DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1985

Date Introduced: 8 May 1985
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

Short Digest of Bill

Purpose

To provide the Director of Public Prosecutions with fuller and more direct powers to pursue civil remedies on behalf of the Commonwealth for the recovery of unpaid taxes and duties.

Background

The present Director of Public Prosecutions (DPP) Mr Ian Temby, Q.C., has for some time advocated the need for the DPP to have wider powers to institute civil actions to recover the proceeds of criminal activity. In a letter sent to the then Attorney-General, Senator Gareth Evans, in September 1984, Mr Temby supported a recommendation from former Special Prosecutor Mr Robert Redlich that such powers be given to the DPP. Mr Redlich was appointed on 21 October 1982 to deal with illegal activities which surfaced as a result of the Costigan Commission.

In the letter (which was tabled in the Parliament by Senator Gareth Evans), Mr Temby said:

"Having regard to the nature of my office, I consider that we are uniquely placed to take effective civil remedy action in conjunction with prosecution functions in order to deprive the criminal of the proceeds of his illegal activity".[1]

In an address to the Australian Society of Labor Lawyers in October 1984, Mr Temby reiterated:

"... that the Office of the DPP should have an enhanced capacity to take civil remedies on behalf of other departments and agencies. The point of this is clear enough. There are two obvious ways of discouraging those who are tempted to break the law. One is to put them in prison. The other is
to render the enterprise profitless. Taken together, they mean that the element of risk will be sufficiently high as to make a contemplated course of conduct unattractive... Under the Act as it now is, civil remedies cannot be pursued except as an adjunct to the prosecution process, which may necessitate the prior laying of charges. That may be too late".[2]

The Act to which Mr Temby refers is the Director of Public Prosecutions Act 1983 (the Principal Act).

When the Principal Act was drafted, the question arose as to what powers should be given to the DPP in terms of civil remedies on the one hand and the recovery of pecuniary penalties, on the other. Pecuniary penalties are monies which are recoverable by the Commonwealth under legislation such as the Income Tax Assessment Act 1936 and the Customs Act 1901 by procedures which stand between criminal prosecutions and civil actions. The experience of two Special Prosecutors namely Mr Redlich and Mr Gyles, Q.C., suggested that in the limited areas in which they operated, it was valuable to be able to exercise civil remedies together with criminal prosecutions. Provisions were therefore included in the Principal Act allowing the DPP to institute civil actions, though in a limited way.

Under paragraph 6(1)(h) of the Principal Act, the DPP could exercise civil remedies in "connexion with, or arising out of, prosecutions instituted or carried on by the Director". Moreover he was authorised to co-ordinate or supervise the taking of civil remedies by other agencies. The effect of this provision meant that a criminal prosecution had to be commenced or underway before any civil remedies could be pursued by the DPP. A further power in paragraph 6(1)(g) enabled the DPP to recover pecuniary penalties and to or supervise the recovery of such penalties by other agencies.

However, the exercise of both of these powers by the DPP were limited to matters designated by the Attorney-General through an instrument published in the Gazette. Thus at present, Mr Temby is authorised to recover pecuniary penalties only in relation to taxation matters taken over from the former Special Prosecutors, Messrs Redlich and Gyles, pursuant to an instrument issued by the Attorney-General on 3 June 1984.

In his report, Mr Redlich urged the removal of these restrictive requirements. In expressing his support for these recommendations, Mr Temby stated that the necessity to take civil remedy action must be pursued prior
to the actual institution of the relevant prosecution. Unless present limitations were removed, existing powers would be virtually useless.[3]

The proposed legislation was foreshadowed by the Attorney-General, Mr Bowen, in an announcement on 26 February 1985. Mr Bowen said the amendment to the Principal Act would give the Office of the DPP more independence from the Attorney-General and more power to take civil actions. The changes will give the office greater ability to take court action to recover unpaid taxes, freeze assets, and recover the proceeds of crime. Action could also be taken to prevent criminals concealing their profits or sending them overseas. Mr Bowen explained that the Government's decisions would make "law enforcement significantly more effective, especially against organised and sophisticated crime". The development of the new measure has involved close consultations between the Attorney-General and Mr Temby.

Main Provisions

For a detailed explanation of the provisions of the Bill, refer to the Explanatory Memorandum.

The Bill primarily amends section 6 of the Principal Act which relates to the functions of the DPP.

The Bill firstly confers upon the DPP an added function of carrying on a prosecution which was originally instituted by the Attorney-General (paragraph 3(1)(a)).

The Bill then proceeds to authorise the DPP to take or to co-ordinate or supervise the taking of, civil remedies on behalf of the Commonwealth and its authorities for the recovery of amounts of tax (paragraph 3(1)(6)). "Amount of tax" is defined widely as being an amount payable under a law of the Commonwealth that imposes, assesses or collects any tax, duties, charges or levies (paragraph 3(1)(d)). Under this provision the DPP will no longer need an instrument from the Attorney-General before undertaking a civil action.

Moreover, the Bill removes the existing requirement that a prosecution be actually commenced before or concurrently with a civil action is instituted by the DPP. The Bill defines "relevant matter" as including any matter connected with an alleged or suspected offence which the Director or a person other than the Director, is proposing or considering a prosecution (paragraph 3(1)(d)).
The Bill also adds a proposed section 16A to the Principal Act. The provision empowers a court, before whom civil proceedings are instituted by the DPP, to prohibit or restrict the publication of any evidence or information identifying a party or witness to the proceedings. This power will presumably be exercised when the court considers a suppression order to prevent prejudice to the administration of justice.

It is worth emphasising in the light of the foregoing, that these increased powers will not confer on the DPP, any powers that do not already exist in other government agencies. The proposed provisions will merely mean, that the DPP's Office will no longer lack powers already possessed and exercised by other bodies.

For further information, if required, contact:

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Footnotes

3. Ibid., note 1.

References

2. Second Reading Speech, Mr Lionel Bowen, Attorney-General of Australia, Hansard, House of Representatives, 8 May 1985, p.1858.