

CRIMINAL CONFISCATION BULLETIN

*An internal newsletter for agencies involved in implementation of
the Proceeds of Crime Act 2002 (Cth)*

Issue No. 1 – 20 July 2006

OVERVIEW OF THE PROCEEDS OF CRIME ACT 2002 (CTH)

The *Proceeds of Crime Act 2002 (Cth)*, which came into effect on 1 January 2003, provides a comprehensive scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. The purposes of this Act include depriving criminals of the benefits from their offences; punishing and deterring those who breach laws of the Commonwealth; and preventing the reinvestment of criminal proceeds in further criminal activity.

A number of Commonwealth agencies have specific investigative powers under the *Proceeds of Crime Act*, including the Australian Federal Police, the Australian Crime Commission, the Australian Customs Service and the Australian Securities & Investments Commission. Litigation under the Act is conducted by the Commonwealth Director of Public Prosecutions.

"CALG"

The Criminal Assets Liaison Group ("CALG") is a group of Commonwealth agencies established to assist in the implementation of the *Proceeds of Crime Act 2002 (Cth)*. Members of CALG include the Commonwealth Director of Public Prosecutions; the Australian Federal Police; the Australian Crime Commission; the Australian Customs Service; the Australian Securities and

Investments Commission; the Insolvency and Trustee Service of Australia; the Commonwealth Attorney General's Department; and the Australian Taxation Office.

Other individuals and agencies are invited to attend CALG meetings from time to time.

CALG meets once each quarter to discuss issues arising in connection with the implementation of the *Proceeds of Crime Act 2002*.

RECENT CRIMINAL CONFISCATION ACTION

AFP AND ITSA SEIZE PLANES, PROPERTIES & AUTOMOBILE

In April 2006 the Australian Federal Police and the Insolvency Trustee Service Australia made a seizure of more than \$8 million worth of assets of Brisbane businessman Steven Hart.

The seizure is a result of a joint investigation and included ten planes; four aircraft hangers; two residential properties; a farm and a Mercedes Benz.



Federal Agents seize aircraft.

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The seizure followed Mr Hart's conviction in May 2005 on nine counts of defrauding the Commonwealth, and a Queensland offence, for which he was sentenced to a maximum of seven years imprisonment.

Since the date of seizure a number of post-forfeiture applications have been made seeking recovery of a number of items of the forfeited property. As at today's date those applications had not yet been resolved.



Sea Fury seized under proceeds of crime legislation.



Decathlon Champ seized under proceeds of crime legislation.

(Source: AFP Media Release, 18 April 2006.)

IDENTITY CRIME RING DISMANTLED

In May 2006 more than \$490,000 in cash and five computers were seized at offices and residences in Parramatta, Harris Park and St Clair, in connection with an alleged organised identity crime syndicate.

Three men were charged with a series of offences including charges under the *Foreign Passport Act 2002* and the *Criminal Code Act 1995*.

"The possible forfeiture again highlights the importance of the Federal Government's *Proceeds of Crime Act*, which prevents criminals profiting from their crimes" Senator Ellison, the Minister for Justice and Customs said.

(Source: Media Release, Minister for Justice & Customs, 17 May 2006.)

CONFISCATED ASSETS ACCOUNT

Proceeds from property confiscated under the *Proceeds of Crime Act 2002* are deposited into an account established by the Act and known as the "Confiscated Assets Account".

The Confiscated Assets Account is administered for the Commonwealth by the Official Trustee in Bankruptcy, who is given specific responsibilities in relation to management of restrained and forfeited property under the Act.

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Up to 30 June 2006 action under the *Proceeds of Crime Act 2002* had resulted in more than \$21.4 million being deposited into the Confiscated Assets Account.

The Minister for Justice and Customs may approve the expenditure of funds held in the Confiscated Assets Account for a number of purposes, including crime prevention measures; law enforcement measures; measures relating to the treatment of drug addiction; and diversionary measures relating to the illegal use of drugs. A list of programs of expenditure which have been approved by the Minister to date can be found on the Attorney-General's Department website.

DECISIONS

In 2005 the long-running Australian Crime Commission investigation Operation Pelagic came to a conclusion when Ida Ronen, Nitzan Ronen and Izhar Ronen each received significant gaol sentences for conspiring to defraud the Australian Taxation Office.

A positive confiscation outcome was also achieved when the New South Wales Supreme Court ordered the forfeiture of \$209,525 in cash originally seized from the premises of Ida Ronen in February 2001: *DPP (Cth) v Ronen* [2005] NSWSC 990.

Whealy J ruled that the cash represented proceeds of the offence of which the Ronens were convicted. His Honour rejected an argument that the cash was "simply the money that has come from the sale of clothing".

REVIEW OF THE POCA 2002

Section 327 of the *Proceeds of Crime Act 2002* requires that the operation of the Act be reviewed three years after its implementation. Pursuant to that requirement, a review of the Act is currently being undertaken with the following terms of reference:

1. To gather information on the impact of the operation of the Act;
2. To identify and consider any factors which have limited the achievement of the objectives of the Act; and
3. To make recommendations for any changes required to enable the Act to better achieve its objectives.

The review is being undertaken by Mr Tom Sherman AO.

TRAINING

The Australian Federal Police is currently piloting a new Financial Investigations Program training course for AFP staff.

The comprehensive course contains information on a wide range of issues including: ID crime; drafting of affidavits required in proceeds of crime litigation; education regarding tax havens and money laundering legislation; and numerous other topics. The course includes presentations by a range of relevant agencies including AUSTRAC, the Attorney General's Department, and ITSA.

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Jennifer Tracey on 02 [REDACTED] or email the contribution to: [REDACTED]

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RECENT CRIMINAL CONFISCATION ACTION

PROCEEDS OF ALLEGED TOBACCO SCAM RESTRAINED

Operation Havanese is a two-year joint operation between the Australian Federal Police, the Australian Customs Service and the Australian Taxation Office in relation to an alleged multi-million dollar tobacco scam.



*Brisbane property restrained as part of
Operation Havanese.*

The latest development occurred in June 2006, when a Taiwanese couple was arrested and charged with offences relating to the alleged excise duty evasion scheme which involved selling duty free tobacco in Australia.

Operation Havanese has also involved civil-based confiscation action under the POCA 2002, which commenced back in November 2004. This action resulted in the restraint of assets worth millions of dollars including a Brisbane office block, houses and luxury cars.



*Luxury car restrained under proceeds
of crime legislation.*

It will be alleged that the tobacco scam could have cost the Commonwealth Government more than \$10 million in evaded excise duty and that the offences occurred between July 2000 and November 2004.

*(Source: ACS / AFP - media release –
28/7/06)*

PROJECT WICKENBY PROCEEDS OF CRIME ACTION

In July 2005 three company directors were arrested and charged with a conspiracy to defraud the Commonwealth. It is alleged that between 1999 and 2005 the trio received millions of dollars through defrauding the Australian Taxation Office.

Civil-based confiscation action against the trio was commenced in July 2005 and resulted in the restraint of assets with an estimated net value in excess of \$10 million, including real estate, motor vehicles, cash and shares.

Project Wickenby is a multi-agency taskforce set-up in 2004, with funding

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of \$305.1 million over seven years, to investigate internationally promoted tax arrangements that allegedly involve tax avoidance or evasion, and in some cases large-scale money-laundering.'

(Source: Treasurer - media release – 20/7/06)

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PROCEEDS OF CRIME FUNDING FOR CENTRELINK

As part of the Budget handed down by the Commonwealth Government in May 2006 Centrelink received dedicated funding for the purpose of working with the Australian Federal Police and the Commonwealth Director of Public Prosecutions on proceeds of crime matters.

Over the next four years Centrelink will receive funding for eleven staff who will be involved among other things in the development of appropriate business processes, proceeds of crime training, and liaison with the AFP and Commonwealth DPP. A number of preliminary meetings between officers of

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Centrelink and the Commonwealth DPP have already taken place.

Whilst Centrelink already has strong recovery powers, it is hoped among other things that the integration of Centrelink's fraud investigation capability with the proceeds of crime capabilities of other Commonwealth agencies will provide a mechanism to address criminal activity that may not be provable to the criminal standard due to the complexity of the investigation in particular matters.

DECISIONS

Mansfield v DPP (WA) [2006] HCA 38

In July 2006 the High Court of Australia handed down its decision concerning criminal confiscation action taken by the State of Western Australia under the *Criminal Property Confiscation Act 2000 (WA)*.

The central issues were whether the court could decline to make a freezing order if the State DPP declined to give an undertaking as to costs and damages, and whether under the WA legislation the court could allow access to restrained property for the purpose of allowing the owner to pay legal costs.

The WA legislation is different from the POCA 2002 (Cth) in that there is no provision like section 21 expressly permitting the court to require the giving of an undertaking. Secondly, the WA legislation does not expressly prohibit the use of restrained property for the purpose of paying legal costs –

compare section 24 of the Commonwealth Act.

The High Court held by majority (6:1) that: (1) the court could refuse to make a freezing order if the DPP did not offer an undertaking as to costs and damages; and (2) that the court had a discretion to decline to restrain particular property, or to exclude property from restraint, in order to allow the owner of restrained property to meet legal costs.

Although the decision is not directly transferable to the Commonwealth POCA 2002 it is nonetheless of interest in terms of how courts will approach the interpretation of criminal confiscation legislation.

END OF YEAR STATISTICS

The Insolvency Trustee Service of Australia has reported that in the 2005-2006 financial year a total amount of \$12.465 million was paid from confiscated property into the Confiscated Assets Account. The total amount paid into the Account since 1 January 2003 was \$23.961 million.

UPCOMING

The Commonwealth DPP and the Insolvency Trustee Service of Australia have announced plans to conduct an inter-agency workshop in September 2006 to discuss cooperation between the two agencies and issues arising from recent cases.

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AUSTRALIAN TAXATION OFFICE NOW AN “ENFORCEMENT AGENCY” UNDER POCA 2002

On 5 October 2006 the *Proceeds of Crime Amendment Regulations 2006* (No 4) came into effect, declaring the Australian Taxation Office to be a “revenue agency” and an “enforcement agency” for the purposes of the POCA 2002.

The definition of “authorised officer” was also amended to include ATO officers who have been authorised by the Commissioner of Taxation for the purposes of the POCA 2002.

By virtue of the Regulations ATO officers authorised by the Commissioner will now have power to swear affidavits in support of applications for restraining orders, and to apply for production orders, POC search warrants, and monitoring orders.

REPORT ON THE REVIEW OF THE PROCEEDS OF CRIME ACT 2002 (CTH)

On 18 October 2002 the Minister for Justice & Customs Senator Ellison tabled in Parliament “the Sherman report” – an independent report by Mr Sherman AO reviewing the operation of the *Proceeds of Crime Act 2002*.

The review was carried out pursuant to section 327 of the Act, which required that the Act’s operation be reviewed as soon as practicable after the third anniversary of the commencement of the Act, which was on 1 January 2006.

Two of the many findings of the report were that the POCA 2002 has been more effective in attacking the proceeds and instruments of crime than its predecessor (the POCA 1987); and that recoveries under the POCA 2002 to date have been 45% higher than the average annual recoveries under the POCA 87.

In addition Mr Sherman AO found that there were nonetheless a number of “impediments to the effective operation of the Act”, and as a result put forward “a large number of recommended changes to the Act”.

The Commonwealth Attorney-General’s Department has indicated that a

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Government response to the report will be prepared.

A copy of the Sherman Report is available on the Attorney-General's Department website.

