

# *Insights into Federal Criminal Law*

Madonna Hayes  
Barrister at Law

13 February 2025



# Overview

1. In the beginning ...
2. Which Courts determine Commonwealth criminal matters?
3. Which laws apply?
4. Criminal Code (Cth)
5. Rules of Evidence
6. The work of the Commonwealth DPP

# 1. In the Beginning ...

- ▶ 1 January 1901 - Federation
  - ▶ *Commonwealth of Australia Constitution Act 1900 (UK)*
- ▶ The Constitution of Australia
  - ▶ No express power to make laws in relation to criminal matters
  - ▶ Implied power arising from laws made according to an express provision
  - ▶ Implied power arising from laws made according to a head of power within section 51
  - ▶ Express incidental power within s.51(xxxix)
  - ▶ Exercise of executive powers within s.61



**"In summing up, it's the constitution. It's  
Mabo, it's justice, it's law, it's the vibe."**



## 2. Which Courts determine Commonwealth criminal matters?

► *Judiciary Act 1903 (Cth)* - Part X

Section 68 - confers federal jurisdiction to State and Territory Courts

# Section 68 - *Judiciary Act 1901*

## Division 1—Application of laws

### 68 Jurisdiction of State and Territory courts in criminal cases

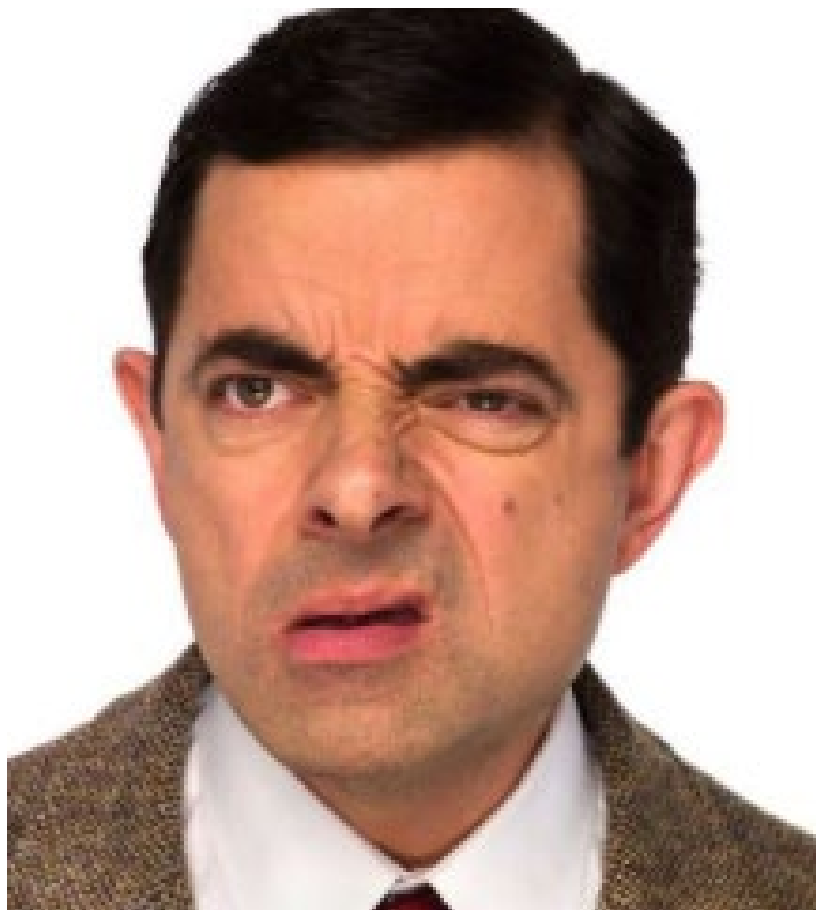
- (1) The laws of a State or Territory respecting the arrest and custody of offenders or persons charged with offences, and the procedure for:
  - (a) their summary conviction; and
  - (b) their examination and commitment for trial on indictment; and
  - (c) their trial and conviction on indictment; and
  - (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith;and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of that State or Territory by this section.
- (2) The several Courts of a State or Territory exercising jurisdiction with respect to:
  - (a) the summary conviction; or
  - (b) the examination and commitment for trial on indictment; or
  - (c) the trial and conviction on indictment;of offenders or persons charged with offences against the laws of the State or Territory, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, shall, subject to this section and to section 80 of the Constitution, have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth.

