

CRIME AND MISCONDUCT COMMISSION

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Criminal Proceeds Confiscation  
Submission 001



Our Reference: AD-06-0477 / AP  
Contact Officer: Angela Pyke

5 February 2013

Mr Ian Berry MP  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
**BRISBANE QLD 4000**

Dear Mr Berry

**RE: CRIMINAL PROCEEDS CONFISCATION (UNEXPLAINED WEALTH AND SERIOUS DRUG OFFENDER CONFISCATION ORDER) AMENDMENT BILL 2012**

I refer to your letter dated 4 December 2012 inviting the Crime and Misconduct Commission (CMC) make a written submission in respect of the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Bill 2012* (the Bill).

I thank you for the opportunity to comment on the Bill. The CMC has considered the Bill and concurs with most of the amendments proposed. Whilst the CMC holds a positive view of the Bill, it also has identified particular amendments which it believes may increase the efficiency and effectiveness of the legislation.

Please find attached the CMC's submission to the Bill. If you have any queries in relation to the submission please contact Angela Pyke, A/Director, Financial Investigations, of my office.

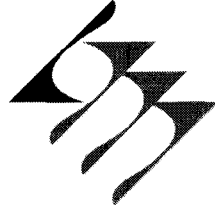
Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross Martin', written over a horizontal line.

**ROSS MARTIN SC**  
Chairperson

Encl.

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

## **SUBMISSION**

***CRIMINAL PROCEEDS CONFISCATION  
(UNEXPLAINED WEALTH AND SERIOUS DRUG  
OFFENDER CONFISCATION ORDER)  
AMENDMENT BILL 2012***

**[FEBRUARY 2013]**

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**Amendment required to sections 37A(2)**

It is submitted that amendment is required to section 37A(2) to omit "the DPP" and insert "*appropriate officer*".

This proposed amendment is consistent with the proposed amendment to section 30A at clause 22 of the Bill and new the provision at section 93L(2).

**Proposed new section 80A**

The CMC considers this section should be consistent with the proposed amendment to section 77(2) detailed at clause 32 of the Bill. Section 77(2) requires the State to provide notice of a proceeds assessment order application. Section 80A requires the State to provide notice of the making of a proceeds assessment order. The CMC submits the requirement for notice of the application and notice of the order should be consistent. On that basis, section 80A(1)(a) should be removed and replaced with the following:

(1) *The person against whom the order is made; and*

This proposed amendment should also be considered in conjunction with the discussion below in respect of the proposed new section 89A.

**Proposed new section 89A**

This section provides for a hardship application to be made within 3 months after a proceeds assessment order is made.

Under the *Criminal Proceeds Confiscation Act 2002* and the *Uniform Civil Procedure Rules 1999* the State is required to serve all known interested parties with the originating application and any further relevant applications that may impact upon the interested parties. It is from this initial point in the proceeding that all known interested parties become aware of the proceedings and are able to bring an application in the proceedings if they so elect.

At present, generally, all applications in relation to a respondent are heard simultaneously at trial - the State's forfeiture application and/or proceeds assessment order application, the respondent's exclusion application, any interested parties' exclusion application and any hardship application.

The proposed new section 89A contemplates the filing of another application up to 3 months after the proceeds assessment order has been made. This may result in another trial after the determination of the proceeds assessment order application, resulting in further court time and all parties incurring further costs.

Pursuant to the amended section 77 at clause 32, the State is required to give notice of the proceeds assessment order application to the respondent and anyone else reasonably suspected of being affected by the making of the order. The CMC contends by providing the required notice of the application to all known affected parties, those parties are able to file an application for hardship during the course of the proceeding and that application can then be heard at trial with all other applications relevant to the proceeding. This will save court time and costs.

The CMC submits the provision for the filing of a hardship application within 3 months after the determination of the order should be removed. Reference to the 3 month period should therefore also be removed from proposed new section 80A(2)(b).

#### **Proposed new section 89J**

The CMC considers this section should be consistent with the proposed new section 89F. Section 89F(2) requires the State to provide notice of an unexplained wealth order application. Section 89J requires the State to provide notice of the making of an unexplained wealth order. The CMC submits the requirement for notice of the application and notice of the order should be consistent. On that basis, section 89J(1)(a) should be removed and replaced with the following:

- (1) *The person against whom the order is made; and*

This proposed amendment should also be considered in conjunction with the discussion below in respect of the proposed new section 89Q.

#### **Proposed new section 89Q**

As discussed above at proposed new section 89A, the CMC recommends similar changes to the provision for hardship applications in respect of unexplained wealth orders.

The CMC submits the provision for the filing of a hardship application within 3 months after the determination of the unexplained wealth order should be removed. Reference to the 3 month period should therefore also be removed from proposed new section 89J(2)(b).

#### **Proposed new section 93U**

It is submitted that amendment is required to section 93U(2) to omit "the DPP" and insert "*appropriate officer*".

This proposed amendment is consistent with the new provision at section 93L(2) and the recommended amendment above in respect of section 37A(2).

#### **Proposed new section 93ZP**

This section allows the State to apply to sell restrained property after an application for a serious drug offender confiscation order is filed. Pursuant to Chapter 2A the State can only apply for a serious drug offender confiscation order once a serious drug offence certificate has been issued.

Pursuant to proposed section 161G(1) of the *Penalties and Sentences Act 1992*, a serious drug offence certificate is to be issued by the court at the time of imposing a sentence for a serious drug offence.

The effect of section 93ZP is an application to sell restrained property is unable to be filed until after a person has been sentenced of a serious drug offence. The time period between restraint and sentencing may be quite lengthy. During this time property may be deteriorating and/or storage fees may be accumulating.

The CMC submits this provision be amended to allow an application for the sale of restrained property to be filed at any time after the property has been restrained.

This amendment is consistent with the current section 46. The sale proceeds would then be held in trust pending the finalisation of the proceedings.

**Proposed new section 93ZZE**

The CMC considers this section should be consistent with the proposed new section 93ZZ. Section 93ZZ(5) requires the State to provide notice of a serious drug offender confiscation order application. Section 93ZZE requires the State to provide notice of the making of a serious drug offender confiscation order. The CMC submits the requirement for notice of the application and notice of the order should be consistent. On that basis, section 93ZZE(1)(a) should be removed and replaced with the following:

- (1) *The person against whom the order is made; and*

This proposed amendment should also be considered in conjunction with the discussion below in respect of the proposed new section 93ZZO.

**Proposed new section 93ZZO**

As discussed above at proposed new sections 89A and 89Q, the CMC recommends similar changes to the provision for hardship applications in respect of serious drug offender confiscation orders.

The CMC submits the provision for the filing of a hardship application within 3 months after the determination of the serious drug offender confiscation order should be removed. Reference to the 3 month period should therefore also be removed from proposed new section 93ZZE(2)(b).

**Proposed amendment of sch 6 (Dictionary) to the *Criminal Proceeds Confiscation Act 2002***

The CMC contends that the definition of applicant should be removed. The definition does not define applicant and may confuse.