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Our Ref: AR : mb
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Telephone: (07) 3238 3906
Facsimile: (07) 3238 3340
Email:

The Honourable Alan Wilson
Chairperson
Taskforce on organised crime legislation
GPO Box 149
Brisbane QLD 4001

Dear Mr Wilson

Taskforce on organised crime legislation

I refer to your letter to Mr John Allen, the Public Defender seeking submissions in relation to the various matters being reviewed by the Taskforce on Organised Crime Legislation.

We welcome the opportunity to make a submission to the taskforce.

Legal Aid Queensland provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Legal Aid Queensland was established under the *Legal Aid Queensland Act 1997* for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, Legal Aid Queensland contributes to government policy processes about proposals that will impact on the cost-effectiveness of our services, either directly, or consequentially, through impacts on the efficient functioning of the justice system.

Legal Aid Queensland always seeks to offer policy input that is constructive and is based on the extensive experience of our lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides us with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. We also endeavour to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

We note the wide-ranging terms of reference of the taskforce. Most of the terms of reference are outside the areas of legal practice and expertise of Legal Aid Queensland staff. Consequently, this submission will only address a related matter — the recovery of proceeds of crime.

The *Criminal Proceeds Confiscations Act 2002* (the Act) prevents persons accessing their restrained property to fund private legal expenses. The rationale for this approach was to prevent restrained property being used in frivolous or unmeritorious actions or defences.

To ensure people whose property is restrained are not denied legal representation in their confiscation and criminal law proceedings, the provisions of the Act allow for them to be represented by Legal Aid Queensland, but their restrained property must be disregarded when we are assessing their financial eligibility for legal assistance. However, Legal Aid Queensland can recover its costs from the restrained or forfeited property.

Under the previous confiscation legislation, when restrained property could be accessed to fund private legal costs, restrained property was taken into account by Legal Aid in assessing financial eligibility, with the result that these matters were not funded for legal assistance.

The Act provides for the payment of costs incurred by Legal Aid Queensland either from restrained property by court order under ss. 38(1)(f), 93V(1)(f) or s. 130(1)(f), or by direction of the Attorney-General or his/her delegate under s. 214(3) from forfeited property to satisfy a charge by Legal Aid Queensland. A third alternative may exist where a client obtains a successful outcome to their confiscation matter and recovers their property. In this situation Legal Aid may be able to recover property from the client under s.36 of the *Legal Aid Queensland Act 1997*.

Despite s.214 of the Act appearing to establish an administrative framework for recovery of costs by Legal Aid Queensland, a simple administrative process has not been established despite our best efforts.

As a consequence, Legal Aid Queensland incurs extra costs in funding legal representatives to make applications to court for orders seeking payment from restrained property. This necessarily involves additional costs to the courts, the Office of the Director of Public Prosecutions and to any other parties to the proceedings.

In comparison, the *Proceeds of Crime Act 2002* (Cwth) establishes a simple administrative scheme for the repayment of costs incurred by legal aid commissions. Under this legislation, forfeited property is paid to a Confiscated Assets Account managed by the Official Trustee. Under s. 293 the Official Trustee must pay to a legal aid commission out of the Confiscated Assets Fund, the legal costs incurred by the commission up to the value of the forfeited property.

Legal Aid Queensland considers that it is in the public interest for there to be a simple administrative scheme through which we can obtain payment of our costs in providing legal representation to people whose property is restrained or forfeited under the *Criminal Proceeds Confiscations Act 2002*. Our preferred option is for the Department of Justice and Attorney-General to implement a simple administrative scheme as allowed under s. 214(3). However, if this is not possible, another option is to amend the legislation to give the Public Trustee power to pay legal aid costs similar to the power of the Official Trustee in the Commonwealth scheme. The use of scarce legal aid resources to make applications to court seeking payment from restrained property diverts resources that might be better used to assist disadvantaged Queenslanders.

Yours sincerely



Anthony Reilly
Chief Executive Officer
Legal Aid Queensland