

RECOMMENDATIONS

Recommendation 1

3.22 The committee recommends that the objects of the *Proceeds of Crime Act 2002* be amended so as to include a statement about undermining the profitability of criminal enterprise, including but not limited to serious and organised crime. Such a statement should be drafted in such a way to avoid causing unnecessary complication of unexplained wealth proceedings.

Recommendation 2

3.78 The committee recommends that Commonwealth Government explore the possibility of amending legislation to allow the Australian Crime Commission Board to issue a determination on unexplained wealth, so as to enable the Australian Crime Commission to use its coercive powers to provide evidence in support of unexplained wealth proceedings.

Recommendation 3

3.80 The committee recommends that the *Australian Crime Commission Act 2002* and the *Proceeds of Crime Act 2002* be amended as necessary to make clear that the Australian Crime Commission's examination material can be used as evidence in proceedings under the *Proceeds of Crime Act 2002*.

Recommendation 4

3.96 The committee recommends that the *Proceeds of Crime Act 2002* be amended so as to enable an ACC examiner to conduct examinations in support of unexplained wealth proceedings after a restraining order has been made by a court.

Recommendation 5

3.105 The committee recommends that search warrant provisions of the *Proceeds of Crime Act 2002* be amended so as to allow for the collection of evidence that is relevant to unexplained wealth provisions. The committee's preferred means of amending the provisions would be to amend:

- subsection 228(1) to enable material that is relevant to an unexplained wealth proceeding to be seized during the execution of a search warrant; and
- subparagraph 228(1)(d)(iii) to remove the requirement that the evidential material relate to an indictable offence.

Recommendation 6

3.114 The committee recommends that the Criminal Assets Confiscation Taskforce be prescribed as a taskforce under the *Taxation Administration Act 1953* and associated regulations.

Recommendation 7

3.121 The committee recommends amending the *Telecommunications (Interception and Access) Act 1979* so as to allow the Australian Taxation Office to use information gained through telecommunications interception, in the course of joint investigations by taskforces prescribed under the *Taxation Administration Act 1953*, for the purpose of the protection of public finances.

Recommendation 8

3.140 The committee recommends that the *Proceeds of Crime Act 2002* be amended so as to eliminate the requirement for authorised officers to meet an evidence threshold test for a preliminary unexplained wealth order where the evidence threshold test for a restraining order has already been met. Any amendment should recognise the need to be able to update an affidavit to reflect new evidence as appropriate.

Recommendation 9

3.151 The committee recommends that provision be made for extending the time limit for serving notice of a preliminary unexplained wealth order to accommodate extraordinary circumstances.

Recommendation 10

3.178 The committee recommends that legal expense and legal aid provisions for unexplained wealth cases be harmonised with those for other *Proceeds of Crime Act 2002* proceedings so as to prevent restrained assets being used to meet legal expenses.

Recommendation 11

3.182 The committee recommends that the enforcement provisions for unexplained wealth orders include an ability to create and register a charge over property that has been restrained by the court to secure the payment of an unexplained wealth order.

Recommendation 12

3.197 The committee recommends that the court's discretion to make a restraining or preliminary unexplained wealth order under subsections 20A(1) and 179B(1) of the *Proceeds of Crime Act 2002* be removed in cases where the amount of unexplained wealth is more than \$100 000, so that the court must make the order in cases over \$100 000.

Recommendation 13

3.200 The committee recommends the court's discretion to make an unexplained wealth order under subsection 179E(1) of the *Proceeds of Crime Act 2002* be removed where the amount of unexplained wealth is above \$100 000, so that the court must make the order in cases over \$100 000, and that the following additional statutory oversight arrangements be made:

- law enforcement agencies must notify the Integrity Commissioner of unexplained wealth investigations;
- the Ombudsman must review and report to Parliament the use of unexplained wealth laws in the same way that Ombudsman does for controlled operations; and
- the oversight by the Parliamentary Joint Committee on Law Enforcement be enhanced so that in addition to appearing when required, that the ACC, AFP, DPP and any other federal agency or authority must brief the committee on their use of unexplained wealth provisions as part of the committee's annual examination of annual reports of the ACC and AFP.

Recommendation 14

4.45 The committee recommends that the Commonwealth Government take the lead in developing a nationally consistent unexplained wealth regime.

Recommendation 15

4.67 The committee recommends that the Australian Government seek a referral of powers from the states and territories for the purpose of legislating for a national unexplained wealth scheme, where unexplained wealth provisions are not limited by having to prove a predicate offence.

Recommendation 16

4.88 The committee recommends that the Commonwealth Government actively participate in efforts to establish international agreements relating to unexplained wealth.

Recommendation 17

4.96 The committee recommends that the Commonwealth Government create and commit to a plan for the development of national unexplained wealth scheme including the following elements:

- identification and implementation of short-term measures including cooperation with states with existing unexplained wealth legislation;
- negotiation with States and Territories to create or improve supporting mechanisms such as equitable sharing programs and mutual assistance agreements;
- development of agreed guiding principles around unexplained wealth; and
- a final objective of achieving a referral of powers from States and Territories to enable the Commonwealth to legislate for an effective and nationally consistent unexplained wealth scheme.

Recommendation 18

4.98 The committee recommends that the Commonwealth Attorney-General immediately place the issue of harmonisation of unexplained wealth laws on the agenda of the Standing Committee on Law and Justice.