in Reporters Without Borders' World Press Freedom Index for 2022. But the threats to press freedom here are more insidious than overt. Late-night injunctions, lacklustre whistleblower protections, metadata retention laws, the widespread use and misuse of suppression orders and meagre shield laws to protect sources all undermine public interest journalism.

These barriers not only limit what the public is allowed to know, but they create an environment where whistleblowers may not feel safe

speaking up or journalists are fearful of reporting information the

public has a right to know. As an example, anyone who receives information about an IBAC report is prohibited from disclosing or publishing the information. It is punishable by up to 12 months in prison, a fine of more than \$20,000, or both.

A major challenge is convincing the public that such protections are worth fighting for. It starts by letting our readers in on a little secret; we cannot rely on governments, politicians or other powerful interests to control what we know.

Without meddling journalists, and brave whistleblowers, we may never have had an inquiries into the banking sector or industrial-scale branch stacking in the ALP.

Love us or loathe us, the media serves a vital role telling the public about how we are governed. While far from perfect, an imperfect free press is better than the alternative.

Annika Smethurst is state political reporter.



Anne Pulford in the hot seat at the robodebt royal commission. (The Mandarin)

“I’m appalled.”

Those were the deflated words uttered by commissioner Catherine Holmes AC SC at the conclusion of evidence given by Department of Social Services principal lawyer Anne Pulford.

It was a grinding, sequential and laborious day at the Royal Commission into the Robodebt Scheme, punctuated by persistent failures of redaction that prevented documents from being displayed on the screen after mobile phone numbers and addresses went up, prompting non-publication orders.

Even so, the day lifted the lid on how multiple internal legal red flags raised by bureaucrats at the initial stages of the creation of the robodebt scheme were bypassed or shelved to pursue a dubious New Policy Proposal (NPP) that became a reality, raising more questions to remain

than answers.

The specific brief that took the NPP to then social services minister Scott Morrison remains illusive, but not for lack of trying.

Anne Pulford, who had been slated to give evidence on Monday, provided the most human of insights into how questions of legality were simply batted away, ignored or mushroomed to deliver a new minister in a new government a new gimmick to whack alleged welfare rorters, irrespective of accuracy or effect.

## Painful memories

To put the demands of memory, circumstance and documentation into context, Pulford was questioned about advice bowled up in 2014 — that's eight years ago. Composed, contrite and cautious, the internal lawyer relied heavily on the document trails she'd provided under summons rather than feelings or recollections. Memories and emotions fade. Official records do not. It was a case study in why archives and their integrity matter.

After eight long years of one of the most legally and morally questionable welfare programs in the commonwealth's history, the picture gradually emerging is one of a policy vortex that unwilling public service participants found difficult to escape as its velocity increased.

Commissioner Holmes' comments of being appalled by what she heard from Pulford betrayed a very human element of an otherwise largely clinical exercise of interrogation and blame apportioning for a program that commenced with poor legal hygiene and eventually went septic.

This matters because it goes to the essential function of advice offered to ministers and the way it is received, interpreted and acted upon.

That advice is slowly making its way into the public domain as key documents are published, like the "[Advice prepared by Solicitor General to AGS re use of apportioned ATO PAYG data](#)".



Pulford, after full a day in the box being drilled on why now prescient legal advice on robodebt was apparently pushed aside in favour of pursuing an approach to the flagging and creation of alleged welfare debts that were numerically and administratively flaky at best, was asked by counsel assisting why countering advice, internal and external, never made it past draft form.

The question, after a day of counsel assisting pulling teeth on the internal advice, went to what happened to external advice obtained from law firm Clayton Utz in August 2018. The advice described it as “somewhat unhelpful” should the Departments of Human Services and Social Services want to continue to rely upon the existing mechanisms, including income smoothing, as a legal justification for the robodebt scheme.

This came after 2014 advice that the calculations and methodologies used to generate apparent savings were duds. Four years after.

## “Catastrophic issues”

Counsel assisting put it to Pulford that advice from Clayton Utz in an internal email could be reworked subtly “if this causes catastrophic issues for us, but that there is not a lot of room for them to do so”.

“Surely by now, you appreciated given whatever the views that you expressed in 2017 through the Ombudsman’s process was that the Department had in its possession an external legal advice, which said that the Robodebt scheme was not lawfully sustainable,” counsel assisting Justin Greggery asked Pulford. “You appreciated that?”

Pulford replied “Yes” and that she presumed this was so but that she did not have a recollection.

“The use of the word ‘catastrophic’ in this email was a recognition of the significance of the advice to the Robodebt scheme, wasn’t it?” counsel assisting Greggery continued.

“I don’t have a memory of the issues at the time,” Pulford replied.

“It must have dawned on you at this time that this was one of the more significant legal advices in respect of an issue that you had been dealing with since November. 2014. A period of almost four years. Correct?,” Greggery pursued.

“Well, I’m not saying it didn’t but I don’t now recall,” Pulford explained.

## Receipt of advice

Pulford went on to explain the legal bill was paid for but the effect of the advice was unclear, even though the bill for the advice was paid.

“On the inquiries you have made about what happened to this advice after that email, all you can identify within the Department and all that your current team has been able to identify is that the bill was paid,” Greggery asked.

“As far as I’m aware, yes,” Pulford replied.

“Does that strike you as extraordinary?” Greggery asked.

“No.” Pulford replied.

“This advice plainly had great significance to the Robodebt scheme, didn’t it?” Greggery continued.

“Yes,” said Pulford.

“And you can find no record where it was converted to a final draft with signatures,” Greggery went on.

“Correct. I can’t find a record,” Pulford said.

## Fine lines

“Where’s the line between losing something and active concealment in your mind?,” Greggery asked, triggering an objection from Pulford’s counsel.

Rephrasing the question, following objection from Pulford’s counsel, Greggery asked.

“Why isn’t it extraordinary that this advice was not finalised in draft form?,” Greggery asked.

“Because departmental practice is when external advices are obtained, they’re obtained in draft and then they are reviewed and a decision made by the relevant client area as to whether they wish to finalise the advice,” Pulford replied.

“And if the advice is not finalised, is it treated as not having been given,” Greggery asserted.

“It certainly treated as not representing the [departmental] preferred view, and arguably still open to further discussion or comment or potentially revision,” Pulford said.

## The outsourcing of misery

What came next went straight to the heart of what role legal advice plays in guiding policy, the role of legal advisers and the gradual commodification of the learned profession that has moved from formulating evidence-based policy to supplying policy-based evidence. Holmes, a former state chief justice, wanted to know how unfavourable advice was received. It was not a pejorative or ‘gotcha’ question, just some plain talking between two seasoned legal hardheads.

“So what do you do — you get an advice in draft and if it’s not favourable, you just leave it that way? And then it never represents anything that you deal with, is that the approach?,” commissioner Holmes asked directly of the witness.

“Yes, commissioner,” Pulford replied.

“And is that done regularly in the department?” commissioner Holmes asked.



“It’s certainly happened many times that I have seen it, yes.” Pulford replied.

“I’m appalled,” said commissioner Catherine Holmes AC.



Public servants know robodebt was defective from the start. (totajla/Adobe)

Key executives in the Department of Social Services were told of fundamental legal and operational problems inherent in how an ambitious payments-integrity program was being designed as early as 2014, the Royal Commission into the Robodebt Scheme has heard from a key witness.

In a day marked by protracted delays over access to and admissibility of potentially cabinet-sensitive documents into an open hearing, Mark Jones, a former executive level 1 officer at the Department of Social Services, finally took the stand at 3.20pm AEST to provide insight into how legal advice on the now illegal scheme was prepared.

Prior to giving evidence, it was revealed Jones had only been granted access to his secure email account at his former employer by the commonwealth on the same day he appeared before the royal commission.

It was one of several ongoing frustrations in the extraction of evidence that included an entire morning, and most of the afternoon, spent wrangling over what is or isn't covered by Public Interest Immunity.

The resolution of that issue has forced the appearance of Department of Social Services principal lawyer Anne Pulford — who was meant to be the first witness — to be bumped from Tuesday to Wednesday as the commonwealth decides on whether it will appeal a decision made by commissioner Catherine Holmes AC SC in relation to what documents can come into the open.

## The Morrison brief

One of those documents appears to be a draft brief prepared for former Social Services Minister Scott Morrison between the end of 2014 and September 2015.

Note those dates, and the content of the documents. We'll come back to them.

Much of the spadework being put in by counsel assisting the royal commission Justin Greggery seems to be pointing toward illuminating at what stage, and on whose authority, a visibly flawed policy proposal at both legal and operational levels was given the blessing to proceed.

With DSS legal chief Pulford temporarily unavailable, Greggery asked question after question around whether Jones recalled key documents, which he usually did after he was furnished with them — an understandable situation given he had only the morning to peruse his former emails.

Critically, the royal commission heard that there were questions raised by internal lawyers at DSS from the outset around how the robodebt scheme could legally operate and that there were serious questions around whether it was legally defensible in a court or tribunal.

## What the EL1 knew

Billed as the “Former Assistant Director, Payment Review and Debt Strategy Team, Social Security Performance and Analysis Branch Department of Social Services”, Jones answered to Andrew Whitecross and was essentially a foot soldier in the preparation of advice on the robodebt proposal.

A document tendered in evidence listed six dot points for clarification, up from five in a previous document.

“As income reporting is a fortnightly obligation and debt raising is also done on a fortnightly basis, the proposal would take an annual or defined period of time and evenly assign a proportion of the income across the period. Debts would then be calculated on this basis. Would a debt amount derived in this way be legally defensible in a tribunal?” a document read by counsel assisting Jones said.

Asked who added the question of defensibility, Jones said first he could not recall and when pressed if it was him said “it could have been.”

## What the EL2 knew

Asked whether the question may have come after a discussion with Cameron Brown, who Jones previously identified as his EL2 superior, Jones said “yes”.

Jones told the royal commission his team worked in a collaborative manner and that there may have been verbal instruction as to what went into the dot points.

Whatever transpired, it was clear in the raft of emails presented in evidence to Jones that there was significant doubt within the legal section of the policy part of DSS that the proposal to data match and raise debts from Human Services would survive an innings in court, which ultimately it did not.

The royal commission heard Jones also pared back a number of other issues raised around the scheme to clarify matters and get legal advice on the defensibility of how the debts were arrived at.

Asked if there was a reason he did not add the full-text dot points of a previous email, Jones said he could not recall specifics. “Shortening it just would have a nice cleaner statement to get legal advice on,” Jones said.

## Smoothing operators

There were also, as widely anticipated, questions as to how the calculation was applied, in particular, the “smoothing” of incomes by taking a total sum over a given period and then averaging these to apply to fortnightly increments during the period.

The royal commission heard this methodology also prompted questions and concerns from within the ranks, again about the legality and the application of the so-called smoothing methodology.

Counsel assisting put forward an email from Jones to DSS lawyer Simon Jordan saying that “we will summarise it, including the feedback from means test policy, and provide to Human Services an explanation as to why DSS will be unlikely to support a measure to that used annual income smoothing to calculate debts.”

## Dear Ann ...

Counsel assisting then confirmed with Jones that he had sent an email to Ann Pulford that read:

“Dear Ann, thank you for following up to determine whether formal legal advice is still required. On the DHS data matching issue email below.

“The advice provided by David Mason 7 November 2014 (email attached) has raised concerns with the proposed approach by DHS to identify and raise debts, while David Mason has indicated that the calculation method does not accord with the legislation and he is not confident that a delegate could validate the debt. We still require formal legal advice.”

Counsel assisting then confirmed Jones had received an email on 3 December from Simon Jordan “who indicated to you that Ms Pulford had passed the request for legal advice on that question to him to look at and that he would aim to get back to you before 18 December.”

“Can I pause there. What was the significance of the 18 December date?,” counsel assisting asked.

“Just to try and get it done properly before Christmas break,” Jones responded.

## The gift of Christmas

Scott Morrison was social security minister for just nine months before being promoted to treasurer.

According to his parliamentary biography, he [held the role from 23 December 2014 to 21 September 2015](#).

The way the dates line up, 18 December 2014 was a Thursday and 23 December 2014 a Tuesday.

Just in time for a new minister to wish his department a happy and holy Christmas.





Commissioner Catherine Holmes. (AAP Image/Lyndon Mechielsen)

The Royal Commission into the Robodebt Scheme has kicked off its first full day of witness hearings, with senior counsel assisting Justin Greggery expressing visible frustration at an apparent lack of communication from a senior Services Australia executive called to appear.

In an inauspicious start to proceedings for members of the bureaucracy soon to be interrogated under the public spotlight, Greggery expressed concern that despite being summonsed to appear as a witness, key documents were still to arrive from commonwealth witnesses, including Services Australia chief operating officer Annette Musolino.

