

## **Additional comments – Australian Greens**

The Australian Greens believe that it is not appropriate to remove the discretion of courts to allow legal expenses to be paid out of restrained assets, in unexplained wealth proceedings.

In preventing a person's restrained assets from being used to cover their legal expenses, this Bill will force parties to look to legal aid for assistance, compounding pressure on the legal assistance sector, which is already overloaded.

Legal Aid Victoria's submission to this inquiry has made it clear that diverting people who wish to contest unexplained wealth proceedings into the legal aid scheme will see an increase in applications requiring funding for protracted litigation, with sizeable payments to legal representatives and forensic experts. At a time when there is clear evidence of significant existing levels of unmet need in the legal assistance sector, with serious consequences such as an increase in self-represented litigants in the family court, this is of serious concern.

There is also doubt as to the capacity of any legal aid grant to meet the costs required in an unexplained wealth matter. As discussed in the Law Council's submission, there is generally a need for specialist commercial expertise in responding to unexplained wealth orders, and there are often restrictions on using legal aid funding to obtain expert reports.

Unexplained wealth proceedings are complex matters, likely to require counsel as well as instructing solicitors and forensic accounting experts.

Because of strict eligibility criteria, and restrictions on how legal aid funding can be used, legal aid is likely to be inadequate in such a situation.

The Law Council states there are already adequate safeguards against the possible dissipation of restrained assets because:

1. the court has discretion in relation to releasing restrained assets, in subsection 20A(3A); and
2. the court is able to require certification of costs by a costs assessor, and able to make any further orders it considers appropriate, under subsection 20A(3C).

The Law Council of Australia recommends the removal of items 3 and 24 of the Bill. It is these items whose enactment would remove judicial discretion to allow restrained assets being used to meet legal expenses.

The Australian Greens further note that item 24 also inserts two new, unrelated, sections, and we propose that those sections be created in an alternative item.

The Law Council also suggests that any of the Bill's provisions which are passed should be subject to a three-year sunset clause, involving a parliamentary or independent review.

The Australian Greens are of the view that the Explanatory Memorandum to the Bill does not establish cogent grounds for removing the court's discretion. There is no evidence that the current discretion undermines the effectiveness of the POC Act's unexplained wealth provisions.

### **Recommendation 1**

**1.1 The Australian Greens recommend that items 3 and 24 of the Bill be removed, in order to preserve judicial discretion about accessing restrained funds for legal costs. This will protect Australians' legal resources with no impact on the Bill's integrity.**

**Senator Penny Wright  
Australian Greens**