RECENT CRIMINAL CONFISCATION ACTION

WA PENTHOUSE FROZEN

In August 2006 the Supreme Court of Western Australia made orders under the Proceeds of Crime Act 2002 (Cth) restraining a top-floor penthouse in Perth's Mount Street apartment complex. The Commonwealth DPP alleged that the



The Mount Street apartment complex

penthouse was suspected of being proceeds of a \$20 million international fraud on a German bank. The restraining

order was obtained using information obtained by German investigators.



Penthouse suspected of being proceeds of crime

(Source: CDPP)

'SUPERANNUATION CASHBACK' PROMOTER FORFEITS PROPERTY

The promoter of an early release superannuation scheme has been ordered by the NSW Supreme Court to forfeit property to the Commonwealth following charges brought by the Australian Securities and Investments Commission.

The orders concluded proceedings against Mr Andre Michalik brought by the Commonwealth DPP under the *Proceeds of Crime Act 2002* after an investigation by ASIC into his financial services business between October 2003 and June 2004.

Mr Michalik had been engaged in advertising to consumers a scheme offering early access to their superannuation for a commission. ASIC's investigation found that Mr Michalik submitted documents to superannuation companies falsely stating that his clients were rolling their superannuation savings into another superannuation fund. He then

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intercepted the cheques and retained a proportion of the proceeds for his own use.

The orders require Mr Michalik to forfeit his interest in an investment in \$5,720,000 market linked Euro Medium Term Notes held by Citibank, Hong Kong, and other assets including a Cruisers Inc 1998 fibreglass motor cruiser purchased in March 2004 for \$278,000, approximately AUD\$1 million held in Citibank accounts in Hong Kong, and \$71,695 in cash.

“This result should send a clear and unequivocal message to anyone who may be thinking about defrauding the superannuation system”, ASIC’s Deputy Executive Director of Enforcement, Mr Allen Turton said.

“Fraudsters should understand that when they set out to commit offences against the system they are no just risking jail, but also putting their assets on the line.”

(Source: ASIC Media Release dated 29 August 2006)

FORMER ATO CONTRACTOR FORFEITS PROPERTY

On 25 August 2006 the ACT Supreme Court made orders forfeiting the property of an Information Technology contractor previously engaged by the Australian Taxation Office in Canberra.

The man had been charged with 47 fraud-related offences after he allegedly accessed personal information illegally whilst working for the ATO. The man allegedly used the information to establish a number of self-managed

superannuation funds, forge documents, and then misappropriate superannuation funds from the Commonwealth in an amount exceeding \$350,000.

The IT contractor consented to orders in the ACT Supreme Court forfeiting properties in Canberra and Melbourne, and more than \$26,000 held in bank accounts.

(Source: AFP Media Release dated 3 August 2006/CDPP)

ACC SEIZES ASSETS OF ALLEGED DRUG & MONEY-LAUNDERING SYNDICATE

A task force led by the ACC, and also involving the AFP, Victorian Police, NSW Police, NSW Crime Commission, ATO, Customs and AUSTRAC resulted in October in the disruption of a major money laundering and drug trafficking syndicate.

Over a 3-week period Task Force Gordian saw the arrest and charging of a total of 57 people for offences relating to the alleged laundering of in excess of AUD \$93 million and for drug and other offences. In addition five firearms, 9



Luxury motor vehicle seized by ACC

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vehicles, and \$2 million in cash have been seized and assets worth several million dollars have been restrained.

ACC Chief Executive Alistair Milroy said Task Force Gordian's focus on money laundering is achieving results.

'We have disrupted the activities of over 6 separate syndicates and various financial facilitators relating to the laundering of what is alleged to be approximately \$93 million dollars. Our focus has been on dismantling the business and infrastructure of organised crime groups and these money launders. The results are most encouraging.'



\$120,000 cash seized from Sydney premises.

Chair of the ACC Board, Mick Keelty said:

'This operation has significantly disrupted the activities of an organised syndicate allegedly involved in a range of criminal activities. By seizing proceeds of crime we remove the incentive to commit further offences and reduce the syndicate's operating resources'. (Source: ACC Media Releases dated 7, 12 & 27 October 2006)

ACS CONFISCATES PROFITS FROM TOBACCO SCAM

In September 2006 the Australian Customs Service investigated a 33 year old Vietnam Airline's crew member for diverting duty free goods to the domestic market. The defendant was found guilty and was subsequently ordered to pay almost \$10,000 in costs, fines and duty repayments. The Australian Customs Service also used *Proceeds of Crime* legislation to seize profits of nearly \$6,000 that were gained by the crew member.

The crew member attempted to leave Australia on 16 September 2006 when Customs officers at Melbourne Airport detected anomalies in the duty free items that were being carried. On closer inspection, Customs officers established that the packages supposedly containing duty free cigarettes and tobacco had been substituted with fruit and cardboard.

(Source: Customs Media Release dated 21 September 2006)

DECISIONS

DPP v Page & Ors [2006] VSCA 224

In this matter the DPP (Cth) appealed against sentences imposed on the defendant page for Commonwealth offences, while the DPP (Vic) also appealed against the sentences imposed on him for State offences.

Page had pleaded guilty to numerous theft, and fraud offences committed whilst he was a senior executive with Australia Post. The total loss caused to

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Australia Post over 4 years had been in excess of \$135,000.

In addition to the above Commonwealth offences Page had committed State offences involving the receipt of corrupt benefits from a business to which he had diverted panel-beating work.

An effective head sentence of 4 years was imposed on Page with an order that he be released on recognisance after serving 4 months. Page was also ordered to pay a pecuniary penalty order under the *Proceeds of Crime Act 2002* of \$105,000, which was paid by Page.

On appeal it was contended by the CDPP, among other things, that the primary judge had given too much weight to Page's cooperation in resolving the proceeds of crime proceedings (pursuant to section 320(a) of the POCA 2002), and had incorrectly found that Page had not benefited from his crimes.

The Victorian Court of Criminal Appeal upheld the DPPs' appeals and increased the non-release period for the defendant to 18 months. In relation to the issue of Page's cooperation in paying the PPO, the Court held that:

- Payment of a PPO does not reduce the criminality of the offender; and
- The primary judge had been wrong to find that the defendant had made no gain by his action (he had, at least, gained the benefit of fraudulently obtained goods and services over a considerable period of time).

FIRST QUARTER STATISTICS

The Insolvency Trustee Service of Australia has reported that in the first quarter of the 2005-2006 financial year a total amount of \$2.67 million was paid from confiscated property into the Confiscated Assets Account.

RECENT EVENTS

- *ATO POC Workshop:* On 8 November 2006 the Australian Taxation Office held a Proceeds of Crime Workshop at its Hurstville Office in Sydney in order to consider the design of a viable proceeds of crime business model for the ATO. The workshop was attended by representatives from the ATO, the Australian Federal Police and the Commonwealth DPP.
- *CDPP/ITSA Workshop:* The Commonwealth DPP and the Insolvency Trustee Service conducted an inter-agency workshop on 22 November 2006 to discuss cooperation between the two agencies and issues arising from recent cases. The workshop was initially scheduled for September 2006 but had to be postponed due to operational requirements.

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Jennifer Tracey on [redacted] or email the contribution to: [redacted]

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PHOTO AUSTRALIAN CUSTOMS SERVICE

when Customs officers at the Sydney Mail Handling Centre detected three parcels containing liquid testosterone. Further parcels were intercepted in September 2006.

All of the seized substances are prohibited under the *Customs (Prohibited Imports) Regulations*.

Source: ACS Media Release dated 1 December 2006

FURTHER POC ACTION TO BE CONSIDERED BY TASKFORCE GORDIAN

RECENT CRIMINAL CONFISCATION ACTION

CUSTOMS SEIZE CASH, STEROIDS

In November 2006 Customs officers disrupted a major steroid distribution racket, after raiding several premises around Brisbane. \$150,000 cash, alleged to be the proceeds of crime, was seized as well as 3 litres of testosterone and more than 200 vials of alleged illegal performance and image enhancing drugs.

The investigation began in July 2006

Further arrests have been made in Melbourne and Sydney in relation to the Taskforce Gordian investigation. Serious drug trafficking offence charges have been laid against a 25 year old man that was stopped and searched on the Hume Highway north of Melbourne. It is alleged that 700g of heroin was found, with a street value of between \$1 and \$1.5 million. Proceeds of crime action is being considered.

Taskforce Gordian is made up of the ACC, AFP, Vic Police, NSW CC, ATO, ACS and AUSTRAC. So far the taskforce has led to the restraint of more than \$2 million of assets under Proceeds of Crime

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action since it commenced in May 2005.

*Source: ACC Media Release dated 15
January 2007*

ACLEI COMMENCES OPERATION

The *Law Enforcement Integrity Commissioner Act 2006* commenced operation on 30 December 2006. The Act established a new office of Integrity Commissioner, supported by a statutory agency, the Australian Commission for Law Enforcement Integrity (ACLEI). The ACLEI Act is administered by the Attorney-General.

The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission and the Australian Federal Police. Other Australian Government agencies with law enforcement functions can be prescribed by regulation as coming within the jurisdiction of ACLEI.

'Corruption' is defined in the ACLEI Act as applying to three categories of activity by a law enforcement officer: an abuse of office; conduct that perverts the course of justice; or corruption of any other kind. The Integrity Commissioner is to give priority to dealing with serious corruption and systemic corruption.

The Integrity Commissioner has powers similar to a Royal Commission, to conduct public or private hearings, and summon any person or government agency to produce documents or things or attend a hearing to give evidence under oath and be cross-examined. ACLEI

investigators can access coercive and other powers used in law enforcement, such as telephone interception, electronic surveillance, undercover and controlled operations, search warrants, and passport confiscation.

In addition the POCA 2002 was amended with effect from 30 December 2006 to provide that ACLEI is an "enforcement agency" for the purposes of the POCA 2002, and to provide that the Integrity Commissioner and other ACLEI staff members are authorised to exercise the various investigative powers under the POCA 2002.

CONFISCATED ASSETS ACCOUNT

ITSA reports a balance of \$11.09m held in the CAA as at 31 December 2006. For the six months to 31 December 2006 proceeds of \$7.71m have been paid into the CAA, with \$7.20m distributed to fund programs approved by the Minister for Justice and Customs.

PROCEEDS OF CRIME FUNDS DRUG AND ALCOHOL REHABILITATION PROJECTS

Eleven community projects will share \$5.5 million in Proceeds of Crime grants to fund drug and alcohol rehabilitation programs, the Minister for Justice and Customs, Senator Chris Ellison, announced on 14 December 2006.

"Proceeds of crime are being restrained and confiscated at a higher rate than ever before thanks to new legislation introduced by the Australian Government in 2002," Senator Ellison said. "To date,

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nearly \$25 million worth of proceeds of crime has been confiscated since the legislation came into force in January 2003,' Senator Ellison said.

Projects receiving funding under the Proceeds of Crime Act 2002 in the September 2006 round for Non Government Organisations are:

- The Buttery Inc – The MISA Lifestyle Support Program;
- The Odyssey House Victoria – The One-Step: Odyssey North East Short Term Engagement Program;
- BAYSA Youth Services - The Youth Access Program;
- Odyssey House McGrath Foundation - The Assessment and Referral Centre at Minto, NSW (refurbishment);
- The Lyndon Community – Under the Specialist Alcohol and Other Drug Staff Training and Support Service program;
- The Salvation Army – Top End – The Parenting Enhancement Module;
- Jesuit Social Services – The Outdoor Experience Program;
- Baptist Community Services SA – The Westcare Drug Intervention Program;
- The Addiction Treatment Foundation – The Out-Patient Co-Morbidity Substance Abuse Program;
- Salvation Army – WA Division - The Bridge House and Harry Hunter Adult Rehabilitation Centre, Perth (refurbishment);
- Turning Point - Two Melbourne Specialist Methamphetamine Clinics.

