

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Question No. 143

Senator Ludwig asked the following question at the hearing on 31 October 2006:

For the years 2005-06:

- (a) Provide a breakdown of the number of referrals for Proceeds of Crime actions under the conviction based action scheme received, and the referring agencies.
- (b) For how many of these referrals has the DPP taken action? What action was taken?
- (c) For those in which you have not taken action (i) what was the reason for not taking action; and (ii) what was done instead?
- (d) Provide a list of the crimes for which assets were confiscated, and the amount confiscated per crime.”

The answer to the honourable senator’s question is as follows:

(a) - (b) *Referral of matters for proceeds of crime action.*

Matters with potential for action under the *Proceeds of Crime Act 2002* (POCA) come to the attention of the CDPP in a variety of ways and with varying degrees of formality. CDPP POCA officers liaise closely with agencies during many large investigations and may provide advice on potential POCA action at a number of different stages depending on the information available. For example, POCA action may be considered when the CDPP is consulted about search warrants or other investigation warrants; when advice is sought about potential criminal offences or about evidence; when agencies come across suspicious or unexplained assets during an investigation, particularly if there is a risk of dissipation; at the point of arrest; at the time of referring a prosecution brief of evidence to the CDPP; or at any other or later stage that relevant information becomes available. In many cases, due to the need to prevent dissipation or concealment of property early on in an investigation, the material initially supplied to the CDPP will be incomplete and require substantial further investigation and consolidation.

Potential matters are assessed for the most effective way to recover the proceeds of the alleged criminal activity. CDPP has regard not only to the potential for POCA action but also to the potential for others forms of recovery or confiscation action, such as civil or administrative recovery action by the source agency itself or by some other agency. In most cases, matters are not specifically conviction-based or civil-based when they come to the notice of the CDPP. CDPP will consider the potential for both conviction-based and civil-based action in each case, and will determine the most appropriate form of action in the particular circumstances (and, indeed, the type of action taken may change over the course of the matter).

Where it is determined that there is or may be potential for POCA action, CDPP officers assist agencies to develop the case. Where there is initially insufficient evidence to commence POCA action, matters may be considered again as more information becomes available about the alleged criminal activity or property connected to it.

For the above reasons it is not possible to identify a “number of referrals” to the CDPP specifically for conviction-based action, or alternatively for civil-based action.

Action taken by the CDPP

What can be provided, however, broken down by source¹ agency, is a list of the various types of actions taken by the CDPP during the 2005-06 financial year in relation to matters received. These are set out below and divided by reference to whether the action was conviction-based or civil based.

Restraining order action taken in 2005-06 financial year

Source Agency	Conviction	Civil	TOTAL
ACC	1	3	4
AFP	14	15	29
AGD		1	1
ASIC		2	2
ATO	3	21	24
Centrelink	2	3	5
Customs	4	2	6
Medicare Australia		2	2
State Police	1		1
TOTAL	25	49	74

Forfeiture order action taken in 2005-06 financial year

Source Agency	Conviction	Civil	TOTAL
ACC		4	4
AFP	6		6
AGD		1	1
ASIC		1	1
ATO	2	1	3
Centrelink	1	1	2
Customs	6	11	17
Dept of Defence			1
State Police	2		2
TOTAL	17	19	37

¹ Source agency is the agency which commences the investigation or identifies the criminal activity. The AFP may also have involvement in many of these matters.

Automatic forfeiture² action taken in 2005-06 financial year

Source Agency	TOTAL
AFP	19
ATO	2
Centrelink	1
Customs	2
TOTAL	24

Pecuniary penalty order action taken in 2005-06 financial year

Source Agency	Conviction	Civil	TOTAL
AFP	3		3
ASIC	1	2	3
ATO	2	4	6
ATSIC		1	1
AUSTPOST		1	1
AUSTRADE		1	1
Centrelink	2	3	5
Customs		1	1
TOTAL	8	13	21

² Automatic forfeiture only occurs upon conviction and occurs only for conviction based action.

(c) Reasons why the CDPP does not take action in particular cases include:

- Adequate and appropriate recovery action already taken by, or available to, source agency.
- Insufficient evidence of criminal offences.
- Insufficient evidence that any benefit/proceeds derived from criminal conduct.
- Inadequate assets/property of suspect to support proceeds of crime action.
- Proceeds of crime action would deprive identifiable victims of the opportunity to recover losses.

Alternative processes to proceeds of crime action include:

- Civil or administrative recovery action by the source agency and/or by individual victims.
- Prosecution.
- Conviction-based reparation orders under section 21B of the *Crimes Act 1914* (Cth).

(d) The amounts recovered under POCA, by offence type, in the 2005-06 financial year were as follows (all figures are provided to the nearest \$1000):

Offence type	Value
Fraud	\$11,192,000
Drugs	\$613,000
Laundering	\$1,083,000
Corporations	\$1,478,000
Other	\$23,000
TOTAL	\$14,389,000

Recovery amounts are provided by ITSA.