



## Bill Summary

### False Information Bill – No. 26 of 2016

This Bill intends to strengthen the law relating to the **provision of false information to the Government, particularly when obtaining a benefit.**

During the introduction of the Bill, the Attorney-General stated that this Bill was necessary in light of planned Government programmes to help people rebuild after TC Winston, to avoid false claims.

The Bill's Explanatory Note states that there is a "need to create a **separate legislation** which specifically addresses and strengthens the law dealing with the provision of false information". Clauses 201 and 326 of the Crimes Decree 2009<sup>1</sup> provide for similar offences:

#### **False information to public servant**

201. If a person (the first person) gives to any person employed in the public service any information which he or she knows or believes to be false, and intending to cause, or knowing it to be likely that the first person will cause the person employed in the public service —

- (a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person —

the first person commits a summary offence.

Penalty — Imprisonment for 5 years.

[...]

#### **Obtaining financial advantage**

326.—(1) A person commits a summary offence if he or she—

- (a) engages in conduct; and
- (b) as a result of that conduct, obtains a financial advantage for himself or herself from another person; and
- (c) knows or believes that he or she is not eligible to receive that financial advantage.

Penalty — Imprisonment for 10 years.

(2) A person commits a summary offence if he or she —

- (a) engages in conduct; and
- (b) as a result of that conduct, obtains a financial advantage for another person from a third person; and
- (c) knows or believes that the other person is not eligible to receive that financial advantage.

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<sup>1</sup> [http://www.paclii.org/fj/promu/promu\\_dec/cd200995/](http://www.paclii.org/fj/promu/promu_dec/cd200995/)



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Penalty—Imprisonment for 10 years.

(3) For the purposes of sub-section (2), a person is taken to have obtained a financial advantage for another person if the first-mentioned person induces the third person to do something that results in the other person obtaining the financial advantage.

## Objectives, scope and intent of the Bill

The Explanatory Note states that the Bill intends to:

- **strengthen and streamline the law related to the provision of false information** to the Government and any entity to which the Government provides funds; and
- **provide for the recovery of property** in instances where a person has been convicted of an offence.

## Summary of provisions

### *Part 1 - Preliminary*

**Clause 1** of the Bill sets out the short title and commencement.

**Clause 2** provides for the definitions used in the Bill, which are provided in Annex A of this paper.

### *Part 2 - Offences*

**Clause 3** provides for the offence of **making false representations** to any officer, agent or representative of the Government or any entity to which the Government provides funds. The penalty is a maximum fine of \$10,000 or imprisonment of 5 years, or both.

**Clause 4** provides for the offence of **making false representations to obtain a benefit**. The penalty is \$20,000 or imprisonment for 10 years, or both.

**Clause 5 prohibits the use of a benefit for purposes other than those for which it was granted.** The penalty for contravention is \$20,000 or 10 years imprisonment or both. It also stipulates that a person in receipt of a benefit must comply with any condition which the Government or entity may determine.

**Clause 6** provides that if the circumstances of a person who has received a benefit are subsequently changed, such person must notify the government or entity to which the Government provides funds and return the unused benefit within 28 days. The penalty for contravention is \$20,000 or imprisonment for 10 years, or both.

**Clause 7** clarifies the meaning of “knowingly”, which is if the person:

- is aware that the information the person is providing is false;



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- is aware that the information is likely to be false and is reckless in that regard, or
- provides any information and is reckless as to whether that information is false.

**Clause 8** provides for attempts, complicity, incitement etc, as outlined in the Crimes Decree 2009<sup>2</sup>, to apply to the offences in this Bill.

**Clause 9** provides for absolute liability to apply to offences under the Bill in line with section 25 of the Crimes Decree, which states:

25. — (1) If a law that creates an offence provides that the offence is an offence of absolute liability —
- (a) there are no fault elements for any of the physical elements of the offence; and
  - (b) the defence of mistake of fact under section 35 is unavailable.
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:
- (a) there are no fault elements for that physical element; and
  - (b) the defence of mistake of fact under section 35 is unavailable in relation to that physical element.
- (3) The existence of absolute liability does not prevent an offender from raising any defence that is applicable to the offence for which he or she is charged

### **Part 3 - Recovery**

**Clause 10** provides the orders that a court may make for the recovery of property from a person convicted of an offence.