Greggery told the Royal Commission two extensions had been already granted for when the statements could be submitted.

Referencing the second extension, Greggery said this was granted “but then it appears that Ms Musolino became unwell on the 13th of October, although the information in support of her condition is sparse”.

“Various requests for further information and various requests on the other hand for further extensions were exchanged between the respective solicitors and, ultimately, the date came and went – that is the date of the 26th of October by which it was anticipated Ms Musolino would reply and provide her information,” Greggery said.

“It may well be that Ms Musolino has been sufficiently unwell to comply with the requirements under her notice. But the information provided to the commission simply does not permit a conclusion about that. She is, of course, as I’ve identified, a very significant witness.”

The roasting appears to have worked, with commonwealth counsel Dominique Hogan-Doran telling commissioner Catherine Holmes at the close of the day’s proceeding she had received the documents and that they would be produced to the Royal Commission “overnight”.

Holmes also appeared unimpressed by various efforts by commonwealth lawyers to appear via video link rather than in person, saying it was “certainly my least preferred way of proceeding”.

During the day, the Royal Commission heard from robodebt victim Madeleine Masterton, who had her debt suddenly dropped when it appeared to become clear to Services Australia that she and Victoria Legal Aid were ready to take the disputed matter to the Federal Court.

Much of the cross-examination centred on documents sent to Masterton by Services Australia, as well as the steps she went through and the information she provided to the agency to inform them an employer used both a trading and holding company name, but were the same entity.

The variation in names was part of the justification for raising a debt because Services Australia “double-counted” the amounts declared, the Royal Commission heard.

Although fairly dry and technical, the extent to which those targeted by the illegal debt collection scheme made substantial efforts to inform Services Australia is important because such evidence goes to whether bureaucrats knowingly prosecuted collections they knew, or should have known, for erroneous debts.

Asked by Holmes whether Victorian Legal Aid had extended an indemnity from being forced to carry legal costs, Victoria Legal Aid witness Miles Brown confirmed this was the case.

Masterton told the Royal Commission that as Victoria Legal Aid was preparing the case, she was contacted by text message and phone by debt collection agency Probe Group, which “asked me to pay the full amount. This was the \$4000 amount, by the way, immediately.”

Asked about her experience with Probe Group, Masterton said “they were very pushy”.

“When I said I wouldn’t pay the full amount immediately, they suggested paying half of it now and half of it in a week,” she said. “I said no. And then eventually I entered into a payment plan of \$50 a week. But I recall that they asked me, at the time, what my income was and how much money I had and what my job was, and that I should have been paying more, basically.”

The role of debt collection agencies is a particular point of inquiry for the Royal Commission, which has summoned a number of agencies to give evidence.

The Royal Commission could yet turn into an albatross for the receivables collection sector because instances of unconscionable tactics have previously come before the Federal Court through prosecutions mounted by the Australian Competition and Consumer Commission.

One debt collection company previously prosecuted by the ACCC, Panthera, received a \$500,000 fine for unconscionable conduct over its serial harassment of identity theft victims who had fraudulent debts taken out in their name.

Panthera is the owner of ARL Collect, one of the companies retained by Services Australia to pursue robodebt collection.

An issue likely to be examined by the Royal Commission is how public servants at Services Australia decided to give a government contract dealing with vulnerable people to a firm ultimately owned by a company being prosecuted by another government department for unconscionable conduct.

Also under the microscope is how senior bureaucrats at Services Australia signed off on the creation of government receivables so ropery that they would have little chance of legal survival had they been created in the commercial world.

The suspension of legal disbelief to create the financial mirage of robodebt at Services Australia will be examined by the Royal Commission on Tuesday.

Witnesses summoned to be in the box include Anne Pulford, principal lawyer at the Department of Social Services, and Mark Jones, a former assistant director of the payment review and debt strategy team, social security performance and analysis branch at the Department of Social Services.

As proceedings drew to a close, Holmes again put public servants on notice that there was little appetite for attempts at bureaucratic obfuscation and delay before her inquiry, especially if there was deliberate overclassification.

This included the use DLMs (distribution limitation markers, better known as security classifications) to keep material out of the public arena.

"I am simply not having a situation in this commission where we're told we can't have documents because they're marked as 'protected'," Holmes said.

"Just because a document's got 'protected' written on, it is no basis for not being available for full use."



Lisa Keeling, former general counsel, programme advice and privacy at the Department of Social Services. (The Mandarin)

It was not a great start to the day for the commonwealth. And it was over just after lunchtime.

After a lengthy series of questions as to how external legal advice clearly calling out legal difficulties about how a still nascent robodebt scheme could effectively function under existing legislation was put to Lisa Keeling, the former general counsel, programme advice and privacy at the Department of Social Services, commissioner Catherine Holmes AC SC cleared the air.

"If you've gotten advice, even if it's in draft form, it's legal advice. It's come from lawyers. It's paid for. It exists," Holmes said of the conveniently shelved internal and external advices highlighting the feral scheme's many defects in how targets were identified, and debts construed and pursued.

"It's like a child putting its hands over its eyes and thinking you can't see it. To say we don't need to do anything with this, isn't it? Any comment?," Holmes pressed Keeling.

"I agree with you," Keeling said. "Once you've received the advice, there should be action on it, regardless of whether it's draft or not."

Earlier, Keeling had been quizzed about why draft legal advice would be left alone to wither rather than be converted to final advice.

"It could be that the advice is not helpful and it's better to be left in draft form," Keeling said, only to be asked to elaborate.

"It may suggest that there's more legal risk to a program than I think the department, the client, might be wanting to accept, Keeling said.

"What's the consequence if the advice is then finalised in that circumstance," counsel assisting Jutin Gregerry asked.

"It was usually something then that would need to be escalated and relied on," Keeling said, prompting Gregerry to ask "to who?"

"It could be all the way up to the secretary or the CEO or it could be down at EL2 level.

"What about to a minister," Gregerry asked.

"It could be to a minister as well, if something's not been delegated down beyond the minister."

## The muster



In national security circles, there is a leak-proofing (or hunting) routine known as a ‘muster’. Limited-distribution documents are recalled and accounted for, along with the eyes that have fallen upon them.

This is essentially what is happening now, but the threshold is who saw, or tried to plausibly ignore, clear evidence the very premise of robodebt was legally retarded — in the literal physical and governance sense – from the outset.

Holmes and counsel assisting Justin Gregerry are methodically rounding up the total of advice that went to the then-social services minister Scott Morrison and other ministers and departmental chiefs about what is increasingly looking like a delusional idea conveniently ignorant of process that was hammered into a New Policy Proposal to sate ambitious egos.

The question is whose, but this is still days away. The catalogue of defects and warnings is still being built.

## What Tax wasn’t told

One of the biggest defects in the attempts to deflect responsibility for the prosecution of defective policy at both Social Services and Human Services is how the views of the Australian Taxation Office (ATO) were treated.

From the outset, the ATO clearly had administrative and practical problems about how the two welfare institutions were trying to reconstitute the legal definition of debt.

Tax, it must be said, has a massive self-interest here, but for arguably the right reasons.

It is not apparent yet, but the ATO is by far the biggest buyer of debt-collection services in the nation, not least because of its status as a secured creditor every time a business or individual dies.

It’s also one of the biggest raisers of debt, over which the agency will litigate in the public interest in the event businesses or individuals either challenge or refuse to pay. Tax evaders can and do go to gaol.

Put simply, no other agency in the commonwealth knows the laws around debt and their application better than tax.

When ATO second commissioner, client engagement group Jeremy Hirschhorn hit the stand, the differences of opinion on the legal construction of debt were not so much stark as polar.

To be fair, Tax has never shrunk from this. In 2017, five years ago, the revenue agency conspicuously hung Human Services out to dry over its peculiar construction of debt.

This is actually where robodebt falls apart at a legal, commercial and moral level, an ignominious trifecta.

## Data mismatch

Hirschhorn was asked about what circumstances would create draft legal advice that was unfavourable but not acted upon.

I think that would be a rare circumstance,” Hirschhorn said. “I’m sort of unaware that there would be a draft advice for example, which is unfavourable, that would then be left unfinalized.”

“I’m not aware of specific situations where a draft unfavourable advice has sort of been stopped, except if ... things had moved on [and] it was no longer relevant.

Gregerry’s next line of questioning went to how the ATO calculates tax obligations and uses data to ascertain these liabilities.

It may seem obvious, but Gregerry step-by-step walked Hirschhorn through how the tax system was built and operated around annualised events, right down to the minutiae of payroll systems, withholding obligations and the automated Single Touch Payroll.

## Dismantling secrecy

A major point in Hirschhorn’s evidence was that the way Tax obtains, uses and shares its data was strictly governed by black letter law where sharing is the exception, not the rule and tightly controlled.

“The default position is that taxpayer information is secret and cannot be shared. Yes. But there are certain legislative exceptions to that, one being the Data Management Act (DMA), which allows, in fact, I think in some cases requires us, to share certain data with other agencies. There are also exceptions in the Tax Administration Act, where we can share information with other agencies for designated purposes,” Hirschhorn said.

Later, Gregerry presented Hirschhorn with a document of a discussion between the Department of Human Services (DHS) and Tax where DHS raised the option of moving data exchanged between the two agencies from under the present DMA laws to other less prescriptive regulations.

Gregerry put to Hirschhorn one specific agenda item in the note.

“By moving out from that legislative framework to the guideline in the Australian government administration controls, it would be cheaper and more flexible and would be able to be run more programs each year was the proposal discussed according to the minute,” Gregerry said.

“So that that is indeed what the agenda item is [and] was what DHS was thinking,” Hirschhorn said.

## Advice absent

Next, Gregerry wanted to know what legal advice DHS sent to Tax to support their lift-and-shift of data governance from black letter law to internal regulation; and thus the legal genesis of the Robodebt scheme.

Tax had already been supplying DHS with data for data matching for years prior to weed out fraud and overclaiming. What had changed is that DHS now wanted to apply data sweeps fortnightly, but using annualised data.

The question of who sought, and what was the legal advice was around this is paramount in this context because it goes directly to how an illegal scheme was permitted to be rolled out.

"Is it the case that you haven't identified whether or haven't been able to identify that a draft or final review of whatever went through DHS legal was provided to the ATO," Gregerry asked Hirschhorn.

"We have not been able to find any draft or final advice or reference to such an advice being provided to us," Hirschhorn said.

Small wonder that when the ATO fronted the Senate Community Affairs Committee in 2017, the revenue agency conspicuously distanced itself from what DHS was doing.

By this stage, Scott Morrison was treasurer, with the ATO reporting into him.

Hirschhorn continues to give evidence today.

# Parents and children warned by police after an increase in online child exploitation

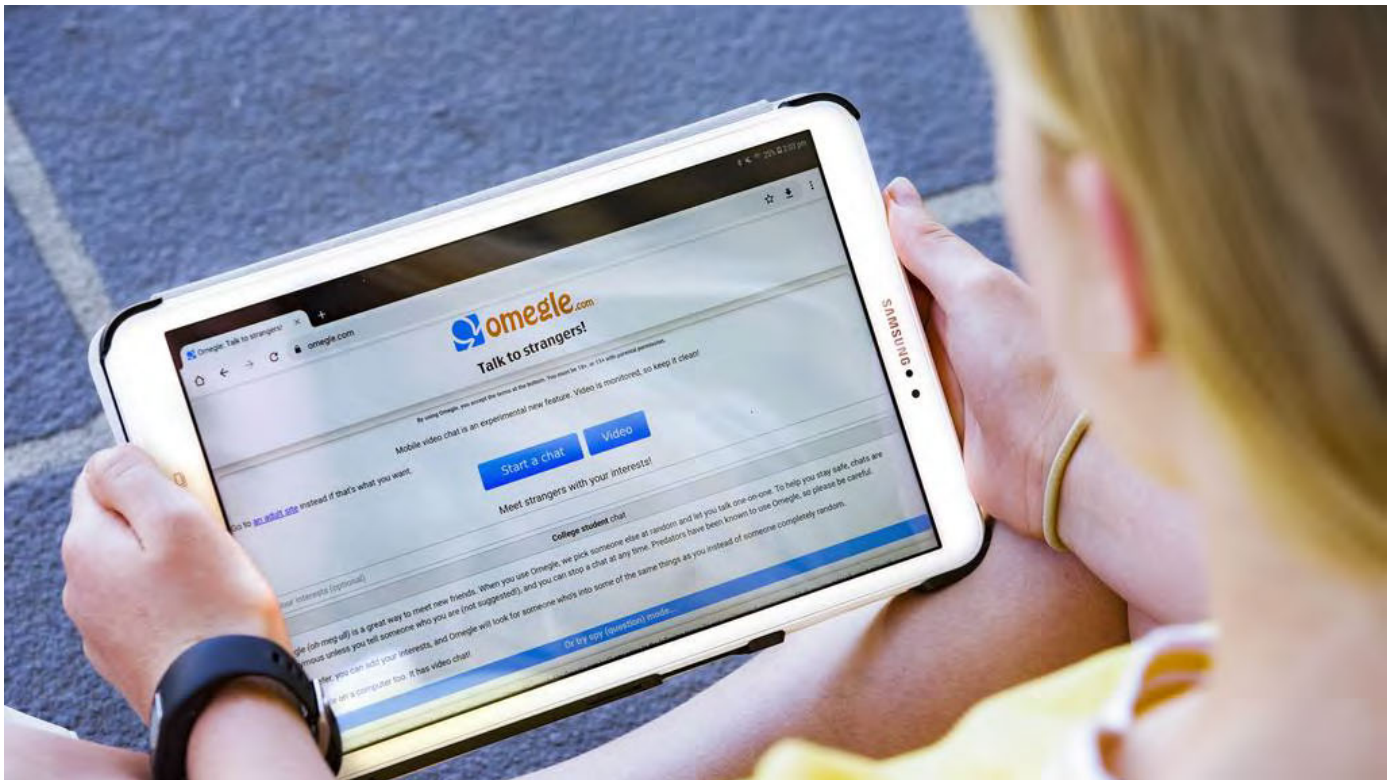
A spike in teenagers being exploited for money after sending explicit images of themselves online has caused police to warn families of the dangers of anonymous online interactions.

