

On 08/02/2013, at 4:28 PM, "Rob Jobson" >

wrote:

Dear Kellie,

Thank you for the opportunity to consider the above proposed legislation. In relation to the UEW aspect, I am surprised that the process commences with an application for an UEW Order under section 89F without any requirement for a restraining order. From our perspective, at the very least a RO preserves the assets said to comprise UEW until such time as a Court has determined the merits. As I see it, there is no impediment to dissipation even whilst proceedings are on foot.

My second reaction is the criteria for embarking on a UEW Application appear, is unnecessarily reliant on evidence of engagement in criminal activities or evidence of acquisition of property in circumstances which are less than bona fide or legal. The WA and NT approach is that acquisition of property can only be acquired in one of two ways - lawfully or unlawfully. If a person has disproportionate wealth the legitimacy of provenance will come out in the course of proceedings.

This approach cuts out the requirement for establishing the requisite criterion upon which to base an application but also, more importantly, does not limit the ambit of the Act only to persons who have UEW but who also meet the governing criteria. Further, s.89G(1)(a)(ii) seems complicated.

Not only must evidence be available to show the person has acquired serious crime derived property etc but also that insufficient consideration was given - an additional matter for adjudication and potential argument.

My final query is s.89G(1)(a)(i) is disjunctive with (a)(ii), (a)(ii) is conjunctive with (b) - is (b) also supposed to be conjunctive with (a)(i)? Further, what is the relevance of (b) in its context with (ii)?

It would seem to axiomatic that if property is acquired in circumstances which are not commercially (or otherwise) legal, then it's acquisition is illegal - without necessarily requiring that to be qualified under (b)?

I hope you do not take these comments as intending any offence. By contrast to other jurisdictions the NT model is simple and straight-forward - and therefore has been effective. Other models all appear to be complicated - caused by setting qualifying criteria and safeguards which, in the end, make enforcement unnecessarily difficult.

SDOCO:

I was particularly interested in noting this proposed initiative which I applaud. It is similar to our Declared Drug Trafficker provisions to all intents and purposes. For what it's worth, I think this proposed ground is sensible and workable.

I have limited by comments to these fundamental impressions. In my view, for what it's worth, the success or failure of the UEW law is not only dependant on having a workable law but equally on the quality and skill of the investigation. I wish you all well in this pending enforcement initiative.

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