2019

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Crimes Legislation Amendment
(Combatting Corporate Crime) Bill 2019

No.      , 2019

(Attorney-General)

A Bill for an Act to amend legislation relating to the
criminal law and law enforcement, and for related
purposes
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A Bill for an Act to amend legislation relating to the criminal law and law enforcement, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Crimes Legislation Amendment (Combatting Corporate Crime) Act 2019.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
### Commencement information

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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
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<tr>
<td>2. Schedule 1, Part 1</td>
<td>The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.</td>
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<td>3. Schedule 1, item 11</td>
<td>The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.</td>
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<td>4. Schedule 1, items 12 to 15</td>
<td>The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.</td>
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</tr>
<tr>
<td>5. Schedule 2, Part 1</td>
<td>The day after this Act receives the Royal Assent.</td>
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<td>The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.</td>
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<td>7. Schedule 2, Part 3</td>
<td>The day after this Act receives the Royal Assent.</td>
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<td>8. Schedule 3</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.
3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments relating to foreign bribery

Part 1—Main amendments

Criminal Code Act 1995

1 Before section 70.1 of the Criminal Code

Insert:

Subdivision A—Definitions

2 Section 70.1 of the Criminal Code

Insert:

advantage means an advantage of any kind and is not limited to property.

annual turnover has the meaning given by section 70.5C.

associate: a person is an associate of another person if the first-mentioned person:

(a) is an officer, employee, agent or contractor of the other person; or

(b) is a subsidiary (within the meaning of the Corporations Act 2001) of the other person; or

(c) is controlled (within the meaning of the Corporations Act 2001) by the other person; or

(d) otherwise performs services for or on behalf of the other person.

3 Section 70.1 of the Criminal Code (definitions of benefit and business advantage)

Repeal the definitions.

4 Section 70.1 of the Criminal Code (at the end of the definition of foreign public official)

Add:
; or (m) an individual standing, or nominated, (whether formally or
informally) as a candidate to be a foreign public official
covered by any of paragraphs (a) to (k) of this definition.

5 After section 70.1 of the Criminal Code

Insert:

Subdivision B—Bribery of foreign public officials

6 Section 70.2 of the Criminal Code

Repeal the section, substitute:

70.2 Bribing a foreign public official

(1) A person commits an offence if:

(a) the person:

(i) provides a benefit to another person; or

(ii) causes a benefit to be provided to another person; or

(iii) offers to provide, or promises to provide, a benefit to
another person; or

(iv) causes an offer of the provision of a benefit, or a
promise of the provision of a benefit, to be made to
another person; and

(b) the first-mentioned person does so with the intention of
improperly influencing a foreign public official (who may be
the other person) in order to obtain or retain business or a
business or personal advantage (whether or not for the
first-mentioned person).

Note: See also section 70.2A. For defences see sections 70.3 and 70.4.

(2) For the purposes of paragraph (1)(b):

(a) the first-mentioned person does not need to intend to
influence a particular foreign public official; and

(b) the first-mentioned person does not need to intend to obtain
or retain particular business or a particular business or
personal advantage; and

(c) business, or a business or personal advantage, does not need
to be actually obtained or retained.
Schedule 1 Amendments relating to foreign bribery
Part 1 Main amendments

Penalty for individual

(3) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(4) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

(a) 100,000 penalty units;
(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the turnover period) of 12 months ending at the end of the month in which the body corporate committed, or began committing, the offence.

70.2A Improper influence

Determination to be a matter for the trier of fact

(1) In a prosecution for an offence against section 70.2, the determination of whether influence is improper is a matter for the trier of fact.

Matters that must be disregarded

(2) In determining whether influence is improper for the purposes of paragraph 70.2(1)(b), a trier of fact must disregard the following:

(a) the fact that the benefit, or the offer or promise to provide the benefit, may be, or be perceived to be, customary, necessary or required in the situation;
(b) any official tolerance of the benefit;
(c) if particular business or a particular business or personal advantage is relevant to proving the matters referred to in that paragraph—the following:
   (i) if the value of the business or advantage is insignificant—that fact;
   (ii) in the case of an advantage—any official tolerance of the advantage;
   (iii) in the case of an advantage—the fact that the advantage may be customary, or perceived to be customary, in the situation.