Source: Minister for Justice Media Release dated 14 December 2006

DECISIONS

DPP v Bowerman [2006] NSWSC 1309

The defendant in this matter applied to the NSW Supreme Court for a variation to restraining orders for the purpose of allowing him to pay legal expenses out of restrained property.

The defendant argued that because his application was brought under section 39 of the POCA 2002, rather than section 24, the prohibition on allowing payment of legal expenses did not apply.

The defendant also sought to draw assistance from *Mansfield v DPP (WA)*, in which the High Court of Australia had held that Western Australian confiscation legislation did permit payment of legal expenses out of restrained property, and made comments regarding the importance of access to legal representation.

The court rejected the defendant's application, ruling that the question of access to restrained property for payment of legal expenses was dealt with in section 24, and that an application under section 39 could not be used to achieve the same purpose.

DPP v A Sum of Money [2007] VCC

In this matter the DPP sought to examine two individuals concerning a series of banking transactions involving the transfer of a sum of money to Macedonia, and then the transfer of a similar sum from Macedonia back to Australia. The transfers to Macedonia had been in amounts of just under \$10,000.

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The respondents argued that, because they had filed affidavits (as part of an exclusion application) in which they gave an account of their involvement in the relevant transactions, there was no adequate purpose to be served by the making of examination orders.

The Victorian County Court found that, despite the respondents' disavowals of criminal intent, the circumstances of the movement of money, the number of people involved, and the other circumstances of the case indicated potentially a deliberate intent to avoid the provisions of the *Financial Transactions Reports Act 1988* and the potential that the respondents had been engaged in money laundering. The Court thus found that reasonable grounds had been made out to order examination of the respondents.

The Court held that it was not significant that no charges had been laid, and might never be laid, as the proceeding was for civil forfeiture.

RECENT EVENTS

CALG MEETING

The Criminal Assets Legal Group (CALG) held the first of its quarterly meetings for 2007 on 9 February 2007 in Canberra.

Among the agenda items discussed at the meeting was the government's response to the Sherman Report – the independent review of the POCA 2002 carried out in 2006.

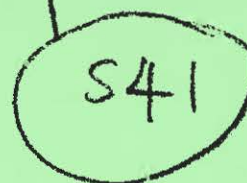
NZ POCA WORKSHOP

New Zealand confiscation authorities held a Proceeds of Crime Workshop in Napier, New Zealand, from 28-30 November 2006. A representative from the Insolvency and Trustee Service of Australia attended the workshop.

Some key points to emerge from the workshop included the following:

- NZ currently has a conviction-based confiscation regime, but is working towards introduction of a civil regime (not expected to come into effect until early 2008); and
- Up to 98% of NZ POC activity is related to drug matters.

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PROCEEDS OF CRIME ACTION OVER STOLEN ROCKET LAUNCHERS

On 5 April 2007 a joint Australian Federal Police and NSW Police operation, with assistance from the Australian Defence Force, resulted in two men being charged in relation to their alleged involvement in the theft of rocket launchers. Action was also commenced against one of the men under the *Proceeds of Crime Act 2002 (Cth)*.

It was alleged in court that a 46-year-old man was responsible for the theft of ten

Light Anti Armour Weapons that were the property of the Australian Defence Force. The ten weapons were allegedly supplied to a 28-year-old man arrested on 5 January 2007 as part of the ongoing operation.

The 46-year-old man was charged with 21 offences under Commonwealth and State legislation, which include one count of stealing Commonwealth property, ten counts of unauthorised possession of a prohibited weapon, and ten counts of the unauthorised supply of a prohibited weapon.

In addition the NSW Supreme Court made orders restraining property of the 46-year-old man and for his examination about his affairs. An application for a pecuniary penalty order against the man was adjourned to a later date.

*Source: AFP Media Release dated 5 April 2007;
CDPP records.*

\$25,000 CASH LINKED TO HOT WATER SYSTEMS

On 22 April 2007 a joint Customs and AFP operation led to the arrest of an Israeli national at Bellingen on the NSW mid-North coast and the seizure of 113kg of MDMA (ecstasy) powder and \$25,000 in cash.

The AFP will allege that the man imported the MDMA powder inside hot water systems from Israel. The hot water systems were x-rayed by Customs, with three of the six cylinders shown to have anomalies. Further Customs examinations located 172 tennis ball cans inside the systems that contained powder.

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Customs referred the matter to the AFP, which substituted the package with an inert substance and monitored the delivery of the package to a warehouse in Sydney.

Search warrants were subsequently executed in Bellingen, Sydney, and at a Melbourne residence, resulting in the seizure by AFP members of approximately \$25,000 in cash.

Source: AFP Media Release dated 23 April 2007

CONFISCATED ASSETS ACCOUNT

YEAR TO DATE

ITSA reported that \$11.09m was paid into the Confiscated Assets Account between 1 July 2006 and 31 March 2007. This compares with an amount of \$8.65 million was paid into the CAA during the first three-quarters of the 2005-2006 financial year.

CAA FUNDING FOR SHARED RESPONSIBILITY AGREEMENTS

In February 2007, under section 298 of the *Proceeds of Crime Act 2002*, the Minister for Justice approved the payment of \$600,000 out of the Confiscated Assets Account to the Commonwealth Attorney-General's Department to contribute to Shared Responsibility Agreements (SRAs) between the Department and indigenous communities. SRAs are agreements between governments and indigenous communities, and are developed where indigenous people and communities decide they want to address

specific priorities. SRAs combine better coordinated service delivery that reduces bureaucratic red tape for individuals and communities.

Source: Attorney-General's Department website.

DECISIONS

DPP (Cth) v Corby [2007] QCA 58

On 2 March 2007 the Queensland Court of Appeal handed down its decision in relation to an application by the Commonwealth DPP for a restraining order in relation to "literary proceeds" suspected of having been derived by Schapelle Corby from sales of the book "My Story – Schapelle Corby with Kathryn Bonella".

At first instance the Queensland District Court had rejected the CDPP's application for a restraining order on the basis that the court was not satisfied that any relevant literary proceeds had been derived "in Australia" (as required by section 153(3A) of the *Proceeds of Crime Act 2002* (Cth)).

The CDPP appealed from the District Court's decision. CDPP submitted that it was not necessary, for the purposes of section 153(3A) of the POCA 2002, that a benefit sought to be intercepted under the Act be generated from Corby's property in, or personal exertion in, Australia: all that is required is that the benefit be derived in Australia in the sense that the benefit has its geographic origin or source in Australia.

The Court of Appeal upheld the CDPP's submissions. Keane JA, with whom

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Williams JA and Helman J agreed, stated that there was no need to read down either section 153(1) or section 153(3A) by importing complexities from a different field of discourse (namely case law regarding provisions of the *Income Tax Assessment Act 1936* (Cth)).

IP CRIME: BUDGET FUNDING FOR POCA ACTION

On 8 May 2007 as part of the 2007 Budget the Government announced additional funding for the Australian Federal Police and the Commonwealth DPP for the investigation, prosecution and taking of proceeds of crime action in relation to intellectual property crime in Australia.

Attorney-General Philip Ruddock said "If we want Australians to create IP and innovate, we need to help industry and creators by targeting IP crime. As a result of this Budget initiative, law enforcement will be better resourced to pursue organised crime, major importers and wholesalers, profiting from piracy and counterfeiting."

"Copyright reforms last year made the laws tougher for pirates and fairer for consumers. This funding will help enforce the new laws against pirates, while consumers use new technologies to enjoy legitimate products," Mr Ruddock said.

Additional funding of \$8.3 million over 2 years will strengthen the capability of the Australian Federal Police to pursue serious and complex IP crime, particularly where organised or transnational criminal elements are involved. The AFP will work closely

with industry and other agencies, including overseas agencies.

The Commonwealth Director of Public Prosecutions will receive an additional \$4.1 million over two years for new prosecutors and training to enable the prosecution of IP crime and finance the pursuit of proceeds of crime.

Source: Attorney-General Media Release, 8 May 2007.

UPCOMING EVENTS

CDPP Conference on Money Laundering Offences

On 17 & 18 May 2007 in Sydney the Commonwealth Director of Public Prosecutions hosted a national conference on prosecution and confiscation action in relation to money-laundering offences. The conference provided a forum for discussion of issues arising in relation to the charging of money laundering offences under the *Criminal Code Act 1995* (Cth); the taking of proceeds of crime action in relation to such offences; and issues in relation to the traditional offence of "structuring" under the *Financial Transactions Reporting Act 1988* (Cth).

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Jennifer Tracey on [redacted] or email [redacted]

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RECENT CRIMINAL CONFISCATION ACTION

MDMA AND \$60,000 CASH SEIZED AT PORT BOTANY

On 9 August 2007 four men were charged and 40 Kilograms of MDMA powder (ecstasy) and \$60,000 in cash were seized at Port Botany in Sydney following a joint Customs and Australian Federal Police (AFP) operation.

The MDMA had an estimated street value of up to \$20 Million.

The operation began when Customs officers monitored the arrival of a Panamanian-registered container ship, the MSC Sophie. The vessel had travelled to Port Botany from Port Louis, France. AFP agents and customs officers mounted a joint surveillance operation to monitor movements around the vessel. Three vehicles were

stopped by AFP agents as they attempted to leave Port Botany at about 10pm.

One of the vehicles was found to contain what was believed to be up to 40 Kilograms of MDMA powder.

Customs officers boarded the MSC Sophia and conducted a search of the vessel and its crew.

During the search they noted one of the ship's officers behaving suspiciously and became concerned he could be concealing something on his body. A frisk search revealed a large amount of cash hidden in the two pairs of jeans being worn by the man.

Cash amounts of AUD\$21,700 and EURO\$26,100 (total value approximately AUD\$63,660) were located and seized.



The 35-year-old Yugoslavian citizen was charged by the AFP with dealing with proceeds of crime contrary to Part 10.2 of the *Criminal Code (Cth)*.

"Stopping drugs from making their way onto Australian Streets is something the AFP and Customs work very hard to achieve. The result of this operation is a great example of the cooperation between the two agencies" Assistant Commissioner Lammers said.

Source: Customs Media Release, 10 August 2007.

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\$1.3 MILLION PROCEEDS OF CRIME SHARED WITH LEBANON

On 6 June 2007 the Attorney-General Philip Ruddock announced that Australia and Lebanon would share in \$1.3 million of confiscated proceeds of crime from a tobacco excise fraud.

From July 1999 to September 2001 more than 93 million cigarettes were sold on the domestic Australian market by a Melbourne based syndicate. The syndicate purchased the cigarettes duty free over the internet, claiming they were intended for overseas suppliers, before diverting the cigarettes for sale through a number of retail outlets in Melbourne.

An Australian Federal Police investigation resulted in eight people being arrested, convicted and imprisoned over the matter in Australia.

"Approximately \$18 million in excise duty was avoided. The money was laundered through Australia, Hong Kong, Belize, and Lebanon. The funds in Lebanon were restrained in June 2002 under a provision of the *Proceeds of Crime Act 1987*," Mr Ruddock said.



Photo: Australian Federal Police

"Lebanon will receive \$683,500 in recognition of the significant

contribution by the Lebanon Special Investigations Commission in assisting the Australian Federal Police in this criminal investigation," Mr Ruddock said.

The funds were repatriated to Australia with the cooperation of Lebanese authorities, and were forfeited to the Australian Government.

"Without the assistance of the Lebanese authorities, the identification, restraint and forfeiture of the criminal proceeds would not have occurred," Mr Ruddock said.

The Commissioner of the Australian Federal Police Mick Keelty presented a cheque to the Governor of the Lebanese Central Bank Mr Riad Salameh on 7 June 2007.