Gemma Scerri [Follow](#)

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2 min read November 4, 2022 - 12:46PM **Cranbourne Leader**

3 comments



Victoria Police warning to parents and children about increase in online child exploitation. (AAP Image/Richard Walker)

## Melbourne City

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Children as young as 14 are being targeted by offshore offenders, tricking kids into sending intimate images of themselves before attempting to financially exploit them.

Parents and children are being warned to monitor online behaviour to stay safe, as police note a “marked increase” in reporting of child sexual exploitation online.

Detectives from the joint task force known as the Victorian Joint Anti Child Exploitation Team (JACET), made up of both Victoria Police officers and AFP investigators, have urged parents to engage in conversation with their children around online safety.

Parents are being encouraged to help children understand issues of coercion, and what to do if children find themselves in situations that make them feel uncomfortable.

It comes after police received reports from more than 100 families of instances where children, particularly teenage boys, were being coerced into sending explicit images of themselves and then later being bribed for money.

Police warn parents that offenders most often come into contact with victims through social media platforms, masquerading as young girls of a similar age to their targets.

After cultivating a friendship with their victims, often through flattery or the pretence of a romantic 'relationship', offenders will then send intimate images claiming to be of themselves, in turn tricking their victims to send their own sexualised photos back.

Once the victim has sent their own photos, the offender threatens to expose these images to the family and friends of the victim, making monetary demands, through either cash transfers, gift cards or cryptocurrency.

Even if victims pay the demanded bribe, offenders still distribute the images.

Police believe offenders are not known to the victims, and are mostly operating offshore.

Investigators have urged the public to come forward and report similar concerning online behaviour.

Support, respect, courtesy and dignity are being offered to anyone who decides to come forward.

Police believe inappropriate and coercive online behaviour goes under reported, due to embarrassment, shame, victims feeling unsure if an offence has even occurred, or being afraid they won't be believed.

Detective Acting Inspector Carla McIntyre urged parents to "be brave".

"Please have the conversation with the young person in your life about this type of offending," she said.

"Let them know how it happens, that it's not their fault, and there is absolutely nothing to feel embarrassed about."

Insp McIntyre encouraged parents to "create an environment where they feel they can be supported".

"The psychological anguish of this type of offending can have a significant impact on young people," she said.

To the victims, Insp McIntyre said they should know they "aren't alone."

"This is happening to other people and police can and will help you," she said.

"Support is available to you."

"It doesn't matter how small or insignificant you make think it is – something that may appear small could later prove vital in an investigation."

Police have provided resources for victims, including reporting and support services:

[Australian Centre to Counter Child Exploitation \(ACCCE\)](#) online blackmail and sexual extortion response kit



[ThinkUKnow](#)

[eSafety Commissioner](#)

[NAPCAN](#)

[Bravehearts](#)

If you have been abused or have any information relating to the abuse or exploitation of children, report it immediately.

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# ‘Full power’: How Brazilian criminals set up an Australian sex-trafficking business

Nick McKenzie

November 6, 2022 — 5.00am

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

An Australian has been identified by South American authorities as the alleged “manager” of the local arm of an international sex-trafficking ring which rorted the nation’s migration scheme to smuggle women into Australia.

The allegations are outlined in the Brazilian prosecution of the South American organisers of the scheme, which identifies a dual “Brazilian and Australian” national, known as Lucas, as the venture’s Australian leader.



The screenshot shows the website 'ESCORTS and BABES .com.au'. At the top, there are navigation links for Home, Blog, Login, and Advertisements. Below the header, there is a 'Back to Search Results' button. The main content area features a profile for a woman located in Parramatta, NSW. To the left of the profile is a photo of a woman in a pink top and white pants. To the right, there is a 'Quick Facts' section with the following details:

|           |                            |           |           |
|-----------|----------------------------|-----------|-----------|
| Gender    | Female                     | Body      | Average   |
| Sexuality | Heterosexual               | Bust      | DD cup    |
| Age       | 24                         | Dress     | Size 6    |
| Height    | -                          | Ethnicity | Brazilian |
| Hair      | Long Black                 |           |           |
| Eyes      | Brown                      |           |           |
| Category  | Escort for Men and Couples |           |           |

There is also a button labeled 'Add to Favorites' in the top right corner of the profile section.

The Australian arm of the syndicate allegedly demanded that Brazilian sex workers pay them \$2000 to get into Australia.

The court files allege Lucas “operates in Australia, a location from which he is responsible for managing the human trafficking scheme for sexual exploitation” as well as “obtaining an Australian visa at the

Australian embassy in Brazil for Brazilian victims of sexual exploitation”.

“Escorts are sent to Australia using consular visas issued at the Australian embassy in Brazil based on ... false documents,” the court documents say.

This week, [the Trafficked investigation](#) by *The Age*, *The Sydney Morning Herald* and *60 Minutes* has demonstrated how crime syndicates have manipulated Australia’s immigration system to enable sex trafficking.

While many of the cases identified in the investigation feature the exploitation of Asian women, the Brazilian allegations illustrate how Australia may be an attractive location to groups operating around the world.

The women linked to the alleged South American scheme were given scripts to dupe Australian border security officials if they were queried about their reason for travelling.

The documents suggest that Australian authorities were in the dark about the alleged trafficking operation and its rorting of Australia’s visa programs until Brazilian authorities made a series of arrests in April 2021.

*Trafficked* has obtained the Brazilian court files and transcripts of WhatsApp messages and conversations, which outline how Lucas (*The Age* cannot disclose his full name based on legal advice) maintained “frequent contact” with the Brazilian syndicate boss.

Lucas was allegedly responsible for “arranging various logistical details about the activity carried out on Australian soil, such as reception of victims of sexual exploitation, their accommodation, transport and attracting clients that use the services provided by the criminal group”.

## Viagem - Australia



- Média Diária entre 4 a 8 Jobs Dia
- Valor Hora: AUD\$ 500,00 = R\$1.500,00  
1 AUD\$ = R\$ 2,85
- Comissão Agência: 50% do Valor
- Hospedagem: Apartamento ou Hotel (Dividido 50% e 50% com a Agência)
- Exigências:
  - PASSAPORTE: Em dia
  - VISTO: Custo de R\$900,00 para a Modelo
  - PASSAGEM: Paga pela Agência e Descontada lá
  - INGLÊS: Básico

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The outline of the arrangement the South American group set up for Australia.

He is the subject of an Interpol Blue Notice, meaning law-enforcement agencies should keep tabs on a person, and is also accused of distributing funds earned from the scheme in Australia back to Brazilian ringleaders.

The court files allege that the syndicate obtained several Australian visas for women they had recruited by exploiting Australian business sponsorship, holiday and partner visa schemes. The syndicate allegedly did this using “false documentation, such as proof of income and fictitious employment relationships”.

The man was said to be using the alias of Lucas when he managed “a prostitution scheme in several cities in Australia” between 2018 and 2021, when Brazilian authorities swooped. He was aided, the court files allege, by a relative who used the alias “Thomas”.

According to transcripts of conversations between Lucas and the Brazilian syndicate bosses, the Australian arm of the syndicate demanded female sex workers pay them an upfront fee of \$2000 to get into Australia.

“This commission comes from what she earns, so you would ask her something around two thousand dollars,” one transcript states.

The Brazilian bosses would then allegedly be paid \$500 a week from the earnings of the women, who would also pay half of every dollar they earned to the Australian scheme managers.

The syndicate also discussed how to ensure they were not “red-flagged” by Australian immigration officials, and would be working “at full power” to expand the scheme across Australia.

“Right now, we have 3 girls, and I am bringing another one, but there is one that is going back in August, and they will be working while I am not here, but when I come back, we are planning to have 8 girls,” Lucas says in the documents.

“So, this is our plan. When I come back, if you have the girls from the second batch with their visas ready, we can organise to bring them immediately. We have to be prepared to pick it up, and then be able to replace girls as quickly as possible.”

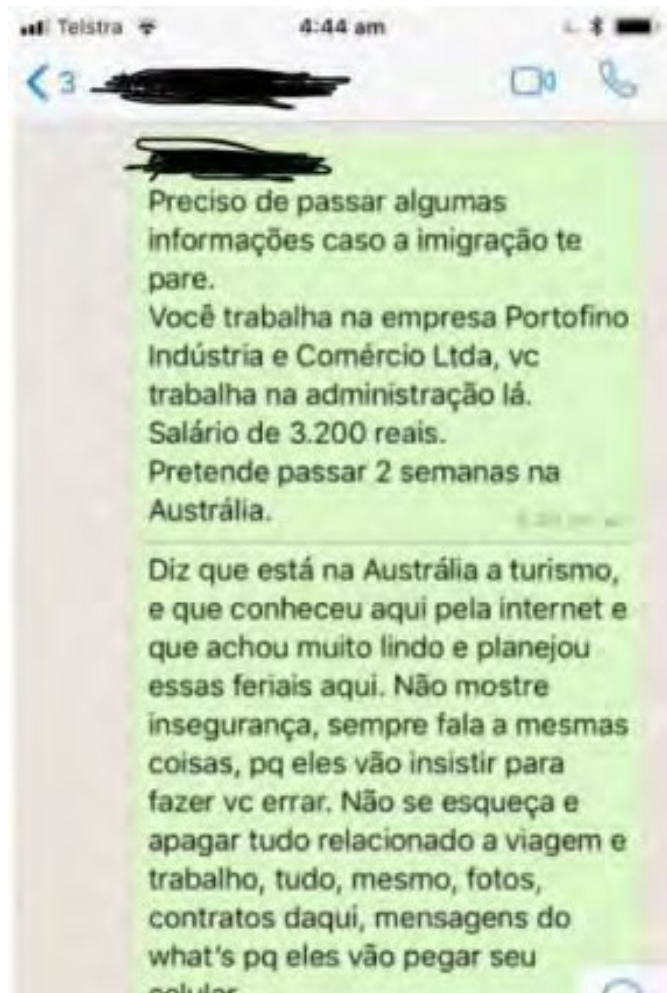
The gang allegedly used multiple visa agents in South America to avoid detection by Australian officials and provided the sex workers with prepared scripts in the event they were quizzed by Border Force officers.

“You work at a company called Portofino Indústria e Comércio Ltda as a manager. Your wage is around AUD770, and you are aiming to spend two weeks in Australia. Tell them that you are in Australia as a tourist, because you found out on the internet how beautiful the country is so you decided to spend your vacation here,” one script says.

“Be confident and always say the same things, because they will insist on to lead you to make a mistake. Don’t forget to delete every single information related to the trip and the job; everything photos, contracts from here, and any other WhatsApp messages, because they will take your mobile.”

Brazilian authorities also scoured Australian websites that advertise the services of escorts, finding pictures of a woman that had been taken in an apartment owned by the Brazilian syndicate boss.

The Department of Home Affairs declined to comment on the case.



