



The Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010

by Lenny Roth

1. Introduction

On 22 June 2010, the Minister for Police, Hon Michael Daley MP, introduced into Parliament the [Criminal Assets Recovery Amendment \(Unexplained Wealth\) Bill 2010](#). These new unexplained wealth laws would expand, in a very significant way, the existing regime for the confiscation of assets derived from criminal activity.

Under the proposed new laws, the NSW Crime Commission could apply to the Supreme Court for an order to confiscate all or part of a person's wealth on the grounds that:

...there is a reasonable suspicion that [the] person has engaged in serious crime-related activity and [the] person cannot lawfully account for the sources of their wealth.¹

This would mean that, for the first time, a person's assets could be confiscated by the State without a finding by a Court (even on the civil standard of proof) that the person has engaged in serious crime related activity. The Crime Commission would only need to establish a reasonable suspicion that a person has engaged in such criminal activity and the onus would then be on

the person to prove to the Court that their wealth was lawfully acquired.

The Minister for Police explained that:

The NSW Crime Commission at present can usually take no action against persons about whom it holds highly developed suspicions regarding serious criminal activity, when only minor offences, if any, can be proved against them and when they have insufficient lawful sources to justify their wealth, accumulation of assets or expenditure. The new regime will close that loophole.²

The Attorney General, Hon John Hatzistergos MLC, has also said that:

These reforms will give law enforcement agencies new and expansive powers to go after the Mr Bigs of organised crime who attempt to conceal the sources of their wealth. These reforms are part of a coordinated plan to target organised criminals and will complement similar schemes that, to this point, have been implemented only by the Commonwealth, Western Australia and the Northern Territory.³

The bill has been 'agreed to in principle' by the Legislative Assembly.

It has been introduced in the Legislative Council but has not yet been debated.

2. Existing confiscation legislation

All jurisdictions in Australia, including the Commonwealth, have enacted laws that provide for the confiscation of assets derived from, or used in, certain kinds of criminal activity.⁴

During the mid 1980s and early 1990s *conviction-based* confiscation laws were introduced in NSW and other jurisdictions. Under these laws, the court can make an order for the confiscation of assets from a person who has been convicted of a criminal offence (to obtain a conviction, the prosecution must *prove guilt beyond reasonable doubt*). In NSW, these laws are found in the *Confiscation of Proceeds of Crime Act 1989* (NSW).

In 1990, NSW became the first State to introduce civil confiscation laws (and most other jurisdictions have since enacted similar laws).⁵ Under these laws, a court can make an order for the confiscation of assets from a person even if the person has not been convicted of an offence. A confiscation order can be made if the court is satisfied *on the balance of probabilities* that the person has engaged in serious criminal activity.

Some jurisdictions have also enacted unexplained wealth laws (these reforms are outlined in Section 6).

3. Existing civil confiscation laws

3.1 Overview: The civil confiscation laws in NSW are contained in the *Criminal Assets Recovery Act 1990* (NSW). The Act allows the NSW Crime Commission to apply to the Supreme Court for two types of orders:

(i) *Assets forfeiture order*: an order forfeiting to the State interests in property of a person who has engaged in certain serious criminal activity (s.22);

(ii) *Proceeds assessment order*: an order requiring a person to pay to the State an amount of money equal to the proceeds of certain criminal activity (s.27).

As proceeds assessment orders are more closely related to the proposed unexplained wealth laws, they are outlined in more detail below.

3.2 Proceeds assessment orders: If an application is made for a proceeds assessment order, the Supreme Court must make such an order if it finds it to be more probable than not that the person was, at any time within the previous 6 years, engaged in:

- a *serious crime related activity* involving an indictable quantity of a prohibited plant or drug; or
- a *serious crime related activity* involving an offence punishable by a sentence of imprisonment for 5 years or more. (s.27)

Serious crime related activity (s.6): Anything done by the person that was a serious criminal offence, whether or not the person has been charged, tried or convicted of the offence. A range of offences are listed as serious criminal offences.

