



# Police Federation of Australia

The National Voice of Policing

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## UNEXPLAINED WEALTH LEGISLATION

The Police Federation of Australia would like to thank the Committee for the opportunity to contribute to your inquiry into Unexplained Wealth Legislation. We do so representing the interests of 55,000 police officers across Australia in all State and Territory jurisdictions and the Commonwealth.

Australia's 55,000 police officers, at the front line of law enforcement, are committed to combating serious organised crime. They also believe that targeting the wealth of organised crime is the most effective way to do so. This approach tackles the economic incentives behind organised crime, acting as a deterrent and also seizes assets that can be used to fund further criminal activity. This will make true the old phrase that 'crime doesn't pay'. Australia's police were promised an effective mechanism to assist them in achieving this commitment, in the form of unexplained wealth provisions. Parliament along with Australia's police, were told that "New unexplained wealth provisions will be a key addition to the Commonwealth criminal asset confiscation regime"<sup>1</sup>. But this promise was not effectively delivered, as the unexplained wealth provisions of the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* did not go far enough in creating a strong unexplained wealth confiscation system. Australia's police now call upon all our elected representatives, from all sides of the political spectrum, to support police in their bid to combat serious organised crime, by creating a strong unexplained wealth confiscation system that can effectively target the main beneficiaries of criminal proceeds, and can be efficiently utilised.

In his Second Reading speech for the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010, The Attorney-General for Australia, The Hon Robert McClelland, emphasised that "It is important that we put strong laws in place to combat organised crime. We need to target the profits of crime and remove the incentive for criminals to engage in organised criminal activity"<sup>2</sup>. Wealth

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<sup>1</sup> Mr Robert McClelland, Attorney-General, *House of Representatives Hansard*, 24 June 2009, p6965.

<sup>2</sup> Mr Robert McClelland, Attorney-General, *House of Representatives Hansard*, 24 June 2009, p6964.

confiscation mechanisms that require a link to a predicate offence are not enough to achieve this because often the major beneficiaries of criminal proceeds are able to distance themselves from the actual commission of crimes by complex and sophisticated means, and with the assistance of highly skilled professionals. It is these people who instigate, organise, and benefit from crime which costs Australia \$15 billion each year, and it is these people that Australia's police want the tools to stop. The Police Federation has been advised that under the current system, law enforcement agencies are reluctant to use the provisions because they believe that the standard to show the lawful means by which wealth was obtained would be so low that in practice the onus is on the investigator to establish an offence, undermining the purpose of these provisions. Therefore Australia's police support an unexplained wealth scheme that requires as minimal a link to a Commonwealth offence as is constitutionally acceptable. The model for an unexplained wealth provision the Police Federation of Australia put forward in its earlier submission is consistent with this approach.

The Police Federation of Australia, in line with its earlier submission, also calls for a system to be created with a view to implement a truly national scheme, one which facilitates the cooperation of the legislature and law enforcement agencies of the Commonwealth and all States and Territories. A national scheme should provide the law enforcement agencies across Australia with an effective mechanism for information sharing and collaborative investigations and taskforces, such that there is no jurisdiction within which organised crime can hide. A national scheme is also the solution to the constitutional problem; utilising the State and Territory legislative powers to remove the requirement that unexplained wealth be linked to a predicate offence completely.

Australia's police want these provisions to target the wealth of those at the top of serious organised crime structures. Accordingly, the legislative scheme should clearly define this purpose, to ensure that the scheme is implemented and interpreted in keeping with this important objective. This should also be sufficient to allay concerns about the interaction of these powers with individual freedoms. This scheme will not force everybody and anybody to either 'explain' or lose their assets; Australia's police want this scheme for the sole purpose of combating *serious* organised crime.

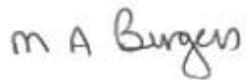
Australia's police call upon our elected representatives to create an unexplained wealth system that is effective not only in form, but also in substance. For unexplained wealth mechanisms to be an effective method of wealth confiscation and deterrent against criminal activity, it needs to be accessible to law enforcement personnel combating serious organised crime. The current system is not so. We are advised that a significant factor behind this is that the evidentiary requirements are far too onerous; it effectively requires investigators to build a detailed financial picture of a person's entire life. Under such a burden, unexplained wealth provisions are not a practically viable tool to combat serious organised crime. As a result of this, there has so far been no use of the current provisions. Australia's police support a system with a more efficient evidentiary requirement, which enables investigators to trigger a preliminary unexplained wealth order through investigations that isolate financial activity from a specified time frame, identify possible unexplained wealth through inconsistencies in declared taxable income and actual wealth, or discover large amounts of cash. Australia's police believe that such a system would create a mechanism that law enforcement agencies would be able to use to combat serious organised crime. The Police Federation of Australia believes that the model proposed in the supplementary submission of the Australian Crime Commission is an effective way of establishing this system, and therefore supports the supplementary submission of the Australian Crime Commission.

Australia's police also support strong oversight of this proposed scheme by independent bodies to maintain the accountability and integrity of unexplained wealth cases. Australian police feel that the ultimate decision to confiscate unexplained wealth should rest with an independent adjudicator, specifically the courts. Judicial supervision of the scheme we advocate is more than adequate to

ensure that these powers are exercised in accordance with the purposes for which they are granted, and to maintain the balance between law enforcement imperatives and individual rights. This judicial supervision can be achieved with use of the judicial discretion based on public interest and the interests of justice, without the need for a general discretion not to make an unexplained wealth order. The Police Federation of Australia also believes that there should be oversight of the scheme by the Australian Commission for Law Enforcement Integrity (ACLEI), the Commonwealth Ombudsman, and the Parliamentary Joint Committee on Law Enforcement. Such measures should allay any fears about misuse of the powers.

We would be happy to appear before the Committee if required.

Sincerely yours

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, slightly informal style.

Mark Burgess  
Chief Executive officer