



**Australian Federal  
Police Association**

Senate Legal & Constitutional  
Legislation Committee

21 January 2002

**Australian Federal Police Association  
Submission for the Committees Inquiry into  
the Provisions of the Proceeds of Crime Bill  
2001**

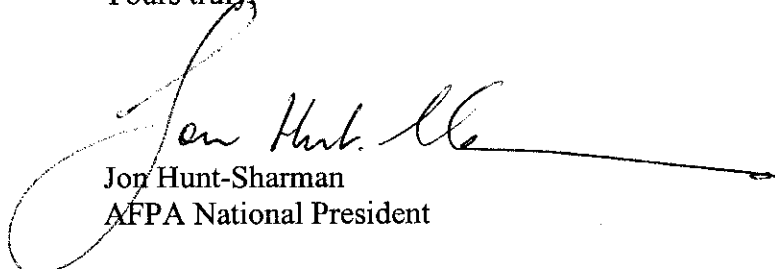


The Australian Federal Police Association (AFPA) submission in essence supports the proposed legislation however there are three areas that we believe the Committee may wish to consider:

- a) **Specific amendments to the proposed legislation in order to further combat transnational organized crime including terrorist organizations;**
- b) **General provisions that could enhance the effectiveness of the legislation;**
- c) **Amendment to the Confiscated Assets Account to allow its use for Law Enforcement purposes.**

Thank you for the opportunity to comment on the proposed legislation. The AFPA would be happy to appear before the Senate Inquiry if you require further information.

Yours truly,



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**a) Specific amendments to the proposed legislation in order to further combat transnational organized crime including terrorist organizations**

The AFPA understands that the Government is considering specific legislation to support the international conventions against terrorism. It is understood that the legislation will include search, seizure and confiscation of assets relating to terrorist activities.

The AFPA submits that terrorism is only a sensationalist title for a criminal activity that is carried out by an organised criminal enterprise. A terrorist activity can be politically or economically motivated. The terrorist group inflicts violent activity to gain influence and power over others.

An organized criminal enterprise does not have to be limited to profit-seeking motives. Although its goals may not be money-driven, the terrorist group, like any other criminal enterprise, needs illicitly obtained money to support itself.

United States Congress defined terrorism as acts that:

1. Involve violent acts or acts dangerous to human life that are a violation of criminal laws of United States..And
2. Appear to be intended
  - i. to intimidate or coerce sections of a civilian population;
  - ii. to influence the policy of government by intimidation or coercion;

or

- iii. to affect the conduct of a government by assassination or kidnapping; ..

In Australia we define Outlaw Motor Cycle Gangs, the Italian and Russian Mafia, the Chinese Triads and the Japanese Yakuza as organised criminal enterprises yet they are well known for their violent acts of terror against individuals, societies and governments.

Our public institutions have already been threatened through extreme acts of violence by organised criminal elements. You will recall the Hilton Bombing, the car bombing outside the Russell Street Police station, the bombing of the NCA building in Adelaide, the assassination of Donald McKay and NSW MLA, Mr John Newman, the numerous "pay back" killings of Police officers and witnesses, and the recent car bombing of Don Hancock and Lou Lewis.

It would seem appropriate to include within this proposed legislation specific criteria to deal with organized criminal enterprises including terrorist groups rather than having separate legislation developed with limited application to terrorist activity only.

There has been debate over the last 20 years in relation to the introduction into Australia of a "Racketeer Influenced & Corrupt Organizations" (RICO) type federal legislation.

In 1983 D.Meagher QC stated

***"One RICO case against a criminal organization leading to the destruction of that organization would outweigh a thousand substantive convictions of the agents of the organization for the individual offences committed".***

In 1984 Mr F.Costigan QC in his final report of his Royal Commission recommended

***"That there be enacted between the Commonwealth and the States, laws similar in nature and to the same effect as RICO".***

In 1989 Mr C.Scott, a senior Assistant Director of the Commonwealth DPP argued that

***"It is more appropriate to amend the (Cmwth) Proceeds of Crime Act to rectify any deficiencies than to adopt RICO".***

In 1991 the Gibbs Committee in its final report into the "Review of the Commonwealth Criminal Law" recommended that

***"RICO style offences should not be considered for adoption in Australia at this stage."***

In 1994 the Report into the "Review of Commonwealth Law Enforcement Arrangements" considered the adoption of RICO legislation in Australia but failed to make a recommendation.

