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Our Ref: PAD 2009-00851

Mr Peter Hallahan
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hallahan

**Re: Inquiry into the Crimes Legislation Amendment (Serious and Organised Crime)
Bill 2009 [Provisions]**

I refer to your letter dated 17 July 2009 regarding the abovementioned inquiry, and thank you for allowing us further time in which to comment.

The Victorian Director of Public Prosecutions supports the broad aims of this legislation as a means of assisting combating organized crime.


In particular the Director wishes to make the following comments in respect of the asset confiscation/unexplained wealth provisions in the Bill:

1. "Unexplained wealth" provisions in the form proposed may not adequately strengthen the Proceeds of Crime regime for a number of reasons:
 - (a) In order to satisfy the threshold requirement for obtaining a restraining order the Commonwealth DPP ("CDPP") would require much more detailed access to, and understanding of, a respondent's financial affairs than would be likely to be available without the ability to extensively access and analyse information not readily available in the absence of compulsory provision of financial records/history by the respondent;
 - (b) The courts are likely to be hostile to the provision and to insist on a high standard of proof before granting an application under this provision; and
 - (c) In the absence of detailed knowledge of the respondent's financial affairs, the CDPP would potentially be exposed to a claim for significant damages if a respondent was able to present evidence to a court purporting to show the lawful antecedents of acquired property, if the CDPP had no means to rebut such evidence.

2. One of the most effective ways of removing proceeds of crime from criminals is to be able to "follow the money". Police need the forensic accounting resources to trace the flow of money from the commission of a crime or from the criminal, and the CDDP needs to have access to forensic accounting resources to prepare for the often robust litigation involved in defending exclusion proceedings.
3. The forensic accounting resources required by the police are primarily directed towards establishing whether a crime has occurred and how far it has extended, whereas the forensic accounting resources required to litigate exclusion proceedings are primarily required to analyse and rebut financial material filed by applicants for exclusion. Accordingly, it would be more effective to provide both police and CDDP with appropriately trained financial analysts/investigators.
4. Experience in Victoria suggests that there may be greater efficiencies achieved if police and proceeds litigators worked more closely together, possibly as part of a single agency.
5. The relationships with other agencies such as the ATO and Centrelink need to be better defined. At present there are, for example, no clear rules concerning the litigation of proceeds of crime matters where the ATO also has an interest.
6. There are good reasons why the Commonwealth-State jurisdictional divide should be examined with a view to determining whether the Commonwealth and the States and Territories could more closely integrate Proceeds of Crime investigations and enforcement, given that criminals attempting to put criminally-derived assets beyond the reach of law enforcement agencies pay no regard to jurisdictional limits.
7. One way this might be achieved is to look at Uniform legislation. At present there are varying provisions between jurisdictions.
8. As an example, the Commonwealth and Queensland civil forfeiture provisions allow the applicant for a restraining order to restrain either property reasonably suspected of being derived from or tainted by serious criminal activity, or to restrain the property of a person reasonably suspected of being involved in serious criminal activity. In Victoria on the other hand the civil forfeiture provision is more restrictive, only permitting the Victorian DPP to seek restraint of property reasonably suspected to be tainted (but not the property of a person reasonably suspected of being involved in serious criminal activity).

Should you have any queries in relation to this submission, please do not hesitate to contact me on (03) 9603 7421.

Yours faithfully,



Peter Byrne
Principal Solicitor
Policy and Advice Directorate