

### ***Discharge of offender without proceeding to conviction: s 19B***

Sentencing offenders is the final and arguably the most important part of the Criminal justice system. In Victoria, the governing principles of sentencing are punishment, deterrence, rehabilitation and denunciation of, and/or community protection from the behaviour of the offender.

To this end, Magistrates and Judges have wide discretionary powers pertaining to the sanctions they may impose following a finding of guilt.

Though legislation that creates an offence usually also indicates the applicable maximum penalty, this does not exhaust the sentencing options given to the Court.

Not all sanctions depend on the court formally recording a conviction; a finding of guilt may be enough.

### **WHAT ARE COMMONWEALTH OFFENCES?**

Any offence that breaches the law of the Commonwealth is a federal offence.

So what does this mean?

Normally, offences involving the Commonwealth Government i.e organisations such as Centrelink, Medicare, Fair Work Australia, or offences against the country such as treason and selling state secrets are federal offences.

### **NON CONVICTION FOR FEDERAL OFFENCES**

Section 19B of the *Crimes Act 1914 (Cth)* (“The Act”) gives the court the power to not convict federal offenders upon the finding of guilt. Two types of orders are available under s 19B where a court is satisfied that a charge is proved:

- dismissal of the charge; and
- conditional discharge.

In determining whether to make such an order, the court is to have regard to factors such as:

- the antecedents of the offender;
  - meaning all aspects of the offender’s life, such as age, family situation, employment circumstances.
- The seriousness of the offence or the damage caused by the offence;
  - If the offence is ‘trivial’ then the court will more likely be swayed toward non-conviction; and
- Any extenuating circumstances surrounding the offence;

- A link between the commission of the offence and the special circumstances must be shown. That is, mental health issues or drug and alcohol issues causing offences.
- In addition, the effect of conviction upon the offender is also a consideration that is taken into account by the Court.

In addition, the Court may discharge a guilty offender without conviction being recorded, subject to certain conditions such as:

- the offender must be of good behaviour for a period of time (more commonly known as a good behaviour bond); or
- the offender must attend drug and alcohol counselling if applicable; or
- any other such order as the Court sees fit.

So what does all this mean?

**Example:**

Deliberately receiving a Centrelink payment that you are not entitled to is a criminal offence. As Centrelink is a Commonwealth government organisation, it is a Commonwealth offence (discussed above).

You can be charged and fined or even imprisonment, even if you pay the money back.

For example, let us assume that you are receiving an unemployment benefit from Centrelink and your circumstances change as you find a job.

You have 14 days to notify Centrelink of this change in circumstances and if you do not, you may be charged with Centrelink fraud.

If the matter appears in Court and the Court finds that it was merely one payment of around \$500 and that the effect of conviction could cost you your job, the Court will be inclined to dismiss the charge (provided you pay the money back to Centrelink) as it is a trivial matter and the effect of conviction far outweighs the seriousness of the offence.

If you are charged with a Commonwealth offence, go and see a competent lawyer to discuss your options.

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(The law as it stands at October 2013)