Whatsapp messages discussing what a woman coming to Australia should do if questioned by immigration officials.COURT DOCUMENTS





06 NOV, 2022

## Brazil names Australian sex ring 'manager'

Sunday Age, Melbourne

Page 1 of 3

# Brazil names Australian sex ring 'manager'

**Nick McKenzie**

An Australian has been identified by South American authorities as the alleged "manager" of the local arm an international sex-trafficking ring which rorted the nation's migration scheme to smuggle women into Australia.

The allegations are outlined in Brazilian prosecution of the South American organisers of the scheme, which identifies a dual "Brazilian and Australian" national known as Lucas as the venture's Australian leader.

The court files allege Lucas "operates in Australia, a location from which he is responsible for managing the human trafficking scheme for sexual exploitation" as well as "obtaining an Australian visa at the Australian embassy in Brazil for Brazilian victims of sexual exploitation".

"Escorts are sent to Australia using consular visas issued at the Australian embassy in Brazil based on ... false documents," the court documents say.

This week, the *Trafficked* investigation by *The Age*, *The Sydney Morning Herald* and *60 Minutes* has demonstrated how crime syndicates have manipulated Australia's immigration system to enable sex trafficking.

While many of the cases identified in the investigation feature the exploitation of Asian women, the Brazilian allegations illustrate how Australia may be an attractive location to groups operating around the world.

The women linked to the alleged South American scheme were given scripts to dupe Australian border security officials if they were queried about their reason for travelling.

The documents suggest that Australian authorities were in the dark about the alleged trafficking operation and its rorting of

Australia's visa programs until Brazilian authorities made a series of arrests in April 2021.

*Trafficked* has obtained the Brazilian court files and transcripts of WhatsApp messages and conversations, which outline how Lucas (*The Age*

cannot disclose his full name based on legal advice) maintained "frequent contact" with the Brazilian syndicate boss.

Lucas was allegedly responsible for "arranging various logistical details about the activity carried out on Australian soil, such as reception of victims of sexual exploitation, their accommodation, transport and attracting clients that use the services provided by the criminal group".

He is the subject of an Interpol Blue Notice, meaning law enforcement agencies should keep tabs on the person, and is also accused of distributing funds earned from the scheme in Australia back to Brazilian ringleaders.

The court files allege that the syndicate obtained several Australian visas for women they had recruited by exploiting Australian business sponsorship, holiday and partner visa schemes.

The syndicate allegedly did this using "false documentation, such as proof of income and fictitious employment relationships".

The man was said to be using the alias of Lucas as he managed "a

prostitution scheme in several cities in Australia" between 2018 and 2021, when Brazilian authorities swooped. He was aided, the court files allege, by a relative who used the alias "Thomas".

According to transcripts of conversations between Lucas and the Brazilian syndicate bosses, the Australian arm of the syndicate

demand female sex workers pay them an upfront fee of \$2000 to get into Australia.

"This commission comes from what she earns, so you would ask her something around two thousand dollars," one transcript states.

The Brazilian bosses would then allegedly be paid \$500 a week from the earnings of the women, who

would also pay half of every dollar they earned to the Australian scheme managers. The syndicate also discussed how to ensure they were not "red-flagged" by Australian immigration officials, and would be working at "at full power" to expand the scheme across Australia.

"Right now, we have 3 girls, and I am bringing another one, but there is one that is going back in August, and they will be working while I am not here, but when I come back, we are planning to have 8 girls," Lucas says in the documents.

"So, this is our plan. When I come back, if you have the girls from the second batch with their visas ready, we can organise to bring them immediately. We have to be prepared to pick it up, and then be able to replace girls as quickly as possible."

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# Australian colleges identified in allegedly helping women enter country to work in sex industry



Nick McKenzie

November 3, 2022 — 5.00am

## KEY POINTS

- The 14 colleges identified as “corrupt” helped more than 190 South Korean females enter Australia to work in the sex industry.
- Several confidential probes by policing agencies have generated extensive information about the way Australia’s immigration system is being scammed by organised crime syndicates.
- Serving law enforcement officers said the role of Australian-based overseas student education providers in helping crime syndicates had been a persistent problem for border security officials.
- None of the Australian colleges identified as corrupt have faced criminal sanction and most remain open.

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

More than a dozen Australian education providers for overseas students have been identified as allegedly “corrupt” by state and federal investigators probing the movement of women from Asia to Australia to work in the sex industry, including at brothels linked to illegal sex rings.

The Australian Criminal Intelligence Commission was involved in the investigation that identified the suspect colleges. It was sparked by a probe into a nationwide criminal network linked to Melbourne brothel 39 Tope.





Brothel on 39 Tope Street in South Melbourne. PAUL ROVERE

The colleges identified as “corrupt” helped more than 190 South Korean females enter Australia to work in the sex industry, including at 39 Tope and other brothels across the country, according to analysis seen by this masthead.

Some of them were recruited overseas by an illegal sex syndicate led by Australian crime figure Mae Ja Kim as recently as December 2018, according to one inquiry.

The inquiry is one of several confidential probes by policing agencies that have never resulted in criminal charges, but have generated extensive information about the way Australia’s immigration system is being scammed by organised crime syndicates.

Several serving law enforcement officers, who confidentially briefed [the Trafficked investigative series](#), said the role of Australian-based overseas student education providers in helping crime syndicates had been a persistent problem for border security officials. The providers help foreign nationals obtain student visas despite knowing they don’t intend to study and instead join what experts have called an “underclass” of exploited foreign workers.

*Trafficked* is a project led by *The Age*, *The Sydney Morning Herald*, *60 Minutes* and Stan’s *Revealed* documentary program that has exposed the wholesale exploitation of Australia’s border security and immigration system by criminal syndicates involved in human trafficking and other crimes.

None of the 14 Australian colleges identified as corrupt have faced criminal sanction and most remain open.

In a statement, the Department of Home Affairs said the overseas student education sector, along with the agents who recruit students and help arrange visas, are monitored by the Tertiary Education Quality and Standards Agency and the Australian Skills Quality Authority. Colleges and agents are required under the law to act with integrity.

*Trafficked* can also reveal how investigators have uncovered the systemic rorting of the English language testing system meant to protect the integrity of Australia’s immigration system.

One federal investigation targeting a Chinese organised crime syndicate run by a suspected prolific English language test rorter has uncovered how the network has helped hundreds of foreign nationals obtain Australian visas fraudulently over the past decade, many of which have subsequently been cancelled.

English language tests are used by the Australian government to assess if foreign nationals are eligible for a range of different visas.

The suspected boss of the “English test rort” crime syndicate is a Sydney man who has reaped multi-million dollar profits by facilitating suspect visas over multiple visa streams. They include skilled visas, student visas, business sponsorship visas and the “golden ticket” high-wealth investor visas that Home Affairs Minister Clare O’Neil this year acknowledged were at risk of abuse.

The syndicate advertises on Chinese language websites, boasting of having facilitated “many successful applications over the last few years” and promising “personalised migration packages for clients” seeking to gain permanent residency in Australia.

“The fastest time to obtain PR [permanent residency] is three months, which will save you much time and effort,” one online advertisement states.

The crime network boss has continued to operate despite the Department of Home Affairs stripping him of his migration agent’s licence in 2016 after implicating him in the rorting of English language tests.

Official sources said that after being denied his licence, the boss has continued to operate his visa scam business, working with a large network of migration fixers to obtain visas by fraudulent means.

Visa applicants are suspected to pay the fixers up to \$200,000 to arrange for others to sit the English language tests they must submit as part of their visa applications, or, to create a false relationship or business sponsorship visa case. English testing centres overseas and in Australia have been corrupted by syndicates, according to official sources.

In a statement, the Department of Home Affairs said it had a “Deed of Agreement with each of the test providers, which outlines requirements such as candidate identity verification, reporting, and score verification processes”.

This week, *Trafficked* revealed how border security failures had enabled [a sex-trafficking boss](#) jailed in Britain to set up a suspected trafficking operation in Sydney; how federal government licensed migration agents suspected to be engaged in falsifying visa applications had [retained their government licences](#); and how multiple Australian education providers were created to facilitate endemic visa rorting.

In response to the revelations, O’Neil and Immigration Minister Andrew Giles said an investigation had started after an urgent meeting on Monday of the heads of the Australian Border Force, Home Affairs and the Australian Federal Police.

# Australia signs deal to counter scourge of human trafficking

Chris Barrett

November 1, 2022 — 6.45pm

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

**Singapore:** Australia will on Wednesday complete a deal with Thailand to counter human trafficking as the Albanese government confronts [disturbing revelations of sexual exploitation of migrants by a criminal operation on Australian soil](#).

In Bangkok for the latest leg of her south-east Asian charm offensive, Foreign Affairs Minister Penny Wong will sign off on Australia's support of a new training centre to counter trafficking – the first of its kind in the region – when she meets with Thai Prime Minister Prayut Chan-o-cha.

Human trafficking has been a long-standing stain on Thailand, with victims including children subjected to forced labour and sex; smuggling networks taking advantage of Burmese migrants – with the backing of figures within authorities – and Thai nationals exploited elsewhere in the world.



Young Thai girls are among those trafficked for work in strip clubs and sex parlours.FILE

“We are pleased to be supporting Thailand’s own initiative and vision to develop a cadre of highly qualified and competent government officers committed to preventing human trafficking in Thailand and

the region,” Wong said.

“Human trafficking is a scourge that, together, we must work to end.”



Foreign Affairs Minister Penny Wong wants to help combat human trafficking. ALEX ELLINGHAUSEN

The US State Department upgraded Thailand to Tier 2 status in its annual *Trafficking in Persons* report in July, crediting it for boosting anti-trafficking efforts in the past year including by launching investigations involving 17 government officials allegedly connected to the trade.

However, the report said the Thai government “did not meet the minimum standards in several key areas”, identifying problems such as decrease in prosecutions and convictions compared with the previous year, shortcomings in combatting labour trafficking, and corruption and official complicity in human trafficking.

“Corruption continues to undermine anti-trafficking efforts. Some government officials are directly complicit in trafficking crimes, including through accepting bribes or loans from business owners and brothels that exploit victims,” the report said.

The country had slumped to the lowest level, Tier 3 – a status that can jeopardise US economic aid – in 2014 and 2015, the year that mass graves containing the bodies of Rohingya Muslims trafficked from Myanmar and Bangladesh were found in abandoned camps in southern Thailand.

The gruesome discoveries sparked a crackdown that led to the conviction and jailing of dozens of people including a Thai general and police officers.

However, as suspects were rounded up the pressure applied from within police and Thailand’s then military government was such that [the lead investigator in the case fled for his own safety to Australia, where he was granted asylum.](#)



Human Rights Watch Asia director Elaine Pearson said that despite high-profile commitments by the Thai government to address human trafficking, it still had a significant human trafficking problem, particularly with migrants exploited from neighbouring Myanmar, Cambodia and Laos.

“The Thai government has not taken the steps necessary to end trafficking, forced labour and other serious abuses,” Pearson said. “Thai officials should stamp out corruption particularly police shakedowns of migrants, improve labour protections and inspections in sectors of work where migrants are vulnerable to trafficking such as fishing and ensure traffickers are held to account.”

The Australian Federal Police has also been helping train police in Cambodia, where thousands of nationals of other Asian nations have been [held against their will at compounds operating online scams](#). Cambodia was relegated as a result to Tier 3 in this year’s US report, as were neighbours Vietnam and Brunei. They joined Malaysia and Myanmar, meaning five of 11 countries in south-east Asia have the worst rating.

Wong flew to Thailand on Tuesday after meeting with the Sultan of Brunei Hassanal Bolkiah in Bandar Seri Begawan, the capital of the former British protectorate, on Monday.

She has now visited eight countries in south-east Asia since Labor won government in May.



## OPINION

# *Labour trafficking is leading to a growing underclass of undocumented workers*

[Abul Rizvi](#)

Former deputy secretary of the Department of Immigration

October 30, 2022 – 8.30pm

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This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

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According to the International Labour Organisation, [illicit labour trafficking is a global criminal business worth around \\$150 billion](#) a year, with some 25 million people currently being forced to provide their labour to farms, sex shops, construction sites and other occupations under heavily exploited circumstances.

Limiting labour trafficking is a constant challenge for all immigration authorities – it is no different for Australia's Department of Home Affairs and Australian Border Force. When I was in a former version of the Department of Home Affairs, dealing with new labour trafficking scams was an ongoing part of the job.



Limiting labour trafficking is a constant challenge for all immigration authorities. GETTY IMAGES

One common scam was out of Malaysia where organisers would lure poor labourers with the promise of a well-paying job in Australia if they would enter into a “debt bondage” arrangement whereby a large cut of their meagre wages would be paid to the organisers.

