

25 January 2024

Our ref: [LP:CLC]

Crime and Corruption Commission
Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

By email: [REDACTED]

Dear Review Team

Review of the Criminal Proceeds Confiscation Act 2002 (Qld) – Discussion Paper

Thank you for the opportunity to provide feedback on the Review of the Criminal Proceeds Confiscation Act 2002 (Qld). The Queensland Law Society (QLS) appreciates being consulted on this important discussion paper.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

General comments

There are broadly five key issues that QLS Criminal Law Committee members have been identified in relation to this review.

1. The use of restrained funds for engaging legal representation is an ongoing concern for members of QLS's Criminal Law Committee.
2. QLS opposes the reversal of the onus in proof which is inherent in unexplained wealth laws. We consider that this undermines the presumption of innocence and that the onus placed on the respondent is oppressive. It is also contrary to the fundamental legislative principles set out in s4(3) Legislative Statements Act 1992 (Qld).
3. We consider that there should be a link between the assets believed to have been acquired unlawfully and commission of an offence.
4. Judicial discretion should be maintained at every stage of the confiscation process and in all categories of confiscation. Importantly, the court should retain discretion to allow, on application by the defendant, legal costs to be met from the assets the subject of the application.

5. The asset confiscation scheme should be supervised by a parliamentary committee.

Please note that in the time available and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Consultation Paper and questions posed in it.

We make the following additional comments for your consideration in response to certain matters raised in the consultation paper.

Current range of asset confiscation mechanisms

A primary concern held by members of QLS's Criminal Law Committee in respect of the current asset confiscation scheme, is the prohibition on a respondent's access to restrained property for the purpose of paying legal fees. Respondents to these applications are essentially hamstrung, because there need not be any correlation between the property subject of the restraining order and any unlawful activity. Currently, legitimately obtained assets can still be restrained pending the hearing of the substantive application, in the event that they are required to satisfy a debt payable to the State.

For instance, there may be no suggestion that a house owned by a respondent is in anyway linked to unlawful activity, but it will still be restrained and, if the State successfully applies for an order such as a PAO (s77), that house might be legitimately sold by the State to satisfy the debt (s87). Legal Aid funding for these matters is limited and in our members' experience, usually involves a condition that those fees be repaid to Legal Aid, if property the subject of an order is ultimately released from restraint.

QLS also consider that further types of property should be excluded from the operation of this scheme. We consider that a prescribed respondent should be able to retain property for which he or she can provide a lawful explanation regarding its initial acquisition. This could include assets that were gifted to the person under a will or through the administration of an estate. This category of assets would clearly not be connected to criminal activity. In cases involving assets under a testamentary disposition, it would appear that it would be confiscating the assets of an innocent third party (such as a deceased parent). We note that 'special property', under a hardship application, includes this category. We consider that it would not only be a dependent that is able to apply to retain this category of property.

QLS acknowledges that there are valid policy reasons in place to combat the seriousness of drug crime, however we consider that it would be a reasonable and fair outcome if a person was allowed to retain assets which the court is satisfied were wholly lawfully acquired.

Unexplained wealth orders

QLS holds the longstanding view that the court should have discretion to allow, on application by the defendant, legal costs to be met from the assets the subject of the application. Sufficient safeguards can be put in place to ensure concerns do not arise that the asset pool is improperly drained. That would protect the integrity of the proceedings and allow for the defendant to be properly represented. In our members' experience, the Crown appreciates the involvement of legal representatives for the defendant to ensure matters are progressed professionally and efficiently.

Additionally, QLS holds concerns with the premise that a person, who has not been convicted of committee an offence amounting to serious crime related activity, would still be subject to an unexplained wealth order made earlier. This is particularly the case if the offence is the only one which has led to a finding of serious crime related activity. We consider that the quashing of a conviction should lead to an unexplained wealth order being revoked, or at a minimum, should trigger an automatic review of the basis for the order.

This response has been compiled by the QLS Criminal Law Committee, whose members have substantial expertise in this area.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Rebecca Fogerty
President