## Section 68 (2) *Judiciary Act* 1901

- ▶ Confers “like jurisdiction”
  - ▶ Considered in the context of procedural laws of a State or Territory – application by “analogy”
    - ▶ *Williams v R (No.2)* (1933) 50 CLR 551
    - ▶ *Peel v R* (1971) 125 CLR 447
    - ▶ *Solomons v District Court of NSW* [2002] HCA 47
- ▶ “*Subject to this section and section 80 of the Constitution*”
- ▶ Section 80 - Trial by jury.
  - ▶ No “judge alone” trials for indictable matters, no majority verdicts

# What about the Commonwealth Courts?

- ▶ High Court of Australia in its appellate jurisdiction
- ▶ Federal Court of Australia in limited original jurisdiction
  - ▶ “trade practices” - *Competition & Consumer Law* 2010
    - ▶ Australian Competition and Consumer Commission (ACCC)
  - ▶ Some interlocutory matters associated with Commonwealth criminal matters eg
    - ▶ *Seeter Pty Ltd t/a Great Barrier Reef Tuna v Hester* [2004] FCAFC 39
    - ▶ *Seeter Pty Ltd v The Commonwealth of Australia* [2004] FCA 1104



### 3. Which laws apply?

# Principal legislation

*Criminal Code*  
(Cth)

*Crimes Act 1914*  
(Cth)

Read together with

- ▶ Other Commonwealth Acts containing  
Offence provisions, definitions, eligibility for  
payments, legal obligations, prohibiting entry or  
exit, import or export of goods - e.g.
  - ▶ *Customs Act 1901* - s.233BAA, s.233BAB -  
import/export prohibited goods
  - ▶ *Taxation Administration Act 1953* - s.8C - fail  
to comply with a requirement - file tax  
returns, BAS
  - ▶ *Bankruptcy Act 1966* - s. 269 - obtain credit  
without disclosing bankruptcy
  - ▶ *Migration Act 1958* - s.233A - people smuggling
  - ▶ *Social Security Act 1991* and *Social Security*  
*(Administration) Act 1999* - obtain financial  
advantage

*But wait,  
there's more*

- ▶ *Judiciary Act 1901* applies State and Territory laws in some circumstances
  - ▶ Section 68(1) - “so far as they are applicable”

#### **68 Jurisdiction of State and Territory courts in criminal cases**

- (1) The laws of a State or Territory respecting the arrest and custody of offenders or persons charged with offences, and the procedure for:
  - (a) their summary conviction; and
  - (b) their examination and commitment for trial on indictment; and
  - (c) their trial and conviction on indictment; and
  - (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith;and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of that State or Territory by this section.

- ▶ *Judiciary Act 1901*
  - ▶ Section 79 - “except as otherwise provided”

## **Division 2—Application of laws**

### **79 State or Territory laws to govern where applicable**

- (1) The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.
- (1A) For the purposes of subsection (1), a Court exercising federal jurisdiction in a proceeding is taken to be exercising federal jurisdiction in:
  - (a) if the laws of a State or Territory apply to a part of the proceeding because of subsection 68C(5)—that State or Territory; or
  - (b) if paragraph (a) does not apply:
    - (i) if the proceeding is transferred or remitted—the State or Territory to which the proceeding is transferred or remitted; and
    - (ii) otherwise—the State or Territory in which the proceeding is commenced;except as otherwise provided by the Constitution or the laws of the Commonwealth.

# Some applicable Queensland Laws

- ▶ *Evidence Act 1977 (Qld) - except where the Evidence Act 1995 (Cth) applies*
- ▶ *Bail Act 1980 - except where Crimes Act 1914 (Cth) applies*
- ▶ *Justices Act 1886 (Qld) - except where a Commonwealth provision applies - e.g. s.4G, 4J, 4H Crimes Act 1914 (Cth)*
- ▶ *Criminal Code (Qld) - some procedural matters except where a Commonwealth provision applies - e.g. ss 69 - 70A Judiciary Act 1901 (Cth)*

## Exclusive Commonwealth jurisdiction

*“Except as  
otherwise  
provided”*

- ▶ *Crimes Act 1914 (Cth)*
  - ▶ Part 1B - Complete sentencing regime for Commonwealth criminal matters
    - ▶ *Penalties and Sentences Act 1992* does not apply
    - ▶ *Mental Health Act 2016* does not apply except some limited sections in that Act