These highly vulnerable people were brought to Australia on a visitor visa known as the Electronic Travel Authority. The organisers would lodge asylum applications on their behalf. The asylum applications brought with them a bridging visa and work rights. Even though the labourers and the organisers knew the asylum claim would eventually be refused, the fact the labourers had work rights was enough to convince Australian employers, usually farmers but also sex shop operators, to give the trafficked people a job.

We knew the key to preventing these scams from growing rapidly was to quickly initiate investigations into the organisers. At the bottom of the criminal hierarchy of these organisers were often unregistered and sometimes registered migration agents and sometimes education agents. But none ever put their names to the asylum applications they organised.

In addition, we processed the unmeritorious asylum applications quickly and returned the trafficked people to Malaysia. Rapid processing and removal made the scam uneconomic as there was not enough time for the organisers to generate a return on investment. Employers were warned and often fined for employing undocumented labour.

Rarely did we allow these scams to reach more than a hundred or so asylum applications before the organisers were forced to move onto another target nation. When the same scam re-emerged in 2014-15, I thought former immigration minister Scott Morrison and his successor Peter Dutton would close it down quickly given their border protection rhetoric.

But no effective action was taken. Asylum applications from Malaysian nationals just kept growing, peaking at more than 9000 in 2017-18. The scam quickly spread to nationals from China. It only slowed once international borders were closed.

By that stage, the surge in asylum applications had started to move onto the Administrative Appeals Tribunal (AAT). The total number of asylum cases at the AAT is now around 40,000 and rising. With current resources, there is no chance of the AAT getting on top of this caseload.

Few of the organisers appear to have been investigated. Processing times continue to blow out and the backlogs create a honeypot for people from other nations to also use the asylum system to delay departure. Pacific Island nationals brought to Australia to work legally on farms are increasingly running away from their employers and applying for asylum.

Despite the bulk of these asylum applications being refused at the primary stage and at the AAT, only around 10 refused asylum seekers are voluntarily removed from Australia each month and less than one per month involuntarily. As a result, the number of unsuccessful asylum seekers in Australia – people with no work rights and no means of support – has grown to more than 30,000 and rising.

Farmers in particular continue to employ unsuccessful asylum seekers and Australian Border Force appears to have largely ceased warning employers about using undocumented labour. But farmers are understandably so concerned about employing undocumented labour that former agriculture minister David Littleproud [proposed an amnesty](#) for undocumented workers. This was quickly [slapped down](#) by former attorney-general Michaelia Cash.

Ironically, Cash said “an amnesty would send a dangerous message that it is OK to flout our strong visa and migration rules, principles that this government has worked incredibly hard over a period of time to secure”. She made no mention of the massive labour trafficking scam that led to Littleproud’s call for an amnesty, nor did she offer any solution other than to let the number of undocumented workers continue to grow and be exploited by organised crime.

Sweeping the issue under the carpet is unfortunately the same approach taken to this issue in North American and European nations.

Unless the Albanese government finds a way to deal with the issue, Australians may need to accept that we will also now have a large and growing underclass of undocumented workers who live and work in the shadows of society often exploited by organised criminals.

# ‘Repulsive abuses of human rights’: Alleged human trafficking kingpin under investigation

Lisa Visentin and Lachlan Abbott

October 31, 2022 – 7.06pm

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

The alleged kingpin of a human trafficking ring is facing deportation after law enforcement agencies launched an investigation into how the criminal syndicate exploited flaws in Australian border security and the immigration system to run a national illegal sex racket.

Binjun Xie, the alleged Sydney-based crime boss at the operation’s centre, was exposed in the [Trafficked investigation](#), a project led by *The Age*, *The Sydney Morning Herald*, *60 Minutes* and Stan’s *Revealed* that also unveiled allegations of visa rorting, human trafficking and foreign worker exploitation in Australia, including in a booming underground prostitution industry.



Binjun Xie, the alleged kingpin of a human trafficking syndicate, is now the focus of an investigation by Australian law enforcement agencies. 60 MINUTES

In a joint statement, Home Affairs Minister Clare O'Neil and Immigration Minister Andrew Giles said an investigation into the revelations was under way following an urgent meeting of the heads of the Australian Border Force (ABF), Home Affairs, and the Australian Federal Police on Monday.

“Last night and this morning, *60 Minutes* and the Nine papers outlined a series of allegations detailing grotesque abuse of Australia’s visa and migration system to facilitate sexual exploitation, human trafficking and other organised crime,” the statement said.

“The allegations detailed repulsive and egregious abuses of human rights that have no place in Australia or any other country.”

The ministers said the government’s immediate response would “focus on the individual elements of the conduct under investigation”.

“The Albanese government has no tolerance for the exploitation of migrants,” they said.

The ministers did not detail exactly who or what would be investigated, but this masthead has confirmed that Xie and migration agents used by the trafficking ring are the focus, with Xie facing deportation depending on the outcome of the investigation.

They also indicated further reviews into the visa system would follow, saying the reports demonstrated there were “broader, systemic failures on show” that required “urgent attention” and blamed the former Coalition government for neglecting the system.

In a press conference on Monday, ABF Acting Commander Tori Rosemond said the revelations were “confronting”, but declined to weigh in on Xie’s involvement and whether he would be deported.

“We don’t comment on individual cases. We also don’t comment on things that may be subject to ongoing investigation or operational activity so I can’t provide further details,” she said.

Rosemond said the ABF shared information and intelligence with Australia’s law enforcement partners both domestically and internationally but declined to comment on how Xie managed to enter Australia on a student visa after being deported from the UK.

Former Immigration Department deputy secretary Abul Rizvi told this masthead the revelations, along with data suggesting visa rorting had been exploding since 2014, indicated the Department of Home Affairs and the former government had failed to take effective action.

Coalition home affairs spokeswoman Karen Andrews, who held the portfolio under the Morrison government, said she had not been made aware of large-scale visa rorting by crime syndicates while minister, but said the revelations were “disturbing” and urged the government to investigate.

“I think that now it has been raised, now it’s out in the public forum, and there may well be information the current government has had more specifically than I had several months ago. But now’s the time that we need to look at what we can do to close those loopholes,” she told ABC radio.

# The migration agent and the Liberal ministers: How one man gamed Australia's visa system

A company run by Jack Ta, who boasted of “cosy” dinners with former Home Affairs minister Peter Dutton, has been used by more than a dozen drug offenders to remain in Australia on bogus asylum seeker claims.

By Nick McKenzie and Amelia Ballinger

NOVEMBER 6, 2022



Liberal MP Jason Wood, Immigration agent Jack Ta and former Home Affairs Minister Peter Dutton.

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

A migration agent who has boasted of “cosy” meals with Coalition ministers and who donated more than \$25,000 to the campaign fund of former Liberal assistant home affairs minister Jason Wood is suspected of repeatedly gaming the visa system to help more than a dozen drug offenders remain in Australia.

Wood was the chair of parliament's migration committee when the donations took place and he hosted migration agent Jack Ta on at least two occasions to dine with now opposition leader Peter Dutton when he was home affairs minister.



A major investigation by *The Age*, *The Sydney Morning Herald* and *60 Minutes* can reveal that Ta has been identified by law enforcement agencies for allegedly running a firm that has been used by Vietnamese drug offenders to exploit the visa system to avoid deportation and extend their stay in Australia.

An undercover sting has also captured Ta on camera offering to help a man posing as a heroin trafficker get visas for two people he said were Vietnamese drug runners. Asked if he could help the drug dealers extend their stay in Australia for two to three years, Ta told the undercover operative it would be “easy” and that “it’s doable”.

“Despite the fact that they’re unlawful at the moment, there are five or six different types of visas that they can apply for,” Ta told the undercover operative organised by *The Age*, the *Herald* and *60 Minutes*.

The revelations come as Home Affairs Minister Clare O’Neil declared the nation’s immigration system broken and signalled an independent review into what she called systemic failures, including in the migration agents sector, that have allowed overseas criminals to remain in Australia.

Authorities have linked Ta’s migration agency to dozens of unmeritorious asylum seeker claims, including at least 15 made by convicted Vietnamese drug offenders.

Ta has a federal government licence to give migration advice and his firm operates in every state in Australia, as well as in Vietnam. Three official sources who briefed this masthead on the condition of anonymity said policing agencies first identified concerns about overseas drug offenders using Ta’s migration agency to file visa applications in 2014.

Records show that between 2017 and 2019, Ta donated \$26,700 to a fundraising vehicle linked to Wood, who Ta has described as his “friend”. Between 2016 and 2019, Wood chaired federal parliament’s joint committee on migration as it ran inquiries into unscrupulous migration agents and into visa cancellation for criminals. Wood became an assistant home affairs minister in May 2019.

In a September 2019 Vietnamese-language post on a personal Facebook page that also advertises his business, Ta described meeting Wood and Dutton at “a very cosy dinner in the dining room of the Parliament in Canberra”.



Jack Ta with Jason Wood and former prime minister Scott Morrison.

“We talked about bills, amendment policies, and definitely this year there will be many good changes. Congratulations to my friend Jason Wood for being promoted as Deputy Minister for Home Affairs after the election, and certainly later we will discuss and contribute opinions to how policies should be amended, and the ‘author’ will also continue to represent you guys when the files have to be in need of the intervention of the Minister/ Deputy Minister.”

“Home Affairs Minister Mr Peter Dutton was still in great form, and we also exchanged what family, business and indispensably, vehicles, are all about.”

There is no suggestion that Dutton or Wood knew that Ta’s company had been used by criminals.

Ta was identified by policing agencies as part of an investigation into Vietnamese drug offenders seeking visas they were not entitled to, but there is no suggestion he was personally under investigation for any crime.

Sources confirmed that the federal government agencies have been briefed that Ta’s business is linked to more than 150 baseless asylum seeker claims over several years and that 100 per cent of protection visa applications his businesses have helped lodge are ultimately determined as being without any merit.

At least 15 convicted drug offenders are among those who have lodged the suspect applications.



Jack Ta

The data suggests Jack Ta's migration agency, which retains its federal government licences to provide immigration advice, has been enabling criminals to lodge false visa claims to extend their stay in Australia. Once a protection visa is lodged, a person can stay in Australia awaiting the approval or rejection of the claim or apply for other visa types, a process that due to departmental and tribunal backlogs can take years.

Investigators linked Ta's office to the applications by analysing IP addresses, according to sources who are not authorised to speak publicly.

It is a breach of the migrant agent's code to knowingly assist a person make a false visa claim, for a migration agent to fail to declare their involvement in a visa claim, or to claim a "special or privileged relationship" with any government official.

In an interview, Ta appeared to defend the lodging of unmeritorious asylum seeker claims for drug offenders because often "the only option and the only visa that they can lodge is for protection visa". Protections visas are reserved only for those who are escaping persecution in another country.

Pressed on why a drug offender would qualify for such a visa, Ta indicated that lodging an asylum seeker claim was a means to allow them to stay in Australia while any appeal process was exhausted, or another visa was lodged.

"You can lodge it. And then you can bring the matter on appeal," he said.

Former deputy secretary of the immigration department, Abul Rizvi, said there was no justification for applying for a protection visa for a known or suspected criminal.

Asked why there was a 100 per cent refusal rate on more than 150 protection visas linked to his office, Ta said he could not recall if his business was involved in the applications. He also said he could not recall if his office had any role lodging asylum seeker claims for at least 15 convicted criminals from Vietnam.

“I can’t give a general comment about the so called 15 people,” he said.

He did, however, state that he had offered lawful advice to more than 1000 Vietnamese cannabis crop minders caught up in the Australian criminal justice system, while also claiming there are “at least 300” criminals planning to enter Australia from Vietnam.

The suspect activity of Ta’s Australia-wide migration business has occurred over a period of several years, during which Ta— like many migration agents— posed with multiple politicians and posted the photos on his social media accounts that also advertise his migration business.

When the Coalition held power, Wood appears to have introduced Ta to a host of senior ministers who briefly posed for pictures with Ta, including prime minister Scott Morrison, treasurer Josh Frydenberg and immigration ministers Alex Hawke and David Coleman. Ta also attended an election campaign launch event for then shadow minister Clare O’Neil, where he was photographed in a small group with O’Neil and then shadow minister Penny Wong. He recently posed for a photo with Labor’s immigration minister Andrew Giles at a migration industry event. There is no suggestion any of these Liberal or Labor politicians had anything but fleeting contact with Ta.



Jack Ta poses with then shadow ministers Clare O’Neil (left) and Penny Wong.

O’Neil said of the photograph with Ta featuring her: “People like this tend to attend open community events with politicians to give an impression of political access. If I have met him, I certainly do not recall it and we have no association I’m aware of.”

