



Monday, 13 May 2024

Mr Peter Khalil MP  
Committee Chair  
Parliamentary Joint Committee on Intelligence and Security  
Parliament House  
Canberra ACT 2600

## **Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024**

Dear Chair

Thank you for the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security review of the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024 (the Bill). The AFP's observations below are focused on the proposed amendments in Schedules 1 and 2 of the Bill, which acknowledge the increasing prevalence of digital assets in law enforcement operations and reflect the operational reality faced by law enforcement. These provisions would support AFP in our dealings with digital currencies and assets in a range of operational matters.

In 2009, the original viable cryptocurrency, Bitcoin, was released. Since 2009, millions of cryptocurrencies have been developed and released onto the market. Cryptocurrencies or digital currencies have gained favour with mainstream adopters because they are not restricted by borders, are very quick and have low transaction fees.

However, the legitimate benefits of digital currencies in global transactions are being exploited by criminal actors. Digital currencies provide a channel for individuals with nefarious intent to transfer value (digital assets) anonymously. Digital currencies feature in a growing range of crimes, particularly financial fraud and scams, ransomware, trafficking in illicit commodities, as well as money laundering and terrorist financing.

The AFP frequently encounters the use of digital assets, including cryptocurrencies, to hold and distribute the benefits of illicit activities across an increasing number of crime types. For example, in 2023, the AFP disrupted a large-scale Australian money laundering organisation (Operation AVARUS-MIDAS). Under Operation AVARUS-MIDAS, the AFP executed 13 warrants and charged 10 alleged offenders, with approximately \$215 million in criminal assets restrained to-date, including over \$30 million in cryptocurrency. Across all AFP operations in the 2022-2023 financial year, the AFP overall restrained more than \$41 million in cryptocurrency equating to approximately 11.7 per cent of all AFP restraints in this period.

To respond to this threat, the AFP led Criminal Assets Confiscation Taskforce (CACT) has established a Cryptocurrencies Capabilities Team to uplift the AFP's capability to take appropriate

action where cryptocurrency is identified in investigations, provide subject matter advice and support, and develop the AFP's relationships with domestic and international partners.

Schedules 1 and 2 of the Bill will assist the work of not only the AFP's Cryptocurrencies Capability Team, but all AFP members who may encounter digital assets and digital currencies in the course of their investigations and proceeds of crime litigation. Schedule 1 of the Bill amends the *Crimes Act 1914*, *Proceeds of Crime Act 2002* (POCA) and *National Anti-Corruption Commission Act 2022* to ensure provisions relating to the seizure of evidential material and tainted property under warrant reflect the complexities involved in searching for, and seizing, digital assets. This includes a framework that better addresses the circumstances in which law enforcement may come across digital assets in the course of exercising search warrant powers, as well as more accurately reflecting the steps that need to be taken by law enforcement when seizing digital assets.

Effective and modern asset confiscation laws are a powerful tool in the fight against organised crime. These amendments ensure the powers available to law enforcement reflect the operating environment, and are appropriately adapted to meet future evolving and unique issues and complexities that arise when dealing with digital assets.

Schedule 2 of the Bill amends the definition of "financial institution" in section 338 of the POCA, to include certain digital currency exchanges (DCEs). This will have the effect of enabling POCA freezing orders, monitoring orders and notices to financial institutions to be made in relation to accounts held with DCEs. Other amendments, such as revisions to the term "account", or the inclusion of "transactions" within the scope of freezing orders, appropriately reflect how DCEs operate, and the range of ways in which digital currencies can be dealt with.

These changes will ensure important POCA investigative powers can be used on Australian-based digital currency exchanges, assisting the CACT to more effectively identify digital currencies associated with criminal offending, and then freeze the relevant asset, held with the DCE, to prevent the dissipation of that property (and prevent potential reinvestment or reuse in future criminal activity), before any restraint action can be taken under the POCA.

I trust that this information is of assistance. The AFP welcomes the opportunity to appear before the committee to answer questions to assist your consideration of this Bill.

Yours sincerely,

A large black rectangular redaction box covering the signature of Ian McCartney APM.

Ian McCartney APM  
Deputy Commissioner Crime