

Division 134—Obtaining property or a financial advantage by deception

134.1 Obtaining property by deception

- (1) A person is guilty of an offence if:
 - (a) the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property; and
 - (b) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to the paragraph (1)(b) element of the offence.

Obtaining property

- (3) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person (the **first person**) is taken to have **obtained** property if, and only if:
 - (a) the first person obtains ownership, possession or control of it for himself or herself or for another person; or
 - (b) the first person enables ownership, possession or control of it to be retained by himself or herself; or
 - (c) the first person induces a third person to pass ownership, possession or control of it to another person; or
 - (d) the first person induces a third person to enable another person to retain ownership, possession or control of it; or
 - (e) subsection (9) or (10) applies.
- (4) The definition of **obtaining** in section 130.1 does not apply for the purposes of this section (or for the purposes of the application of section 132.1 to this section).
- (5) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Intention of permanently depriving a person of property

- (6) For the purposes of this section, if:
 - (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and
 - (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;the person has the intention of permanently depriving the other of it.
- (7) For the purposes of subsection (6), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.
- (8) For the purposes of subsection (6), if:
 - (a) a person has possession or control (lawfully or not) of property belonging to another; and
 - (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
 - (c) the parting is done for purposes of the person's own and without the other's authority;the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

Money transfers

- (9) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the **first person**) causes an amount to be transferred from an account held by another person (the **second person**) to an account held by the first person:
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.
- (10) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if a person (the **first person**) causes an amount to be transferred from an account held by another person (the **second person**) to an account held by a third person:
- (a) the amount is taken to have been property that belonged to the second person; and
 - (b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.
- (11) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), if:
- (a) a credit is made to an account (the **credited account**); and
 - (b) a debit is made to another account (the **debited account**); and
 - (c) either:
 - (i) the credit results from the debit; or
 - (ii) the debit results from the credit;
- the amount of the credit is taken to be transferred from the debited account to the credited account.
- (12) For the purposes of this section (and for the purposes of the application of section 132.1 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

General deficiency

- (13) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.
- (14) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.

Alternative verdicts

- (15) If, in a prosecution for an offence of theft, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the trier of fact may find the defendant not guilty of the offence of theft but guilty of the offence against this section, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.
- (16) If, in a prosecution for an offence against this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the trier of fact may find the defendant not guilty of the offence against this section but guilty of the offence of theft, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

134.2 Obtaining a financial advantage by deception

(1) A person is guilty of an offence if:

- (a) the person, by a deception, dishonestly obtains a financial advantage from another person;
and
- (b) the other person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.