



Police Federation of Australia

The National Voice of Policing

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17 August 2011

Committee Secretary
Parliamentary Joint Committee on Law Enforcement
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Dear Committee Secretary

POLICE FEDERATION OF AUSTRALIA SUBMISSION

INQUIRY INTO COMMONWEALTH UNEXPLAINED WEALTH LEGISLATION AND ARRANGEMENTS

The Police Federation of Australia would like to thank the Committee for the opportunity to contribute to your Inquiry into Unexplained Wealth Legislation. We do so representing the interests of 55,000 police officers across Australia in all State and Territory jurisdictions and the Commonwealth.

We would like to suggest that the Committee aim to achieve three objectives which would significantly improve Australia's unexplained wealth legislation and arrangements, namely:

- 1. Create a genuinely national scheme**
This would mean abolishing, or at least minimizing, Commonwealth/State barriers, including barriers to information sharing between law enforcement and collaborating agencies.
- 2. Minimize litigation**
This would involve including options for settlements and mediation, creating more opportunities for forfeiture and tax and debt recovery, and ensuring against delaying tactics.

3. Treat unexplained wealth as a criminal commodity

This would involve creating a rebuttable presumption of criminality relating to possession of large amounts of cash without adequate explanation.

We propose the following measures to achieve these objectives.

The effectiveness of the *Proceeds of Crime Act 2002* is undermined by the need to provide evidence of a link to a Commonwealth or related offence to obtain an order restraining funds of an accused from a Court. At present a person need only prove that unexplained wealth is not proceeds of a Commonwealth or related offence, not that it was lawfully obtained, to avoid having the funds restrained. Funds would be restrained **until** an accused can demonstrate that the funds were lawfully acquired.

To achieve an effective regime, we need a provision which creates a rebuttable presumption of a criminal offence where a person is in possession of large amounts of money without adequate explanation. This would create an incentive for the person accused to disclose to the Court the source of such assets. The rebuttable presumption should be along the following lines:

“If a person has:

- (a) income in excess of income declared in taxation returns, or obtained in years for which no taxation return was filed; or
- (b) assets inconsistent with tax declared income, or obtained in years in which no taxation return was filed; or
- (c) cash over a specified amount (e.g. \$100,000);

that income or cash, or those assets, are presumed to be derived from an offence against a law of the Commonwealth, a foreign indictable offence or a State offence that has a federal aspect”.

A Court’s discretion to refuse to issue a restraining order, and to revoke a preliminary order, under the unexplained wealth provisions is inconsistent with other provisions in the POC Act, in particular the other provisions for restraining and forfeiting property. The discretion to refuse should be removed once it has been established that there are reasonable grounds to suspect that an offence has occurred.

The unexplained wealth provisions allow a person to draw on restrained assets for legal expenses. This is inconsistent with the other parts of the POC Act which require legal costs to be met by legal aid in the first instance. The former right encourages the dissipation of the restrained assets in prolonged litigation. This should be addressed by preventing restrained assets from being used for legal expenses. To achieve this outcome, the POC Act should be amended so that access to restrained funds will be governed by s 24 (of the POC Act) in the same way as funds restrained on grounds other than unexplained wealth, and will not be available up front to meet legal expenses.

The PFA would be pleased to discuss these proposals with the Committee.

Yours sincerely



Mark Burgess
Chief Executive Officer