Source: Attorney-General Media Release, 7 June 2007.

PROCEEDS OF CRIME RETURNED TO CHINA

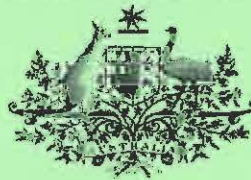
On 7 June 2007 the Australian Government presented the People's Republic of China with confiscated proceeds of crime worth over \$3.37 million.

"It gives me great pleasure to repatriate these proceeds of crime to the People's Republic of China," Minister for Justice and Customs, Senator David Johnston said.

Senator Johnston met with the Chinese Vice-Minister for Public Security, Zhang Xinfeng, and presented a cheque for \$3.37 million at a special ceremony at the Australian Federal Police Sydney Headquarters.

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In 2005, the AFP had identified Australian Bank accounts opened by a Chinese national in a false name, and with the DPP's assistance commenced restraining order action on the funds under the *Proceeds of Crime Act 2002*.



Photo: Australian Federal Police

AFP Deputy Commissioner Operations, Peter Drennan, said \$3.37 million was forfeited to the Commonwealth on 29 November 2006 as a result of civil forfeiture proceedings that could only be undertaken after valuable assistance was received from Chinese authorities.

"This is an excellent example of how international cooperation between law enforcement agencies can not only combat transnational crime, but ensure that criminals do not have the opportunity to profit from illegal activities" Deputy Commissioner Drennan said.

The *Proceeds of Crime Act 2002* provides for the repatriation of restrained funds. Under the equitable sharing program, the Minister for Justice and Customs has discretion to return funds to a foreign country in recognition of their assistance leading to the recovery of the funds.

Source: Minister for Justice and Customs Media Release dated 7 June 2007.

CONFISCATED ASSETS ACCOUNT

NEW ROUND OF PROCEEDS OF CRIME GRANTS

On 3 July 2007, the Minister for Justice and Customs, Senator David Johnston, announced a new \$4 million funding round for the *Proceeds of Crime* grants program.

Under the *Proceeds of Crime* grants program, Non-Government Organisations (NGOs) can apply for up to \$750,000 in funding for eligible projects targeting alcohol and illicit drug use.

"The Australian Government will use the proceeds of confiscated criminal assets to provide targeted assistance to help community organisations working in this important sector," Senator Johnston said.

Since the commencement of the *Proceeds of Crime Act 2002* in 2003, the Australian Government has awarded \$26.9 million in *Proceeds of Crime* funding to Government and Non-Government projects for crime prevention, law enforcement, drug treatment and diversionary initiatives.

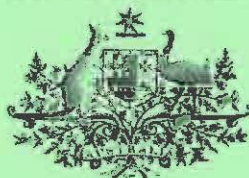
DECISIONS

CDPP -v- HART & ORS [2007] QCA 184

On 1 June 2007 in the Queensland Court of Appeal handed down a decision concerning the interpretation of section 121 (4) (a) (i) of the *Proceeds of Crime Act 2002*. Section 121(4) determines the relevant six-year period a court may have regard to when determining the amount of benefit derived by a

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person in respect of the commission of a serious offence and other unlawful activity.

Section 121 (4) (a) (i) provides that if "some or all of the person's property is covered by a restraining order" then the relevant six year period is the 6 years preceding the application for the restraining order. Otherwise, section 121 (4) (a) (ii) provides that the relevant six year period is the 6 years preceding the application for the pecuniary penalty order.

In the Hart matter, CDPP had restrained certain items of property on the basis that they were legally owned by third parties, but suspected of being subject to the effective control of Hart. No property which was legally owned by Hart had been restrained.

In this scenario the question arose as to whether "some or all of Hart's property" was "covered" by the CDPP's restraining order within the meaning of section 121 (4) (a) (i). This issue was important because, for the quantifying a PPO, CDPP sought to reply on conduct which had allegedly been engaged in by Hart within 6 years preceding the application for a PPO (which had not been lodged until some years after the restraining order application).

Counsel for Hart argued that, whilst Hart had an "interest" in the restrained property within the meaning of the POCA 2002, that interest had not been affected by the restraining orders obtained by the CDPP which in turn referred to the property of third persons subject to the effective control of Hart.

By comparison, CDPP maintained that, although based on suspected effective control by Hart, the relevant restraining orders affected all interests in the items of restrained property, including Hart's.

At first instance, the primary judge accepted the contentions of Hart's counsel. On appeal, however, the court held unanimously in favour of the CDPP. Keane JA said that: "In summary, when s121 (4) (a) (i) of the Act speaks of 'the person's property ... covered by a restraining order', it is referring to the interest which a person has in any item of property affected by the order. The restraining order affected the interest of Mr Hart in each of the items of property specified in the order. In that way, Mr Hart's property was covered by the order".

Philippides J observed that to confine the scope of a restraining order in the manner contended for the respondent would result in serious undermining of the purposes of the POCA and suggest that if a restraining order did not extend to all interests in property specified in an order the confiscated scheme would be nugatory to the dealings in equitable interests in property.

CDPP -v- MARE [2007] QDC

In July 2005 the Commonwealth DPP commenced proceedings under the POCA 2002 to restrain a variety of items of property in connection with suspected excise fraud offences by John Dalzell Mare. The restrained items included a marine vessel ("the Bahama 2"), a commercial lease, funds held in various bank accounts both in Australia and overseas, and the proceeds from the sale of a business suspected of having been under Mare's effective control.

In January 2007 the company which previously owned the abovementioned business brought an application for reasonable business expenses and specified debts to be paid out of the moneys still subject to restraint.

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"Bahama 2": subject of action under the POCA 2002.
Source: Australian Customs Service.

Ultimately, however, the court was not satisfied, on the balance of probabilities, as required by paragraph 24(2)(d) of the POCA 2002, that the company expenses and debts sought to be paid out of restrained property could not be met out of property not covered by a restraining order.

Bradley DCJ commented that commercial decisions made by the Applicant since the making of a restraining order had affected the capacity of the company to pay business expenses. It was the view of the Judge that the company's asset base placed the company in a position whereby it could meet expenses without access to the money subject to a restraining order.

The application to access restrained funds was accordingly dismissed.

UPCOMING EVENTS

CDPP POC WORKSHOP

On 8 & 9 November 2007 in Canberra the Commonwealth Director of Public Prosecutions will hold an internal CDPP workshop on the POCA 2002.

Among other things the workshop will include a presentation by former CDPP Ian Temby QC, who has agreed to address the workshop on Proceeds of Crime Advocacy.

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Matthew Curtis on [REDACTED] or email: [REDACTED]

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RECENT CRIMINAL CONFISCATION ACTION

\$1.7 MILLION RECEIVED UNDER POC ARRANGEMENTS

On 13 September 2007 the Dutch government returned more than AUD \$1.7 million to Australian authorities following a successful 14-year-long operation by the Australian Federal Police.

The money came from the proceeds of an international criminal syndicate that was the subject of an intensive police investigation called Operation Caribou, beginning in 1993.

Back in August 1994, the AFP arrested numerous people after the syndicate imported five tonnes of cannabis resin into the Hervey Bay area of Queensland.

The money belonging to the syndicate was discovered in a safety deposit box at a Dutch bank.

In 1994 CDPP had obtained restraining orders under the *Proceeds of Crime Act 1987* over all of the property of one of the defendants, Raymond Dumbrell. In 2003, a declaration was obtained that the cash in the safety deposit box, valued at the equivalent of AUD \$1.7 million, which had been part of Dumbrell's property, was forfeited to the Commonwealth of Australia.

CONFISCATED ASSETS ACCOUNT

ITSA ACTIVITY REPORT AS AT 30/10/07

The Official Trustee in Bankruptcy (part of the Insolvency Trustee Service of Australia), which has responsibility for management of restrained property and realisation of confiscated property under the POCA 2002 advised that as at 30 October 2007:

- It held custody of over \$24 million in cash, and of other property valued at over \$38 million;
- \$1.5 million had been paid into the Confiscated Assets Account since 1/7/2007.

DECISIONS

DPP (VIC) -v- LE [2007] HCA 52

In this matter the DPP (Victoria) successfully appealed to the High Court of Australia against a decision of the Victorian Court of Appeal relating to the forfeiture of an apartment jointly owned by Le (a convicted heroin trafficker) and his wife.

The Victorian Court of Appeal had held that, the wife having succeeded in an exclusion application in respect of the jointly owned apartment, the entire

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apartment (i.e. not just the wife's interest) should be excluded from forfeiture.

On appeal, the High Court ruled by majority (3:2) that in fact only the wife's interest in the property should have been excluded from forfeiture. The High Court held that the effect on the joint tenancy of the forfeiture of Mr Le's interest had been to convert the joint tenancy into a tenancy in common with one interest held by the wife and one by the State of Victoria.

The minority of the High Court would have upheld the DPP's appeal on the grounds that the wife had not paid "sufficient consideration" for the acquisition of her interest in the property, it having been transferred to her by Le for "natural love and affection" only (after Le had been arrested for heroin trafficking).

CDPP -v- HART & ORS [2007] QCA 184 – UPDATE

A report on the decision of the Queensland Court of Appeal in this matter was included in Issue Six of the Criminal Confiscation Bulletin in August 2007. Since that time, on 16 November 2007, the High Court refused Hart special leave to appeal against the decision, commenting that the decision of the Queensland Court of Appeal had been "clearly correct".

RECENT EVENTS

CDPP POC WORKSHOP

On 8 & 9 November 2007 at the Hotel Kurrajong in Canberra the Commonwealth Director of Public Prosecutions held an internal CDPP Proceeds of Crime Workshop.

The workshop was attended by more than 30 CDPP confiscation lawyers, and was addressed by speakers including the Commonwealth Director of Public Prosecutions Chris Craigie SC, and confiscation counsel (and former CDPP) Ian Temby AO QC.



Attendees at the CDPP POC Workshop (right to left): Chris Craigie SC, John Thornton, Ian Temby AO QC, Angela Alexandrou & Rebecca Ashcroft.

Topics covered at the workshop included among others "Proceeds of Crime Advocacy"; "The Importance of Preparation and Planning in POC Litigation"; "Scope of Questioning in a POC Examination"; and "Implications of the *Hatfield* decision".

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Suzanne Mayhew on [redacted] or email: [redacted]



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RESTRAINING ORDER HELD NOT TO HAVE LAPSED

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INTERNATIONAL CRIME COOPERATION WORKSHOP

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RECENT CRIMINAL CONFISCATION ACTION

REPATRIATION OF \$3.86 MILLION TO SINGAPORE

The Minister for Home Affairs, Bob Debus announced on 16 May 2008 that Australia would repatriate stolen funds totalling \$3.86 million to the Singapore Government under the *Proceeds of Crime Act 2002*. "The repatriation of proceeds of crime to its country of origin is an important part of the international cooperation involved in the investigation and prosecution of crime," Mr Debus said.

Forfeiture of the funds was the result of investigations by the Australian Federal Police, in cooperation with Singapore Police into criminal activity by Singapore national Teck Leng Chia. Chia defrauded a number of banks in Singapore using documents purported to be from his employer, Asia Pacific Breweries.

He used two Westpac accounts to launder more than \$90 million, and used the funds to gamble at casinos in Australia, South East Asia and the United Kingdom. Chia was convicted in Singapore in 2003 and sentenced to 42 years jail.

Mr Debus said AFP Commissioner Mick Keelty would return the stolen funds to the President of Singapore, where he also received the country's Distinguished Service Order.