There is no record of any financial donation from Ta to Labor.

But Ta has claimed an ongoing and close relationship with Jason Wood and has also donated to the Pinnacle Club, which is a fundraising entity in the Victorian MP's seat of Latrobe.

In an interview, Ta said he had donated "tens of thousands" of dollars to the Liberals.

"I feel that as good friends, we should donate, and we should put a bit of money in making sure that our friends can have access to the best," Ta said. Election records only disclose donations from Ta to the Liberals.

In October 2021, Ta hosted then assistant home affairs minister Wood on a Facebook Live chat in which the pair chatted about integrity in the migration sector. Ta claims to have repeatedly lobbied Wood to crack down on unlicensed migration agents.

In a statement, Wood said that his involvement with Ta was "limited and professional", that he was aware of no adverse information about Ta's business and that he did not believe he had ever dealt with a visa matter involving any of Ta's clients.

"From my understanding, Jack Ta is ... an industry leader," said Wood, who also stressed that he had long championed crackdowns and reforms to tackle visa fraud.

Wood said Ta's donations were "a matter for him."

In a statement, Dutton said he had "never met with Mr Ta in a one-on-one setting" and "at no time were concerns raised with Mr Dutton regarding any alleged involvement Mr Ta had in the potential misuse of the visa system."

In September 2017, Ta wrote in Vietnamese on his Facebook page that it was "an honour to have dinner with the Minister for Immigration, Mr Peter Dutton" and that "in a cosy space, we shared concerns present in Australia such as the citizenship act, deportation of criminals, and policies as well as how the Ministry of Immigration operates should be amended."

In August 2018, he posted that "Peter Dutton is still Home Affairs Minister, and friendly meals are still ... there."

In September 2019, Ta headlined a post in Vietnamese: "cosy dinner with the Australian Minister and Deputy Minister for Home Affairs [Wood]."

"Home Affairs Minister Mr Peter Dutton was still in great form, and we also exchanged what family, business and indispensably, vehicles, are all about," the post said. There is no suggestion that Mr Ta's claims to have had "cosy" dealings with Wood and Dutton are accurate.

While this masthead is not suggesting Dutton or Wood were ever told of Ta's suspect visa practices, O'Neil said the previous government had failed to protect the integrity of the migration system.

"There is a real problem here and that's why I think this needs to be properly looked at and properly addressed and why the former government needs to come out and explain how it let it get to this point where

criminals are coming into our country operating with impunity and no one's doing anything about it," she said.

The revelations about Ta's dealings come as part of a series of reports uncovering evidence of serious gaps in Australia's border security and immigration system. The evidence has been uncovered by Trafficked, a project led by *The Age*, the *Herald*, *60 Minutes* and Stan's Revealed documentary program.



# *Gaps in migration system need to be quickly plugged*

The Herald's View

October 31, 2022 – 6.04pm

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

Flaws in Australia's border security and immigration system have allowed a crime syndicate to run an illegal sex racket that exploits women and shunts them around the country like livestock.

Failures of the Immigration and Home Affairs departments have allowed the crime boss at the centre of the crime ring to enter and operate in Australia after his release from jail in Britain, where he was involved in similar crimes.

Binjun Xie, who UK police identified as a Chinese triad boss nicknamed "The Hammer", has been allowed to live freely and grow rich in Sydney while exploiting gaps in the migration system for illegal purposes. That it should be [left to the media to investigate this alleged criminal activity](#) makes a mockery of Australia's tough talk on border security.

The *Herald* has widely reported on the haste with which the bureaucracy has deported asylum seekers. The full force of border protection moved to deport a Tamil family of four who lived a quiet life in the Queensland town of Biloela. Yet, despite clear warnings about Xie's criminal history and networks, the bureaucracy has failed to act, leaving it for journalists to expose the damage.

Former British detective Kevin Forrest, who helped jail Xie in England a decade ago, said he was "absolutely flabbergasted" that Australia had allowed him to enter the country and become involved in a criminal enterprise after his earlier racket was shut down in Europe. The *Herald* agrees this system failure is extraordinary. Xie was jailed in Britain for five years with the condition that he would be deported back to China after his release. He then left China and moved to Australia to allegedly start his Australian criminal enterprise. Forrest, thinking it was supposed to be hard to gain entry to Australia, was shocked at how easy it was for Xie.

*Trafficked*, a project led by the *Herald*, *The Age*, *60 Minutes* and Stan's *Revealed* documentary program, highlights visa rorting, human trafficking and foreign worker exploitation in Australia through a growing underground prostitution industry.

The investigation exposes the misuse of migration agents running so-called visa farms which rort the migration system. Visa fixers and migration agents with federal government licenses, though not directly involved in or aware of the crimes allegedly being committed by the syndicates, have brought thousands

of foreign workers to Australia where they have been moved from coast to coast like cattle for use in illegal sex work.

Law enforcement sources said Commonwealth agencies had been warned that federal government-licensed migration agents – including one linked to Xie's network – were enabling visa farms. Organised crime syndicate bosses use them to gain repeated entry into Australia for syndicate members and foreign sex workers who are treated like slaves. Apart from some exceptions, the underground sex networks have largely operated with impunity.

Former immigration department deputy secretary Abul Rizvi, who worked closely with the Howard government, said the revelations suggest the Department of Home Affairs and former government had failed to take effective action.

Police who detected drug traffickers rorting Australia's migration system have also said the system needs to be tightened to prevent crime networks from flourishing here. Xie's history in the UK should have raised alarm bells with Immigration and Home Affairs agencies. The *Herald* believes he should be immediately deported.

The failure to deport a crime boss who has been allowed to exploit women in the illegal sex trade highlights a deep hypocrisy within a migration system that has stringently expelled some people while allowing criminal syndicates to stay and flourish.

Glaring gaps in the migration system need to be closed and its biggest risks targeted. Australia should not allow any further development of an underclass of workers being exploited by organised criminals.

# ‘It’s easy’: Migration agents offering fake visas for \$500 a month

By Nick McKenzie, Amelia Ballinger and Wing Kuang

OCTOBER 31, 2022



An undercover journalist was offered a pathway to an Australian visa over coffee. THE AGE

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

Federal government agencies have allowed migration agents to keep operating despite repeated warnings about their role in rorting the visa system that is misused by organised crime gangs involved in human trafficking and worker exploitation.

Secret briefings from police and border security officials over the past decade warn that some agents have corrupted Australia’s migration system at the same time as the Home Affairs Department has continued to issue them the required licences.

Undercover recordings taken as part of investigative series *Trafficked*, by *The Age*, *The Sydney Morning Herald*, *60 Minutes* and Stan, show agents operating with impunity as they advise on how to rort the visa system, including by encouraging the use of false documents and fake asylum claims.

One agent, linked to up to 500 visas in recent years, is recorded urging a young woman to move to Australia for sex work by lodging a false education visa application, while also describing a network of Australian education providers set up to exploit the nation's student visa stream.

The revelations come after the series on Sunday [revealed how a human-trafficking boss jailed in the United Kingdom](#) had entered Australia after his release from prison and built an underground sex network that exploits foreign women.

While some agents appear to have offered to lodge false visa applications, there is no evidence to suggest they are personally aware of the syndicate's crimes, including human trafficking and illegal prostitution, only that those agents are used by the syndicate to enable their operation.

Police complained that migration agents play a key role in allowing that network to flourish at the same time as repeated warnings to policymakers have failed to close the loopholes.

In February 2019, federal parliament's joint committee on migration heard evidence that licensed agents were poorly regulated and those without licences operate with near impunity while breaching the law.

An official source, not authorised to speak publicly, confirmed that in December 2020 a law enforcement briefing to senior departmental officials warned migration agents and other people-smuggling fixers were "exploiting gaps" in border security.

The briefing said agents were "almost certainly" rorting Australia's migration programs, such as student, spouse and asylum seeker visa pathways including women suspected to be trafficked or exploited in the sex industry.

The Department of Home Affairs, Australian Border Force and the Office of the Migration Agents Registration Authority had all failed to respond to this "non-compliance and criminality", the briefing said.

In a statement, the department did not respond to questions about any specific cases or individuals, but said there was a comprehensive suite of laws and programs in place to defend the integrity of the visa system, oversee migration agents and prevent worker exploitation

Police in Victoria, Queensland and South Australia have also shared confidential reports to Border Force and other federal agencies warning that fixers, including some with government-issued migration licences, were rorting visa programs.

In 2019, Victoria Police's operation Candlepin provided evidence to Border Force that a migration fixer was being used by a human-trafficking syndicate to obtain visas for exploited Asian sex workers.



Queensland Detective Inspector Brad Phelps said the force was powerless to confront the problem. GLENN HUNT

A report from South Australian detectives in November 2018, lamented that state police had “no authority or involvement” in tackling migration crime and called for changes in the law that “addresses and restricts the involvement of Asian crime syndicates and abuse of immigration visas”.

Queensland Detective Inspector Brad Phelps said the conduct of some migration agents was “reprehensible” but also complained that his force was powerless to confront the problem.

“They’re a key part. If you don’t have the victims coming to Australia, then you don’t have the industry. They are crucial in getting those people into the country – without their support the whole operation would fall down,” he said.

These warnings mirror others contained in hundreds of pages of leaked confidential departmental documents [published by this masthead in 2014](#).

Those files warned wide-scale visa rorting were compromising Australia’s national security. Some had links to terrorism or organised crime.

## The South Korean connection

Undercover interviews by the *Trafficked* investigation confirm that some visa fixers and migration agents are offering to help people enter Australia on fraudulent grounds.



One, who police suspect has long been used by an Australian sex-trafficking syndicate to supply visas, is South Korean businessman Doowon Kim, who runs an immigration service in Sydney and Melbourne. Kim facilitates visas but as an education agent, faces no regulatory oversight.

A Korean investigative journalist, working undercover with *Trafficked* and posing as a debt-laden woman, approached Kim earlier this year and inquired about travelling to Australia to engage in sex work.

Kim said he was running a “student immigrant agency” and had previously helped large numbers of foreigners enter Australia.

“I helped out a lot with arranging visas for them. I helped one person and they brought another one, because it’s easy’... So I ended up helping a lot of people.”

The Australian Federal Police and Victoria Police, which monitor the sex- trafficking syndicate’s activity, believe he has helped up to 500 foreigners enter Australia, including multiple vulnerable women recruited by the organisation’s head, Melbourne woman Mae Ja Kim.



Organised crime boss Mae Ja Kim, who was jailed in 2015 in Victoria for a minimum of two-and-a-half years in connection to dealing with the proceeds of crime.

Women from South Korea, North Korea and China who were recruited into the sex-trafficking ring told investigators they had made large payments to Kim to lodge their fraudulent visa applications.

There is no suggestion Doowon Kim was directly involved in or aware of the exploitation of vulnerable Asian women as sex workers, but the covert recording backs the police belief that he is part of a network of corrupt Australian migration agents and education providers.



On the undercover recording, Doowon Kim said: “Australia is in a state of boom. Demand is through the roof.

“You’ll do an English course at the start, but you don’t even have to attend it. There’s no homework, so you don’t even have to stress ... there are business schools that are there purely operating for people like you to keep their visa alive.

“[They] don’t care about attendance, they are purely aware of workers that enrol for the sake of keeping their visas.”

Kim said he charged foreigners \$500 a month to remain in Australia on a falsely acquired visa.

He also encouraged the undercover reporter to work in the sex industry, noting that COVID had lessened the supply of young Asian women into Australia.

“They’re going crazy because there is less supply. You’ll earn a lot,” he said.

When Kim was confronted by this masthead recently in Melbourne, he said that he had been “cleared” by Border Force and gave reporters the mobile number of an ABF investigator he said would vouch for him.

This masthead confirmed the number belongs to a senior ABF official, but he did not respond to efforts to contact him.

Kim denied he knew that the women who he had helped enter Australia were exploited by a notorious human-trafficking syndicate, but confirmed he had regular dealings with the syndicate boss Mae Ja “Mimi” Kim, who he called “older sister”.

## ‘Many people prefer protection visa’

The undercover reporter cold-called seven migration agents or migration fixers posing as a prospective applicant. Six of the agents appeared to encourage scamming Australia’s migration system.

Another immigration agent told the undercover journalist, posing as a Chinese massage worker, that she could lodge a protection visa, even though she had not suggested she was a genuine asylum seeker. The charge was \$1800.

Protection visa applicants can work on bridging visas for a number of years.

“You can try student visa too. Maybe you don’t think student visa is better than protection visa, feeling that with protection visa, you don’t need to study or pay for tuition fees, right? All you do is just to stay here and work. That’s why many people prefer protection visa. If you... insist doing protection visa, then we can do it.”

