



CDPP

Australia's Federal Prosecution Service



**Commonwealth Director
of Public Prosecutions**

GPO Box 21
Melbourne VIC 3001
Level 16 460 Lonsdale
Street
Melbourne VIC 3000
DX. 446
Telephone **03 9605 4333**
Facsimile 03 9670 4295
www.cdpp.gov.au

16 October 2015

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Attention: Ms Justine Clarke/Ms Robyn Gilbert

By email: freedoms@alrc.gov.au

Dear Ms Wynn

**ALRC Interim Report 127 –
Inquiry into Traditional Rights and Freedoms
Chapter 12: Privilege against self-incrimination
Derivative use immunity**

I refer to the Australian Law Reform Commission's Interim Report 127 entitled *Traditional Rights and Freedoms: Encroachments by Commonwealth Laws (Interim Report)* released on 3 August 2015 and, in particular, to Chapter 12 which addresses the privilege against self-incrimination.

Paragraph 12.106 of the Interim Report states:

"Concerns have been raised regarding statutes that provide use immunity only, and not derivative use immunity. The ALRC is interested in comment as to whether further review of the use and derivative use immunities is necessary." [emphasis added]

The Australian Securities and Investments Commission (**ASIC**) has provided the Office of the Commonwealth Director of Public Prosecutions (**CDPP**) with a copy of its submission and supplementary submission to the Inquiry dated March 2015 and September 2015 respectively.

I understand that ASIC has also provided the Commission with a copy of the *Joint Submission of the Australian Securities Commission and the Commonwealth Director of Public Prosecutions for amendment of s68, ASC Law and s597, Corporations Law (1991 Joint Submission)*, dated 13 August 1991.

To the extent that the Commission may be considering revisiting the need for derivative use immunities in Australia, the CDPP stands by its view that the practical effect of the derivative use immunity can be to place a virtually insurmountable obstacle in the way of successful prosecutions for the reasons set out in section 2.6 of the 1991 Joint Submission and, more recently, by ASIC in its submission dated September 2015 (see [21]-[24]). Accordingly, it is the CDPP's position that statutory regimes which abrogate an accused's privilege against self-incrimination but which retain a "use immunity" without a further "derivative use" immunity have a legitimate place in the legislative landscape and can be entirely consistent an accused's right to a fair trial and the public interest.

I note that the original closing date for submissions was 21 September 2015. I would respectfully request that the Commission exercises its discretion to consider this submission outside that timeframe.

Please do not hesitate to contact me if you wish to discuss this matter further.

Yours faithfully,



Shane Kirne
Deputy Director
Commercial, Financial & Corruption