AFP Photo

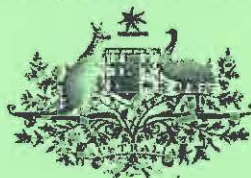
"I congratulate the AFP and the Commonwealth DPP for their work on this case and commend the international policing community for their cooperation," Mr Debus said.
Source – MHA media release, 16/5/08

SHARES RESTRAINED

Following an investigation by the Australian Securities and Investments Commission, on 8 April 2008 the DPP

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obtained a restraining order over 418,148 shares in the Queensland Gas Company belonging to the QGC former company secretary Mukesh Panchal. It is alleged in the proceedings under the *Proceeds of Crime Act 2002* that Mr Panchal purchased shares in QGC while aware of an upcoming agreement between the company and British Gas plc.

Source – court documents; CDPP records.

FEDERAL AUTHORITIES SEIZE \$1.5 MILLION

In raids in Sydney on 5 & 6 March 2008 federal authorities located more than \$1.5 million and netted four people for financial offences.

Information was referred to the Australian Crime Commission (ACC) led Financial Intelligence Assessment Team (FIAT) from the Australian Transaction Reports and Analysis Centre (AUSTRAC) concerning financial transactions between Australia and China.

As a result of ACC FIAT's investigation into the matter, four persons were arrested on 5 March 2008 as they allegedly attended banks in Sydney's Central Business District carrying large sums of money. ACC investigators subsequently executed search warrants at a unit in Croydon Park and at storage facilities in Belfield and Homebush in Sydney's west and searched two motor vehicles. During these searches further large sums of cash were seized.

Two Hong Kong nationals and a man and a woman from Sydney appeared in court on 6 March 2008.

ACC Chief Executive Alistair Milroy said: "National law enforcement has placed a high priority on the development of strategies to detect, understand and

disrupt serious and organised crime, recognising the importance that financial intelligence plays in impacting on such crime.

"Through the FIAT, the ACC and its partner agencies are impacting on the funds and resources organised crime groups rely on to further their illegal activity."

Source – ACC media release, 10/3/08

\$2.6 MILLION FORFEITED FROM COCAINE SYNDICATE

On 11 March 2008 the Commonwealth Director of Public Prosecutions obtained orders from the NSW Supreme Court forfeiting \$2.6 million in cash seized in May 2005.

The money was originally seized in connection with Operation Rhodium, a joint federal-NSW investigation regarding the activities of a cocaine syndicate alleged to have been operating out of Sydney, NSW.

Source: CDPP records.

CONFISCATED ASSETS ACCOUNT

ITSA ACTIVITY REPORT AS AT 15/5/08

The Official Trustee in Bankruptcy (part of the Insolvency Trustee Service of Australia), which has responsibility for management of restrained property and realisation of confiscated property under the POCA 2002 advised that as at 15 May 2008:

- It held custody of over \$26 million in cash, and of other property valued at over \$35 million;
- \$12.81 million had been paid into the Confiscated Assets Account

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since between 1 July 2007 and 31 March 2008.

DECISIONS

Lee v DPP (Cth) [2008] NSWSC 300

In this matter the Supreme Court of NSW ruled that the DPP is entitled to lodge an application for forfeiture under section 49 at the same time as an application for a restraining order under section 19 (in order to prevent the restraining order from lapsing after 28 days), even if the DPP is not ready to proceed with the s 49 application.

Lee and others were alleged to have committed foreign indictable offences stemming from their operation of a number of unregistered management investment schemes. In July 2007 DPP applied for a section 19 restraining order over bank accounts of Lee located in Australia suspected of containing proceeds of the alleged foreign indictable offences. The summons also applied for an examination order and a section 49 forfeiture order. The restraining order was granted. In November 2007 Lee applied to the NSW Supreme Court for a declaration, purportedly pursuant to section 45(2) of the Act, that the section 19 restraining order over his property ceased to be in force 28 days after it had been made. Lee also sought orders that the application for forfeiture be struck out because the Act provided that such an application could only be proceeded with after six months and therefore the application sought the exercise of a non-existent power.

The Court rejected Lee's applications. The Court noted that section 49 was silent as to when the forfeiture application should be made and that the application for a section 49

forfeiture order, which accompanied the restraining order application, was made recognising that it could not be dealt with by the court until the necessary period of time (6 months) had elapsed. His Honour accepted that the lodging of the application for forfeiture at the same time as the restraining order was an indication that the Director of Public Prosecutions was "seriously intent upon pursuing the matter". The Court also ruled that section 45(3), rather than section 45(2), was applicable in respect of section 19 restraining orders and that because none of the prerequisites specified in paragraph 45(3)(a) had been satisfied, the section 19 restraining order had not lapsed.

RECENT EVENTS

INTERNATIONAL CRIME COOPERATION WORKSHOP

In April 2008 officers from the CDPP and the AFP participated in a week-long International Crime Cooperation Workshop in Brisbane. The workshop was initiated and organised by the Attorney-General's Department Anti-Money Laundering Assistance Team (AMLAT). The object of the workshop

International Crime Cooperation Workshop
Brisbane 14-18 April 2008



Workshop participants from Australia, Canada, Hong Kong, India, Japan, Korea, Malaysia, New Zealand, Singapore, South Africa, Taiwan, Thailand, United Kingdom, United States, and Vietnam. Participants include: Mr. John G. (Australia), Mr. John G. (Canada), Mr. John G. (Hong Kong), Mr. John G. (India), Mr. John G. (Japan), Mr. John G. (Korea), Mr. John G. (Malaysia), Mr. John G. (New Zealand), Mr. John G. (Singapore), Mr. John G. (South Africa), Mr. John G. (Taiwan), Mr. John G. (Thailand), Mr. John G. (United Kingdom), Mr. John G. (United States), and Mr. John G. (Vietnam).

was to build capacity for prosecutors and law enforcement officials from Pacific countries in using proceeds of

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implementation of the *Proceeds of
Crime Act 2002 (Cth)*



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crime legislation, mutual assistance and
extradition.

Over the course of the Workshop the
participants, with guidance and
mentorship from CDPP and AFP officers,
developed materials to support a
hypothetical restraining order
application using proceeds of crime
legislation from their own country. The
workshop culminated in the participants
presenting an application for a
restraining order to a judge.

The Workshop was opened by the Hon
Duncan Kerr SC MP in his capacity as
Parliamentary Secretary for Pacific
Island Affairs. Countries with lawyers
and police in attendance were The Cook
Islands, The Federated States of
Micronesia, Fiji, Kiribati, Palau, Papua
New Guinea, Nauru, Niue, Samoa,
Solomon Islands, Tonga, Tuvalu and
Vanuatu.

The editors of this Bulletin welcome contributions
from relevant agencies. Please contact Suzanne
Mayhew on [redacted] or email:
[redacted]

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A newsletter for agencies involved in implementation of the *Proceeds of Crime Act 2002 (Cth)*



Bulletin No 9 – 21 November 2008

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RECENT CRIMINAL CONFISCATION ACTION

WORLD'S LARGEST ECSTASY SEIZURE – \$7 MILLION OF PROPERTY RESTRAINED

The Australian Federal Police and the Commonwealth Director of Public Prosecutions have commenced proceeds of crime action against five suspects connected with the world's largest ecstasy seizure (Operation Inca).

In August this year a 12-month joint investigation by the Australian Federal Police and the Australian Customs Service resulted in the smashing of an international drug syndicate following the world's largest seizure of 4.4 tonnes of ecstasy.

Sixteen arrests resulted from the detection of the ecstasy in June last year and the detection and seizure of another 150 kilograms of cocaine in July 2008.

The investigation also identified a money laundering operation worth more than \$9 million that the drug syndicate allegedly used to pay for the illegal drugs.

Between August and October this year, the Commonwealth Director of Public Prosecutions, assisted by the Australian Federal Police, commenced proceeds of crime action against five suspects connected with the alleged drug syndicate, including the syndicate's suspected head, resulting in the restraint of cash, real property and other items with an estimated net value in excess of \$7 million.



Cash seized during Operation Inca. Source: AFP

AFP Commissioner Mick Keelty said "Investigations like this one, that include targeting the illegal financing of organised criminal syndicates involved

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in the global trade in illicit drugs are proving highly successful and ensure an economic as well as social return for the community”.

Source – AFP and Customs media release dated 8/8/08; CDPP records.

CASH AND PSEUDOEPHEDRINE SEIZED IN SYDNEY

In July this year an operation involving Customs, the Australian Federal Police and the New South Wales Crime Commission resulted in the seizure of around \$230,000 in cash, and prevented the supply of enough illegal chemicals to make methylamphetamine (ICE) with an estimated street value of \$297 million.

The seizure of 850 kilograms of pseudoephedrine, a border controlled precursor chemical used in the production of methylamphetamine, is one of Australia's biggest.

The pseudoephedrine was detected by Customs in three consignments of ornaments and statues that arrived at Port Botany in Sydney in sea cargo from Thailand on 4 July.

AFP agents executed search warrants at four locations in Sydney, resulting in the seizure of \$230,000 in cash, a bank note counter, a number of weapons including a taser and a machete, and an additional 25 kilograms of pseudoephedrine pills.

Source – AFP & Customs Media Release, 13/7/08

FORFEITURE OF COMPUTERS USED IN ONLINE CHILD EXPLOITATION OFFENCES

The *Proceeds of Crime Act 2002 (Cth)* provides for the forfeiture not just of proceeds derived from Commonwealth

offences, but also of property used in or in connection with the commission of Commonwealth offences.

In recent years there has been a rapid growth in the number of prosecutions connected with Commonwealth on-line child exploitation offences. Connected with these prosecutions, the Commonwealth DPP's policy is to seek forfeiture of equipment used in the commission of relevant offences, such as computer hard drives and mobile telephones. In the 2007-08 financial year CDPP made a total of 21 applications for forfeiture of these types of items.

Forfeiture of equipment used in the commission of online child exploitation offences plays a role in achieving specific and general deterrence.

Source – CDPP Annual Report 2007-08

CONFISCATED ASSETS ACCOUNT

FUNDING TO COMBAT PEOPLE TRAFFICKING

On 23 October 2008 the Minister for Home Affairs Bob Debus announced \$1 million in funding from the Confiscated Assets Account to help four Australian non-government organisations in their efforts to combat people trafficking.

The Anti-Slavery Project, Project Respect, the Scarlet Alliance and Australian Catholic Religions Against Trafficking in Humans will each be granted \$250,000 to provide vital outreach for trafficking victims and conduct education and awareness initiatives on people trafficking.

“It's time to recognise the tireless efforts of these NGOs in the protection of victims of people trafficking and in

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raising awareness of the crime in the broader community," Mr Debus said.

"This funding recognises the important work they do along with a number of Government agencies in developing Australia's anti-trafficking strategy."

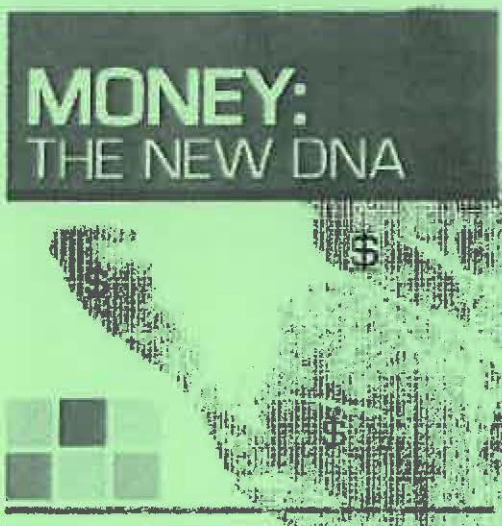
The funding was provided out of the Confiscated Assets Account, which holds the proceeds of assets confiscated under the *Proceeds of Crime Act 2002*.