The AFPA believe that the time has now come for the adoption of RICO style offences within the proposed Proceeds of Crime Bill 2001.

There is significant opportunity for this Senate Committee to recommend the introduction of the positive points of RICO legislation into this current Bill before Parliament to ensure that there are appropriate federal offences and penalties for organised criminal enterprises including terrorist organizations.

Currently the Bill distinguishes between the processes available in relation to a “Serious Offence” V’s “Indictable Offence”. This is commendable, but it can limit the effectiveness against true Organised Criminal enterprises.

A pattern of “indictable Offences” should be addressed in a more severe way than where an individual is involved in a single “indictable offence” or even a single “serious offence”.

To resolve this problem, two categories of Racketeering offences could be formulated within this Bill.

### **Category Two Racketeering Offence**

A suggestion for elements of this type of Racketeering offence within the Australian context would be:

- a) one racketeering predicate offence committed within the jurisdiction (i.e. under Commonwealth Law- a Commonwealth indictable offence; and
- b) any other racketeering predicate offence, under any law (Commonwealth, State or overseas); and
- c) that the above offences form a pattern of racketeering.

Note: A racketeering predicate offence includes a blend of Commonwealth and State offences which are traditional organised Crime activity such as murder, kidnapping, extortion, illegal gambling, illicit drug importations & supply, people and weapon smuggling, money laundering, bribery & corruption of public officials etc, but it also includes white collar crime such as insider trading, systematic bank, corporate and public sector fraud etc.

Note: A pattern of racketeering would be where the defendants predicate offences are related or continuous or at least pose the threat of continuity.

### **Category Two Process & Penalty**

The above Racketeering Offence could be subject to greater penalties and harsher forfeiture under the Bill. In such a case the pattern of “Indictable offences” should be treated the same as a “Serious Offence” under the Bill.

### **Category One Racketeering Offence**

A suggestion for elements of a Category One Racketeering offence within the Australian context would be:

- a) one racketeering predicate “Serious Offence” committed within the jurisdiction (i.e. under Commonwealth Law- a Commonwealth “Serious offence as defined under the proposed Bill; and
- b) any other racketeering predicate offence, under any law (Commonwealth, State or overseas); and
- c) that the above offences form a pattern of racketeering.

### **Category One Process & Penalty**

For example, those involved may be fined up to twice the gross profits of the proceeds of the crime under the Pecuniary Penalty Orders. The penalties (fines and imprisonment) for failure to comply with Production, Restraining & Confiscation Orders, and Examination Orders, etc relative to a “Serious Offence” could also be multiplied if a Category One Racketeering Offence is established.

### **RECOMMENDATION 1**

**Include a Category One and a Category Two “Racketeering Offence” within the Proceeds of Crime Bill 2001.**

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### **b) General provisions that could enhance the effectiveness of the legislation;**

The current Bill, although a vast improvement on the current Act, still has limitations in relation to organised criminal enterprises and their business dealings.

The Bill appears to only allow forfeiture of unexplained assets if a “Serious Offence” has occurred.

The AFPA believes that the requirement of a “Serious Offence” is far too limiting, as unexplained wealth should be able to be confiscated even if the predicate offence is an “Indictable Offence”.

The AFPA suggests that the Bill should be amended to reflect the recently introduced Western Australian Criminal Property Confiscation Act 2000.

This Act does not require the existence of a “Serious Offence” to confiscate unexplained wealth.

