

Imposition: s 29B *Crimes Act 1914 (Cth)* – Repealed

Commentary

Section 29B *Crimes Act 1914* (as well as many other dishonesty offences in the *Crimes Act*) was repealed by the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No 137, 2000). This provision was replaced by provisions in the *Criminal Code Act 1995* particularly s 135.1 general dishonesty and s 135.2 obtaining financial advantage. Those provisions commenced on 24 May 2001.

Meaning of ‘imposed’

‘Imposed’ means ‘to place a burden upon’, ‘to inflict something on or upon’, ‘to levy on’, ‘to set on’, ‘to put on’, ‘to place an obligation upon’, or to deceive and trick. This terminology was approved by the Victorian Court of Criminal Appeal in *R v Wescombe* [1987] VR 1012 at 1013; (1987) 25 A Crim R 337 at 338-9; *Will v Borchardt (No 2)* [1991] 2 Qd R 230 at 237-8.

Meaning of ‘public authority under the Commonwealth’

A public authority under the Commonwealth is defined in s 3 *Crimes Act 1914 (Cth)* as ‘any authority or body constituted by or under the law of the Commonwealth or of a territory’. See discussion by Higgins J in *Hall* (1992) 106 FLR 458. Note also that the Commonwealth Bank, as a result of privatisation is no longer a public authority under the Commonwealth.

Meaning of ‘untrue representation’

An untrue representation is one that is untrue to the knowledge of the defendant: *Bacon v Salamane* (1965) 112 CLR 85. An untrue representation may be made in any manner whatsoever: *Jacobson v Piepers* [1980] Qd R 448 – representation by conduct.

With a view to obtain money, benefit or advantage

The imposition must have been made with a view to obtain money or any other benefit or advantage: *Bacon v Salamane* at 92. It is not necessary for the prosecution to prove that the Commonwealth was defrauded or cheated, nor is it necessary for the prosecution to prove that the defendant in fact obtained money or advantage: *Will v Borchardt*.

Suggested Direction

The prosecution must prove that:

1. The defendant imposed or endeavoured to impose.

‘Imposed’ means ‘to place a burden upon’, ‘to inflict something on or upon’, ‘to levy on’, ‘to set on’, ‘to put on’, ‘to place an obligation upon’, or to deceive and trick.

2. Upon the Commonwealth or a public authority under the Commonwealth.

3. By an untrue representation made in any manner whatsoever.

An untrue representation is one that is untrue to the knowledge of the defendant. The prosecution must prove that the defendant knew the representation was untrue.

4. With a view to obtain money or any other benefit or advantage.

It is not necessary for the prosecution to prove that the Commonwealth was defrauded or cheated, nor is it necessary for the prosecution to prove that the defendant in fact obtained money or advantage.