Matters to which regard may be had

(3) In determining whether influence is improper for the purposes of paragraph 70.2(1)(b), a trier of fact may have regard to the following:
   (a) the recipient or intended recipient of the benefit;
   (b) the nature of the benefit;
   (c) the manner of the provision of the benefit (or, if applicable, the offered or promised manner of the provision of the benefit);
   (d) whether the value of the benefit is disproportionate to the value of any consideration provided or purported to have been provided for the benefit;
   (e) if the benefit was provided, or the offer or promise to provide the benefit was made, in the absence of any legal obligation to do so—that fact;
   (f) whether the benefit was provided, or the offer or promise to provide the benefit was made, dishonestly;
   (g) whether, and to what extent, the provision of the benefit, or the offer or promise to provide the benefit, is recorded or documented;
   (h) if the provision of the benefit, or the offer or promise to provide the benefit, is recorded or documented:
      (i) the accuracy of the record or documentation; and
      (ii) whether the record or documentation is consistent with the ordinary practices of the person who made the record or documentation;
Schedule 1 Amendments relating to foreign bribery

Part 1 Main amendments

(i) whether there is evidence that due diligence was exercised by
the first-mentioned person in section 70.2 in relation to the
benefit, or the offer or promise to provide the benefit;

(j) whether any of the following conduct is contrary to a written
law in the place where that conduct occurs:
    (i) the provision of the benefit, or the offer or promise to
        provide the benefit;
    (ii) the acceptance of the benefit;
    (iii) any conduct directly connected with conduct referred to
        in subparagraph (i) or (ii);

(k) if particular business or a particular business or personal
advantage is relevant to proving the matters referred to in that
paragraph—the following:
    (i) whether the business or advantage was awarded on a
        competitive or non-commercial basis;
    (ii) whether there is any demonstrable conflict of interest in
        the provision of the business or advantage.

(4) To avoid doubt, subsection (3) does not limit the matters to which
the trier of fact may have regard.

7 After subsection 70.3(2) of the Criminal Code

Insert:

(2A) A person does not commit an offence against section 70.2 if:
    (a) the person’s conduct occurred in relation to a foreign public
        official (the relevant foreign public official); and
    (b) the relevant foreign public official is covered by
        paragraph (m) of the definition of foreign public official in
        section 70.1 because the relevant foreign public official is a
        candidate to be a particular foreign public official (the
        substantive foreign public official); and
    (c) assuming that the first-mentioned person’s conduct had
        occurred wholly in the place, the foreign country or the part
        of the foreign country, as the case may be, (the relevant
        place) referred to in the item of the table in subsection (1)
        that would be applicable if the first-mentioned person’s
        conduct had occurred in relation to the substantive foreign
        public official, a written law in force in the relevant place.
permits the provision of the benefit to the relevant foreign public official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3).

8 After section 70.5 of the Criminal Code

Insert:

Subdivision C—Failure to prevent bribery of foreign public officials

70.5A Failing to prevent bribery of a foreign public official

Offence

(1) A person (the first person) commits an offence if:

(a) the first person is a body corporate:

(i) that is a constitutional corporation; or

(ii) that is incorporated in a Territory; or

(iii) that is taken to be registered in a Territory under section 119A of the Corporations Act 2001; and

(b) an associate of the first person:

(i) commits an offence against section 70.2; or

(ii) engages in conduct outside Australia that, if engaged in in Australia, would constitute an offence (the notional offence) against section 70.2; and

(c) the associate does so for the profit or gain of the first person.

(2) Absolute liability applies to:

(a) paragraphs (1)(a) and (c); and

(b) the circumstance in subparagraph (1)(b)(i) that the associate commits an offence against section 70.2; and

(c) the circumstance in subparagraph (1)(b)(ii) that the associate engages in conduct outside Australia that, if engaged in in Australia, would constitute the notional offence.

(3) To avoid doubt, the first person may be convicted of an offence against subsection (1) because of the commission by the associate
of an offence against section 70.2 even if the associate has not been
convicted of that offence.

(4) Section 12.6 applies in relation to an offence against subsection (1)
of this section as if the reference in section 12.6 to an employee,
agent or officer of a body corporate included any associate of the
body corporate.

Exception

(5) Subsection (1) does not apply if the first person proves that the first
person had in place adequate procedures designed to prevent:
(a) the commission of an offence against section 70.2 by any
associate of the first person; and
(b) any associate of the first person engaging in conduct outside
Australia that, if engaged in in Australia, would constitute an
offence against section 70.2.