Simon Feng, of Sydney-based migration and education consultant Ausmon International, suggested to the journalist posing as a Chinese sex worker that she could apply for a visa using fake documents.

“Your workplace, family condition, that could be made up,” said Feng when the undercover journalist said she may struggle

to find official documentation to substantiate her visa claim. When the journalist asked Feng to clarify if he could “help me fake” her visa documents, he said: “Yes, they can be made up.”

Asked by this masthead about his conduct, Feng denied making the comments before hanging up.

Licensed migration agent Baoyan Zhang, who operates in Sydney, also offered to arrange a fraudulent student visa in return for a payment of \$1400. Zhang said the undercover reporter could keep working full time and never attend school, which is a requirement of student visa conditions.

“You don’t need to attend class ... if you pay \$1400 for three months what we could do is ensure you have the student visa and the college won’t report you.”

For an extra payment, she could arrange for a false qualification certificate, she said.

“If you need the qualification certificate, you need to pay another extra \$2000 each year,” she said on the recording. Zhang could not be reached for comment.

Another registered migration agent told the undercover reporter she could apply for a protection visa and it can “help you stay here for another five or 10 years ... and you can use this time to see if you get another opportunity, such as marriage and other stuff”.

Federal government licensed migration agent Songtao Lu has for 10 years been flagged by federal government agencies as being used by the syndicate to lodge false visa claims for exploited foreign workers, including sex workers.

Lu first came to the attention of South Australian detectives in 2018 after they discovered dozens of women being controlled by a crime syndicate had obtained visas with his assistance. There is no evidence that Lu was aware of the syndicate’s activities or the women’s circumstances, only that the syndicate used his services.

Three years after he was flagged, Lu remains licensed by the federal government to assist people obtain visas – and he is still being used for illegitimate visa applications.

In a covert recording, Lu is taped offering to lodge a false asylum protection visa application for \$2500.

“For cases like yours, what you could do is to apply for a protection visa. And then you can get a bridging visa. A bridging visa can be used for about three years. Our fee is \$2500,” he says on the recording.

## Failure and negligence

Former deputy secretary of the Immigration Department Abul Rizvi said the willingness of migration agents to rot the system suggested government regulation of the sector was failing.



Simon Feng.

"The only explanation I can give is a lack of resources and a level of negligence," he said.

The Home Affairs agency that regulates migration agents, the Office of the Migration Agents Registration Authority, revealed in a recent report that one in three of the almost 5000 migration agents in Australia “have received a complaint at some time whilst being registered.”

But it said that most “complaints are dismissed” because of a lack of evidence or co-operation from the complainant. In 2021, only eight agents were barred or had their registration cancelled.

In 2019, a federal parliamentary inquiry called for an Immigration Commissioner to deal with visa rorting, but the recommendation was dismissed by Home Affairs.

# 'A state of disrepair': Home affairs minister slams immigration system

Nick McKenzie and Amelia Ballinger

November 6, 2022 — 8.30pm

This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

Home Affairs Minister Clare O'Neil has declared Australia's migration system is broken and is being exploited by overseas criminals, and has flagged an independent inquiry to examine revelations of widespread visa rorting linked to sex trafficking, foreign worker exploitation and drug crime.

In her strongest comments yet about the failings in the system, O'Neil blamed her predecessor, Liberal Peter Dutton, and revealed she had received expert advice that "tens of thousands of people" might be unlawfully in Australia, including many who are exploited foreign workers.

"We've ended up with a system where there's massive visa queues and where the people who actually legitimately want to use the system can't properly use it. And yet criminals who want to bring people into the country as slaves are able to somehow do it," O'Neil said.

"We've got to change the way that this system operates."

O'Neil made the comments after she was privately briefed by Australian Federal Police commissioner Reece Kershaw and Border Force commissioner Michael Outram in response to [a series of reports](#) in this masthead about organised crime exploitation of the visa system.

O'Neil was responding to *Trafficked*, a project led by *The Age*, *The Sydney Morning Herald*, *60 Minutes* and Stan's Revealed documentary program which [casts a light on visa rorting](#), [sex trafficking](#) and [foreign worker exploitation](#) in Australia. Among the reports was that of a [human trafficking boss](#) who entered Australia in 2014 and built a criminal underground sex empire despite having previously been jailed in the UK for similar offending.

*"There are systemic problems ... Criminals are coming into our country operating with impunity and no one's doing anything about it."*

Home Affairs Minister Clare O'Neil

"The migration system is in a state of disrepair," said O'Neil said, blaming Dutton, now the opposition leader, for the problems.

The *Trafficked* “investigation has uncovered, repulsive criminal wrongdoing in our country”, she said. “There’s some systemic issues here about the way that our migration system has been run down ... creating direct criminal conduct in our country and putting Australians in danger.”



Home Affairs Minister Clare O'Neil says the immigration system is broken and needs an overhaul. ALEX ELLINGHAUSEN

The minister said it was vital to get “independent eyes on what’s happened here”. She wanted “answers to why various law enforcement bodies within the Australian government had information that was needed to prevent harm occurring in the Australian community, and that information didn’t get to the right people at the right time”.

O'Neil has already commissioned a review of how problems in the migration system – including huge backlogs in visa processing – are denying Australia access to desperately needed foreign skilled workers.



Binjun Xie is alleged to be trafficking women for sex work into Australia.

*Trafficked* has revealed how state and federal agencies have spent years issuing confidential warnings of migration rorting, involving syndicates gaming the visa system to bring criminals or exploited workers into Australia. This is facilitated by networks of corrupt federal government licensed migration agents, [education colleges](#), fixers and people who rort the English language test.

Border security failures enabled [human trafficking boss Binjun Xie](#) to allegedly set up an underground sex network across Australia, and authorities have also uncovered repeated rorting of visa streams by Vietnamese cannabis crop producers and traffickers in Australia.

O'Neil said the revelations had highlighted “the failure of our visa system” as well as “[dodgy educational institutions](#) that are clearly set up as fronts to bring people into the country, some of whom go on to commit crimes”.

“And the question is, why was this problem let run for so long?”





Opposition Leader Peter Dutton says he has zero tolerance for any attempts to exploit the visa system. ALEX ELLINGHAUSEN

“There are systemic problems ... It’s not about a bad apple here or there, but in fact this interaction between education providers, between visa systems that aren’t working properly and between migration agents, who are not properly regulated. There is a real problem here and that’s why I think this needs to be properly looked at and properly addressed.

“Criminals are coming into our country operating with impunity and no one’s doing anything about it.

“The expert evidence does suggest that during that nine years that the Coalition was in power, literally tens of thousands of people came into our country. They might be exploited farm workers, they might be women who are trapped in sexual slavery. The human consequences of these problems are enormous, and we’ve got to change the way that this system operates so we can have a properly run migration system.”

In a statement, Dutton said he had “zero tolerance when it comes to any attempt to exploit our visa system and vulnerable individuals”.

“As minister for immigration and border protection, I oversaw establishment of Taskforce Cadena ... which specifically detects and disrupts criminal syndicates who seek to profit off vulnerable foreign workers,” he said.

He said he would support any further measures “to combat visa fraud within the Australian migration system”.

# Watchdog granted licence to a business used by 'money launderers'

The company got a green light to move money into and out of Australia, despite intelligence warnings and the prosecution of a related business in New Zealand.

By Nick McKenzie and Amelia Ballinger

NOVEMBER 2, 2022



This article is part of a series examining a global human trafficking syndicate exploiting flaws in Australian border security and the immigration system. [See all 13 stories.](#)

Australia's anti-money laundering watchdog has granted a government licence to a cash-transfer company used by alleged money launderers involved in sex trafficking and drug syndicates.

AUSTRAC registered the money-moving firm owned by Jintao "Jerry" Li despite red flags that his business empire had long been used by people laundering money.

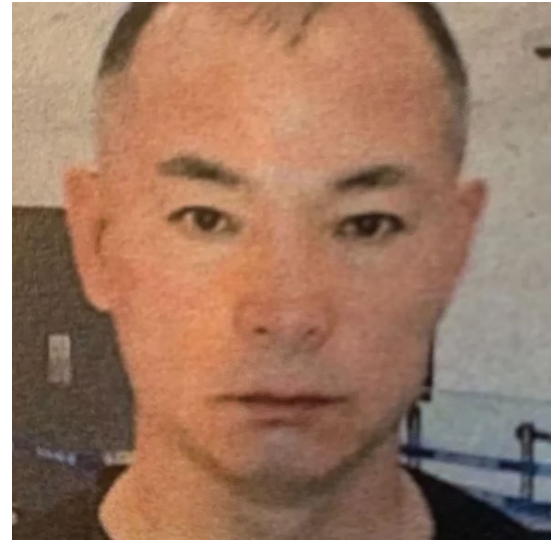
Businesses founded by Li were implicated in a major money-laundering case in New Zealand in 2020. Authorities in Australia have also linked his local money-moving businesses to more than \$1.4 billion in

fund transfers over eight years, many of which appear suspect or to have links to Chinese organised crime and underground Asian sex rings.

AUSTRAC's authorisation of Li's business, ACSF International Trading, to operate as a financial services entity exposes the struggle facing state and federal agencies in policing suspected money laundering.

This is AUSTRAC's key role, but after it passes its intelligence about suspect money movers to other agencies, it mostly relies on them to take operational action.

Two official sources aware of the situation said no law enforcement agency had acted on AUSTRAC's confidential warnings about Li's businesses.



Jintao "Jerry" Li

There are limited circumstances under which AUSTRAC can deny a licence to a financial services firm, and this combined with the failure of law enforcement agencies to act, led to ACSF securing its required registration, the sources said.

It is unlawful to operate a money-moving business in Australia without an AUSTRAC registration. But while businesses must meet a fit and proper test to obtain such a licence, AUSTRAC cannot strip a licence based only on intelligence suggesting a business is being used for organised crime.



The registered address for Li's business in Sydney. JANIE BARRETT

AUSTRAC declined to comment but stressed it had “provided extensive intelligence to support law enforcement investigations in these matters”.

*The Age* and *The Sydney Morning Herald* were unable to contact Li.

The failure to prevent a decade of suspected money laundering throws light on the serious problem facing Australian authorities and the Albanese government in containing a practice by which criminal enterprises move money around and make it look like legitimate income.

With limited resources, agencies such as the AFP must triage AUSTRAC intelligence and make hard decisions about which businesses to target. This leaves some firms free to continue operating despite obvious risks they may be moving dirty money.

On Monday, senior Queensland police organised crime fighter Brad Phelps [warned that illegal sex traffickers involved in serious exploitation of vulnerable Asian women](#) were earning hundreds of millions of dollars. This money was then circulated overseas before moving back into the Australian property market. He called for these money trails to be investigated.

Detective Inspector Phelps also described how his investigators had exposed an underground sex trade involving Asian women moved around Australia like “cattle”.

Phelps was interviewed by [Trafficked](#), a project led by *The Age*, *The Sydney Morning Herald*, *60 Minutes* and Stan’s *Revealed* documentary. The investigation exposed exploitation of Australia’s border security and immigration system by criminal syndicates involved in human trafficking and other crimes.

In June, this masthead [revealed how police were tracking another suspected Chinese money laundering syndicate](#) headquartered in Victoria and NSW that moves hundreds of millions of dollars annually to China and elsewhere. The “Chen Organisation” counts as its customers a relative of Chinese President Xi Jinping, along with Asian triads and bikies, according to briefings from law enforcement officials.

In a thinly veiled reference to the Chinese government, Australian Federal Police Commissioner Reece Kershaw spoke out in June about governments “turning a blind eye to the proceeds of crime washing through their economies”.

Officials in the United States have directly called out Beijing’s failure to combat money laundering trails that flow through Western countries.

Australian authorities, including the AFP, the Australian Criminal Intelligence Commission, AUSTRAC and the ATO, have recently ramped up efforts to target money laundering, but more than half a dozen sources say they are being hampered by the sheer scale of the problem, inadequate resources and the failure of Beijing to act.

There have been some successes. A recent operation codenamed Sunnybank and led by the tax office targeted a money-moving business in Queensland (not Li’s) that sent tens of millions of dollars offshore for underground Asian sex rings. The principal is also involved in local Chinese Communist Party-linked organisations.



Attorney General Mark Dreyfus declined to comment on the Li case but AUSTRAC said Australia had a “robust anti-money laundering and counter-terrorism financing regime”.

AUSTRAC registration of the Li-owned ACSF International Trading enables it to move funds overseas in return for a cut of every dollar shifted.

This masthead is not suggesting that Li is personally engaging in money laundering, only that his businesses are suspected of being used by money launderers and criminals. Similarly, it is not suggested that he is personally involved in the crime syndicates that use his business.