# THE CRIMINAL CODE (COMMONWEALTH)

# The Criminal Code (Cth)

- ▶ *Criminal Code Act 1995 (Cth)*
  - ▶ Schedule to the Act is referred to as the *Criminal Code (Cth)*
  - ▶ Applies to all federal offences after 15 December 2001
- ▶ Principle legislation dealing with Commonwealth criminal law
  - ▶ Principles of criminal responsibility
  - ▶ Criminal offences
- ▶ 1980s - Review of Commonwealth Criminal law
  - ▶ Consolidate & restate the principles of criminal responsibility
  - ▶ Ensure consistency
- ▶ Joint committee of A-Gs - uniform Model Criminal Code

## *Chapter 2 - Principles of Criminal Responsibility*

- ▶ Codifies general principles of criminal responsibility for Commonwealth offences
  - ▶ Departs from the terms *actus reus* and *mens rea*
  - ▶ Original intent to simplify principles of criminal responsibility, however in practice can be confusing and complicated.

- ▶ Section 3.1 - Elements
  - ▶ An offence consists of physical elements and fault elements
- ▶ Section 3.2 - Prosecution must prove each physical element, together with the applicable fault element for each physical element
- ▶ May help practitioners to think of the **physical element** as being similar to the *actus reus* and the **fault element** as being similar to *mens rea*.

## 4.1 Physical elements

(1) A physical element of an offence may be:

- (a) conduct; or
- (b) a result of conduct; or
- (c) a circumstance in which conduct, or a result of conduct, occurs.

(2) In this Code:

***"conduct"*** means an act, an omission to perform an act or a state of affairs.

***"engage in conduct"*** means:

- (a) do an act; or
- (b) omit to perform an act.

## SOCIAL SECURITY ACT 1991 - SECT 1344

### *False statement in connection with claims and hardship requests*

#### Example

#### *Physical Element*

1344. (1) A person must not knowingly or recklessly make a false or misleading statement in connection with, or in support of, the person's or any other person's:

(a) claim for a pension, benefit or allowance under this Act; ...

(2) The statement referred to in subsection (1) may be a spoken statement or a written statement.

-----

Here, the physical “**conduct**” element is the making of the statement.

The “**circumstance in which that conduct occurs**” is that the statement is false

### 4.3 Omissions

An omission to perform an act can only be a physical element if:

- (a) the law creating the offence makes it so; or
- (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that there is a duty to perform by a law of the Commonwealth, a State or a Territory, or at common law.

- ▶ *CDPP v Poniatowska* [2011] HCA 43;
- ▶ *Director of Public Prosecutions (Cth) v Keating* [2013] HCA 20.

## 5.1 Fault elements

(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Subsection (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

## SOCIAL SECURITY ACT 1991 - SECT 1344

### *False statement in connection with claims and hardship requests*

1344. (1) A person must not knowingly or recklessly make a false or misleading statement in connection with, or in support of, the person's or any other person's:

(a) claim for a pension, benefit or allowance under this Act; ...

(2) The statement referred to in subsection (1) may be a spoken statement or a written statement.

-----

Here, the fault element can be either “**knowledge**” or “**recklessness**” BOTH in relation to the

- conduct of making of the statement and
- circumstance that the statement is false

Example

*Fault  
Element*

Definitions - What is required to establish each fault element?

- ▶ Section 5.2 - Intention
- ▶ Section 5.3 - Knowledge
- ▶ Section 5.4 - Recklessness
- ▶ Section 5.5 - Negligence

- ▶ Section 5.6 - guidance where there is no fault element specified in the offence provision
  - ❖ *the “default” fault element*
- ▶ Sections 6.1 and 6.2 - offences where there is no fault element required
  - ❖ strict liability and absolute liability

## Part 2.3 - Circumstances in which there is no criminal responsibility

- ▶ Lack of capacity -

- ▶ Age

- ▶ Mental impairment

- ▶ Defences -

Intoxication, Mistake, Claim of right, Intervening conduct or event, Duress, Sudden or extraordinary emergency, Self-defence, Lawful authority

## Part 2.4 - Extensions of criminal responsibility

- ▶ Attempt
- ▶ Complicity and common purpose - aid, abet, counsel or procure
- ▶ Joint commission
- ▶ Commission by proxy
- ▶ Incitement
- ▶ Conspiracy