The order requires the person to pay to the State an amount assessed by the Court as the value of the proceeds from an *illegal activity/ or activities* of the person, which took place within the previous 6 years. An *illegal activity* is broadly defined as 'an act or omission

that is an offence under the laws of NSW or the Commonwealth' (s.4).

A proceeds assessment order can also be made against a person who has derived proceeds from an illegal activity of another person, if that other person was, in the previous 6 years, engaged in a serious crime related activity of the kind referred to above (s. 27(2A)). However, the Court can only make such an order against a person if the person knew or ought reasonably to have known that the proceeds were derived from an illegal activity.

For the purpose of assessing the proceeds derived from an illegal activity, the Court is to have regard to a number of matters including:

- the money, or value of any interest in property, acquired by the defendant because of the illegal activity;
- the value of any service, benefit or advantage provided for the defendant because of the illegal activity;
- the market value of a plant or drug similar to any involved in the illegal activity, and the amount ordinarily paid for an act similar to the illegal activity;
- the value of the defendant's property before and after the illegal activity;
- the defendant's income and expenditure before and after the illegal activity. (s.28(1))

Important presumptions (reverse onus provisions) apply in relation to the last two matters. If evidence is given that the value of the defendant's property after an illegal activity exceeded the

value of his or her property before the activity, the Court is to treat the excess as proceeds derived from the activity – except to the extent (if any) that the Court is satisfied the excess was not due to an illegal activity (s. 28(2)).

Similarly, if evidence is given of the amount of the defendant's expenditure during the previous six year period, the Court is to treat any such amount as proceeds derived from an illegal activity – except to the extent (if any) that the Court is satisfied the expenditure was funded from income, or money from other sources, that is unrelated to an illegal activity (s.28(3)).

3.3 Restraining orders: The NSW Crime Commission can apply to the Supreme Court for a restraining order to prevent a person from disposing of certain property pending the outcome of confiscation proceedings (s.10A). An application can be made for such an order in respect of property of a person who is suspected of having engaged in *serious crime-related activity*. If the Court considers that there are reasonable grounds for this suspicion, it must make the order.

4. Total value of assets confiscated under existing laws in NSW

There are no available figures on the total value of assets confiscated under the conviction-based confiscation laws in NSW. However, in 2008/09, 42 confiscation orders were granted and the total estimated value of property confiscated was \$469,000.⁶ Under the civil confiscation laws in NSW, since 1990 the total realisable confiscation orders have amounted to \$218 million (including \$13 million in 2008/09).⁷ More than 70 percent of this amount came from assets forfeiture orders.

5. The proposed new unexplained wealth laws in NSW

Key provisions in *Criminal Assets Recovery Amendment (Unexplained Wealth) Bill 2010* are outlined below.

5.1 Unexplained wealth orders (new s.28A): The NSW Crime Commission may apply to the Supreme Court for an unexplained wealth order requiring a person to pay to the State an amount assessed by the Court as the value of the person's unexplained wealth.

The Supreme Court must make an unexplained wealth order if it finds that there is a reasonable suspicion that the person has, at any time:

- (i) engaged in a *serious crime related activity*; or
- (ii) acquired *serious crime derived property* from another person's *serious crime-related activity*.

The definition of **serious crime related activity** is on p2 above.

An interest in property is **serious crime derived property** if it is all or part of the proceeds of a serious crime related activity. An interest in property can also be serious crime derived property if it is the proceeds of the disposal of serious crime derived property; or it was acquired using serious crime derived property. (s.9)

In relation to (ii) above, the order must be made whether or not the person who is the subject of the application knew or suspected that the property was derived from illegal activities.

However, in all cases, if it thinks it is in the public interest to do so, the Court may refuse to make an unexplained wealth order, or may reduce the

assessed amount that would otherwise be payable under an order.

5.2 Assessing unexplained wealth (new s. 28B): The unexplained wealth of a person is defined as:

...the whole or any part of the current or previous wealth of the person that the Supreme Court is not satisfied on the balance of probabilities is not or was not illegally acquired property or the proceeds of an illegal activity.