Note: A defendant bears a legal burden in relation to the matter in
subsection (5): see section 13.4.

Penalty

(6) An offence against subsection (1) is punishable on conviction by a
fine not more than the greatest of the following:
(a) 100,000 penalty units;
(b) if the court can determine the value of the benefit that the
associate obtained directly or indirectly and that is reasonably
attributable to the conduct constituting the offence, or that
would have constituted the notional offence, against
section 70.2—3 times the value of that benefit;
(c) if the court cannot determine the value of that benefit—10%
of the annual turnover of the first person during the period
(the turnover period) of 12 months ending at the end of the
month in which the associate committed, or began
committing, the offence or notional offence against
section 70.2.

Geographical jurisdiction

(7) Section 15.1 (extended geographical jurisdiction—category A)
applies to an offence against subsection (1).
70.5B Guidance on preventing bribery of foreign public officials

(1) The Minister must publish guidance on the steps that a body corporate can take to prevent an associate from bribing foreign public officials.

(2) Guidance under subsection (1) is not a legislative instrument.

9 Before section 70.6 of the Criminal Code

Insert:

Subdivision D—Miscellaneous

70.5C Meaning of annual turnover

(1) For the purposes of this Division, the annual turnover of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the A New Tax System (Goods and Services Tax) Act 1999);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(2) Expressions used in this section that are also used in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning in this section as they have in that Act.

70.5D Related bodies corporate

The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this Division in the same way as for the purposes of the Corporations Act 2001.
10 Application of amendments

The amendments made by this Part apply in relation to conduct engaged in on or after the commencement of this Part.
Part 2—Other amendments

Director of Public Prosecutions Act 1983

11 Subsection 17B(1) (table item 5, column headed “Provisions”)

After “70.2,” insert “70.5A,”.

Income Tax Assessment Act 1997

12 Subsection 26-52(2)

Repeal the subsection, substitute:

(2) An amount is a bribe to a foreign public official to the extent that:

(a) you incur the amount in, or in connection with:

(i) providing a benefit to another person; or

(ii) causing a benefit to be provided to another person; or

(iii) offering to provide, or promising to provide, a benefit to another person; or

(iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b) you incur the amount with the intention of improperly influencing a foreign public official (who may be the other person) in order to obtain or retain business or a business or personal advantage (whether or not for yourself).

The benefit may be any advantage and is not limited to property.

13 Subsection 26-52(2A)

Omit “a business advantage”, substitute “a business or personal advantage”.

14 Subsections 26-52(6) and (7)

Repeal the subsections, substitute:
Improper influence

(6) In determining whether influence is improper, disregard the following:

(a) the fact that the benefit, or the offer or promise to provide the benefit, may be, or be perceived to be, customary, necessary or required in the situation;

(b) any official tolerance of the benefit;

(c) if particular business or a particular business or personal advantage is relevant to determining whether influence is improper—the following:

(i) if the value of the business or advantage is insignificant—that fact;

(ii) in the case of an advantage—any official tolerance of the advantage;

(iii) in the case of an advantage—the fact that the advantage may be customary, or perceived to be customary, in the situation.

15 Application of amendments

The amendments of the Income Tax Assessment Act 1997 made by this Part apply to a loss or outgoing incurred on or after the commencement of Part 1 of this Schedule.
Schedule 2—Amendments relating to deferred prosecution agreements

Part 1—Main amendments

Director of Public Prosecutions Act 1983

1 Before section 1

   Insert:

Part 1—Preliminary

2 Subsection 3(1)

   Insert:

   approving officer means a person appointed as an approving officer under section 17G.

   Commonwealth entity has the same meaning as in the Public Governance, Performance and Accountability Act 2013.

   conduct has the same meaning as in the Criminal Code.

   deferred prosecution agreement means an agreement mentioned in subsection 17A(1).

   DPA (short for deferred prosecution agreement): see deferred prosecution agreement.

   secrecy provision means a provision that:

   (a) is a provision of a law of the Commonwealth (other than this Act); and

   (b) prohibits or regulates the use or disclosure of information.

3 Before section 5

   Insert:
**Part 2—Office of the Director of Public Prosecutions**

**4 After paragraph 6(1)(fa)**

Insert:

(fb) to negotiate, enter into, and administer, on behalf of the Commonwealth, deferred prosecution agreements; and

**5 After subsection 9(6F)**

Insert:

(6G) The Director may, on behalf of the Commonwealth, enter into a DPA and do all things necessary or convenient to be done for or in connection with negotiating, entering into, or administering, a DPA.

