COMMISSIONER'S OFFICE

Your Ref

HQ2011/1145: Our Ref

Mr Jon Bell
Committee Secretary
Parliamentary Joint Committee on Law Enforcement
Parliament House
CANBERRA ACT 2600

Dear Mr Bell

I refer to the discussion paper regarding the *Inquiry into Commonwealth unexplained wealth legislation and arrangements,* which subsequently called for further submissions to be provided to the Committee for consideration.

Appendix 1, details Northern Territory Police's supplementary information for the areas where further evidence is required for the Committee's consideration.

In deciding the future direction of any Commonwealth legislation regarding unexplained wealth, I invite the Commonwealth to consider the Northern Territory *Criminal Property Forfeiture Act* which is considered to be an effective and powerful tool in targeting unexplained wealth.

Yours sincerely

John McRoberts APM
Commissioner of Police

10 February 2012

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APPENDIX 1

FURTHER INFORMATION REQUESTED BY COMMITTEE

- **Making the objects of the Proceeds of Crime Act more explicit, particularly in relation to purpose of unexplained wealth laws and the definition of serious and organised crime.**

  Response: One of the concerns raised with the Committee was that there was a potential for Law Enforcement Agencies to use the powers contained in the Unexplained Wealth Legislation to target 'mums and dads with money under the bed'. This will not be the case, the Northern Territory Police confirm that these investigations are protracted and remain heavily resource intensive, involving a full financial analysis of a persons wealth, not just the money under the bed.

  Northern Territory Police note that the committee is looking at putting a $25,000 minimum on Unexplained Wealth. At present the Northern Territory Police do not have a minimum, but in assessing an investigation prior to Supreme Court proceedings the NT Police tend to view $100,000 as a baseline. This is not a business rule and there is nothing to preclude an action against a lower amount.

- **Minimising the need to prove a Commonwealth Offence.**

  Response: The Northern Territory Police do not support the linking of proceedings to any offence. The potential to make another level of proof that would also provide a further safety net to organised crime to diversify their wealth into the custody of people with no criminal record or who are not directly involved in any offending.

- **Amending search warrant powers.**

  Response: It would appear that this is an operational issue for the Australian Federal Police and does not directly affect the Northern Territory. In addition to the powers of Section 34 warrants in the Northern Territory, there are a large number of additional powers under Section 36 that can be utilised, which include compelling a person to provide information as to where property liable to forfeiture is located.

- **Enabling the ATO to receive intercept information.**

  Response: The Northern Territory Police are supportive of any amendments to legislation that would provide a cohesive working relationship between the ATO and Police jurisdictions to disrupt organised crime.

- **Option for dispute resolution.**

  Response: At least two unexplained wealth matters have involved settlement conferences and all have been resolved prior to going to hearing. The Northern Territory Police remain flexible in the acceptance of evidentiary material provided by respondents, and it has been noted during these conferences that respondents seem reluctant to go to hearing and spend significant amounts of their wealth on defending something that they cannot prove. Given the legal cost value that is often in addition to the forfeiture amount sought the Northern Territory Police expect that most matters will continue to be resolved at conference levels.

- **Preventing legal expenses being met from restrained property.**

  Response: The Northern Territory legislation prevents this under section 154 of the Criminal *Property Forfeiture Act (NT).* Having said this, it allows for Legal Aid to be provided in these circumstances, with their fees being paid back to them by the Government. It was rightly pointed out to the Committee that in the past the property under restraint was dissipated during legal proceedings so that there was nothing left to forfeit. It should be noted that our Judges in the Northern Territory now look at not restraining certain property so that legal expenses can be met. It was clearly highlighted as an option in a recent application for restraint by Justice Mildren. Justice Mildren intended to leave at least $45,000, if not $90,000 out of a restraining order for this exact purpose. The Northern Territory is now reviewing the legislation in this area in order to prevent this from becoming normal practice. It would be recommended to the Commonwealth to ensure this is negated from the outset.

- **Setting up special courts or judges.**

  Response: This would be supported by the Northern Territory as there have been inconsistencies in the application of the legislation by various courts. Having a specialised court or dedicated Judge would allow for a far more consistent process in these matters.