The person who is subject to unexplained wealth proceedings has the burden of proving that the person's current or previous wealth is not, or was not, illegally acquired property or the proceeds of an illegal activity.

'illegally acquired property' relates to 'illegal activity' in the same way that 'serious crime derived property' relates to 'serious crime related activity' (s.9).

The current or previous wealth of a person is the amount that is the sum of the values of the following:

- all interests in property of the person (or subject to the effective control of the person);
- all interests in property that the person has, at any time, expended, consumed or otherwise disposed of (by gift, sale or other means);
- any service, advantage or benefit provided at any time for the person, or at the person's request, to another person.

However, in assessing unexplained wealth, the Court is not required to consider any current or previous wealth of which the NSW Crime

Commission has not provided evidence.

5.3 Restraining orders: The bill also has provisions that would allow the Supreme Court to make a restraining order against a person's interests in property pending the outcome of an application for an unexplained wealth order (as outlined in Section 3.3, under existing laws, restraining orders can be made pending the outcome of applications for asset forfeiture orders and proceeds assessment orders).

5.4 Differences between new laws and existing laws: Some of the key differences between the proposed new laws and the existing provisions relating to proceeds assessment orders are discussed below.⁸

First, and most importantly, the NSW Crime Commission would have a much lower threshold to meet when applying for an unexplained wealth order. Under existing laws, the Court can only make a proceeds assessment order if it is satisfied *on the balance of probabilities* that the person has engaged in a serious crime related activity. Under the proposed new laws, the Court would only need to be satisfied that there is a *reasonable suspicion* that the person has engaged in serious crime related activity.

Second, under existing laws, the Court can only make an order if the serious crime related activity occurred within the past 6 years. Under the new laws, there would be no time limit: the Court could make an unexplained wealth order whenever the suspected serious crime related activity took place.

Third, under the new laws, a person could be required to account for, and have confiscated, a greater proportion of their past and current wealth. Under

existing laws, a proceeds assessment order requires a person to pay to the State an amount equal to the value of the proceeds derived by a person from an illegal activity (or activities) of the person during the past 6 years. There are two presumptions that operate:

- an increase in the person's wealth after an illegal activity was derived from that activity;
- all of the person's expenditure in the past 6 years was derived from an illegal activity.

Under the new laws, a person would be required to pay to the State an amount equal to the value of the person's unexplained wealth. There is a presumption that all of the person's current and previous wealth (about which the NSW Crime Commission gives evidence) is unexplained wealth.

Fourth, under existing laws, the Court cannot make an order against a person unless the person knew or ought to have known that the proceeds were from an illegal activity. The new laws are not limited in this way.

Fifth, under existing laws, the Court has no discretion to refuse to make a proceeds assessment order, whereas under the proposed laws, the Court would have a discretion to refuse to make an unexplained wealth order, or to reduce the amount that would otherwise be payable under an order, if it was in the public interest to do so.

5.5 Half of proceeds to go to Victims Compensation Fund: The bill would also amend the Act to provide for 50 percent of the proceeds from proceeds assessment orders or unexplained wealth orders to be credited to the Victims Compensation Fund (proposed s.32(3)). Under the current laws, the

Treasurer is to determine how much of the total proceeds from confiscation orders are to be credited to that fund.

6. Unexplained wealth laws in other Australian jurisdictions

6.1 Overview: Four jurisdictions have enacted unexplained wealth laws (in addition to having conviction-based and civil confiscation laws):

- Western Australia in 2000;⁹
- Northern Territory in 2003;¹⁰
- South Australia in 2009 (these laws are not yet in force);¹¹
- The Commonwealth in 2010.¹²

The NSW Attorney General, Hon John Hatzistergos MLC, has reported that:

At meetings in 2009 and 2010 it was agreed by most jurisdictions, with the exception of the Australian Capital Territory and Victoria, that developing unexplained wealth provisions with mutual recognition across borders would be of great assistance in combating crime.¹³