**6 After subsection 11(2)**

Insert:

(2A) Without limiting the generality of subsection (1), directions or guidelines under that subsection may be given or furnished in relation to negotiating, entering into, or administering, deferred prosecution agreements.

**7 Before section 18**

Insert:

**Part 3—Deferred prosecution agreement scheme**

**17A Entering into a DPA**

(1) The Director may, if the Director considers it appropriate to do so, enter into an agreement, on behalf of the Commonwealth, with a person (other than an individual) for an offence mentioned in section 17B that is specified in the agreement.
Amendments relating to deferred prosecution agreements  
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(2) Criminal proceedings must not be instituted in a federal court or in a court of a State or Territory against the person in relation to an offence specified in the agreement if the agreement is approved under section 17D.

(3) Subsection (2) does not apply if:
   (a) the Director is satisfied that there has been a material contravention of the agreement by the person; or
   (b) both of the following apply:
       (i) the person provided inaccurate, misleading or incomplete information to a Commonwealth entity in connection with the agreement;
       (ii) the person knew, or ought to have known that the information was inaccurate, misleading or incomplete.

17B Offences to which a DPA may relate

(1) A DPA may be entered into in relation to an offence against a provision listed in the following table.

<table>
<thead>
<tr>
<th>Item</th>
<th>Act</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</td>
<td>Sections 35H, 35J and 35K, a provision of Part 4 (other than Division 4 of that Part), sections 74, 123, 136, 137, 138, 139, 140, 141, 142, 143 and 162</td>
</tr>
<tr>
<td>2</td>
<td>Autonomous Sanctions Act 2011</td>
<td>Sections 16 and 17</td>
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<tr>
<td>3</td>
<td>Charter of the United Nations Act 1945</td>
<td>Sections 20, 21, 27 and 28</td>
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<tr>
<td>5</td>
<td>Criminal Code</td>
<td>Sections 70.2, 131.1, 134.1, 134.2, 135.1, 135.4, 141.1, 142.1, 144.1, 145.1, 145.2, 145.3, 145.4, 145.5, 400.3, 400.4, 400.5, 400.6 and 400.7, subsection 400.8(1) and sections 400.9, 480.4, 480.5, 480.6,</td>
</tr>
</tbody>
</table>

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Schedule 2 Amendments relating to deferred prosecution agreements

Part 1 Main amendments

### Offences to which a DPA may relate

<table>
<thead>
<tr>
<th>Item</th>
<th>Act</th>
<th>Provisions</th>
</tr>
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<tbody>
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<td></td>
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<td>490.1 and 490.2</td>
</tr>
</tbody>
</table>

(2) A DPA may be entered into in relation to:

(a) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to an offence mentioned in subsection (1) of this section; or

(b) an offence prescribed by the regulations for the purposes of this paragraph.

(3) If a DPA is entered into in relation to an offence mentioned in subsection (1) or (2) (the *primary offence*), the DPA may also be entered into in relation to an offence (the *secondary offence*) to which all of the following apply:

(a) the secondary offence is likely to arise out of the same course of conduct that constitutes, or may constitute, the primary offence;

(b) the secondary offence has a maximum penalty that is less than the maximum penalty for the primary offence;

(c) the Director is satisfied that it is appropriate to enter into the DPA in relation to the secondary offence.

#### 17C Content of a DPA

(1) A DPA entered into with a person must contain the following:

(a) a statement of facts relating to each offence specified in the DPA;

(b) the last day for which the DPA will be in force;

(c) the requirements to be fulfilled by the person under the DPA;

(d) the amount of financial penalty to be paid by the person to the Commonwealth;

(e) the circumstances which constitute a material contravention of the DPA, including (but not limited to) the following circumstances:

(i) the contravention of a term of the DPA that is specified in the DPA as a significant term;
Amendments relating to deferred prosecution agreements  
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(iii) a pattern or sequence of contraventions of a term or terms of the DPA that, considered collectively, are significant;

(f) that the person consents, in circumstances mentioned in subsection 17A(3), to the Director instituting a prosecution of the person on indictment for an offence specified in the DPA without the person having been examined or committed for trial.