Li was a director at a money transfer business identified by the Australian Federal Police in 2016 as moving funds for a drug network. It is not suggested Li was aware of the source of the funds.

Documents released by the AFP under freedom of information laws cast light on Li’s remittance business in Sydney being used to move drug funds.

The documents reveal “high-level members of a [Chinese] criminal syndicate” were “depositing large amounts of cash which were suspected to be the proceeds of crime”.

Policing sources have also confirmed that networks suspected of involvement in sex trafficking regularly used Li’s remittance businesses to transfer money.

In February, AUSTRAC [released a briefing paper](#) urging financial institutions to beware of money movements that may be indicators of sex-trafficking activity.

“Most instances of forced sexual servitude have occurred in NSW and Victoria,” AUSTRAC wrote. “There is consistent demand for illegal and forced paid sexual services in Australia. Forced sexual servitude coordinators have adapted to take advantage of environmental and technological changes to include online services in their illegal operations.

“When providing paid sexual services to customers online, forced sexual servitude coordinators continue exploiting their victims and profiting from their activities.”

In New Zealand, the Department of Internal Affairs prosecuted two companies founded by Li that breached anti-money laundering obligations between 2014 and 2019. The companies moved up to \$400 million between New Zealand, Australia and China.

Li did not face any charges personally because there was insufficient evidence to show his involvement.

New Zealand judge Graham Lang fined the companies \$7.5 million and said they engaged in repeated, prolonged and serious contraventions of the law.

A freedom of information search of the NZ Department of Internal Affairs revealed that in 2020, investigators believed that “despite not being an active director/shareholder of many of these companies” investigated for breaching money laundering laws, Li “remains the controlling person of the remittance businesses”.

In 2016, New Zealand anti-money laundering officials also assessed that “the real business owner” of money moving businesses operating unlawfully is “‘Jerry’ Jiantao Li.”





06 NOV, 2022  
HERD OF OLD DRUG MULES

Sunday Telegraph, Sydney

EXCLUSIVE

BOOK EXTRACT

# HERD OF OLD DRUG MULES

## AFP arrests 18 elderly foreigners blackmailed into smuggling

Police have been shocked by the number of older international travellers arriving in Sydney with huge amounts of drugs in their bags - and then claiming they were forced to do it after being scammed online and told this was the only way to get their savings back. **ANTON ROSE reports P5**



06 NOV, 2022  
HERD OF OLD DRUG MULES

Sunday Telegraph, Sydney

# Invasion of elderly foreign drug mules

### HOW IT WORKS

- A "cleanskin" elderly foreign national loses their money in an online scam
- Criminals then contact them and offer to let them recoup their lost money
- The victims fly to another country, in several cases Zimbabwe, where their suitcases are filled with drugs
- The syndicate then organises their flights to Australia where they arrive with kilos of drugs in their baggage

Clint Eastwood come undone in The Mule. (Below) meth and cocaine found in the US trio's luggage and (above) drugs in the Korean man's baggage.



06 NOV, 2022

# HERD OF OLD DRUG MULES

Sunday Telegraph, Sydney

EXCLUSIVE  
ANTON ROSE

SYDNEY Airport has been hit by an invasion of elderly foreign drug mules who have told Australian Federal Police they were forced into smuggling after being scammed and blackmailed by overseas criminals.

Customs officials were at first astonished to find elderly passengers with huge amounts of drugs in their bags but what began as an isolated incident has now become a disturbing pattern, with 18 intercepted in the past year.

Each time these elderly passengers were caught by border officials, they claimed they had been coerced into bringing the substances into

Australia by criminal gangs who had scammed them of their savings.

In July three elderly US citizens arrived into here from Zimbabwe with 15kg of meth and 1.5kg of cocaine in their suitcases.

They told the AFP they were forced to carry the drugs by men from Nigeria and the UK after losing \$500,000 in an online scam.

In the same month two Germans arrived into Sydney Airport with 18kg of meth in their six suitcases, again from Zimbabwe.

They too blamed a man from the UK after they had fallen for the classic scam of picking up an "inheritance" of \$10 million.

In August the youngest of



the mules, a 57-year-old Korean national landed in Sydney with 2.5kg of cocaine stuffed in his suitcase.

He told police he was scammed and criminals told him if he went to Belgium he would get his money back but if he travelled to Australia he would get it faster. He was charged with attempting to import a commercial quantity of drugs.

AFP Commander Kate Ferry said the passengers were "unwittingly" duped and given "false hope" they could recoup their money if they brought drugs into Australia.

"The victims of scams are already facing significant financial hardship along with any additional emotional trauma as a result of the online scam," Commander Ferry said.

"These criminals prey on the vulnerable and, at times, naïve and further victimise them by banking on the fact that they will do whatever it takes to recover their funds.

"The consequences for these victims can be severe, including lengthy terms of imprisonment."

However, the AFP were

unable to confirm what charges the other drug mules were facing.

However, Ms Ferry did say elderly people with no criminal record were attractive to drug rings.

"Criminal syndicates, by their very nature, exploit vulnerable communities and will undertake whatever tactics necessary to import drugs into our country," they said.

The trend has some similarities to the 2018 Clint Eastwood movie *The Mule*, which was based on the true story of Leo Sharp.

This 87-year-old war veteran, who had no criminal record, was used by a cartel to smuggle drugs but, like the Sydney mules, was caught with five bags of cocaine.





Adam Fennessy. (Supplied)

Can the public service preserve the best of what it learned during the COVID-19 pandemic about [ways of working](#), from both an HR and process perspective, that will lift its game moving forward? Some of the sector's leaders are banking on it but it will require focus and [investment](#) to ensure the bureaucracy learns those lessons and the knowledge sticks.

According to ANZSOG's Adam Fennessy, the [appetite for public sector reform](#) spells good things for the [APS's future horizons](#).

"There is an exciting confluence of reform and momentum back into the public service at the Australian government level and all of the new ways of working that we learned during COVID – whether we wanted to or not," Fennessy told *The Mandarin*.

The long-time public servant and former Victorian department secretary recently stepped down from his [last post as VPS commissioner](#) to lead ANZSOG as its new CEO.

Reflecting on what was different today about the mood for APS transformation, and what he would tell a public servant who had “seen and heard it all before”, Fennessy said research showing what needed to be fixed was publicly available and that there were positive signs the work to make it happen was starting.

“My message for the slightly cynical or fatigued public servants is that there was a lot of research out of the Thodey review that has been published online, so it’s transparent.

“Implementations always follow their own path but if they are committed publicly by ministers, and they’re funded, and there are also the broader election commitments to invest in the public service’s capability, you know something’s going to happen,” he said.

In Fennessy’s first month at the helm of the ANZSOG, federal minister for the public service Katy Gallagher has shared her [reform plans for APS capability](#) and the new Labor government has [handed down its first budget](#) outlining its expectations of bureaucrats under an ambitious program of work.

“When there’s a very firm and focused reform agenda, that does really energise not just the commonwealth public service but lots of governments around Australia, and it can also impact and positively benefit learnings to and from New Zealand,” Fennessy said.

“ANZSOG is interested in how we position ourselves for our core focus on public leadership and public sector leadership, acknowledging that there are a lot of moving parts and successful public programs are going to involve governments, not-for-profit partners, and potentially private sector providers,” he said.

Of course, this is not the first time a government has pledged positive change by tinkering with the public service workforce. A lot of preliminary work has been undertaken over the past decade, including the [Thodey Review](#) — which [some of Australia’s now most-powerful public](#)

[servants](#), like Gordon de Brouwer and Glyn Davis, had direct involvement in writing.

Businessman David Thodey, who chaired what is properly known as '[Our public service our future — independent review of the APS](#)', has been tapped by the new government to [lead the user audit of myGov](#) that is currently underway.

“David Thodey ran Telstra as a big national organisation, critical to the economy, and could bring a fresh perspective, but also understood how government works,” Fennessy said.

“The Thodey review spoke to lots of jurisdictions and governments around Australia — it tackled a lot of common issues, whether it be digital and data, or how we work with ministers and elected officials, or how we think about longer-term issues like Indigenous issues, or climate change,” he added.

Coalition prime minister Malcolm Turnbull commissioned this work, and the Thodey review report was published in December 2019.

But COVID-19 has forced the conversation about the state of the APS to move beyond wonky hypotheticals. Unless the government can ensure the public service is fit-for-purpose, the collective suffering of the latest pandemic risks being repeated.

Some APS thought leaders and former senior departmental heads have described the need for action on APS reform as [reviving a debate left dormant since the mid-80s](#).

“The Albanese government has shown a strong commitment from both ministers and senior public servants, like [PM&C secretary] Glyn Davis around serious implementation,” Fennessy said.

“With governments, when you see a committed public framework, which also has potential investment in that framework, that’s when, as a jaded public servant, you know, something’s going to happen.”



If the pandemic taught lawmakers anything, it was that having the capacity to respond to a crisis could not be taken for granted.

During the onset of the COVID-19 pandemic, the country was [battling multiple community disasters](#), and there was no framework to execute surge plans to rapidly mobilise staff in areas of critical need.

The challenges of interoperability across agencies, departments, and government jurisdictions also became clear. Should a similar kind of multitude of complex problems arise again, the government knows the cost of responding inefficiently will be [disastrous](#) — not only potentially for communities and human life but also for the economy.

“For ANZSOG, having shaped and being part of the new public sector reform agenda of the new government, and now being in a very good position to co-deliver a lot of the capability development in the program work, I think it’s a really exciting time,” Fennessy said.

“My excitement about the public purpose sector is it’s a much broader space to play in — that’s how governments have evolved not just in Australia, but around the world,” he added.



ACT director-general Kathy Leigh. (The Mandarin)

The head of the ACT Public service has made the case for an end to ad hoc collaboration between the various levels of government, and a formal arrangement to support staff secondments between jurisdictions.

According to [Kathy Leigh](#), mobility has been the basis for creating and maintaining a 'one-service' culture and approach in the ACT.

"I believe that greater mobility between our public services would improve collaboration. It would enhance the operation of our federation and achieve even better outcomes for Australia," Leigh told an audience of bureaucrats in Canberra.

The senior mandarin took on [her current role](#) as head of service and director-general of the Chief Minister and Treasury Directorate in 2018. She chairs the [strategic board of directors](#) and provides high-level strategic advice to the ACT chief minister and cabinet.

Leigh was previously head of the ACT's [justice and community safety directorate](#) and prior to that a long-time public servant in the federal Attorney-General's Department. In 2015 she was named a fellow of the Institute of Public Administration Australia (IPAA).

Although relationships between the APS and their peers at the state and territory level had always been "professional and collegiate", the senior public servant reflected on information, knowledge and skills sharing had become firmly two-way.

"I've also noticed that commonwealth ministers are reaching out via territory ministers to be able to engage directly with ACT public servants on the ground — for example, our health clinicians — so that they can gain a better understanding of how our commonwealth policies operate in practice," the director-general said.

Leigh said the benefits of mobility, collaboration, and cross-pollinating ideas and practices were self-evident. But while secondments and transfers between public servants working for the commonwealth and the ACT are not uncommon, they mostly happened on an ad hoc basis.

The time had come to formalise secondment arrangements between public services as a "concrete" step toward embedding collaboration across various government bureaucracies, she added.

"We should actively encourage mobility between all public services, and we should formalise the arrangement so that we don't have to reinvent the wheel each time," Leigh said.

"It's very clear to me that while the commonwealth and the states and territories have got many overlapping areas of knowledge and skills, there are also complementary knowledge and skills strengths.

“My experience is that we are moving to benefit from that two-way collaboration.”

[Since 2011](#), Leigh said, the ACT public service had followed the mantra of ‘one ACT government, one ACT public service’ because it was what the community expects of the public administration. Citizens do not care who is responsible for what area, she said, they just want their issue to be addressed, and it is within this context that ACT public servants advised their ministers.

“It’s how we ensure that our ministers get comprehensive advice. If we give advice on part of the picture to our ministers, we set them up to under-deliver,” Leigh said.

“There are actually very few issues that fit neatly into a silo. You might be able to deal with an issue within a silo. But you will deal with that much better if you bring to bear the full breadth of skills and knowledge across the whole of the government.”

Leigh said that achieving a collaboration culture in a small public service such as the ACT bureaucracy was a smart way of operating because it meant no skill set had to be duplicated and problem-solving shared problems only had to happen once.

“It also provides more satisfying work for our staff because they’re not frustrated by artificial barriers,” she said.

Leigh made her remarks at a [secretary series event in Canberra hosted](#) by IPAA ACT on Thursday.