The Governments in both Queensland and Tasmania have not yet announced an intention to introduce unexplained wealth laws. However, in November 2009, the Queensland Opposition released a consultation draft bill.¹⁴

6.2 Use of these laws: In Western Australia, from 1 January 2001 to June 2009, there were 24 applications for unexplained wealth declarations (including 5 in 2008/09). Of these, 17 declarations were finalised, and 14 of these resulted in a payment to the State.¹⁵ These payments amounted to \$5.4 million, which accounts for 15 percent of all monies confiscated under WA's confiscation laws.¹⁶ In the Northern Territory, it appears that nine unexplained wealth matters have been

finalised, which has resulted in \$3.76 million being forfeited to the State.¹⁷

6.3 Differences between the various laws: The unexplained wealth laws in those jurisdictions that have them are very similar to each other and also to those now proposed in NSW. Some differences are outlined below.

(i) Threshold for unexplained wealth action: In Western Australia and the Northern Territory, the laws do not require the DPP to meet any statutory threshold when applying to the Court for an unexplained wealth order. The Commonwealth and South Australian laws require the Court to be satisfied that there is a reasonable suspicion that the person has wealth that was not lawfully acquired. The proposed laws in NSW would have a higher threshold. The Court would need to be satisfied that there is a reasonable suspicion that a person has engaged in a serious crime-related activity.

(ii) Discretion to refuse to make order: Under the laws in Western Australia and the Northern Territory, the Court does not have any discretion to refuse to make an unexplained wealth order if the Court finds that a person's total wealth exceeds the person's lawfully acquired wealth. The Commonwealth and South Australian laws provide the Court with a discretion to refuse to make an order; as is the case under the proposed laws in NSW, which would allow a Court to refuse an order, or to reduce the amount payable, if it is in the public interest to do so.

(iii) Exclusion where not possible to explain wealth: Unique to South Australia is a provision allowing the Court to exclude a component of a person's wealth from an application if the Court is satisfied that: (i) it is not reasonably possible for the person to

establish that a component of his or her wealth was lawfully acquired (e.g. due to effluxion of time); and (ii) that the person has acted in good faith.¹⁸ There is no such provision in the NSW bill but, as noted above, the Court would have a discretion to reduce the amount payable under an order.

(iv) Relief where order would result in hardship for dependants: Under the Commonwealth laws, if an order would cause hardship to a dependant of the person subject to the order, the Court is to direct the State, once the order is satisfied, to pay a specified amount to the dependant.¹⁹ This does not apply if the dependant is over the age of 18 and had knowledge of the conduct that led to the order. There is no such provision in other jurisdictions or in the NSW bill but, as noted above, the Court would have a discretion to reduce the amount payable.²⁰

7. Unexplained wealth laws in other countries

There does not appear to be any similar unexplained wealth laws in the United Kingdom, the United States, or New Zealand.²¹ While the UK laws contain reverse onus provisions, these only come into operation if a person has been convicted of an offence.

Forfeiture laws in the Canadian province of Manitoba provide for the forfeiture of property that is 'the proceeds of unlawful activity'. There is a presumption that property owned by a member of a criminal organisation is the proceeds of unlawful activity.²² The forfeiture laws were used for the first time in 2010 but not on the basis of this presumption.²³ The laws in Quebec contain a similar presumption.²⁴

Italy has enacted unexplained wealth laws as part of a range of measures to

seize illegally obtained assets from the Mafia. An Australian Parliamentary delegation reported that:

Chief Police Officers and Public Prosecutors can undertake an investigation into suspected illegally gained assets without establishing a predicate offence. At the conclusion of an administrative investigation the matter can be sent to trial to establish the source of the assets. During this process it falls to the individual to explain the source of their wealth. Prior to the trial process assets can be seized, and then they are confiscated at the conclusion of the trial. The Delegation was told that this process is both effective and efficient.²⁵