Under S.4 (a) of the Act Confiscable property includes—

“property equal in value to any amount by which the total value of a person’s wealth exceeds the value of the person’s lawfully acquired wealth (“**unexplained wealth**” — see section 144)”;

Under S.144 of that Act unexplained wealth is defined as:-

- (1) A person has unexplained wealth if the value of the person’s wealth under subsection (2) is greater than the value of the person’s lawfully acquired wealth under subsection (3).
- (2) The value of the person’s wealth is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person’s wealth.
- (3) The value of the person’s lawfully acquired wealth is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit, that both is a constituent of the person’s wealth and was lawfully acquired.

## **RECOMMENDATION 2**

**That “Unexplained wealth” should be able to be confiscated without the requirement of a Serious Offence being identified.**

The AFPA believes that the Bill is could be limited in relation to forfeiture of property linked to organised criminal enterprises.

The Bill needs to ensure the forfeiture includes property, businesses or enterprises acquired by, maintained with or conducted through (but not necessarily derived from) the commission of offences. (E.g. Federal Government contracts for which approval was obtained through bribe, Federal Contract tendering where businesses competitors are scared off by threats of violence or extortion, businesses bought with legitimate funds but propped up with proceeds of offences).

It should also be made clear that businesses used in the process of money laundering are liable to forfeiture (it is not entirely clear in this Bill) and that the business should be forfeited even though the money laundering may not be the primary purpose of the business.

The definition of Financial Institution appears limited and may not pick up “Cash dealers”, “Underground banking” etc which are used by organized criminal enterprises to conceal illicit funds.

**RECOMMENDATION 3**

**That the Bill be amended to ensure that property, businesses or enterprises under the influence of organised criminal enterprises can be forfeited.**

In relation to financial institutions again there is an opportunity to ensure that organized criminal enterprises, including terrorist organizations have to fear the cooperation between Australia's financial institutions and law enforcement. In doing so we must also protect those financial institutions for that increased cooperation.

A section could be added to this Bill as follows:

***"If a financial institution has reasonable grounds to suspect that information it has about a client of the institution***

- a) might identify a serious offence;*
  - b) might identify a racketeering offence; or*
  - c) might otherwise be of assistance in the enforcement of this Act;*
- the financial institution is obliged to give this information to a Law Enforcement Agency.*

*Further, that no action or suit or proceeding can be taken against the Financial Institution or its employees acting in the course of their employment in relation to supplying that information to a Law Enforcement Agency.*

**RECOMMENDATION 4**

**That the Bill includes a Financial Institution obligatory reporting requirement in relation to suspicious information it has about clients that might identify "Serious Offences or Racketeering Offences.**

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**c) Amendment to the Confiscated Assets Account to allow its use for Law Enforcement purposes.**

The current Bill appears to be limited on the use of assets confiscated by the Commonwealth. It would be unfortunate if the Bill does not direct the use of these funds for law enforcement related purposes.

The AFPA requests that the Senate Committee consider the inclusion of a Section in the Bill similar to the Western Australian Criminal Property Confiscation Act 2000.

The suggested Section would come within S.294 Chapter 4 Part 4-3  
**“Payments out of the Account”** and would read:-

- (3) Money may be paid out of the Confiscated Assets Account at the direction of the Attorney General, as reimbursement or otherwise —
- (a) for a purpose associated with the administration of this Act;
  - (b) for the development and administration of programmes or activities designed to prevent or reduce organised crime including drug related criminal activity and the abuse of prohibited drugs;
  - (c) to provide support services and other assistance to victims of crime;
  - (d) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating persons involved in the commission of a confiscation offence;
  - (e) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating confiscable property;
  - (f) to cover any costs of storing, seizing or managing frozen or confiscated property that are incurred by the Police Force, the DPP or a person appointed under this Act to manage the property; and
  - (g) for any other purposes in aid of law enforcement.

#### **CONCLUSION:**

The AFPA hopes that the above comments, although some being controversial, will be considered in the Committees deliberations.

The AFPA welcomes the proposed Bill and congratulates the Government on producing further legislation that will assist federal law enforcement officers investigate serious and organised crime impacting on Australia.

The AFPA suggestions should not be seen as criticisms of the proposed Bill but as constructive comment to enhance the fight against organised crime and terrorism.

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