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5 February 2013

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PO Box 6100
Parliament House
Canberra ACT 2600
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By email: legcon.sen@aph.gov.au

Submission: *Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012*

Liberty Victoria is grateful for the opportunity to make this submission on the *Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012* ("the Bill") to the Senate Legal and Constitutional Affairs Committee. Thank you for the extension of time granted to make this submission.

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

In general terms, Liberty Victoria supports the introduction of the Bill as a reasonable and necessary amendment to the legislative regime. Whilst removing the discretion of the Courts to make, or refuse to make, unexplained wealth restraining orders, preliminary unexplained wealth orders, and unexplained wealth orders once relevant criteria have been satisfied, Liberty Victoria takes comfort that the safeguards remain that orders must be in the public interest and in the interests of justice.

With regard to legal expenses and the proposed repeal of s 179SA of the *Proceeds of Crime Act* 2002 ("the Act"), Liberty Victoria is concerned that this adds further pressure to the Legal Aid Commission which is currently unable to meet the many demands upon its services. The amendment would see the State, and therefore tax-payers, often asked to carry the burden of the cost of legal representation rather than such costs being taken from the relevant property in question.

Whilst the Explanatory Memorandum makes it plain that this amendment is intended to prevent wealth being dissipated on legal expenses in order to frustrate potential unexplained wealth orders, Liberty Victoria Is concerned that the case has not been made that such activity is commonplace, or that the Act as it stands cannot prevent such abuses.

At present, s 179SA of the Act provides:

Legal expenses

(1) If the court considers that it is appropriate to do so, it may order that the whole, or a specified part, of specified property covered by an order under subsection 179S(1) is not available to satisfy the unexplained wealth order and may instead be disposed of or otherwise dealt with for the purposes of meeting a person's reasonable legal expenses arising from an application under this Act.

(2) The court may require that a costs assessor certify that legal expenses have been properly incurred before permitting the payment of expenses from the disposal of any property covered by an order under subsection (1) and may make any further or ancillary orders it considers appropriate.

This provides for significant oversight by the Courts to prevent such potential abuses. A Court may only order that part of the relevant property be used for legal expenses if "it is appropriate to do so". Further, the Court may require that a costs assessor certify that legal expenses have been properly incurred, and may make any further or ancillary orders it considers appropriate. This provides for significant protection.

If respondents to applications for unexplained wealth orders are unable to obtain legal representation from Legal Aid, and if the Act was amended to prevent legal expenses being met from the relevant property pool, then this may well result in respondents being self-represented at a significant cost to the resources of the Courts and to tax-payers. While the motivation of such proposed reform is understandable, Liberty Victoria is concerned that such amendments may actually result in more cost being incurred to

the public due to the limited and valuable resources of the Legal Aid Commission and the Courts. This may be a significant pitfall in the Bill given the Act, as it stands, already provides for significant oversight by the Courts to prevent abuse.