8. The debate about unexplained wealth laws

The debate about unexplained wealth laws has largely taken place in the context of two recent Committee inquiries at the Commonwealth level.²⁶

8.1 Arguments for: In submissions to the Committee inquiries, several law enforcement agencies expressed support for unexplained wealth laws.²⁷

The Police Federation of Australia (PFA) argued that there are three clear objectives for unexplained wealth laws:

...firstly, to deter those who contemplate criminal activity by reducing the possibility of gaining or keeping a profit from that activity; secondly, to prevent crime by diminishing the capacity of offenders to finance any future criminal activity that they might engage in; and, thirdly, to remedy the unjust enrichment of criminals who profit at society's expense.²⁸

These mirror the objectives of existing confiscation laws. However, the PFA

believes that unexplained wealth laws would make the existing laws more effective. In support of the case for unexplained wealth laws, the PFA cited the following views of an expert in money laundering investigations:

We have developed this fiction that following the money trail will directly lead police to the top echelons of crime in Australia. It is possible in many cases to identify persons of interest who have accumulated significant wealth which appears to be unexplained but any proof of their involvement in crime is totally absent. The money flows up but the evidence of criminality does not.²⁹

The PFA argued that unexplained wealth laws 'are effective in attacking the layering and integration stage[s] of money laundering'. It stated:

Once the integration stage is reached it is impossible to link the criminally derived assets and wealth back to the predicate offence. The only potential vulnerability that exists is that it is also impossible for the criminal to establish lawful acquisition of his total assets and wealth as they include funds originating from illegal activity.³⁰

According to the PFA, unexplained wealth laws in other jurisdictions have been effective. It stated:

Between 2003/4 through to 2007/8 Western Australian [confiscation laws] and Northern Territory [confiscation laws] combined, led to approx...\$40 million worth of assets restrained or forfeited and yet for the whole of the Commonwealth only approx \$60 million worth of assets have been restrained or forfeited under [Commonwealth laws].³¹

It should be noted that these figures are not limited to confiscations under unexplained wealth laws, and they are

for assets which are either restrained or forfeited (not all assets subject to a restraining order at the start of proceedings end up being confiscated at the end of the proceedings).

The Australian Federal Police explained to a Senate Committee inquiry that it sought the introduction of unexplained wealth laws as:

...an additional method to investigate and confiscate the proceeds of crime generated by organised crime networks. In essence, they will enable us to investigate better those individuals who distance themselves from the commission of criminal activity but are actively involved in its planning and benefit from it.³²

The Explanatory Memorandum to the Commonwealth bill that introduced unexplained wealth laws stated:

While the [*Proceeds of Crime Act 2002*] contains existing confiscation mechanisms, these are not always effective in relation to those who remain at arm's length from the commission of offences, as most of the other confiscation mechanisms require a link to the commission of an offence. Senior organised crime figures who fund and support organised crime, but seldom carry out the physical elements of crimes, are not always able to be directly linked to specific offences.³³

8.2 Arguments against. In submissions to the recent Committee inquiries, the Law Council of Australia stated that it was opposed to unexplained wealth laws 'on the grounds that they offend fundamental common law and human rights principles'.³⁴ The Law Council made a number of arguments.

First, the Law Council argued that the reverse onus of proof 'runs counter to

the presumption of innocence'.
Second, it argued that:

By reversing the onus of proof...unexplained wealth [laws] remove the safeguards which have evolved at common law to protect innocent parties from the wrongful forfeiture of their property. As [a] result a person may be liable to have their lawfully acquired property confiscated as unexplained wealth, even though there is no evidence that the property in question has been associated with, used for or derived from criminal activity.³⁵

The Law Council pointed to the risk 'for example, that liberal use of these powers may result in those who have failed to keep receipts or records losing their lawfully acquired assets'.³⁶

Third, the Law Council submitted:

Such broad, sweeping powers are open to misuse, overuse and arbitrary application particularly when they lack sufficient safeguards and have the potential to result in significant monetary gains to the State. For example, such provisions could be used as a method of harassing suspects who have been uncooperative with police or whom police have been unable to arrest due to lack of evidence...³⁷