## Part 2.6 - Proof of criminal responsibility

- ▶ Burdens and Standards of proof

# RULES OF EVIDENCE



# Evidence Acts - 1977 (Qld) or 1995 (Cth)?

- ▶ *Evidence Act 1977* (Qld)
- ▶ Some sections of the *Evidence Act 1995* (Cth)
  - Section 5 - list of sections that apply in all Australian Courts, including
    - ▶ Section 182 - Commonwealth records, postal articles and Commonwealth documents
    - ▶ Section 155 - Official records
    - ▶ Section 155A - Commonwealth documents

## Section 182(1)

EXTENDS the operation of important provisions to all Australian Courts for documents that are, or form part of, *Commonwealth records* including -

Exceptions to the Hearsay rule for -

- Business records - Section 69
- Tags, labels and other writing - Subsection 70(1)
- Electronic communications - Section 71

Admissibility of

- Documentary evidence - Sections 47, 48, 49 and 51
- Documents produced by processes, machines etc. in the course of business - Section 147
- Documents produced from proper custody Section 152
- Public documents - Section 156
- Electronic communications, lettergrams and telegrams - Sections 161 and 162

Proof of certain matters by affidavit or written statements - Division 2 of Part 4.6

## Section 182(4)

EXTENDS the operation of other sections of the Act to *all Australian Courts* for a *Commonwealth document* that is currently in the possession of a Commonwealth entity, or a recently destroyed Commonwealth document, including -

- ▶ Documentary evidence - Sections 47, 48, 49 and 51
- ▶ Documents produced by processes, machines etc. in the course of business - Section 147
- ▶ Documents produced from proper custody - Section 152
- ▶ Requests to produce documents or call witnesses - Division 1 of Part 4.6
- ▶ Proof of certain matters by affidavit or written statements - Division 2 of Part 4.6
- ▶ Section 183 - Inferences about documents

***Commonwealth record*** means a record made by:

- (a) an Agency within the meaning of the *Public Service Act 1999*; or
- (b) the Parliament, a House of the Parliament, a committee of a House of the Parliament or a committee of the Parliament; or
- (c) a person or body other than a Legislative Assembly holding office, or exercising power, under or because of the Constitution or a law of the Commonwealth; or
- (d) a body or organisation other than a Legislative Assembly, whether incorporated or unincorporated, established for a public purpose:
  - (i) by or under a law of the Commonwealth or of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island); or
  - (ii) by the Governor-General; or
  - (iii) by a Minister; or
- (e) any other body or organisation that is a Commonwealth owned body corporate;

and kept or maintained by a person, body or organisation of a kind referred to in paragraph (a), (b), (c), (d) or (e), but does not include a record made by a person or body holding office, or exercising power, under or because of the Constitution or a law of the Commonwealth if the record was not made in connection with holding the office concerned, or exercising the power concerned.

***Commonwealth document*** means:

- (a) a document in the nature of a form, application, claim or return, or any document of a similar kind, that has, in accordance with a Commonwealth law, or in connection with the provision of money or any other benefit or advantage by the Commonwealth, been filed or lodged with a Commonwealth entity or given or sent (including sent by a form of electronic transmission) to a Commonwealth entity; and
- (b) any of the following documents:
  - (i) a report of the passengers or crew on a ship or aircraft that has been communicated to the Department administered by the Minister administering Part XII of the *Customs Act 1901* under section 64ACA or 64ACB of the *Customs Act 1901*;
  - (ia) a report relating to the passengers or crew on an aircraft or ship that has been communicated to the Department administered by the Minister who administers the

*Migration Act 1958* under Division 12B of Part 2 of that Act;

- (ii) a ship's inward cargo adjustment report delivered to an officer under subregulation 46(3) of the Customs Regulations;
- (iii) an entry made under the *Customs Act 1901* or *Excise Act 1901* in relation to goods;
- (iv) a form or statement given to a Collector under regulation 41 of the Customs Regulations;
- (v) a passenger card given to an officer under subregulation 3.01(3) of the Migration Regulations;
- (vi) a report referred to in section 46 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* that has been given under that section to the Minister administering that Act;
- (vii) any other document prescribed by the regulations for the purposes of this paragraph.

## Section 69 - Business records exception to the hearsay rule

Where a document forms part of the records of a person/organisation in the course of or for the purpose of a business; and

The document contains a previous representation made or recorded in the course of the business

The hearsay rule does not apply to a representation made:

- ▶ by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact; or
- ▶ on the basis of information by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact.