Source – Minister for Home Affairs Media Release, 23/10/08

AFP INITIATIVE ON FINANCIAL INVESTIGATIONS

The Australian Federal Police has responded to recent changes in Australia's anti-money laundering (AML) and Counter Terrorist Financing (CTF) regime by developing and expanding initiatives that have led to advances being made in its approach to tackling proceeds of crime and money

Taking away the proceeds and targeting the finances is key to combating organised crime.



laundering. These initiatives have included in particular a targeted AFP-wide campaign to raise awareness and deliver key messages regarding the benefits of financial investigation strategies.

The campaign emphasizes that, when implemented at every level of an investigation, a financial investigation strategy will help to identify and restrain assets, target criminal profits and identify money laundering and terrorist financing activity. Other strategic policing benefits include removing the perception in the community that "crime pays" and deterring people from committing acquisitive crime by removing the incentive: the profit.

The awareness campaign had the aim of increasing the profile of a financial investigation strategy as a proactive investigative tool. The campaign was rolled out through a series of presentations to staff at AFP offices around the country earlier this year.

UPCOMING EVENTS

NATIONAL CRIMINAL CONFISCATION CONFERENCE – FEBRUARY 2009

In February 2009 the Australian Federal Police, the Australian Crime Commission and the Commonwealth Director of Public Prosecutions will jointly host a "National Criminal Confiscation Conference".

The Conference, to be held in Brisbane from 24 to 26 February 2009, will be open to officers from all federal and State investigation and prosecution agencies involved in criminal confiscation work, and will feature a number of international speakers.

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The aims of the Conference include the identification of common practical and legal issues affecting proceeds of crime investigations and litigation in Australian jurisdictions, and increasing the level of communication and cooperation between different agencies involved at State, Territory and federal level in the investigation and litigation of criminal confiscation matters.

Minister for Home Affairs Bob Debus has approved funding for the Conference from the Confiscated Assets Account.

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Marcus Hassall on [redacted] or email: [redacted]



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Logo – AUSTRAC Customer Information line
Source: http://www.ag.gov.au/www/agd/agd.nsf/Page/Anti-moneylaundering_Customerinformation#Skip

RECENT CRIMINAL CONFISCATION ACTION

\$187,000 CASH SEIZED AT PERTH AIRPORT

On 23 December 2008 Customs and Border Protection officers at Perth Airport found over \$187,000 of undeclared currency concealed in the luggage of a 44-year-old Stirling man.

The Australian Federal Police ("AFP") seized the currency and charged the man with failing to declare excess currency, contrary to section 53 of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*.

The man appeared in Perth Magistrates court on 24 April 2009, facing a potential maximum penalty for this offence of two years imprisonment or a \$55,000 fine.

On 12 March 2009 DPP obtained restraining orders over the cash pending the outcome of criminal proceedings against the man.

This incident was among over 280 money laundering incidents that were reported to the AFP in 2008.

Source – AFP/Customs media release, 24/04/2009; CDPP records.

ALLEGED COPYRIGHT ABUSES: \$50,000 CONFISCATED

Meanwhile in Brisbane, the AFP and CDPP restrained \$50,000 in funds alleged to have been derived from the illegal distribution of movies and television programs. The ring was alleged to have been managed by two Brisbane men via an offshore website.

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A 21-year-old and a 27-year-old were charged with distributing copyrighted material contrary to Section 132AI of the *Copyright Act 1968* and dealing in proceeds of crime worth \$10,000 or more contrary to Section 400.6 of the *Criminal Code* on 03 December 2008.

It is estimated that the men facilitated the transfer of over 10,000 terabytes of data (equivalent to 14.3 million copies of movies and television programs) between the website's 400,000 international members.

At a search warrant executed just prior to the arrest of the men, the AFP located and seized three computers and in excess of 1200 DVDs.

At the time of the arrests, AFP National Manager for Economic and Special Operations Mandy Newton said the AFP would continue to take action to restrain the funds derived from organized intellectual property crime.

"The AFP will continue to work closely with its industry partners against intellectual property crimes and to restrain the proceeds of those crimes," Assistant Commissioner Newton said.

On 2 March 2009 the full sum of \$52,748 was forfeited under the *Proceeds of Crime Act* to the Commonwealth without contest.

Source – AFP media release 04/12/2008, CDPP records.

BOGUS BABY BONUS CLAIMS LEAD TO RESTRAINT OF PROPERTY

In November 2008 the AFP and CDPP obtained restraining orders over property owned by a 33-year-old Perth man alleged to have fraudulently claimed more than \$300,000 in Baby

Bonus payments from Centrelink. It is alleged the man did this by using his position as an employee of Medicare Australia to obtain encrypted Tax File Numbers of deceased persons, then used those TFNs to make 23 false claims for Baby Bonus payments and to claim immunization payments for 58 fictitious children.

The man was charged with contraventions of the *Criminal Code* for of abuse of public office (section 142.2); obtaining a financial advantage by deception (section 134.2); and money laundering (sections 400.4 & 400.6).

The items of property restrained by the CDPP included more than 15 bank accounts and a recent model "Dodge Nitro" motor vehicle. Orders were also obtained for the compulsory examination of the man.



Source – AFP media release 27/11/2008, CDPP records.

ECSTASY MARKET BREAKTHROUGH: DRUGS, CASH AND EQUIPMENT SEIZED

A year-long joint operation targeting the trafficking, manufacturing and large scale distribution of illicit drugs has lead to the seizure of more than \$6.1 million

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of property (including 8 motor vehicles and 2 motorcycles) and cash in excess of \$1 million.

Operation Golf Brazen, involving the Australian Crime Commission ("ACC"), Queensland Police Service ("QPS") and Queensland Crime and Misconduct Commission ("CMC") closed on 03 February 2009.

The three-stage joint operation involved the execution of search warrants at several Queensland properties located at the Gold Coast, Sunshine Coast and Brisbane as well as one property in New South Wales.

As a result of the operation 20 people have been charged with a combined total of approximately 87 drug related offences. A range of illicit substances and items used for their manufacture were also located and seized, including 4.5kgs of ecstasy powder; 2385 tablets; 4 pill presses; 3 hydroponic set-ups (suspected of being used to produce cannabis); amphetamine and more than 80g of cocaine.

The CMC was responsible for the operation's financial investigations, provided the resources of its Organised Crime Investigation Team Silhouette, and conducted coercive hearings.

ACC Chief Executive Officer Alastair Milroy said the importance of collaboration and national coordination cannot be underestimated:

"The investigative and intelligence capabilities contributed by all partner agencies to this joint operation have been invaluable. Importantly, this partnership has caused the disruption of three organised crime syndicates operating across three states. This is a positive outcome for law enforcement."

Queensland Police Minister Judy Spence said the operation is an example of a successful national multi law enforcement agency response to problem of illicit drugs.

Source – joint media advisory – Australian Crime Commission, Queensland Police Service, Crime and Misconduct Commission (Queensland); 03/02/2009

\$990,000 BURIED AMPHETAMINE CASH SEIZED

In April 2009 the Australian Federal Police and the Queensland Police Service, with assistance from the Australian Customs and Border Protection Service completed a six-month operation targeting the manufacturing and trafficking of dangerous drugs in Queensland.

On 22 April 2009 police executed search warrants on addresses in Toowoomba and on the Gold and Sunshine Coasts. 36 people were charged with 82 offences in relation to possession of drugs, money, firearms and clandestine laboratory equipment. It will be alleged that the joint agency operation has dismantled a large methamphetamine trafficking network.

Numerous items of property were located and seized during the course of



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the execution of the warrants, including four motor vehicles, two motorcycles, jewellery, a jet ski, and a sum of over \$990,000 in cash located in a shipping container beneath a driveway at one of the premises. The cash was discovered with the assistance of Atlas (pictured), an AFP sniffer dog trained specifically to locate hidden cash.



Restraining orders were obtained by the CDPP over the abovementioned items, as well as in relation to various items of real property including a Glenview property (pictured).

AFP Manager of the Brisbane office Commander Brian McDonald said the operation was a significant achievement.

"This is an exceptional outcome for law enforcement as it continues to work together to dismantle drug syndicates

and prevent drugs from reaching the streets of Australia."



Source – AFP media release 22/04/2009;
CDPP records

CONFISCATED ASSETS ACCOUNT

ITSA ACTIVITY REPORT AS AT 31 MARCH 2009

The Official Trustee in Bankruptcy (part of the Insolvency Trustee Service of Australia), which has responsibility for management of restrained property and realisation of confiscated property under the *POCA 2002* advised that:

- For the financial year to date of reporting (01 July 2008 to 31 March 2009) ITSA recovered a total of approximately \$10.39 million which was paid into the Confiscated Assets Account.
- ITSA recovered \$5.06 million of the above amount during the month of March 2009; the highest monthly recovery for the 2008/2009 financial year to date.

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DECISIONS

NSWSC REFUSES TO STAY POC PROCEEDINGS

In the recent matter of *Lee v DPP (Cth)* [2009] NSWSC 174, the New South Wales Supreme Court refused an application for a stay of proceedings under the *Proceeds of Crime Act 2002*.

The proceedings relate to more than \$4 million in various Australian bank accounts, suspected of being proceeds of a fraudulent trading scheme whereby investors were induced to purchase non-existent commodity options on non-existent foreign commodity exchanges.

The applicant Lee, instructing lawyers from outside Australia, sought a stay of the confiscation proceedings until such time as he was advised that he would not be charged with any offence to which the restraining order related.

The application was made in the context of the Supreme Court of NSW previously refusing to strike out the DPP's applications for examination under section 180 and for forfeiture under section 49; see *Lee v DPP (Cth)* [2008] NSWSC 300.

It was argued for the applicant that his submission to a compulsory examination under the Act, his opposition to an application for forfeiture and his own application for relief under the *POCA 2002* might prejudice his privilege against self incrimination by requiring him to disclose information which he would not be required to disclose in any criminal proceedings.

The applicant placed particular reliance on the decision of *DPP (Cth) v Jo and Ors* (2007) 176 A Crim R 17. In that

case, the Queensland Court of Appeal ("QCA") upheld the decision of a District Court Judge to grant a temporary stay of a forfeiture application for reason that there was a "real risk" that any prosecution case might benefit "incidentally" from evidence adduced by the respondents on an exclusion application or an examination.

The CDPP as respondent submitted that sections 197 & 198 of the *POCA 2002* afforded protection to a person whose privilege against self-incrimination might arise in an examination under section 180, and, that privilege is maintained in *POCA 2002* proceedings by its statutory embodiment in section 128 of the *Evidence Act 1995*. To that extent, it was submitted that the decision to grant a stay in *Jo* "on a broad assertion about the risk of self incrimination" was incorrect.

Although the Judge refused to order the stay in this case, he did not find it necessary to express a concluded view about the CDPP's submission regarding *Jo*, noting that he would not lightly conclude that a decision of the QCA was wrongly decided.

He did however note that he was persuaded by the CDPP's alternative submission that the Queensland decisions of *Jo* and *Shaw* were distinguishable from the present case. In this regard His Honour noted that proceedings under sections 19 and 49 of the *POCA 2002* are directed solely at the proceeds of offending, by whomsoever, against a law of the Commonwealth or of a foreign country, and do not require the commencement of any criminal proceedings.

His Honour was not persuaded that the potential prejudice faced by Lee was such that the interests of justice required the stay of proceedings against him.

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RECENT EVENTS

REPORT OF NATIONAL CRIMINAL CONFISCATION CONFERENCE – FEBRUARY 2009

From 24 to 26 February 2009, the Australian Federal Police, Australian Crime Commission and Commonwealth Director of Public Prosecutions jointly hosted a "National Criminal Confiscation Conference" in Brisbane. The three day event had more than 150 attendees, representing more than 25 different agencies involved in criminal confiscation work, from all Australian jurisdictions except Tasmania.