- **Establishment if a threshold below which unexplained wealth matter must satisfy additional test, or cannot be prosecuted.**

  Response: As previously stated, there should be no specific legislative threshold and each matter should be assessed on its merits. At present the Northern Territory generally applies a test of $100,000.

- **Removing the requirement to meet an evidence threshold twice.**

  Response: The Northern Territory would recommend that this not be considered further. The elements of proof already required place enough onus on the prosecution that any further thresholds would essentially negate the intention of the legislation.

- **Extending the time limit for notices of preliminary unexplained wealth orders.**

  Response: This is a jurisdictional matter and not something the Northern Territory utilise. Northern Territory Police have interim restraining orders of 3 working days in the first instance and then any amount of time as set by the Supreme Court pending the making of the Unexplained Wealth Declaration. The Northern Territory would recommend consideration of adopting similar processes.

- **Prescription of taskforces under the Taxation Administration Regulations 1976.**

  Response: The Northern Territory Police support the prescribing of taskforces for these purposes as it would remove any ambiguity as to the use of information received from the ATO.

- **Streamlining the implementation of taskforces.**

  Response: The Northern Territory Police support the streamlining of taskforces and believe that they will become an integral part of the ongoing disruption of organised crime groups.

- **Improved international cooperation in relation to unexplained wealth matters.**

  Response: Although there could be some benefits associated with this it would need to be fully analysed in comparison to the resources required to effectively manage this. The Northern Territory has recently encountered difficulties with the Cook Islands and a declared drug trafficker's money that was held in one of their banks. In the Northern Territory a declared drug trafficker, upon declaration, forfeits all property to the Territory (obtained lawfully or not). The Cook Islands would not recognise a Northern Territory forfeiture order as their legislation required we prove the money was 'tainted'.

- **Granting the ability to create and register a charge over restrained property.**

  Response: This is not an option under the *Criminal Property Forfeiture Act (NT)* and as such cannot comment on this.

- **Deeming certain types of unexplained wealth to be unlawfully obtained or treating large amounts of unexplained cash as a criminal commodity.**

  Response: This is not something that has been an issue for the Northern Territory as there has been no criminal test applied to the wealth. If the respondent is unable to prove that it was lawfully obtained then the legislation dictates it to be treated as unexplained and therefore unlawfully obtained.

- **Separating unexplained wealth provisions from PoCA and placing them in stand-alone legislation.**

  Response: The Northern Territory Police would recommend that this is not considered as an option. Most unexplained wealth proceedings in the Northern Territory do not start out as such and are a progression of other investigations and proceedings. Often the catalyst is a major drug prosecution where the proceedings area initiated in relation to 'crime used' or 'crime derived' property and during the course of that independent investigation, unexplained wealth is identified, usually through a criminal benefit. This is found to be more common in actions where there are multiple respondents and could result in situations that have occurred in the Northern Territory, where a respondent is proceeded against in relation to crime used and crime derived property whilst his spouse is proceeded against in relation to unexplained wealth. With two separate acts, this will create confusion and difficulty.

- **Gaps that are being exploited in Australian Jurisdictions**

  Response: It would appear that the non-uniformity of PoCA legislation throughout Australia is providing an avenue for criminal enterprises to use the jurisdictional boundaries to minimise their exposure to forfeiture proceedings. The Northern Territory is also discovering that increasingly people are utilising electronic means to access and transfer wealth. This creates difficulties in this jurisdiction due to not being able to execute a search warrant on entities that do not have a 'shopfront' in the Northern Territory. It would be recommended to the Commonwealth that in addition to any other potential gaps that a strong focus is given to limiting the avenues of criminal enterprise to utilise electronic means circumvent or deflect the intent of the legislation.

- **Development of arrangements to enable the sharing of proceeds by non-participating States and Territories.**

  Response: The Northern Territory supports any arrangements that provide for holistic approach to the pursuit of unexplained wealth.

- **Harmonisation of Commonwealth and State and Territory laws, considering options such as developing a set of guiding principles for unexplained wealth laws, model legislation, referral of powers, or international linkages.**

  Response: This will be an obvious next step in tackling unexplained wealth across Australia. The Northern Territory would submit that in developing any future strategies on this front that the input of smaller jurisdictions be invited and considered. The Northern Territory has already shown that, even as a small jurisdiction, that tackling large scale criminal enterprise can be achieved with well targeted and structured legislation.