## Section 69 - Business records exception to the hearsay rule

The exception does not apply to representations made/obtained for the purpose of legal proceedings or a criminal investigation

*Proving a negative - when the absence of a record can prove that an event did not occur*

Sub (4) -

If, in the course of the business there is a system that has been followed of making and keeping records of all events & occurrences of a particular kind,

the hearsay rule does not apply to evidence that tending to prove that there is no record of the event in accordance with that system.



CDPP

*Australia's Federal Prosecution Service*

# Commonwealth Director of Public Prosecutions

- ▶ Independent prosecution service established by Parliament to prosecute alleged offences against Commonwealth law
- ▶ Established under the *DPP Act 1983*, commenced operations on 5 March 1984
- ▶ Operates independently of the Attorney-General and political process.
- ▶ Current Director is Raelene Sharp KC, appointed on 4 December 2023 for a 5-year term.

# National Prosecution Service

- 454 staff
- Approx 290 lawyers
- 10 Offices across 7 States & Territories
- CDPP Counsel list
- National recruitment via APS Jobs website

## A different kind of DPP

- ▶ The Office of the CDPP's work is not limited to litigation in court.
- ▶ The majority of referrals are received prior to a prosecution being commenced.
- ▶ Prosecutors are also involved in - assessing evidence, drafting charges and providing legal advice and assistance to investigators
- ▶ Commonwealth offending can often involve very large and complex briefs of evidence which may take significant time and expertise to consider and formulate strategies to prosecute.

## A different kind of DPP

- ▶ CDPP prosecutors -
  - ▶ appear in all levels of courts from Magistrates Courts to the HCA
  - ▶ travel to metropolitan, suburban and regional Courts in all States and territories, including Jervis Bay, Norfolk Island, Christmas Island and the Cocos (Keeling) Islands.
  - ▶ are involved at all stages of the prosecution process including mentions, bail, summary matters, committals, trials and appeals.
- ▶ This differs somewhat from the majority of State and Territory DPPs where the emphasis is mainly on committals and trials.

# Nationally organized and run practice groups, based on compatible crime types

Serious Financial and Corporate Crime

Organised Crime and National Security

Fraud and Specialist Agencies

Human Exploitation and Border Protection

# Fraud and Specialist Agencies (FSA)

Prosecutes -

- ▶ Fraud against the Commonwealth.
- ▶ Matters referred from specialist regulatory agencies.
- ▶ Matters in the Jervis Bay territory and Norfolk Island.

Offence types -

- ▶ General tax fraud, social security fraud, Medicare fraud, NDIS fraud, family day care fraud, childcare benefits fraud, disaster relief payment fraud, fraud-related money laundering, fraud against the Bankruptcy Act 1966, counterfeit currency and identity fraud.

Referrals from specialist agencies include -

- ▶ Fisheries, marine safety, secrecy, crimes at sea, offences involving Commonwealth officials and property, and aviation.

# Human Exploitation and Border Protection (HEBP)

Prosecutes -

- ▶ Crimes relating to the integrity of Australia's borders and the exploitation of persons within and outside Australia.

Offence types -

- ▶ Drug and drug precursor importation and trafficking, money laundering, child exploitation offending within Australia and overseas, human trafficking and slavery, cybercrime, computer and telecommunications offences, illicit tobacco, quarantine and wildlife offences.

# Organised Crime and National Security (OCNS)

Prosecutes -

- ▶ Crimes relating to transnational, serious and organised crime, terrorism and national security

Offence types -

- ▶ Terrorism, transnational drug importations, money laundering, espionage, foreign interference and prosecutions referred by the Special Investigator appointed to investigate allegations of war crimes committed by Australian defence personnel in Afghanistan

# Serious Financial and Corporate Crime (OCNS)

Prosecutes -

- ▶ Serious financial crimes, focusing on offences involving corporations, financial markets and services, large-scale tax fraud, criminal cartel conduct, and bribery and corruption of Commonwealth and foreign officials

Offence types -

- ▶ Fraud offences under the Criminal Code (Cth) and financial offences under the Corporations Act 2001, bribery of foreign public officials and corruption involving Commonwealth officials, and cartel offences such as price fixing and rigged tenders

