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Senate Legal and Constitutional Affairs Committee  
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**Submission to Legal and Constitutional Affairs Legislation Committee on Proceeds of Crime  
Amendment (Proceeds and Other Matters) Bill 2017**

Thank you for the opportunity to provide comment on the *Proceeds of Crime Amendment (Proceeds and Other Matters) Bill 2017* (Cth) currently before the Senate.

**Who Am I?**

I'm the owner/operator of a small policy consultancy business specialising in drug-related harms, vice markets and criminal justice reform. I'm also a sessional university lecturer in law. Prior to my current role I worked as criminal solicitor as well as a research assistant in criminology.

**Comment on Bill**

Proceeds of crime laws are a crucial measure to tackle the laundering of money and the flourishing of organised crime in Australia. However, these measures must be evidence-based and proportionate.

As is made explicit in the Explanatory Memorandum, the impetus for this Bill are the two recent decisions of *Commissioner of the Australian Federal Police v Huang*,<sup>1</sup> and *Commissioner of the Australian Federal Police v Hart & Ors*,<sup>2</sup> both of which provide constraints on the scope of proceeds of crime orders in relation to wealth utilised to discharge a mortgage or improve a property.

It is strongly suggested that parliament use this evolution in case law as an opportunity to evaluate the effectiveness of proceeds of crime laws before extending the net further. Proceeds of crime laws have not been effectively evaluated in Australia. Attempts have been made, but an insufficiency of data has made evaluation impossible.<sup>3</sup>

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<sup>1</sup> [2016] WASC 5.

<sup>2</sup> [2016] QCA 215.

<sup>3</sup> Bartels, L 'A review of confiscation schemes in Australia' (2010) *AIC Reports*, Technical and Background Paper 36 <[http://www.aic.gov.au/media\\_library/publications/tbp/tbp036/tbp036.pdf](http://www.aic.gov.au/media_library/publications/tbp/tbp036/tbp036.pdf)>

At the same time, concerns have been raised both academically,<sup>4</sup> and amongst legal professionals,<sup>5</sup> that the scope of ‘proceeds’ under existing laws is unfairly broad. This is particularly evident in relation to orders made prior to conviction.<sup>6</sup>

Given the issues raised about existing proceeds of crime laws, it would seem ill-informed to extend existing laws to cover further circumstances without a comprehensive evaluation of the scope of the existing laws.

Yours sincerely,

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<sup>4</sup> Skead, N., & Murray, S. (2015). The politics of proceeds of crime legislation. *University of New South Wales Law Journal*, 38(2), 455-491.

<sup>5</sup> ‘\$35 million in criminal profits seized by SA Police shows ‘unfairly balanced’ laws, civil libertarian says’ *ABC News* 14 January 2015 <<http://www.abc.net.au/news/2015-01-14/sa-police-seize-35-million-in-criminal-profits/6012270>>.

<sup>6</sup> Nedim, U ‘Should police be able to seize suspected proceeds of crime before a person is found guilty?’ (2015) *Sydney Criminal Lawyers Blog* <<https://www.sydneycriminallawyers.com.au/blog/should-police-be-able-to-seize-suspected-proceeds-of-crime-before-a-person-is-found-guilty/>>