



PJC-ACLEI - Inquiry into the Integrity of overseas Commonwealth law enforcement operations – Answers to written questions on notice

1. Please explain how deferred prosecution agreements under the US and UK enforcement regimes operate? Has AGD considered how these arrangements could be applied in the Australian context?

Deferred Prosecution Agreements (DPAs) are currently used in the United States in the context of corporate crime. DPAs in the United States typically involve the Department of Justice reaching agreement with a company to suspend or defer any prosecution in return for payment of a financial penalty, payment of compensation to victims, the imposition of a regime of corporate monitoring for a specified period, and admission of facts. Fulfilment of the conditions then results in dismissal of the charges against the accused company.

In May 2012, the United Kingdom released a consultation paper seeking views about the use of DPAs as a mechanism to combat economic crime by corporate offenders. The United Kingdom's proposed DPA process differs from the US model. It comprises the following steps:

- a decision by prosecutors following investigation on whether to offer or enter into a DPA
- commencement of DPA proceedings before a judge
- judicial approval of the content of a DPA
- monitoring and action for non-compliance or breach (including prosecution), and
- withdrawal of prosecution in the case of full compliance.

Under the United Kingdom's proposal, DPAs would be provided for by legislation. The principles for determining whether a DPA would be appropriate would then be set out in a code of practice. This differs from the United States, where DPAs do not have a statutory basis.

Public consultation on the proposed UK model was open until 9 August 2012. The UK Government indicated it intended to publish a formal response paper to the consultation in October 2012 once public submissions had been considered.

The Attorney-General's Department has at this stage undertaken a preliminary investigation of how alternative enforcement tools, including DPAs, could be applied in the Australian context.

2. What are the differences between the UK and US models in relation to judicial oversight of agreements arrived at with corporations accused of corruption and related crimes?

There is limited judicial involvement in the United States DPA scheme.

Under the United Kingdom's proposed model, there would be significant judicial oversight, as a judge would oversee the commencement of DPA proceedings and be required to approve the content of any DPA.