## Prosecution statistics 2023–24



**7,485**

Offences dealt with\*



**4,249**

Cases before  
the courts\*



**2,018**

Cases dealt with\*



**1,413**

Prosecutions  
resulting in  
conviction\*

## Breakdown of referrals

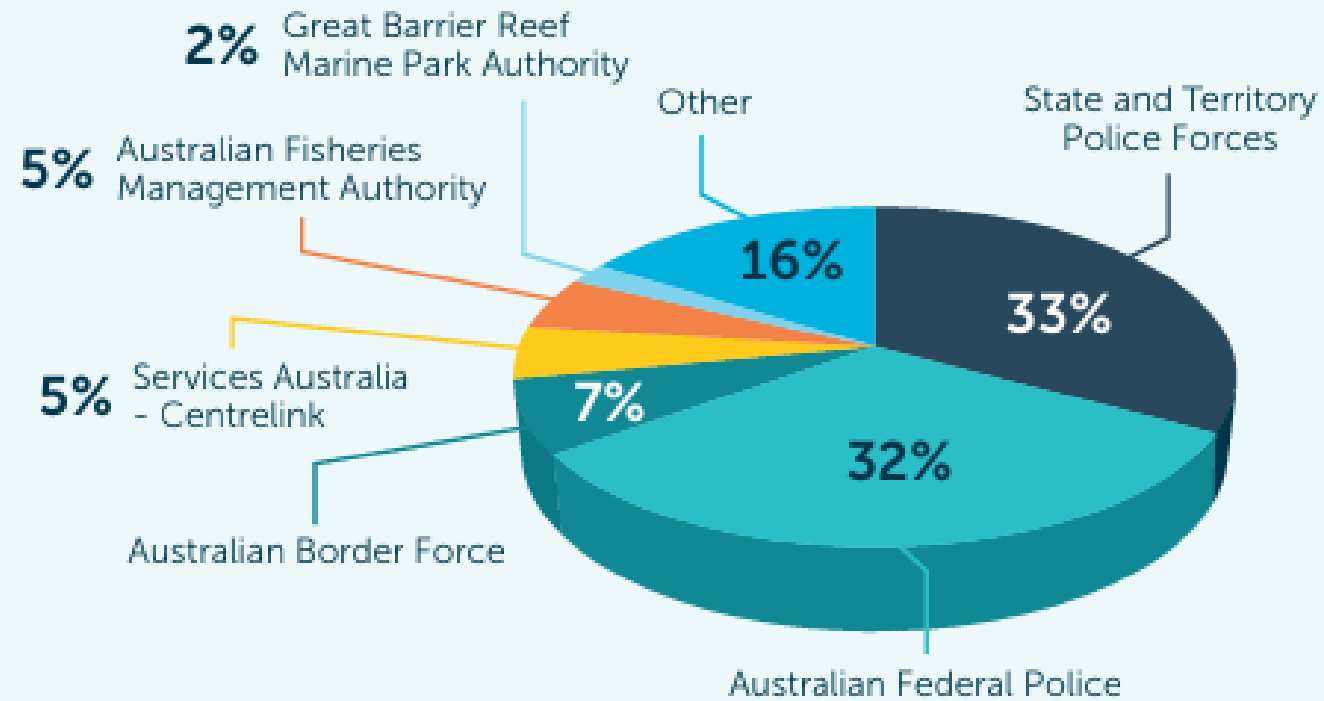
### Referrals received



### Referrals on hand at 30 June 2024



## Top referring agencies



## Working with Partner Agencies

- ▶ CDPP has no investigative function.
- ▶ In 2023/24 the CDPP received referrals from 51 different agencies
- ▶ 72% of the matters came from the Australian Federal Police (AFP), state and territory police and Australian Border Force (ABF) combined
- ▶ CDPP provides preliminary advice on procedure, evidence, investigations, warrants, charges
- ▶ Contribute to training and development of investigators in relation to Commonwealth criminal law

# Prosecution Policy of the Commonwealth

## The *Prosecution Policy of the Commonwealth* -

- ▶ underpins all of the decisions made by the CDPP throughout the prosecution process
- ▶ promotes consistency in decision making
- ▶ public document available at [cdpp.gov.au](http://cdpp.gov.au)

Two-stage test that must be satisfied before a prosecution is commenced -

- ▶ there must be **sufficient evidence** to prosecute the case
  - ▶ Prima facie case and reasonable prospects of conviction
- ▶ it must be evident from the facts and all of the surrounding circumstances, that the prosecution would be in the **public interest**