**Clause 11** provides for the recovery of property from a third party, other than the person convicted.

### **Part 4 – Miscellaneous**

**Clause 12** provides for the protection of informers.

**Clause 13** provides for the Attorney-General's powers to make regulations to give effect to the Act.

## International comparisons

In the **United Kingdom**, the Social Security Administration Act 1992<sup>3</sup> relates to false representation to obtain benefits ('benefit fraud'):

<sup>2</sup> [http://www.paclii.org/fj/promu/promu\\_dec/cd200995/](http://www.paclii.org/fj/promu/promu_dec/cd200995/)

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1992/5/section/112/enacted>



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### **False representations for obtaining benefit etc**

(1) If a person for the purpose of obtaining any benefit or other payment under the legislation to which section 110 above applies whether for himself or some other person, or for any other purpose connected with that legislation—

- (a) makes a statement or representation which he knows to be false; or
- (b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular, he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to **a fine not exceeding level 5 on the standard scale**, or to **imprisonment for a term not exceeding 3 months**, or to both.

In Australia, fraud prosecutions are diverse, can be committed in numerous ways and span the broad range of Commonwealth programs and assistance available to the Australian community, as well as the Australian taxation system.

Division 2 of the Social Security (Administration) Act 1999 states:

### **False statement in connection with claim or hardship request**

(1) A person contravenes this subsection if:

- (a) the person makes a statement; and
- (b) the statement is false or misleading; and
- (c) the person is reckless as to whether the statement is false or misleading; and
- (d) the statement is made in connection with, or in support of, the person's or any other person's:
  - (i) claim for a social security payment under the social security law; or
  - (ii) request under paragraph 1129(1)(d) of the 1991 Act that section 1129 of that Act apply to the person; or
  - (iii) request under paragraph 1131(1)(f) of the 1991 Act that section 1131 of that Act apply to the person.

'Social security fraud' commonly used offences include:

- s.134.1(1) Criminal Code – obtaining property by deception
- s.134.2(1) Criminal Code – obtaining a financial advantage by deception
- s.135.1(5) Criminal Code – general dishonesty – causing a loss
- s.135.2(1) Criminal Code – obtaining a financial advantage

The maximum penalty for offences of obtaining property and obtaining a financial advantage by **deception is 10 years imprisonment**.



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The maximum penalty for an offence of **general dishonesty is 5 years imprisonment**.

The maximum penalty for an offence of obtaining a **financial advantage is 12 months imprisonment**.

The Social Security Legislation Amendment (Miscellaneous Measures) Act 2011 commenced on 4 August 2011. This Act amended the Social Security (Administration) Act and inserted section 66A – General Requirement to Inform of a Change of Circumstances – into the Act.

## Further information

- Crimes Decree 2009: [http://www.paclii.org/fj/promu/promu\\_dec/cd200995/](http://www.paclii.org/fj/promu/promu_dec/cd200995/)

## Disclaimer

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.



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### Annex A - definitions used in the Bill

**"benefit"** means:

- any advantage, whether pecuniary (monetary) or otherwise; or
- any claim or entitlement

In relation to:

- any programme, benefit scheme or Government policy initiative where a person receives a direct or indirect advantage; or
- any programme or benefit scheme provided by an entity.

**"entity"** means an organization that receives funding from the Government and which the Attorney-General prescribes by notice in the Gazette;

**"false information"** means information which is false, incorrect, untrue or misleading, in whole or in part, substance or form;

**"false representation"** means the provision of false information to any officer, agent or representative of the Government or an entity in any manner including:

- a letter, by any form of delivery;
- a form
- an application
- a claim;
- a statement, whether in writing or otherwise;
- a document of any kind;
- email correspondence; or
- communication in person, by phone or any electronic means;

**"knowingly"** has the meaning provided in clause 7.