



phone | +61 3 6223 3333
mail | PO Box 173 Ascot Vale, Victoria, Australia 3032
email | info@rtbacommerce.com
web | rtbacommerce.com

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Friday 25 September 2020

Crimes Legislation Amendment (Economic Disruption) Bill 2020

Dear Committee,

On behalf of Retail and Trade Brand Advocacy (RTBA) I am happy to contribute to this enquiry and cover areas of interest for our brands and alliance groups which can assist in supporting legitimate retail and supplier trade by reducing the financial ability of illegal trade to operate.

About RTBA

RTBA supports a coalition of industry groups, businesses, retailers and trademark owners working to minimise the impact of illicit criminal conduct on the Australian trading environment. We strive to unite, mobilise and advocate for industry constituents, and promote effective change with regards to regulatory, financial and taxation issues affecting the supply chain, in this case dealing with illicit product in the retail economy supported by proceeds of crime.

Background

We would like to indicate general support of the bill and recognition that the potential gains from the Proceeds of Crime Act (PoC) have historically suffered from an abundance of red tape, any changes in legislation designed to ease the administrative burden on agencies and smooth the path from identification to seizure and confiscation is a good thing.

The pool of criminally derived assets is huge. During 2017 the Treasury Department conducted a significant revue into the Black Economy. The Black Economy Taskforce (BETF) concluded that the size of black economy was approximately 3% of GDP or roughly \$50 Billion per year. A significant portion of this figure was derived from drugs (\$10 billion) and illicit tobacco (\$5 billion). It would appear then that the generation of criminal proceeds is not a constraint to the activities of the Australian Federal Police (AFP) Criminal Asset Confiscation Taskforce (CACT).

Across the financial years of 2017/18 and 2018/19, the Commonwealth spent \$38.3 million (CACT funding) and confiscated \$128.2 million. This nett return of approximately \$45 million per year represents less than 1/1000th of the criminal proceeds generated during those years. It should be noted that in 2016/17, authorities in New South Wales, Queensland and Western Australia confiscated assets to the value of \$52 million thereby doubling the national figure. Even when we combine these figures, there appears to be enormous scope to identify and seize further assets.

Recommendations

In the AFP's 2018-19 Annual Report, it was noted that no investigations were being conducted that were likely to lead to an unexplained wealth order and that there were no applications for unexplained wealth orders during that financial year. We note that the BETF recognised the lack of synergy between the Federal and State regimes in regard to PoC legislation and called for greater harmonisation. The BETF Report also called for greater information sharing between the state and Federal agencies regarding Unexplained Wealth. Furthermore, "Recommendation 8.3" of the BETF Final Report calls for a reversing of the onus in relation to Unexplained Wealth prosecutions. We say that reversing the onus can lead to more cost-effective, high volume prosecutions and that if greater resources were to be provided to the CACT, that would allow it to identify and prosecute more instances of unexplained wealth.

The efficiency of the PoC legislation has been one of the constraints on effective criminal asset enforcement. It is hoped this new legislation goes some way to alleviating those hurdles. We would also like to suggest that the under-resourcing of the CACT further reduces the likelihood of the PoC legislation serving the criminal deterrence purpose for which it is designed. As the figures above indicate, a doubling or tripling of the size of the CACT has the potential to generate a significant funding source for the Commonwealth and lower the quantity of illicit funds currently flowing to criminals. Certainly, an increase to the number of investigators dedicated to the task of seeking ill-gotten gains would not be short of targets.

In conjunction with this new legislation, RTBA encourages the Government to consider the following related issues:

- Changing enforcement policy settings to target more crimes that generate asset seizures.
- Re-instituting the highly effective Waterfront TF's, funded via the CAA, as the States have a significant stake in crimes that cross the border and impact their work post-border.
- We would like to indicate support for Schedule 7 of the Bill, providing the Minister with alternative avenues to fund operations of state and territory police forces in activities that are consistent with Section 298 of the *Proceeds of Crime Act 2002*, in particular, for crime prevention and law enforcement measures.
- We support and expanded and innovative use of the measures in this Schedule to allow the Minister to fund state and territory police activities and operations in areas of support for the Commonwealth that might not be strictly seen as a core area of state police responsibility however this organised activity requires localised active enforcement and resourcing.

RTBA's Mark Burgess, former head of the Police Federation and Rohan Pike, former Federal Police Officer would be more than happy to present to the Committee and supply further insight into practical policing application of these proposed laws.

Kind regards,

Heath Michael

Managing Director
Retail and Trade Brands Advocacy