Fourth, the Law Council noted that 'it is not at all clear' that unexplained wealth laws 'have proven to be an effective prosecutorial tool' in Western Australia and the Northern Territory.³⁸

Fifth, the Law Council argued that existing laws contain considerable confiscation powers, and there is no need for even greater powers.³⁹ Mr Tim Game SC, from the Law Council, stated that 'the legislation is already tough, if not draconian'.⁴⁰

Civil Liberties Australia (CLA) has also criticised aspects of unexplained wealth laws. Commenting on the 2009 Commonwealth bill, CLA stated that it:

...does not oppose the introduction of unexplained wealth provisions per se, but believes the bill should be amended to provide for a fairer and more balanced scheme.⁴¹

Like the Law Council, CLA considered that the reverse onus provisions were unfair. After noting that the DPP only has to show a reasonable suspicion that a person has unlawfully acquired wealth, CLA commented:

...this low standard is offensive to notions of basic fairness that have underpinned the civil legal system for centuries. It has always been the case, even in civil proceedings, that the party bringing an action or making an allegation should have to show a prima facie case on the balance of probabilities.⁴²

This argument would also apply to the proposed new laws in NSW. However, as noted earlier, the NSW bill would impose a higher threshold than the Commonwealth laws. Under the NSW bill, the Court would need to be satisfied that there is a reasonable suspicion that a person has engaged in serious crime related activity.

CLA also submitted that the DPP should have the legal burden of proof, and the respondent should only have an evidential burden. It explained:

...the respondent should be given an opportunity to produce evidence which suggests that their wealth was lawfully acquired. Where a respondent chooses to take up this opportunity, he should only have to satisfy the court on an evidential, as opposed to legal, burden of proof. Of course, if the respondent fails or

refuses to adduce any evidence, then it would be open to the Court to draw the inference that the assets were unlawfully obtained...⁴³

...to introduce these [laws] would represent a significant step beyond the national and international consensus in this area.⁴⁷

CLA also argued that the threshold for commencing unexplained wealth proceedings should be raised from a 'reasonable suspicion' that a person has unlawfully acquired wealth to a 'reasonable belief' that a person has unlawfully acquired wealth.⁴⁴ This was also supported by the Law Council.⁴⁵

He also questioned whether the laws were appropriate 'considering the current tension between the rights of the individual and the interests of the community?' He concluded:

On balance I believe it would be inappropriate at this stage to recommend the introduction of these provisions but the matter should be kept under review.⁴⁸

It should also be noted that not all law enforcement agencies are convinced of the benefits of unexplained wealth laws. When asked if such laws would be a useful tool to have in Queensland, the Director of Intelligence at the Queensland Crime and Misconduct Commission said:

I am going to opt out and say the jury is still out, to be truthful, on unexplained wealth...I am still trying to see how efficient and effective the unexplained wealth legislation is in countering organised crime at the most senior levels. I think we have some trigger offence [and] that actually gives you a bit more in the way of substance to investigate.⁴⁶

9.2 Committee reports (2009): In August 2009, the Joint Committee on the Australian Crime Commission published a report on legislative measures to outlaw serious and organised crime groups.

The Committee's report noted the concerns about unexplained wealth laws but concluded that the laws 'appear to offer significant benefits over other legislative means of combating serious and organised crime'.⁴⁹ The Committee stated:

...it may be possible to deal with the concerns...through well-constructed legislation which incorporates safeguards such as administrative or judicial review mechanisms and evidentiary safeguards.⁵⁰

9. Reports that have considered unexplained wealth laws

Before turning to the recent Committee reports, it is worthwhile referring to an earlier report by Tom Sherman AO on Commonwealth confiscation laws.