(2) A DPA entered into with a person may contain any of the following terms:

(a) a term requiring the person to do any of the following:
   (i) to compensate victims of an offence specified in the DPA;
   (ii) to donate money to a charity or other third party;
   (iii) to consent to any relevant orders under the *Proceeds of Crime Act 2002* being made in relation to an offence specified in the DPA;
   (iv) to implement a compliance program or policies;
   (v) to cooperate in any investigation or prosecution relating to a matter specified in the DPA;
   (vi) to pay reasonable costs incurred by a Commonwealth entity relating to negotiations for the DPA;

(b) a term setting out the consequences of a failure by the person to comply with any of the terms of the DPA;

(c) any other term that the Director considers appropriate.

(3) A financial penalty for the purposes of paragraph (1)(d) must be of a severity that the Director considers appropriate having regard to all circumstances relating to the DPA, including:

(a) the person’s cooperation in negotiations for the DPA; and

(b) the severity of the penalty that may be imposed by a court if the person was convicted of each offence specified in the DPA; and

(c) the inclusion in the DPA of terms of a kind mentioned in subparagraph (2)(a)(i), (ii) or (iii).

(4) Despite paragraph (1)(d), a DPA need not include a financial penalty if the Director is satisfied that there are exceptional circumstances.
circumstances and it is not in the interests of justice to include such a penalty.

17D Approval of a DPA

(1) After the person and the Director agree to the terms of the DPA, the Director must give the following to an approving officer:

(a) the DPA;
(b) a written statement that the Director is satisfied of the matters mentioned in subsection (2).

(2) The Director must be satisfied of the following:

(a) there are reasonable grounds to believe that an offence specified in the DPA has been committed;
(b) entering into the DPA is in the public interest.

(3) The approving officer must review the DPA and decide to either:

(a) approve the DPA; or
(b) not approve the DPA.

(4) The approving officer must approve the DPA if the approving officer is satisfied that:

(a) the terms of the DPA are in the interests of justice; and
(b) the terms of the DPA are fair, reasonable and proportionate.

(5) For the purposes of subsections (3) and (4), an approving officer must assume that the information set out in the DPA is true and correct.

(6) The approving officer must give written notice of the decision to the person and the Director.

(7) If the approving officer approves the DPA, the Director must, within 10 business days after the day notice of the decision is given, publish the DPA on the Office’s website.

(8) Despite subsection (7), the Director may do either of the following if the Director considers it appropriate to do so in the interests of justice:
Amendments relating to deferred prosecution agreements  Schedule 2
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(a) publish a version of the DPA that does not disclose the name
of the person or any other material the Director considers
should not be disclosed;
(b) not publish the DPA.

(9) Without limiting subsection (8), the Director may publish a version
of the DPA, or not publish the DPA, if the Director is satisfied that
publishing the full version of the DPA may:
(a) pose a threat to public safety; or
(b) prejudice an ongoing investigation; or
(c) prejudice the fair trial of a person; or
(d) be contrary to an order of a court.

(10) Subsection (8) does not prevent the Director publishing the DPA,
or a version of the DPA, at a later time if the Director considers
that it would be in the interests of justice to do so.

17E When a DPA is in force

(1) A DPA is in force for the period beginning the day after notice of
the approval of the DPA is given as mentioned in
subsection 17D(6) and ending on the earliest of the following:
(a) the day specified in the DPA for the purposes of
paragraph 17C(1)(b);
(b) if the Director is satisfied that there has been a material
contravention of the agreement—the day the person is given
notice of the initiation of criminal proceedings of a kind
mentioned in subsection 17A(2).

(2) However, if:
(a) a person is given notice as mentioned in paragraph (1)(b);
and
(b) a court makes a declaration (however described) that there
has not been a material contravention of the agreement;
the agreement is taken not to be in force for the period between the
day the person is given the notice and the day the court makes the
declaration.

(3) A variation to a DPA takes effect immediately after the day notice
of the approval of the variation is given under subsection 17F(2).
(4) To avoid doubt, a DPA ceasing to be in force does not affect the validity of anything done by the Director, or the person, in accordance with the terms of the DPA.

17F Varying a DPA

(1) If the person and the Director agree to a variation to the DPA, the Director must give the DPA as varied to an approving officer.

(2) The approving officer must review the DPA as varied and decide to either:
   (a) approve the variation; or
   (b) not approve the variation.

(3) However, the approving officer must not approve the variation unless the approving officer is satisfied that:
   (a) the terms of the DPA as varied are in the interests of justice; and
   (b) the terms of the DPA as varied are fair, reasonable and proportionate.

