Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia on the proposed Deferred Prosecution Agreement scheme code of practice

9 July 2018

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the proposed code of practice for a Deferred Prosecution Agreement (DPA) scheme in Australia. The Synod sees DPAs as part of a suite of measures needed to deter, detect and prosecute corporate criminal behaviour with additional measures being whistleblower protection and reward in the private sector, a public beneficial ownership register and making it easier to for law enforcement agencies to prosecute foreign bribery and money laundering offences.

The Synod strongly agrees with 2.6 that “In most circumstances, it will be inappropriate to offer a corporation DPA negotiations where an ongoing or imminent regulatory action or legal proceeding (including proceedings under the Proceeds of Crime Act 2002) seeks, or would seek, to address the corporation’s misconduct (either wholly, or in part).”

The Synod supports the involvement of the relevant Commonwealth law enforcement agencies in the DPA negotiations as outlined in 2.10.

The Synod strongly supports the inclusion of the terms in DPAs outlined in 3.3.

The Synod strongly supports that a corporation should not be allowed to benefit from criminal activities its employees have been engaged in, and thus strongly supports 3.8 – 3.10.

The Synod also strongly supports that those harmed by the criminal activity of employees of a corporation should be compensated and thus strongly supports 3.11 – 3.14. We particularly welcome that a corporation may be required to pay compensation to a foreign government where it has engaged in bribery of officials in that country.

The Synod agrees that the ultimate decision on an independent monitor should rest with the CDPP as per 3.20.

The Synod holds the view that there should be a presumption that a DPA will be made public after it has been approved, unless there are clear reasons not to and the CDPP should be required to make the reasons for not making the DPA public as soon as it is practicable to do so (for example, the reasons might not be able to be published if the existence of DPA would compromise a criminal investigation). Our concern is that, unlike US law enforcement authorities, Australian law enforcement authorities are far less transparent and will not make data and information available that law enforcement agencies in other jurisdictions would (such as the US Department of Justice publicly providing information about the seizure of assets in the US where they have been stolen from another jurisdiction, while Australian law enforcement agencies do not make such information available). Thus unless the Code makes the default the
DPA will be published, the Synod fears the CDPP may never publish any DPA they have negotiated.

The Synod supports that any variation to the terms of a DPA will require the approval of the approving officer (as per 5.6).

The Synod strongly supports 7.2 that requires that the CDPP must not consider the national economic interest, the potential effect upon relations with other governments or the identity of the natural or legal persons involved in the matter in relation to cases involving the bribery of a foreign government official.

Dr Mark Zirnsak
Senior Social Justice Advocate
Synod of Victoria and Tasmania
Uniting Church in Australia
Phone: (03) 9340 8807
E-mail: mark.zirnsak@victas.uca.org.au