

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

**Question No. 147**

**Senator Ludwig asked the following question at the hearing on 31 October 2006:**

For the years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06:

- (a) How many restraining orders were issued in each year?
- (b) Of those restraining orders, how many resulted in: (i) A forfeiture order; and (ii) A pecuniary penalty order.
- (c) How many restraining orders did not result in any type of final order? Why not?
- (d) Provide a breakdown of all forfeiture orders made, indicating: (i) the offence for which the order was made; (ii) the amount that was restrained under forfeiture; and (iii) whether all of that amount was eventually confiscated.
- (e) Provide a breakdown of all criminal confiscation recoveries for which a forfeiture order was made, indicating the (i) offence for which the confiscation occurred; and (ii) amount was confiscated.
- (f) Provide a breakdown of all civil confiscation recoveries for which a forfeiture order was made indicating the (i) the offence for which the confiscation occurred; and (ii) amount confiscated.”

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

The *Proceeds of Crime Act 2002* (POCA) commenced on 1 January 2003. Figures are provided from that date.

(a) Restraining orders issued under POCA:

	2002/03	2003/04	2004/05	2005/06
<b>Number of restraining orders issued</b>	35	107	173	74

(b) Orders and forfeitures under POCA:

Orders and forfeitures	2002/03	2003/04	2004/05	2005/06
<b>Pecuniary Penalty Orders</b>	2	6	16	21
<b>Automatic forfeitures</b>	0	10	18	24
<b>Forfeiture orders</b>	10	49	56	37

These record orders and forfeitures made in each year. Some of the orders and forfeitures made may be in matters where a restraining order was obtained in a previous year.

(c) Since the POCA commenced operation on 1 January 2003, it is estimated that there have been 35 matters in which restraining orders were made where there were no final orders in that matter. As at 30 June 2006, there were 179 restraining orders still in force.

Reasons why property may be released from restraint without a final order being made include:

- further investigations may reveal:
  - suspected criminal activity cannot be established; and/or
  - the restrained property was lawfully acquired by the suspect;
- a suspect may himself or herself produce evidence which establishes the above;
- the parties may agree to discontinue proceeds of crime action in favour of some other available remedy; and
- a related prosecution may be discontinued or unsuccessful.

(d) Forfeiture orders are made under sections 47, 48 and 49 of POCA. Upon forfeiture, forfeited property vests in the Commonwealth.

The estimated amounts forfeited under POCA, broken down by offence type, are set out below. These figures do not include amounts subject to automatic forfeiture and pecuniary penalty orders. All figures provided are to the nearest \$1,000.

**2002-03**

	<b>Number</b>	<b>Value</b>
Fraud	3	\$18,000
Drugs	3	\$5,000
Laundering	5	\$131,000
Other	1	\$2,000

**2003-04**

	<b>Number</b>	<b>Value</b>
Fraud	18	\$886,000
Drugs	11	\$1,656,000
Laundering	21	\$2,101,000

**2004-05**

	<b>Number</b>	<b>Value</b>
Fraud	28	\$890,000
Drugs	13	\$467,000
Laundering	10	\$354,000
Other	5	\$1,000

**2005-06**

	Number	Value
Fraud	8	\$747,000
Drugs	9	\$1,103,000
Laundering	14	\$365,000
Corporations	1	\$702,000
Other	5	\$533,000

Amounts recovered under forfeiture orders are set out in answers to e) and f).  
Recovery amounts are provided by ITSA.

(e) Conviction based forfeitures are made under section 48 of POCA. Recoveries pursuant to such orders, broken down by offence type, are set out below. Some of the recoveries made may be related to matters where the forfeiture order was obtained in a previous year. These figures do not include amounts recovered pursuant to automatic forfeiture and pecuniary penalty orders. All figures are to the nearest \$1,000.

**2002-03**

	Conviction based Value
Laundering	\$58,000

**2003-04**

	Conviction based Value
Drugs	\$20,000
Laundering	\$176,000

**2004-05**

	Conviction based Value
Fraud	\$353,000
Drugs	\$6,000
Laundering	\$317,000
Other	\$2,000

**2005-06**

	Conviction based Value
Fraud	\$230,000
Drugs	\$7,000
Laundering	\$174,000
Other	\$2,000

Recovery amounts are provided by ITSA

(f) Civil based forfeiture orders are made under sections 47 and 49 of POCA. Recoveries pursuant to such orders, broken down by offence, are set out below. Some of the recoveries made may be related to matters where the forfeiture order was

obtained in a previous year. These figures do not include amounts recovered pursuant to pecuniary penalty orders. All figures are to the nearest \$1,000.

**2002-03**

	Civil based Value
Fraud	\$17,000

**2003-04**

	Civil based Value
Fraud	\$210,000
Drugs	\$732,000
Laundering	\$1,355,000

**2004-05**

	Civil based Value
Fraud	\$536,000
Drugs	\$674,000
Laundering	\$150,000

**2005-06**

	Civil based Value
Fraud	\$243,000
Laundering	\$398,000
Corporations	\$694,000

Recovery amounts are provided by ITSA.