



Senator Trish Crossin  
 Chair, Senate Legal and Constitutional Affairs Committee  
 Parliament House  
 CANBERRA ACT 2600

Tuesday 28 July 2009

Dear Senator Crossin

The Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 – CLASOC for simplicity – is now before the Senate’s Legal and Constitutional Affairs Committee (Senate L&CA): we are making a submission on the Bill. The history of this Bill, as we’re sure you are aware, is:

- in early 2009 there was an Attorney-General’s Department (AGD) review of the *Proceeds of Crime Act 2002* (POC) under way, following the Sherman Review which reported in 2006;
- AGD was preparing amendments to the POC when a bikie brawl and death at Sydney Airport in March occasioned the Standing Committee of Attorneys-General (SCAG), meeting in April, to require urgent amending legislation relating to serious and organised crime. The result is CLASOC.

We understand from AGD that CLASOC **No 2** is being prepared for tabling in the Spring Session of Parliament. CLASOC 2 will, we understand, pick up elements of the POC review not incorporated into the urgently-prepared CLASOC. We ask you and the Senate L&CA Committee to delay considering CLASOC, if possible, so that CLASOC and CLASOC 2 can be considered together to produce a more balanced approach to particularly tough legislation where the civil liberties of relatively-innocent people are sometimes at risk.

Considering the two Bills together will also allow the Parliament, and your Committee – as well as interested civil society groups like Civil Liberties Australia – an appropriate amount of time to analyse and assess the report of the Parliamentary Joint Committee on the Australian Crime Commission (PJCACC), which is due to table a report of about 200 pages in mid-August on its **inquiry into the legislative arrangements to outlaw serious and organised crime groups pursuant to Section 55(1)(b) of the Australian Crime Commission Act 2002**. PJCACC has been investing and holding hearings on this matter since May 2008 in all Australian capital cities, as well as sending a delegation overseas in early 2009.

As it stands, no submissions to your committee on the CLASOC Bill will be able to consider the PJCACC report, as it will be tabled after the closing date for submissions to you.

Secondly, and more directly of financial interest to CLA, we ask you to ensure that in either CLASOC or CLASOC 2 there is an amendment to the existing POC s298 as per the ‘Addendum’ over the page, which was contained in an earlier submission of CLA’s. We had been discussing this amendment, or something similar, for a year with former Home Affairs Minister Bob Debus, and had his in-principle support. We ask for your Committee’s support for this change.

The amendment would allow groups like CLA, NSW Council for Civil Liberties and Liberty Victoria – as well as other human rights organisations – to access support funds from proceeds of crime to help our work in contributing considerable time, effort and expertise into trying to help make Australia’s laws and legal system as good and as fair as they can be, which we know is the driving aim of your Committee.

Yours Sincerely

(Dr) Kris Klugman OAM, President



## **ADDENDUM:**

### **Minister may approve funding for community benefit programs**

CLA submits:

In 2008, in discussion with the Attorney-General in his Parliament House office, CLA explained that it had undertaken a detailed analysis but could find no source of funds in the Australian Government's normal, annual allocations designed to support 'community service' activity that civil liberties/human rights (CL/HR) groups could access for their efforts aimed at bettering the Australian community and Australia's national and international interests. This work includes making submissions to the Australian Parliament and Government on legal and allied matters, researching where gaps exist in laws or regulations, analysing local and international comparisons of police/security/emergency services activity, comparing and contrasting civil society approaches internationally to common questions, identifying and proposing remedies to individual and group inequity in the system, and the like.

The Attorney-General asked his two AGD advisers present at the meeting to check through AGD and other government department community funding allocations to see which were amenable to providing CL/HR funds for worthwhile projects. After six months of searching, the A-G's advisers could find no source of funds, other than the 'Proceeds of Crime' scheme, which was at best peripheral because of the way s298 is expressed, so that legitimate CL/HR projects require considerable 'bending' or 'tilting' to fit – and then only just – within the s298 "purposes".

CLA believes the AGD's proposed change – making the purpose for *'the benefit of the community'* – would allow CL/HR groups to legitimately access the Proceeds of Crime funds. We strongly support the Department's proposal.

However, should the AGD proposal not be accepted for any reason, CLA proposes a **simple, one-line addition** to s298 - clause (c) below – as follows:

#### **PROCEEDS OF CRIME ACT 2002 - SECT 298**

##### **Programs for expenditure on law enforcement, drug treatment etc.**

(1) The Minister may, in writing, approve a program for the expenditure in a particular financial year of money standing to the credit of the \* Confiscated Assets Account.

(2) The expenditure is to be approved for one or more of the following purposes:

- (a) crime prevention measures;
- (b) law enforcement measures;
- (c) **civil liberties and human rights measures;**
- (d) measures relating to treatment of drug addiction;
- (e) diversionary measures relating to illegal use of drugs.

*CLA provided this proposal to the Minister for Home Affairs, Mr Bob Debus, in September 2008, as requested by him after follow-up discussion in his office on how CL/HR groups could access already-available government funds to support their work for the Australian community.*

We ask that this amended clause be included in the CLASOC 2 Bill.