(4) For the purposes of subsections (2) and (3), an approving officer must assume that the information set out in the DPA as varied is true and correct.

(5) The approving officer must give written notice of the decision to the person and the Director.

(6) If the approving officer approves the variation, the Director must, within 10 business days after the day notice of the decision is given, publish the DPA as varied on the Office’s website.

(7) Despite subsection (6), the Director may do either of the following if the Director considers it appropriate to do so in the interests of justice:
   (a) publish a version of the DPA as varied that does not disclose the name of the person or any other material that the Director considers should not be disclosed;
   (b) not publish the DPA as varied.

(8) Without limiting subsection (7), the Director may publish a version of the DPA as varied, or not publish the DPA as varied, if the
Director is satisfied that publishing the full version of the DPA may:
(a) pose a threat to public safety; or
(b) prejudice an ongoing investigation; or
(c) prejudice the fair trial of a person; or
(d) be contrary to an order of a court.

(9) Subsection (7) does not prevent the Director publishing the DPA, as varied or a version of the DPA as varied, at a later time if the Director considers that it would be in the interests of justice to do so.

17G Appointment of approving officers

(1) The Minister may, in writing, appoint a person as an approving officer for the purposes of this Part.

(2) The Minister must not appoint a person as an approving officer unless the Minister is satisfied that:
(a) the person is a former judicial officer of a federal court or a court of a State or Territory; and
(b) the person has the knowledge or experience necessary to properly exercise the powers of an approving officer.

(3) An approving officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) An approving officer is to be paid the remuneration that is determined by the Minister in writing.

(5) A determination made under subsection (4) is not a legislative instrument.

17H Evidence

Admissibility

(1) In civil or criminal proceedings against a person (other than an individual) who is, or was, a party to a DPA, or negotiations for a DPA, none of the following are admissible in evidence against the person:
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1. (a) documents (other than the DPA itself) that indicate the person entered into negotiations for a DPA;
(b) documents (other than the DPA itself) that were created solely for the purpose of negotiating a DPA.

2. (2) Without limiting subsection (1), the documents include the following:
   (a) any record indicating the person entered into negotiations for the DPA;
   (b) any record of negotiations for the DPA;
   (c) any draft of the DPA (including any draft statement of facts).

3. (3) Subsection (1) does not apply in the following circumstances:
   (a) the circumstances mentioned in subsection 17A(3);
   (b) if the person has given evidence in another criminal proceeding or a civil proceeding that is inconsistent with the documents mentioned in subsection (1).

4. (4) To avoid doubt, this section does not affect the admissibility in evidence of any information or document obtained as an indirect consequence of a disclosure of, or any information contained in, any document mentioned in subsection (1).

Agreed facts

5. (5) The statement of facts included in the DPA is taken to be agreed facts for the purposes of section 191 of the Evidence Act 1995 in any of the following:
   (a) criminal proceedings that are instituted in circumstances mentioned in subsection 17A(3);
   (b) proceedings under the Proceeds of Crime Act 2002 that are instituted after criminal proceedings mentioned in paragraph (a).

17J Destroying evidence

1. (1) A person commits an offence if:
   (a) a book, document or thing is relevant to:
      (i) negotiating a DPA; or
      (ii) assessing compliance with a DPA; and

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(b) the person causes the book, document or thing to be prevented from being used in:

(i) negotiating the DPA; or

(ii) assessing compliance with the DPA; or

(iii) evidence in criminal proceedings of a kind mentioned in subsection 17A(2) relating to the DPA.

Penalty:

(a) for an individual—imprisonment for 5 years or 300 penalty units, or both; or

(b) for a body corporate—5,000 penalty units.

(2) The fault element for paragraph (1)(b) is intention.

17K Disclosure of information

(1) This section applies if:

(a) a person is, or was, an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a Commonwealth entity; and

(b) the person obtains information of a kind mentioned in subsection (2) (including by a disclosure, or a series of disclosures, under this section).

(2) The information is information (including personal information within the meaning of the *Privacy Act 1988*) obtained as a direct result of the negotiating, entering into, or administering, of a DPA.

(3) The person may disclose the information (including the personal information) to an authority described in an item of the following table, or an official of such an authority, for a purpose described in that item if:

(a) the person believes on reasonable grounds that the disclosure will serve that purpose; and

(b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

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<td>Commonwealth entity or an authority of a State or Territory, or of a foreign country</td>
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<td>3</td>
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</table>

(4) This section applies despite any other secrecy provision, whether enacted before, at or after the commencement of this section.