The report then went on to examine the unexplained wealth provisions in the Commonwealth bill and it concluded that the provisions were 'a reasoned and measured approach to the problem of organised crime'.⁵¹

9.1 Sherman Report (2006): In 2006, Tom Sherman AO was asked to conduct a review of the *Proceeds of Crime Act 2002* (Cth). Mr Sherman's report noted that the AFP submitted that unexplained wealth laws should be incorporated into the Act. In response, Mr Sherman stated:

In September 2009, the Senate, Legal and Constitutional Affairs Committee reported on the provisions in the Commonwealth bill. The Committee identified some concerns including:

- There are legitimate reasons why a person may not be able to produce evidence showing wealth was lawfully acquired;
- There is a potential for the laws to be used where it has proved too difficult or time consuming to prosecute a person.

The Committee concluded that these concerns could be addressed by providing the court with a discretion to refuse to make an unexplained wealth order if it was not in the public interest to do so.⁵² As noted earlier, the Commonwealth unexplained wealth laws do contain this discretion (as do the proposed laws in NSW).

Liberal Senators on the Committee also recommended (as argued by Civil Liberties Australia) that the threshold for commencing unexplained wealth proceedings should be raised from 'reasonable grounds to suspect' to 'reasonable grounds to believe'.⁵³ This recommendation was not adopted in the legislation that was enacted.

10. Conclusion

The proposed new unexplained wealth laws would allow the NSW Crime Commission to apply to the Supreme Court for a confiscation order against a person without having to prove that the person has engaged in serious criminal activity. The Commission would only need to meet a 'reasonable suspicion' threshold and the onus would then be on the person to prove that their wealth was lawfully acquired.

These laws are seen as an important new tool in the fight against organised crime. However, there are some doubts about the effectiveness of such laws, having regard to the experience so far in Western Australia and the

Northern Territory. In addition, the Law Council of Australia and Civil Liberties Australia have criticised these laws on the basis that they infringe upon fundamental civil liberties.

- ¹ Hon M. Daley MP, [NSWPD](#), 22 June 2010.
- ² Hon M. Daley MP, [NSWPD](#), 22 June 2010.
- ³ Hon J. Hatzistergos MLC, [NSWPD](#), 19 May 2010.
- ⁴ See L Bartels, [A review of confiscation schemes in Australia](#), Australian Institute of Criminology, 2010.
- ⁵ *Drug Trafficking (Civil Proceedings) Act 1990* (NSW). As can be seen from the title, this legislation initially only targeted the proceeds from drug trafficking. In 1997, civil confiscation laws were extended to a wider range of offences and the Act was renamed the *Criminal Assets Recovery Act*.
- ⁶ Office of the Director of Public Prosecutions NSW, [Annual Report 2008-2009](#), p51
- ⁷ L Bartels, n4, p12.
- ⁸ This is based on [Criminal Assets Recovery Amendment \(Unexplained Wealth\) Bill 2010](#), Explanatory note, p2.
- ⁹ *Criminal Property Confiscation Act 2000* (WA), Part 3.
- ¹⁰ *Criminal Property Forfeiture Act 2002* (NT), Part 6.
- ¹¹ *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA).
- ¹² *Proceeds of Crime Act 2002* (Cth), Part 2-6.
- ¹³ Hon J. Hatzistergos MLC, n3.
- ¹⁴ See Hon L. Springborg, [QPD](#), 25/11/09. See also John-Paul Langbroek, 'NSW adopts LNP's unexplained wealth laws', [Media Release](#), undated.
- ¹⁵ Office of the Director for Public Prosecutions, Western Australia, [2008/2009 Annual Report](#), p27.
- ¹⁶ L Bartels, [Unexplained Wealth laws in Australia](#), Australian Institute of Criminology, July 2010, p2
- ¹⁷ L Bartels, n16, p2.
- ¹⁸ *Serious and Organised Crime (Unexplained Wealth) Act 2009*, s. 9(11).
- ¹⁹ *Proceeds of Crime Act 2002* (Cth), s. 179L
- ²⁰ Civil confiscation laws in NSW have a similar relief from hardship provision in relation to asset forfeiture orders: *Criminal Assets Recovery Act 1990* (NSW), s.24.
- ²¹ See the summaries of confiscation laws in the US, the UK, and other countries in S Young, *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime*, Edward Elgar Publishing, 2009.

