



Charging Centrelink omission prosecutions pursuant to section 135.2 of the Criminal Code

Instruction Number: 1
Last Update: June 2014

Following the High Court decisions in *DPP v Poniatowska* (2011) 244 CLR 408 on 26 October 2011 and *DPP v Keating* (2013) 297 ALR 394 on 8 May 2013, prosecutions based upon omissions can only proceed if the relevant change in circumstances occurred on or after 4 August 2011. Prosecutions pursuant to section 135.2 of the *Criminal Code* which are based upon omissions will be charged according to the following:

1. Agreed analysis of the elements of section 135.2 of the *Criminal Code* is:
 - (1) A person engages in conduct (conduct - intention)
 - (2) As a result of that conduct the person obtains a financial advantage (result – recklessness)
 - (3) The person is not eligible to receive the financial advantage (circumstance – knowledge or belief)
 - (4) The other person is a Commonwealth entity (absolute liability).
2. The conduct is an omission by the failure to advise of an event or change in circumstances as required by section 66A of the *Social Security (Administration) Act*.
3. The commencement date of a charge should be the date of the first affected payment of benefit that occurs 15 days or more after the 'event' or change in circumstances.
4. There are some changes of circumstances, such as travelling overseas, which do not affect a person's benefits until a certain amount of time has passed. In the case of a Centrelink recipient who travels overseas, the charge should start on the date on which the first affected payment was made. However, the particulars should include the date that the defendant left Australia.
5. The end date of a charge should be the date of the last affected payment of benefit.
6. The charge must include the following:
 - the commencement and end date of the offence;
 - the defendant intentionally failed to inform the Department of a particular event or change in circumstances as required by law (or as required by section 66A of the *Social Security (Administration) Act*);
 - what the change of circumstances was;
 - the failure to inform resulted in the defendant receiving a financial advantage;
 - the defendant was not entitled to that advantage; and
 - the defendant knew or believed they were not entitled to the advantage.

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7. The charge may also include the following:

- the fact that the defendant was on a benefit and what that benefit was.

8. The charge may be drafted in a format that is suitable to the jurisdiction (i.e. it may contain particulars or the particulars may be listed separately).



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