Funding for the Conference was sourced from the Confiscated Assets Account with the approval of the Minister for Home Affairs Bob Debus.

Attendees included two international key note presenters; Mr David Armond (Deputy Director of Proceeds of Crime, Serious Organised Crime Agency ("SOCA") United Kingdom) and Mr Wayne Walsh (Department of Justice, Hong Kong).

David Armond (SOCA)

Presentation: "Investigation strategies undertaken in the UK and Europe on civil cases"



Topics covered during the Conference included **Progressing Civil Cases in Australia; Financial Investigations** (international and local); **"Effective**

Control" (and its inherent complexities); and **Jurisdictional Comparisons** (concerning confiscation action).

Jon Sparke (NSWCC)

Presentation: "Criminal Asset Confiscation Litigation & Financial Investigation Experiences of the NSW Crime Commission"



The Conference was engaging and rewarding and provided an excellent opportunity for the attendees to share their experiences and strategies in relation to the investigation and litigation of criminal confiscation matters.

National Criminal Confiscation Conference

Brisbane 24 – 26 February 2009

"Attendees participate in Group Exercise"



The editors of this Bulletin welcome contributions from relevant agencies. Please contact Fleur Davis on [redacted] or email: [redacted]

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RECENT CRIMINAL CONFISCATION ACTION

CASH & DRUGS SEIZED: PART ONE

On 30 July 2009, the Australian Crime Commission ("ACC") in conjunction with Victoria Police Drug Task Force detectives smashed a drug importation syndicate, resulting in the arrest and charging of five people with drug related offences and the seizure of drugs and over \$35,000.00 in cash.

The seized drugs, with an estimated value of half a million dollars, included

cocaine, ecstasy, amphetamine, 80 litres of "Fantasy" and steroids.

The arrests and property seizure followed the execution of search warrants at inner metropolitan and outer suburbs of Melbourne. The operation has put an end to the activities of the syndicate that is believed to have interstate connections.

Detective Inspector Doug Fryer of the Drug Task Force observed that the successful result highlights the effectiveness of multi agency cooperation.

Noting that Australian law enforcement is no longer bound by jurisdictional borders, Detective Inspector Fryer said:

"Victoria Police and the ACC will continue to work together and alongside other law enforcement agencies to target and dismantle organised crime and reduce the harm caused by drugs in our community."

Source – Joint Victoria Police and Australian Crime Commission media release, 30 July 2009.

CASH & DRUGS SEIZED: PART TWO

On Friday 02 July 2009, the AFP in Queensland and Victoria arrested five people in conjunction with the importation of precursor chemicals capable of making \$20 million worth of amphetamines.

The consignment of chemicals which arrived in Sydney on 25 June 2009, were imported from South Africa in metal multi-threaded rollers destined for an address in Alexandra Hills, Brisbane.

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AFP agents monitored the consignment alleging it was transported by a 47 year old man from Bilambil Heights in NSW to an address in Woodstock, Victoria where it arrived on 02 July 2009.

On that day, the AFP executed search warrants at six locations in Victoria, Queensland and NSW, seizing the precursor chemicals and \$25,000.00 in cash.

Customs and Border Protection intercepted a similar consignment on 02 July 2009, which is currently being examined by AFP Forensics.

The alleged ring leader, a 43 year old South African man faces charges associated with importing and attempting to possess a border controlled precursor in contravention of the *Criminal Code*.

Three other men faced Melbourne Magistrates Court on 03 July 2009 charged with *Criminal Code* offences of attempting to possess and attempting to pre-traffic a border controlled precursor and were each bailed to re-appear on 12 October 2009.

A 42 year old Brisbane man has also been charged in association with his role in the syndicate for dealing with money or property contrary to the *Criminal Code*.

Source – AFP media release, 03 July 2009.

SETTLING PROCEEDINGS UNDER THE POCA 2002

Available under the *POCA 2002* are three types of final order – Forfeiture Orders, Pecuniary Penalty Orders and Literary Proceeds Orders. It is a

requirement for most orders, that there is a restraining order in place that is either person or asset directed.

Civil confiscation proceedings under the *POCA 2002* can commence independently of the prosecution process, therefore occurring before, during or after prosecution proceedings (if any). The evidentiary standard is the balance of probabilities.

It is not uncommon for proceedings under the *POCA 2002* to be resolved by agreement between the parties. Settlement negotiations may properly be instituted by either the plaintiff or respondent.

In determining the merits of making or accepting an offer for settlement, the CDPP will consider a range of factors including but not limited to the prospects of success were the matter to be litigated, the cost of litigation, potential damages claims and the views of the investigating agency/ies.

Following are some examples of different types of successful confiscation settlements which occurred during the 2008-2009 financial year.

FORFEITURE ORDER: LI & LEE

In April 2005, the CDPP obtained civil based asset directed restraining orders pursuant to section 19 of the *POCA 2002* in respect of \$2,260,000.00 in seized cash.

Venezuelan Nationals, husband and wife, Li and Lee, were arrested in Sydney and charged with money laundering offences under the *Criminal Code* after Li was found to be in possession of \$285,300.00 cash and Lee was found to be in possession of \$715,000.00 cash.

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Further cash amounts were located with \$449,950.00 found during a search warrant in the couple's Sydney hotel room and \$809,950.00 in a safety deposit box at the Commonwealth bank in Li's name.

Two criminal trials were held with the first resulting in a hung jury and the second with the conviction of Li and acquittal of Lee. Li has appealed his conviction, and this is yet to be heard.

In March 2009, despite the outcome in the criminal proceedings against Lee and Li's pending appeal, in respect of the proceedings under the *POCA 2002*, final orders were made by the NSW Supreme Court by consent. The orders provided among other things that the sum of \$1.99 million cash be forfeited to the Commonwealth pursuant to section 49 of the *POCA 2002*.

PECUNIARY PENALTY ORDER: MARE

In July 2005, the CDPP obtained civil based person directed restraining orders pursuant to section 18 of the *POCA 2002* in relation to property alleged to be subject to the effective control of John Daizell Mare. The restraining order related to property located in Australia, Hong Kong and Vanuatu.

The restraining orders were obtained on the basis that there were reasonable grounds to suspect that, Mare had committed an offence of defrauding the Commonwealth by the lodging of false returns and mis-describing petroleum products produced at a refinery run by a company named Oil Recyclers Australia Pty Ltd for which Mare was the director and shareholder.

Specifically, it was alleged that the refinery had been selling products for use as fuel or for the purposes of fuel,

but was falsely declaring the nature of the products in order to attract no or reduced rates of excise duty.

In May 2009, the proceedings under the *POCA 2002* were resolved by a court order made by consent requiring Mare to pay a pecuniary penalty in the sum of \$1.1 million which was fully paid to the Commonwealth from restrained funds being held by the Official Trustee.

The civil proceedings under the *POCA 2002* were initiated and resolved notwithstanding the fact that Mare has not been charged with any criminal offence and notwithstanding that Mare held no property in his own name.

Source: CDPP records.

LEGAL UPDATE

SOC BILL: PROPOSED AMENDMENTS TO *POCA 2002*

The *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009* ("the SOC Bill") was introduced into Parliament by the Attorney-General Robert McClelland on 24 June 2009.

Schedules 1 and 2 of the Bill propose the following amendments to the *POCA 2002*:

- insertion of "unexplained wealth" provisions;
- insertion of "freezing order" provisions relating to funds held in bank accounts;
- removal of the limitation period for civil confiscation action;
- provision for the civil restraint and confiscation of instruments of "serious offences";

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- streamlining of the Act's information disclosure provisions; and
- revision of the Act's provisions relating to legal aid reimbursements.

Four of the above proposals represent legislative responses to recommendations of the Sherman Report.

The Attorney-General has said of the reforms:

"The increasingly sophisticated and aggressive nature of organised crime requires a tough response. It is important that we have strong, tailored and effective laws in place to combat serious organised crime."

Source – CDPP Records; Attorney-General for Australia media release, 24 June 2009.

CONFISCATED ASSETS ACCOUNT

ITSA ACTIVITY REPORT AS AT 30 JUNE 2009

The Official Trustee in Bankruptcy (part of the Insolvency Trustee Service of Australia), which has responsibility for management of restrained property and realisation of confiscated property under the *POCA 2002* advised that:

- For the financial year of reporting (01 July 2008 to 30 June 2009) ITSA recovered a total of approximately \$16,799,814.50 which was paid into the Confiscated Assets Account ("CAA").
- ITSA recovered \$6,411,579.65 of the above amount in the final quarter of the financial year (for the months April to June 2009).

PROJECTS CURRENTLY BEING FUNDED OUT OF THE CAA

Section 298(1) of the *POCA 2002* provides that the Australian Government may approve a programme for the expenditure of money from CAA for one or more of the following purposes:

- (a) Crime prevention measures;
- (b) Law enforcement measures;
- (c) Measures relating to treatment of drug addiction;
- (d) Diversionary measures relating to illegal use of drugs.

Non-government sector organisations can apply for program funding for community projects in relation to nominated priority areas of (a), (c) or (d) above by responding to advertisements by the Australian Government seeking expressions of interest ("EOI") as made.

Minister for Home Affairs, Brendan O'Connor has recently announced funding for community projects in Western Australia, Victoria and Sydney and has indicated that he will be making further announcements about other recipients in the near future.

More than \$6 million of funding will be distributed to community groups for projects supporting initiatives in crime prevention and Indigenous prisoner throughcare.

Halls Creek Artists' Community (northern WA)

On 2 September 2009, Mr O'Connor delivered funding of \$438,324 to the Warlayiriti Artists' Aboriginal Corporation for a project to engage young Indigenous people in three

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remote communities using photography, painting and film.

Mr O'Connor explained:

"This funding recognises the contribution work that an innovative group of artists is making to Indigenous arts and culture, and ultimately to crime prevention. It is grass roots groups of this kind who will make a positive difference to young Indigenous Australians".

Victorian YMCA Youth and Community Services Inc:

On 03 September 2009, Mr O'Connor, along with Member for Melbourne Lindsay Tanner, visited Victorian YMCA Youth and Community Services Inc to deliver funding for a program to reduce re-offending by young people.

Mr O'Connor said:

"It is grass roots groups of this kind who can make a difference in addressing the issues faced by young offenders in Australia. This funding will help young offenders aged 16-21 to re-engage socially and economically with their community by strengthening their vocational and work readiness skills to improve work prospects."

The project will use networks and partnerships that have been developed over the past years with industry, employers and unions providing entry level employment opportunities in the transport, construction, manufacturing and automotive industries.

Inner West Skills Centre Inc (Sydney):

The following day, Mr O'Connor visited Sydney's Inner West Skills Centre, along with Member for Reid Laurie Ferguson and delivered funding of \$318,003 for a program to help young

people develop the skills required to achieve their potential across the areas of employment, training, welfare and youth services.

He said of this initiative:

"Disadvantaged young people are over represented in youth crime statistics and this funding will provide educational, vocational and life education initiatives to help these young people stay out of the criminal justice system."

Source – AGD website for Crime Prevention:
<http://www.crimeprevention.gov.au>;
Minister for Home Affairs media releases 02, 03 & 04 September 2009.

IN OTHER NEWS

PROSECUTOR PAIRING PROGRAMME

Komisi Koria, a prosecutor from Samoa, employed by the Samoan Attorney-General's Office, undertook a two month secondment in the Head Office Criminal Assets Branch of CDPP for two months commencing 22 June 2009 pursuant to ongoing cooperation between CDPP and the AMLAT section of the Attorney-General's Department.

