



HIGH COURT OF AUSTRALIA

8 May 2013

DIRECTOR OF PUBLIC PROSECUTIONS (CTH) v KELLI ANNE KEATING

[2013] HCA 20

Today the High Court unanimously held that a person could commit the offence of obtaining a financial advantage from a Commonwealth entity, contrary to s 135.2(1) of the *Criminal Code* (Cth) ("the Code"), by failing to comply with a Centrelink notice requiring that person to inform Centrelink of a change in circumstances. The High Court also unanimously rejected the proposition that a person could commit the offence by omitting to perform an act or acts that the person was not under a legal duty to perform at the time of the omission.

On 7 October 2010, Ms Kelli Anne Keating was charged with three counts of obtaining a financial advantage contrary to s 135.2(1) of the Code. Section 135.2(1) makes it an offence for a person to engage in conduct and, as a result of that conduct, to obtain a financial advantage from a Commonwealth entity, knowing or believing that he or she is not eligible to receive that financial advantage. The Commonwealth Director of Public Prosecutions alleged that from 2007 to 2009 Ms Keating failed to advise the Department of changes to her income while in receipt of a social security payment. During this period, Centrelink had issued a number of notices to Ms Keating, under ss 67(2) and 68(2) of the *Social Security (Administration) Act* 1999 (Cth) ("the Administration Act"), requiring her to inform Centrelink of various matters including changes to her income. It was not agreed that Ms Keating received those notices.

On 26 October 2011, the High Court handed down its decision in *Director of Public Prosecutions (Cth) v Poniatowska* (2011) 244 CLR 408. The Court held that for a person to breach s 135.2(1) by omitting to do something, the omission must be of an act that the person was under a legal duty to perform.

On 4 August 2011, a new s 66A was inserted into the Administration Act. Section 66A(2) imposes a duty upon a recipient of a social security payment to inform the Department within 14 days of a change of circumstances which might affect the payment. Section 66A is taken to have commenced on 20 March 2000.

On 14 December 2012, the case against Ms Keating pending in the Magistrates' Court of Victoria was removed into the High Court. The Court was asked to decide whether a person could commit an offence under s 135.2(1) of the Code either by failing to comply with the duty imposed by s 66A of the Administration Act at a time before the amendment received the Royal Assent, or by failing to comply with a notice issued by Centrelink under ss 67(2) and 68(2).

The High Court unanimously held that a person could not breach s 135.2(1) of the Code by failing to comply with the duty imposed by s 66A of the Administration Act at a time after 20 March 2000 but before the date on which the amendment received the Royal Assent. The Court held that for an omission to constitute an offence under s 135.2(1), a person must have failed to do a thing that, at the time of the failure, the law required that person to do. The Court also held that an offence under s 135.2(1) was capable of being committed by a failure to comply with a notice issued by Centrelink under the Administration Act.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*