- 22 [Criminal Property Forfeiture Act 2004](#) (Manitoba), s.11.
- 23 R Romaniuk, 'Crime-proceeds home confiscated', *Winnipeg Sun*, [12 March 2010](#).
- 24 [An Act respecting the forfeiture, administration and appropriation of proceeds and instruments of unlawful activity](#), s.11 (Quebec)
- 25 The Parliament of Australia, [Report of the Australian Parliamentary Delegation to Canada, the United States, Italy, Austria, the United Kingdom & The Netherlands](#), June 2009, p62-63.
- 26 The Parliamentary Joint Committee on the Australian Crime Commission, [Inquiry into the legislative arrangements to outlaw serious and organized crime groups](#), which reported in August 2009; and the Senate Legal and Constitutional Affairs Legislation Committee, [Inquiry into the Crimes Legislation Amendment \(Serious and Organised Crime\) Bill 2009 \[Provisions\]](#), which reported in September 2009.
- 27 Parliamentary Joint Committee on the Australian Crime Commission, [Inquiry into the legislative arrangements to outlaw serious and organized crime groups](#), August 2009, p108-09
- 28 Senate Legal and Constitutional Affairs Legislation Committee, [Transcript](#), Melbourne, 28 August 2009, p25.
- 29 Police Federation of Australia, [Submission to Parliamentary Joint Committee on the Australian Crime Commission](#), 30 April 2009, p5.
- 30 PFA submission, n29, p6
- 31 PFA submission, n29, p8.
- 32 Senate Legal and Constitutional Affairs Legislation Committee, [Transcript](#), Melbourne, 28 August 2009, p47.
- 33 Parliament of Australia, [Crimes Legislation Amendment \(Serious and Organised Crime\) Bill 2009: Explanatory Memorandum](#), p5.
- 34 Law Council of Australia, [Submission to Senate Committee on Legal and Constitutional Affairs](#), August 2009, p15.
- 35 Law Council of Australia, [Inquiry into the legislative arrangements to outlaw serious and organized crime groups: Supplementary information](#), 11 December 2008, p12.
- 36 Law Council of Australia, n34, p16.
- 37 Law Council of Australia, n34, p18.
- 38 Law Council of Australia, n34, p19.
- 39 Law Council of Australia, n34, p21.
- 40 Senate Legal and Constitutional Affairs Legislation Committee, [Transcript](#), Melbourne, 28 August 2009, p2.
- 41 Civil Liberties Australia, [Submission: Inquiry into the Crimes Legislation Amendment \(Serious and Organised Crime\) Bill 2009](#), 14 August 2009, p3.
- 42 Civil Liberties Australia, n41, p5.
- 43 Civil Liberties Australia, n41, p5.
- 44 Civil Liberties Australia, n41, p3-4.
- 45 Senate Legal and Constitutional Affairs Legislation Committee, [Transcript](#), Melbourne, 28 August 2009, p6.
- 46 Joint Committee on the Australian Crime Commission, [Transcript](#), Brisbane, 7 November 2008, p31.
- 47 T. Sherman AO, [Report on the Independent Review of the Operation of the Proceeds of Crime Act 2002](#), July 2006, p37.
- 48 T. Sherman, n47, p37.
- 49 Parliamentary Joint Committee on the Australian Crime Commission, [Inquiry into the legislative arrangements to outlaw serious and organized crime groups](#), August 2009, p114
- 50 Joint Committee report, n49, p114.
- 51 Joint Committee report, n49, p117.
- 52 Senate Legal and Constitutional Affairs Legislation Committee, [Inquiry into the Crimes Legislation Amendment \(Serious and Organised Crime\) Bill 2009 \[Provisions\]](#), September 2009, p57-59.
- 53 Senate Committee report, n52, p66-67.

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