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REDUCING TIMEFRAMES AND INCENTIVISING SELF REPORTING.

Presentation to Australian Institute of Professional Investigators.

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- **TOPICS COVERED**
- Overview of role of CDPP
- Overview of Practice Group Model
- Current mechanisms to assist reducing timeframes and advancing pleas
- Possible future actions to incentivise self reporting/early guilty pleas.

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OVERVIEW OF ROLE OF THE CDPP

- An independent service established to prosecute alleged offences against the laws of the Cwlth
- No investigative function – but involved early in providing pre- brief advice
- May prosecute State/Territory offences in some circumstances
- Pre mid 2014, operated on a regional basis, with a Head Office in Canberra
- Now based on a national Practice Group Model



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OVERVIEW OF PRACTICE GROUP MODEL

From 2/6/14 moved to a national Practice Group Model

- Aim to provide a more effective, efficient and nationally consistent practice to address the increasing complexity and coverage of Cwlth criminal law, and to align better with partner agencies
- Are 5 PGs – set up on compatible crime types
- PG Leader is responsible for leadership/management of all the practice and policy issues for the respective PG



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THE COMMERCIAL, FINANCIAL & CORRUPTION PG

Types of matters dealt with

- Overseas bribery and other major corruption matters
- ASIC matters
- Large scale tax fraud and other referrals from SFCT
- Large scale finance crime-related money-laundering
- Cartel matters



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CURRENT WAYS TO ASSIST REDUCING TIMEFRAMES

- Early engagement/pre-brief advice
- Work collaboratively
- Focus on service – timely, effective and efficient
- Less risk averse – less requisitions
- Project management of matters
- Pairing of senior and junior lawyers
- Proactively explore options for plea/narrowing issues



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CURRENT WAYS TO INCENTIVISE SELF REPORTING/EARLY GUILTY PLEAS

Pre-charge:

- Induced statements, Letters of Comfort, indemnities under s. 9 DPP Act [use/transactional]
- ACCC immunity Policy/Annexure B of PPC re serious cartel matters

Post charge:

- ASIC/CDPP early guilty plea approach
- Proactive charge negotiation

Sentence discounts

- Past [s. 16A(2) Crimes Act 1914] and future [s.16AC]



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RE CHARGE NEGOTIATION – see 6.14- 6.20 PPC

- encouraged, may occur at any stage of the matter
- prosecution may initiate
- charges to bear reasonable r'ship to nature of alleged conduct
- not agreed to if D maintains innocence
- option of 'roll ups' or representative charges
- may be able to settle Agreed Statement of Facts
- may be able to schedule some offences – see s.16BA Crimes Act 1914 re federal offences



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POSSIBLE FURTHER INCENTIVES

- Draft self reporting Protocol between CDPP & AFP [re Foreign bribery matters]
- DPA scheme
- Whistle blower protection



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DRAFT PROTOCOL BETWEEN CDPP & AFP

- To provide more guidance to corporations who may consider self reporting foreign bribery conduct
- Factors to apply whether to prosecute – similar to DPA factors
- If prosecute, process to resolve as an early guilty plea.



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DEFERRED PROSECUTION AGREEMENT SCHEME

- Gov't discussion paper
 - what are they?
 - What offences applicable to?
 - Limited to corporations?
 - Criteria to qualify/be invited
 - Degree of judicial oversight
 - Monitoring
 - Breach



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DPAs – the UK approach

Introduced under the *Crime and Courts Act 2013*

Stages:

- invitation by prosecutor to company to enter DPA negotiations – ie at P's discretion
- DPA agreed to by parties – prosecutor applies the DPA Code for Prosecutors
- Court approval

Applies only to corporations

Not limited to self reporting



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UK DPA Code

- Issued by DPP and Director of the SFO
- Evidential stage - 2 limbs
 - full Code test satisfied or
 - reas. suspicion and reas. ground to believe continuing investigation will provide more evidence w/i reas. time];and
- Public Interest stage
- Terms of DPA to be fair, reasonable and proportionate – including redress to victims



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UK DPA CODE – PUBLIC INTEREST FACTORS

Some factors favouring prosecution

- History of similar conduct
- Conduct part of established business practice
- Company had no effective compliance program and failure to demonstrate significant improvement since
- Subject to previous warning
- Failure to notify w/i reasonable time
- Reported but failed to verify it or report inaccurate or incomplete
- Level of harm



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UK DPA CODE – PUBLIC INTEREST FACTORS

Some factors favouring against prosecution

- Co-operation - if genuinely proactive, timely, remedial action taken
- Lack of prior history of similar conduct
- Existence of proactive corporate compliance program
- Conduct represents isolated conduct by individuals
- Offending not recent, entity in current form effectively a different entity
- Consequences of conviction disproportionate
- Collateral effects on others
- Assistance re prosecution of individuals
- Timeliness of reporting



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WHISTLEBLOWERS – SOME OPTIONS HOW TO INCENTIVISE

- Current options: induced statement and indemnity [but note risk of prosecution if very culpable]
- Other :
 - Publicly available guidelines to give more comfort /clarity as to likelihood of prosecution
 - Extend DPAs to individuals if self report/report conduct of employer company
 - Financial redress?
 - under DPA, or
 - similar to US False Claims Act, under which 3rd party may institute action re a fraud agst Gov't., can receive a portion of damages [15- 30%].



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WHISTLE-BLOWER PROTECTIONS - SOME POLICIES OF MINOR PARTIES

Greens policy document:

In the previous parliament, the Greens negotiated with Labor to pass new laws to enshrine legal protections for public servants and contractors that expose wrongdoing in the public service. It is time to extend these protections to private sector workers.

But offering legal protections is not always enough for people to risk their financial security, job security and mental health. It is time to follow the lead of US and provide rewards for whistle-blowers that expose misconduct that enables authorities to reclaim money. The US False Claims Act offers whistle-blowers a defined proportion of reclaimed money that is found to be wrongfully gained.



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Nick Xenophon Team policy document:

Examples of what needs to be done:

Establish a national anti-corruption commission

Ensure politician entitlements and claims are reported in a timely and transparent way

Put in place whistleblower legislation that protects the informant and compensates them for any loss of income due to their actions