# Case Reports



## CDPP successfully prosecutes fraudulent claims for Queensland disaster relief payments

5 x defraud the Commonwealth of \$94,777.82 by fraudulently claiming disaster recovery payments

D pleaded guilty and was sentenced to 4 years' imprisonment, with a non-parole period of 21 months. Reparation order for \$93,641.10

- ▶ Over 2 years, D obtained 116 payments of social security benefits paid either in relation to fraudulent claims for AGDRP, or redirected payments of legitimate benefits in relation to other recipients
- ▶ D also attempted to obtain a further \$55,000 by submitting fraudulent claims for AGDRP which were not paid
- ▶ D created 66 false identities and assumed the identities of 17 existing Centrelink recipients to submit the fraudulent AGDRP claims. He also assumed the identities of 11 existing Centrelink recipients for the redirected payments.
- ▶ D opened 26 separate bank accounts in false names to receive payments
- ▶ When arrested, D was in possession of 289 items of ID information in names other than his own. These documents were obtained by D through his employment at a Management College. D had accessed student enrolment information

## CDPP prosecutes overseas child sex abuse crimes in the Philippines

- 1 x possess child abuse material obtained or accessed using a carriage service - s.474.22A(1) CCC
- 9 x engage in sexual intercourse with child outside Australia - s.272.8(1) CCC
- 15 x produce child pornography material outside Australia - s. 273.5(1) CCC
- 1 x prepare to engage in sexual intercourse with child outside Australia - s. 272.20(1) CCC
- 1 x attempt to engage in sexual intercourse with child outside Australia - ss 11.1(1) & 272.8(1) CCC

- ▶ Sentenced to 16 years' imprisonment, with a non-parole period of 11 years' imprisonment
- ▶ Between July 2015 and August 2019, D travelled to the Philippines and engaged in, or attempted to engage in, sexual intercourse with children under 16 years of age and produced child pornography material (by recording this offending) on multiple occasions.
- ▶ D's offending involved at least thirteen child victims.
- ▶ In July 2021, AFP officers located electronic devices in D's possession containing child pornography material and child abuse material, including material he had produced while in the Philippines.
- ▶ [R v DIXON \[2023\] NSWDC 109](#)

## CDPP successfully prosecutes gold bullion GST fraudsters

- K & M each found guilty after a 6-week trial in NSWSC of 2 x conspiring to dishonestly cause a loss to the Commonwealth, for their role in committing gold bullion fraud over a 2-year period.
- **\$40,911,685.00** defrauded
- Sentenced to 8 years' imprisonment with a non-parole period of 4 years and 6 months
- Very complex prosecution involving an enormous quantities of evidence - electronic brief = >77,000 documents.

- ▶ When GST laws introduced in 2001, there was an exemption on the payment of GST on applicable to 'investment-grade' gold bullion (gold that had been stamped into bars and coins) on the basis it was considered a form of currency.
- ▶ Investment-grade gold bullion was made distinct from 'scrap' gold or gold that had changed its form by either being damaged, melted down or because it came in the form of jewellery, which was subject to GST.
- ▶ This created a loophole which was exploited by criminals who would purchase GST-free bullion and change into scrap gold. They would then sell it to precious metals dealers & jewellers, adding 10 % GST. Instead of remitting that GST to the ATO, offenders would claim input tax credit (ITC) exemptions applicable to the sale of second-hand goods & keep the profit
- ▶ In 2013, the Australian Federal Police set up Operation Nosean and, as part of their investigations, conducted raids in the precious metals industry
- ▶ K & M engaged in an elaborate conspiracy to defraud the Commonwealth.

# Man convicted and sentenced for directing activities of a terrorist organisation

- 1 x knowingly directing the activities of a terrorist organisation - s102.2(1) *Criminal Code*.
- Convicted after trial & sentenced to 15 yrs imprisonment with a non-parole period of 11 years and three months
- This was Australia's 2<sup>nd</sup> conviction under Div 102 Criminal Code (Cth).
- In 2008 the CDPP prosecuted Abdul Nacer Benbrika for leadership of a terrorist group. Found guilty after trial. Sentenced to 15 yrs' imprisonment with a non-parole period of 12 yrs

