

Parliamentary Joint Committee on Law Enforcement

Inquiry into Commonwealth unexplained wealth legislation and arrangements

Questions on Notice from Mr Chris Hayes MP dated 6 March 2012

Question 1

Would similar problems arise if, rather than vest the power to temporarily restrain assets with an ACC examiner, the ACC instead applied to the Administrative Appeals Tribunal for temporary asset restraint? There appears to be precedent for such an approach in the process used for an extension of a controlled operation beyond three months (Part IAB of the *Crimes Act 1914*).

As noted in the Department's response to the Committee's question on notice about the ACC's proposal, the Constitution requires that certain functions and powers only be exercised by the judiciary. The Administrative Appeals Tribunal is not a judicial body. Therefore, the issue of whether the power to issue restraining orders could be validly conferred on the Administrative Appeals Tribunal is the same as for ACC Examiners.

Part IAB of the *Crimes Act 1914* does not provide a relevant precedent, as the function of approving extensions to controlled operations is administrative, not judicial, in nature.

Question 2

Alternately, would the same or other significant legal or Constitutional issues arise if an ACC Examiner was given the power to compel an individual to retain (or not disburse) a particular asset until such time as an examination was concluded, with a penalty imposed for doing otherwise? This would appear to be similar to the way in which an ACC Examiner is currently empowered to compel an individual to attend an examination, with penalties imposed for non-compliance.

Restraining orders are orders that require a person not to dispose of or otherwise deal with particular property. Contravening a *Proceeds of Crime Act 2002* restraining order is an offence punishable by up to 5 years imprisonment or a fine of \$33,000.

Giving ACC examiners the power to compel an individual to retain (or not disburse) a particular asset until such time as an examination was concluded, with a penalty imposed for doing otherwise, does not appear to be any different in substance to giving ACC examiners the power to restrain assets. As a result, such a proposal is likely to give rise to similar legal considerations.

If the Government decided to consider such a proposal, it would need to take appropriate advice on whether such a power could be conferred on ACC examiners.