17L. Disclosure and use of certain information

(1) If a provision of a Commonwealth law authorises the disclosure of information to, or the use of information by, a person or authority in relation to a prosecution for an offence, the provision is taken to authorise the disclosure of the information to, or the use of the information by, the person or authority for the purposes of negotiating, entering into or administering a DPA in relation to that offence.

(2) This section applies to a provision of a Commonwealth law whether the provision was enacted before, at or after the commencement of this section.

Part 4—Director, Associate Director and staff

8  Before section 31

Insert:

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Part 5—Miscellaneous

9 Subsection 31(1)

After “9(6D)”, insert “, Part 3”.

10 After subsection 31(1A)

Insert:

(1AAA) The Director may, by writing signed by him or her, delegate to a person who:

(a) is a member of the staff of the Office; and

(b) is an SES employee; and

(c) is a legal practitioner;

all or any of the Director’s functions or powers under Part 3 (other than those under subsections 17B(3), 17C(4), 17D(8) and 17F(7)).

11 Application provision

The amendments made by this Part apply in relation to conduct occurring before, on or after the commencement of this Part.
Part 2—Consequential amendments to the tax law

A New Tax System (Goods and Services Tax) Act 1999

12 After paragraph 69-5(3)(a)

   Insert:

   (aa) section 26-7 of the *ITAA 1997 (Deferred prosecution agreements);

Income Tax Assessment Act 1997

13 Section 12-5 (after table item headed “debt interests”)

   Insert:

   deferred prosecution agreements
   no deduction for loss or outgoing under a deferred prosecution agreement

26-7 Deferred prosecution agreement expenditure

   You cannot deduct under this Act a loss or outgoing incurred under a term of a deferred prosecution agreement that is in force under Part 3 of the Director of Public Prosecutions Act 1983.

15 Application provision

   (1) The amendments made by this Part (other than item 12) apply in relation to the income year in which Part 1 of this Schedule commences and later income years.

   (2) The amendment made by item 12 of this Part applies in relation to the tax period in which Part 1 of this Schedule commences and later tax periods.
Part 3—Other consequential amendments

Administrative Decisions (Judicial Review) Act 1977

16 After paragraph (xa) of Schedule 1

Insert:

(xaa) decisions under Part 3 of the Director of Public Prosecutions Act 1983;

Crimes Act 1914

17 After paragraph 16A(2)(fa)

Insert:

(fb) whether the person entered into a DPA (within the meaning of the Director of Public Prosecutions Act 1983) in relation to the offence and the extent to which the person has complied, or failed to comply, with the terms of the DPA;

18 Application provision

The amendments made by this Part apply in relation to conduct occurring before, on or after the commencement of this Part.
Schedule 3—Amendments relating to dishonesty definitions in the Criminal Code

Criminal Code Act 1995

1 Subsections 73.9(3) and 92A.1(2) of the Criminal Code
   Repeal the subsections.

2 Sections 130.3 and 470.2 of the Criminal Code
   Repeal the sections.

3 Section 474.1 of the Criminal Code
   Repeal the section, substitute:

474.1 Determination of dishonesty to be a matter for the trier of fact
   In a prosecution for an offence against this Subdivision, the
determination of dishonesty is a matter for the trier of fact.

4 Subsection 480.1(1) of the Criminal Code (definition of
dishonest)
   Repeal the definition.

5 Section 480.2 of the Criminal Code
   Repeal the section, substitute:

480.2 Determination of dishonesty to be a matter for the trier of fact
   In a prosecution for an offence against this Part, the determination
   of dishonesty is a matter for the trier of fact.

6 Dictionary in the Criminal Code
   Insert:

   dishonest means dishonest according to the standards of ordinary
   people.
Amendments relating to dishonesty definitions in the Criminal Code  

Schedule 3

Note: The following provisions affect the meaning of dishonest in certain cases:

(a) section 131.2 (theft);
(b) subsection 134.1(5) (obtaining property by deception);
(c) subsection 471.1(2) (theft of mail-receptacles, articles or postal messages);
(d) subsection 474.47(8) (using a carriage service for inciting property damage, or theft, on agricultural land).

7 Application provision

The amendments made by this Schedule apply in relation to the commission of an offence for which dishonesty is an element, if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this item.