The objective of the Pairing Programme has been to strengthen the capacity of the Samoan Attorney-General's Office to meet its obligations under the *Proceeds of Crime Act 2007* ("POCA 2007") by:

- (i) Identifying criminal matters that have proceeds of crime potential;
- (ii) Undertaking restraint and confiscation action under the *POCA 2007*; and

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- (iii) Coordinating the efforts of the relevant government agencies in proceeds action.



(Komisi Koria)

During his time with CDPP, Mr Koria has been exposed to proceeds of crime related work at both the operative and administrative levels.

Having regard to the differences and similarities between *POCA 2002* and *POCA 2007* Mr Koria has adapted a prosecutors' manual, which will be an important tool in the implementation of proceeds action in Samoa.

Mr Koria is confident that his experience will ultimately translate into more active enforcement of Samoa's Proceeds of Crime Legislation.

SUSSEX POLICE BLING IN THE NEW YEAR WITH PAYBACK CAMPAIGN

Crime Stoppers UK in conjunction with the Sussex Police kicked off the New

Year with the Payback campaign "Too much bling? Give us a ring" with a view to encouraging members of the public to report their suspicions about people who appear to be wealthy despite any evidence of a legitimate income.

The Bling poster below, (from Sussex Police design originally produced by Kent Police) was used in conjunction with a campaign website and placed on buses as well as coasters in pubs.



(Bling poster used in campaign)

Source: *Payback Review Issue 1 – February 2009.*

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Fleur Davis on [redacted] or email: [redacted]

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RECENT CRIMINAL CONFISCATION ACTION

MONEY-LAUNDERING INVESTIGATION LEADS TO \$1.25 MILLION CASH

On 02 October 2009 the Australian Federal Police ("AFP") seized more than \$1.25 million following a four month money laundering investigation and arrested and charged two men aged 57 and 53 with possession of money

reasonably suspected of being the proceeds of crime in contravention of section 400.9 of the *Criminal Code*.

The investigation commenced following a referral from the Australian Crime Commission's ("ACC") Financial Intelligence Assessment Team.

The money was found during search warrants conducted on residential addresses in Baulkham Hills and Castle Hill and a business address in Parramatta.

More than \$578,000 was located during the search warrant at the Baulkham Hills residence and over \$600,000 was in the possession of the 53-year-old man.

AFP National manager Economic and Special Operations Assistant Commissioner, Mandy Newton said:

"The AFP works closely with partner agencies, such as the Australian Crime Commission, the Australian Tax Office and AUSTRAC to disrupt financial based crimes"

ACC Chief Executive Officer Mr John Lawler said the arrests demonstrated the value of financial intelligence in minimising the damage to the Australian economy caused by organised crime.

Source – AFP media release, 27 October 2009.

TOBACCO COUPLE ORDERED TO PAY \$8.28 MILLION; IMPRISONED

On 23 July 2009 a Taiwanese couple alleged to have been involved in a large scale tobacco excise fraud were ordered by the Queensland District Court to

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repay to the Commonwealth \$8.28 million in illegally obtained benefits.

The pecuniary penalty order under the *Proceeds of Crime Act 2002 (Cth)* represents the culmination of proceedings against the couple which commenced in November 2004.

Property subject to the control of the couple and targeted in the proceedings included luxury real estate, a Rolls Royce motor vehicle, and funds held in various bank accounts.



Residential property targeted in proceedings under the POCA 2002

Following the resolution of the confiscation proceedings, on 28 August 2009 the couple were sentenced to imprisonment for offences of conspiring to cause a loss to the Commonwealth

and dealing with proceeds of crime worth \$1 million or more. The couple were ordered to serve non-parole periods of seven years and three years respectively.

The pecuniary penalty order made against the couple represents in dollar terms the second largest confiscation order made under the provisions of the *Proceeds of Crime Act 2002*.

Source – AFP, Customs and Border Protection and ATO media release 29 August 2009; CDPP records.

\$4.16 MILLION RETURNED TO PEOPLE'S REPUBLIC OF CHINA

On Friday 20 November 2009, the Australian Government represented by AFP Chief Operating Officer Mr Andrew Wood presented the Director General of China's Guangdong Provincial People's Procuratorate with a cheque representing confiscated proceeds of crime worth over AUD \$4.16 million at a ceremony in Guangzhou.

In June 2007, the Commonwealth Director of Public Prosecutions, in cooperation with the AFP and the Procuratorate, commenced action under the *Proceeds of Crime Act 2002* ("POCA 2002") to restrain property and money believed to have been misappropriated from a Chinese local government and sent to Australia via Hong Kong.

The *POCA 2002* provides for the repatriation of restrained funds under the equitable sharing program, the Minister for Home Affairs has discretion to return funds to a foreign country in recognition of their assistance leading to the recovery.

"The repatriation of these proceeds of crime to the People's Republic of China demonstrates the strength of the relationship between Australian and

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Chinese authorities in combating transnational crime," Mr Wood said.

"The property and money was forfeited to the Commonwealth as a result of civil forfeiture proceedings that were only undertaken following valuable assistance from Chinese authorities."



Andrew Wood presents cheque to Zheng Hong during a ceremony in Guangzhou.

"The AFP continues to build strong relationships with Chinese law enforcement authorities, which is evidenced by the ongoing success in investigations of transnational crimes."

Source – AFP media release 20 November 2009.

AUSTRALIA DELIVERS FURTHER RAHARDJA CRIME PROCEEDS

On 8 December 2009 the Minister for Home Affairs, Brendan O'Connor delivered to Indonesia's Minister for Law and Human Rights Patrialis Akbar, more than AUD \$493,000 recovered from the criminal activities of the late Hendra Rahardja.

These funds are in addition to more than AUD \$637,000 repatriated to Indonesia from assets confiscated in Australia in 2004.

Hendra Rahardja and his associates were convicted in Indonesia of corruption, in relation to fraudulent loan arrangements with the PT Bank Harapan Sentosa, but Mr Rahardja died in 2003 before he could be extradited to Indonesia from Australia.

"The recovery of the proceeds of crime is a result of the considerable hard work and determination by the joint Australian and Indonesian task force into Mr Rahardja's criminal activities in Australia and abroad," Mr O'Connor said.

"The success of the task force is symbolic of the close and effective working relationship between Australia and Indonesia in combating the shared threat of transnational crime."

"The Australian Government is committed to working closely with Indonesia on international crime cooperation matters and that relationship has already resulted in important outcomes including the recovery of criminal proceeds."

Source – Minister for Home Affairs media release 08 December 2009.

CONFISCATED ASSETS ACCOUNT

FIRST QUARTER STATISTICS – 2009/10

The Official Trustee in Bankruptcy (part of the Insolvency Trustee Service of Australia), which has responsibility for management of restrained property and realisation of confiscated property under the *POCA 2002* advised that:

- For the first quarter of the 2009/2010 financial year, ITSA recovered an amount of \$6,339,664.86 which was paid into

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the Confiscated Assets Account ("CAA").

ROTARY CLUB AND MISSION AUSTRALIA RECEIVE FUNDING FROM CONFISCATED ASSETS ACCOUNT

Minister for Home Affairs, Brendan O'Connor has made further announcements regarding recipients to share in more than \$6 million of funding to be distributed to community groups for projects supporting initiatives in crime prevention and Indigenous prisoner throughcare.

Two community groups to receive funding are The Rotary Club of Swan Hill, and Mission Australia

Community Liaison and Support Program Swan Hill

On 06 October 2009, Mr O'Connor announced that the Rotary Club of Swan Hill will receive a grant of \$152,960 for what he said will be a fantastic project that will help the area's most vulnerable residents feel safe by making their homes more secure.

Mr O'Connor said, *"This program will provide home safety assessments to elderly residents throughout the City of Swan Hill, and the Shires of Gannawarra and Buloke in Victoria."*

"The grant will enable the installation of safety equipment such as security doors, improved lighting and smoke detectors to increase community safety, confidence and a sense of wellbeing."

"In addition to the home safety assessments, the Rotary Club will encourage greater reporting of incidents and raise public awareness."

"The funding will not only help elderly people secure their homes but also help them feel safer."

Source – Attorney-General for Australia media release, 06 October 2009.

Nurturing Pathways of Early Development: Help Us Grow Strong ("HUGS")

On 12 October 2009, Mr O'Connor along with the member for Oxley, Bernie Ripoll announced funding of \$500,000 to Mission Australia to provide programs for children under five in Inala and Carole Park, Queensland.

Mission Australia, a leading community service group, operates more than 300 employment, community service, housing and rehabilitation programs across Australia.

HUGS will be an early intervention program to provide an educational, nurturing and stimulating environment for these young children and their families as they lead up to school age.

Mr O'Connor said, *"HUGS will work with disadvantaged families of children under five and offer them playgroups and parent support programs to help these children transition into Prep."*

"Practical programs for the very young can help reduce the likelihood of them growing up to act in anti-social ways or commit crimes."

"This project will also deliver multicultural and culturally specific Vietnamese, Samoan, Tongan and Indigenous playgroups so these children can improve their communication and social skills."

Mr Ripoll said, *"Mission Australia has always valued the importance of the family unit, and this project will help*

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disadvantaged families from our community access school, early childhood programs and information services."

"HUGS will help families get the support they need to set their child up with the skills they'll need to do well at school."

Source – Attorney-General for Australia media release, 12 October 2009.

DECISIONS

NSW RESTRAINING ORDER PROVISIONS RULED INVALID BY HIGH COURT

On 12 November 2009 the High Court of Australia ruled by majority (4-3) that the ex parte restraining order provisions of the *Criminal Assets Recovery Act 1990 (NSW)* ("the CAR Act") were constitutionally invalid: *International Finance Trust Company Limited & Anor and NSW Crime Commission* [2009] HCA 49,

The majority (French CJ, Gummow, Bell and Heydon JJ) held that section 10 of the CAR Act impermissibly directed the NSW Supreme Court ("NSWSC") as to the exercise of its jurisdiction and therefore infringed Chapter III of the Commonwealth Constitution; *Kable v DPP (NSW)* (1996) 189 CLR 51.

In particular, the majority interpreted the provision as requiring the NSW Supreme Court ("NSWSC") to hear and determine, without notice to the persons affected, applications for restraining orders made ex parte by the NSW Crime Commission, without any facility for a defendant to apply for speedy dissolution of the restraining order upon being notified of its grant. The majority did not regard a defendant's ability to apply for an exclusion order (in respect of which the

defendant would bear the onus of establishing, on the balance of probabilities, that the affected property was not illegally acquired) as an adequate recourse.

By contrast, the minority judges (Hayne, Crennan and Kiefel JJ) were of the view that it would be possible under the CAR Act for a restraining order initially made ex parte to be reviewed either by the judge that made the order, or by another judge of the same Court. On this basis the minority concluded that the Act did not infringe the *Kable* principle.

Does the High Court's decision affect the validity of the restraining order provisions in the POCA 2002?

The ex parte restraining order provisions contained in the *POCA 2002* are different from those contained in the CAR Act in two important respects. First, under section 26 of the Act, whilst a court must *consider* an application for a restraining order made ex parte, it also has express power to require the DPP, before finally determining the application, to give notice of the application to the relevant parties: subs (5).

Secondly, the *POCA 2002* contains a specific procedure allowing the respondent to a restraining order made ex parte to apply speedily for the revocation of the order, on the basis that there was no proper basis for the order having been made (section 42 of the *POCA 2002*).

These provisions in combination are believed to be sufficient to preserve the constitutional validity of the *POCA 2002*.

The editors of this Bulletin welcome contributions from relevant agencies. Please contact Fleur Davis on [redacted] or email: [redacted]

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COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

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