- ▶ D previously convicted of related conduct. In 2013 he helped 7 people travel Syria to participate in the conflict there. Convicted in 2016 of 7 x offences under the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth) & sentenced to 8 yrs' imprisonment with a non-parole period of 6 yrs.
- ▶ While serving this sentence he was charged with knowingly directing the activities of a terrorist organisation contrary to s102.2(1) of the *Criminal Code*.
- ▶ D led a terrorist organisation called 'the Shura.' The Shura's initial focus was to assist fighters in Australia to reach Syria. When passport cancellations in 2013-14 prevented them from achieving this aim, they shifted focus to planning domestic terror attacks
- ▶ Members discussed terror attacks around Sydney including beheadings, improvised explosives at the Sydney Mardi Gras, an attack on a naval base in Sydney Harbour & an attack on AFP at the NSW Supreme Court.
- ▶ They pledged allegiance to the then-'Caliph' of Islamic State, Abu Bakr al-Baghdadi



Christmas Island December 2008



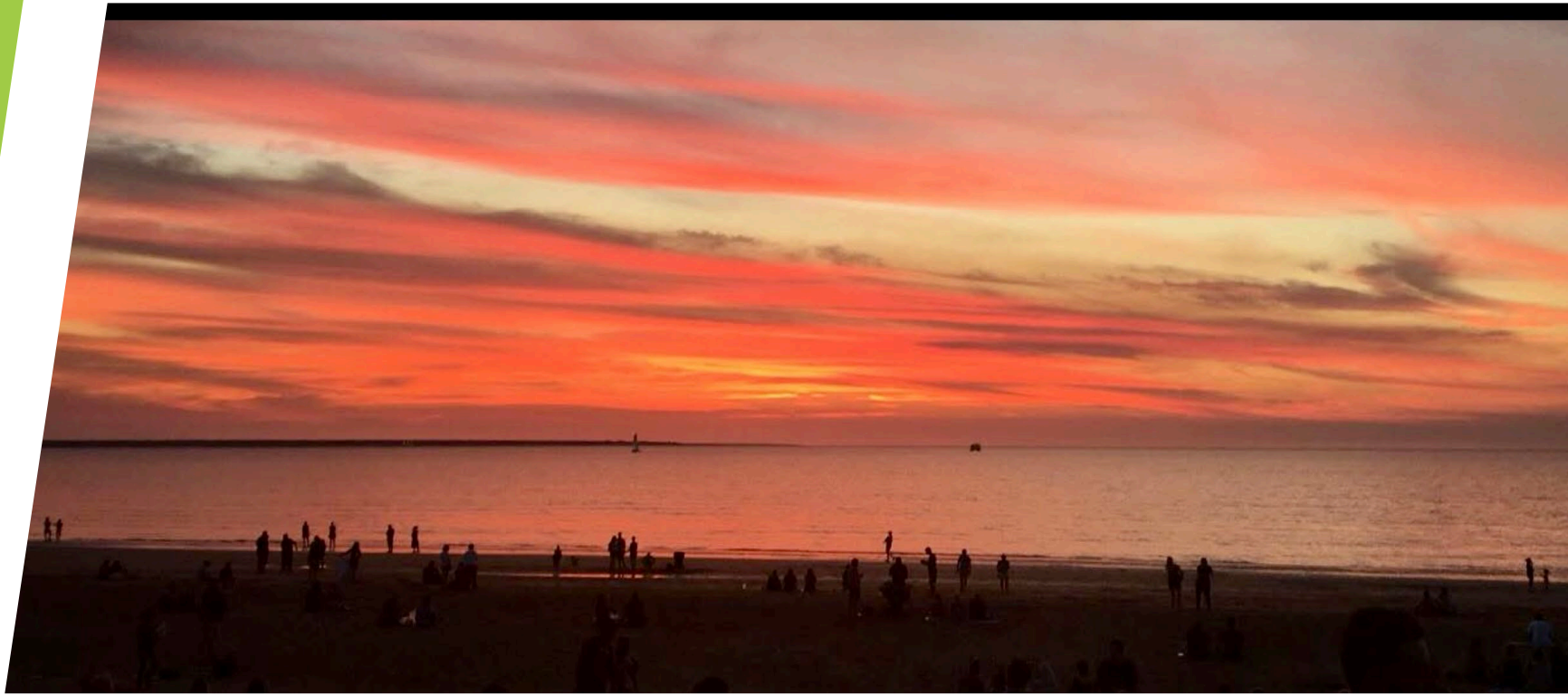
Christmas Island December 2008



Perth

2007 - 2012





Mindil Beach  
Darwin 2015