

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 2.1

Question No. 40

Senator Ludwig asked the following question at the hearing on 14 February 2006:

a) How much has been recovered under the Proceeds of Crime Act?

Please indicate (update from previous figures ending last September):

b) Where have these funds been allocated in terms of grants and programs?

c) How much has been allocated in each grant or program?

d) Indicate the amount of assets restrained that were subsequently not recovered?

For this, could you provide a breakdown indicating:

i) How much was restrained, and then not able to be recovered due to a lapse of time.

ii) How much was restrained, and then returned to the owner (indicate reason)

The answer to the honourable senator's question is as follows:

a) As at 31 March 2006 \$17.6 million had been recovered under the *Proceeds of Crime Act 2002*. (Note: this is not the total amount that is receipted to the *Confiscated Assets Account*. The CAA also receives amounts under the *Crimes Act* (\$40,893), the *Customs Act* (\$323,108), the *Mutual Assistance Act* (\$97,262), and *Equitable Sharing* (\$2,053,134 – from USA).

b) & c) To date funding of \$9.4 million has been allocated to Australian Government programs (primarily law enforcement/crime prevention measures), and \$3.76 million to community programs (primarily drug treatment/diversion measures), and \$0.737 million under the equitable sharing program (\$94,622.74 to QLD Police, \$642,540.46 to Indonesia).

(Note: The AGD has also received \$123,806 for management of community programs).

\$107,778.54 has been provided from the CAA under the Act to ITSA for administration and official trustee costs.

The 14 Australian Government programs are as follows:

- **The Australian National Child Offender Register (ANCOR)** operated by CrimTrac, received \$713,333 to fund the development of a national consistent approach to child protection offender registration. Funding received under the POCA makes up one third of the total development funding for this project, with the remainder being provided by the states and territories.
- **Firearms Management System Scoping Study**, managed by the Attorney-General's Department, will receive \$1.0 million to fund the development of a system to provide (i) the ability to detect movement of illegal firearms into Australia and between jurisdictions, (ii) early identification of trends in firearms supply and use, (iii) better coordination of law enforcement efforts, (iv) people with a legitimate use of firearms will be able to travel more easily between jurisdictions, and (v) improving Australia's ability to meet its international firearms commitments.

- **Enhanced IT Intelligence Functionality** project will provide \$1.0 million to the Australian Federal Police to upgrade their high-tech computer systems to improve their ability to sift through large databases to extract intelligence, linkages and other information to enhance the prevention and investigation of criminal activity.
- **CCTV Upgrade at Australian International Airports** will provide \$890,000 to the Australian Customs Service to upgrade its closed circuit television (CCTV) capabilities at Adelaide, Darwin, Brisbane, Perth, Gold Coast and Cairns International Airports by providing wide-angle surveillance and digital video recording capabilities.
- **ATO Document Verification Study**, managed by the Attorney-General's Department and the Australian Taxation Office, will receive \$508,574 to undertake an empirical study of the Proof of Identity (POI) information provided by a sample of customers applying for tax file numbers with the Australian Taxation Office. The study will have implications for wider whole-of-government identity security measures.
- **Review of the *Extradition Act 1988*, the *Mutual Assistance in Criminal Matters Act 1987*, and intensive bilateral treaty negotiations**, managed by the Attorney-General's Department, will receive \$1,119,347 to significantly enhance Australia's capacity to cooperate with other countries to enforce the law where alleged offenders and evidence are located in a foreign jurisdiction. Extradition and mutual assistance in criminal matters are essential to effectively combat terrorism and transnational organised crime, including people smuggling, trafficking (in persons, firearms and illicit drugs), money laundering and corruption.
- **Croc Festivals**, managed by the Department of Health and Ageing and operated by Indigenous Festivals Australia, received \$105,000 to support the 2005 festival program.
- **In-Car Computing**, managed by the Australian Federal Police - \$394,000 was approved to accelerate in-car computing research and development from the concept to application stage.
- **Drug Use Monitoring in Australia**, managed by the Australian Institute of Criminology, received \$360,000 to continue extend data collection of drug use by police detainees to a new site in Darwin and another in Melbourne.
- **Lost and Stolen Documents Register**, managed by the Australian Crime Commission - \$33,950 was approved to conduct a feasibility study into the establishment of a lost and stolen document register for proof of identity documents to assist victims of identity theft and mitigate the risk of further compromise of their identity for criminal purposes.
- **18th International Symposium on the Forensic Sciences** – \$60,000 was granted to the National Institute of Forensic Sciences to assist in the funding of the Symposium.
- **Reform of Measures to Combat Money Laundering and the Financing of Terrorism** - \$1,919,419 was allocated to AUSTRAC to engage in reform of measures to counter money-laundering and the financing of terrorism.
- **Improved Closed Set DNA profiling** - The National Institute of Forensic Sciences (NIFS) has received \$900 000 to fund research into the possible development of a fresh approach to DNA profiling in situations where there is a closed set of subjects (such as identification of victims of mass disaster). The near-perfect accuracy required for some circumstances, such as criminal prosecutions, is costly and time-consuming. NIFS, in partnership with Forensic Sciences South Australia and the Flinders University, will seek to develop a process for

closed set DNA profiling which, by having a lesser, more appropriate standard of accuracy, will be quicker and more cost-effective.

- **Firearms Theft Monitoring Program**, managed by the Australian Institute of Criminology, will receive \$400,000 to undertake a long term Firearms Theft Monitoring Program to assist in identifying changes in the nature and extent of firearms theft, and provide valuable support for the future development of policy on firearms theft in Australia.

