

**SENATE INQUIRY
CRIMES LEGISLATION AMENDMENT BILL (No. 2) 2011**

**SUBMISSION BY THE ACTING DIRECTOR OF PUBLIC
PROSECUTIONS, STATE OF VICTORIA**

The observations made in this submission concern those provisions of the Bill which impact upon proceeds of crime applications (Schedule 2). The Victorian Director of Public Prosecutions, by virtue of jurisdiction, has limited exposure to the Commonwealth proceeds of crime scheme, although there are areas of overlap or concurrent proceeds of crime activity between the two jurisdictions.

It is understood that the proposed amendments will vest concurrent Commonwealth power in the Commissioner for the Australian Federal Police to apply for the following orders under the *Proceeds of Crime Act 2002 (Cth)*:

- Restraining order,
- Ancillary order,
- Forfeiture order (conviction and non-conviction based)
- Pecuniary penalty order,
- Literary proceeds order,
- Preliminary unexplained wealth order, or unexplained wealth order, and
- Examination order.

The *Confiscation Act (1997) (Vic)* vests similar power in the Victorian Director of Public Prosecutions. Whilst the Assistant Director of Asset Confiscation Operations can also apply for certain orders, in practice, he/she rarely does so, and even then only after consultation with the Director of Public Prosecutions. In effect, the Victorian regime vests the powers solely in the Director of Public Prosecutions, in the context of serious indictable prosecutions.

That the Victorian Director of Public Prosecutions is effectively the only applicant to be given standing to make application in cases involving serious offending in the superior courts underpins important strengths of the current Victorian legislative scheme. The strengths, generally, are operational distance and objectivity combined with independent prosecutorial discretion as to whether to make or not make application as the case and evidence warrant. The Victorian scheme has thus had the benefit that a consistent high standard (extending to evidentiary, procedural and ethical matters) has been maintained in all court directed proceeds of crime litigation processes. The same observation may be made of the Commonwealth scheme to this point.

There would appear to be no reason in principle why the Commonwealth Director of Public Prosecutions ought not remain the sole applicant in such proceedings. The integrity and efficiency of the process is not necessarily enhanced by the provision of concurrent power.

The Victorian Director of Public Prosecutions may have an increased role to play in the Commonwealth scheme for proceeds of crime once the High Court decision in *Momicilovic v R & Ors* is available. Depending on the outcome, the Victorian Director may seek to supplement and modify accordingly the above observations.