The ten community programs funded under the Act are:

- **The Youth Outreach Drug Treatment** program, operated by the Grampians Community Health Centre, will receive \$258,331 to provide innovative rural youth drug treatment and prevention services in the Wimmera and Central Grampians regions of Victoria.
- **The Pre-Program and Re-Entry Program**, to be managed by the Forster Foundation for Drug Rehabilitation inc (trading as Banyan House), will receive \$304,183 to help fund a 20 bed residential withdrawal and rehabilitation facility which caters for Aboriginal and non Aboriginal men and women experiencing substance misuse problems in the Northern Territory.
- **The Carinya Halfway and Aftercare Program**, to be managed by the Wollongong Crisis Centre, will receive \$141,894 to help provide supported accommodation in the Wollongong region of NSW for people with a history of illicit drug dependence who may also be suffering from a mental health disorder.
- **The Youth Options Program**, operated by Drug Arm WA, will receive \$150,000 to help provide assistance to young people in WA to enable them to improve their life and work skills and make a positive contribution to the community by providing mentoring and other support to young people at risk of criminal offending, substance abuse and social exclusion.
- **The 2 to 1 Program**, to be managed by UnitingCare Wesley Adelaide, will receive \$330,341 to help support people within the inner city of Adelaide SA, who have long term illicit drug and mental health concerns and will provide both group and individual treatment to individuals with a long term substance abuse history.
- **The AMEND Program (Assisting Mothers to End the Need for Drugs)**, operated by St Luke's Nursing Service, will receive \$218,367 to help establish a home based relapse prevention and management service for pregnant and parenting women on the Gold Coast, QLD, and will help women who experience problems relating to their use of illicit drugs and who find it difficult to access mainstream drug and alcohol services.
- **The Lifestyle Support Program**, managed by The Buttery Inc, will receive \$385,800 to help treat people with co-existing mental health and illicit drug dependence issues in the Northern Rivers area of NSW, to provide a sustainable long term reduction in the use of illicit drugs in the Northern Rivers community.
- **Wesley Rehabilitation Services** managed by Wesley Mission - \$660,000 was approved to provide 10 additional beds at its abstinence-based residential program in South West Sydney.
- **Brisbane Home and Community Based Illicit Drug Treatment Service** managed by OzCare (formerly St Vincent Community Care) - \$652,100 was approved to provide a non residential integrated drug rehabilitation service in Brisbane.

- **Odyssey Peninsula Short Term Engagement Program** managed by Odyssey House - \$666,000 was approved to provide short term residential accommodation and case management services in the Frankston and Peninsula regions of Victoria.

This information is regularly updated and available at www.crimeprevention.gov.au .

d) The Commonwealth Director of Public Prosecutions (CDPP) advises that property is restrained under the Act to preserve property at a very early stage of proceedings so that after further investigation, if confiscation orders or automatic forfeiture of property occurs, the specified property will be available for forfeiture or to be used to satisfy pecuniary penalty orders.

It is not possible to provide a precise figure of amounts restrained or amounts which are yet to be recovered. While the CDPP attributes values to restrained property, CDPP figures are estimates which are subject to regular re-assessment as more detailed information regarding the value and ownership of restrained assets is obtained (e.g. an encumbrance on a property).

An appreciation of how much property has been released from restraint but not subject to recovery can be obtained from the following (as calculated on 7 February 2006):

- the total value of assets restrained by the CDPP in the period from the commencement of the Act to 31 December 2005 was estimated to be approximately \$187 million
- the estimated value of assets restrained by the CDPP as at 31 December 2005 was approximately \$128.8 million
- these figures suggest that during the period 1 January 2003 to 31 December 2005, property valued at approximately \$58.2 million which had been restrained became unrestrained
- in the period to 31 December 2005, approximately \$16.5 million of the \$58.2 million had been recovered through action commenced under the Act. (Property which has been forfeited to the Commonwealth and been released from restraint may still be in the process of being realised and would not be included in this figure).
- the difference between \$58.2 million and the approximate amount recovered up until 31 December 2005 is approximately \$41.7 million.

In response to the specific sub-questions d (i) and (ii):

(i) How much was restrained, and then not able to be recovered due to a lapse of time?

Restrained property does not become incapable of confiscation due to the mere lapse of time.

(ii) How much was restrained, and then returned to the owner (indicate reason)?

Restraint of property prevents assets being dealt with in particular ways. Neither title in, nor custody of the property passes to the Commonwealth unless and until such time as a final order is made or the property is realised to satisfy a debt to the Commonwealth following an order under the Act. Accordingly, should property become released from restraint, it is not 'returned' to the owner. Instead, the owner's rights to deal with that property become free from restraint by the CDPP.

As noted above, estimates suggest that during the period to 31 December 2005, restrained property valued up to approximately \$58.2 million was released from restraint. Of this, approximately \$16.5 million has been recovered by the Commonwealth. Not all of the remaining property (valued at approximately \$41.7 million) would have remained in the custody of the owners. Some of the property may have been the subject of a substantiated third party claim and was released to that third party or disposed of to satisfy that claim.

Some of the reasons why property might be released from restraint include:

- investigations may reveal that particular items of restrained property owned have been lawfully acquired by the suspect
- a court may order that particular items of restrained property are released (e.g. due to a successful exclusion application)
- the CDPP or a court may determine that a confiscation order can be met out of other items of restrained property
- if the confiscation action is based on a criminal prosecution of the suspect, that prosecution may be discontinued, or may be unsuccessful with the result (in the absence of any other action under the Act) that the property is released from restraint by operation of statute
- civil-based confiscation action in relation to the property may be unsuccessful, may not be possible or may be determined by the CDPP to have no reasonable prospects of success, and
- the CDPP may determine that the net value of part or all of the relevant property makes it inappropriate to expend further Commonwealth resources.

Without a review of each individual matter, the CDPP is not in a position to state neither what amount was released nor the reason for its return.