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**Crimes Legislation Amendment (Serious and Organised Crime)
No. 2 Bill**

Thank you for the opportunity to comment on the Crimes Legislation
Amendment (Serious and Organised Crime) No. 2 Bill ("the Bill").

Liberty Victoria is one of Australia's leading human rights and civil
liberties organisations. Liberty works to defend and extend human
rights and freedoms in Victoria.

We make the following comments in relation to the bill:

Proceeds of Crime Act 2002 (Cth) ("POCA")

Schedule 1 - Proceeds of Crime

Firstly, Liberty Victoria does not support the regime as it is established
under the POCA. Our comments in relation to the amendments
proposed to the POCA are not to be read as generally supportive of the
confiscation regime particularly the reverse onus of proof requiring a
person to satisfy the court that their interest is lawfully derived.

In relation to some of the proposed amendments, our comments are -

- Liberty is concerned about the reduction in the possible
exemptions from exclusion orders. They are widened by the
proposed amendment to 73(10)(c)-(e) as the words
'terrorism offences' is removed and replaced by the term
'serious offences'. This just makes it harder to have property
excluded from forfeiture and Liberty does not support this
change.

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- Liberty welcomes clause 30 of the Bill regarding the proposed amendment to section 77(1) of the POCA that the 6 month time limit for applications for transfer or buy backs being removed.
- Liberty also welcomes the clarification of section 333(1)(a) made by the insertion of the words “a court passes sentence” in relation to the POCA’s reference to “conviction day”. By clause 66 of the Bill It seems to be common sense to remove ambiguity in relation to what triggers the confiscation regime.

Part 3 – Examinations

- Clause 114 of the Bill which amends section 195 of the POCA increases the penalties fourfold from 6 months and/or 30 penalty units to 2 years and/or 120 penalty units. Liberty questions whether an increase of this magnitude is appropriate and does not see that there is any justification.
- Clause 116 of the Bill creates a new s197A POCA offence for the provision of false or misleading information (penalty 2 years and/or 120 penalty units) without any apparent defence. Liberty believes that this should at the very least require that the person did so knowingly or with reckless disregard.

Part 4 - Notices

- Clause 125 amends s203(1)(c) of the POCA. This allows the DPP to specify form and manner of documents to be produced. However, although requirement that notice must give reasonable time to comply, no requirement that form and manner should be reasonable.
- Liberty recommends that incorporating a new subsection (i.e. after (3)) which would require a Magistrate to have regard to the reasonableness of the requirements specified in (1) taking into account any hardship that may be caused to the person required to produce the documents or things. Without such an inclusion, this could be costly and unfair for a person.
- The current section 211 of the POCA provides that a failure to comply with an order under this Part is an offence carrying a penalty of 6 months imprisonment and/or 30 penalty units. Clause 127 of the Bill inserts a defence only insofar as the time of compliance is concerned (and reverses the onus of proof). Liberty suggests that the defence inserted by s127 should be a general defence available where a person has made all reasonable efforts to comply with the order.
- Clause 133 of the Bill extends the number of government agencies which may obtain transaction and account holder information from financial institutions to include the ATO, Customs and ASIC (previously only the AFP, ACC and the Integrity Commissioner). Liberty asks what is the reasoning behind this significant increase in access to personal information without a warrant? (Only the requesting officer’s statement that the officer reasonably believes the information is required to determine whether to take action under the Act or in relation to proceedings under the Act (per s213(2)). Liberty believes it is paradoxical that clause 135 of the Bill inserts a requirement (into s214(d) of the Act) that the officer take into account the

ability of the financial institution to comply in the form and manner required by the officer and fails to afford this consideration to individuals subject to production notices.

- Similarly to section 218 of the Act should be amended to provide a general defence where a person has taken all reasonable efforts to comply with a notice to produce under section 213.

Part 7 – Evidence

- Clause 182 of the bill, amending the definition of ‘unlawful activity’ (section 338 of the POCA) is of great concern to Liberty. Removing the words ‘on indictment’ has the effect that all summary offences are able to trigger this property confiscation regime. This is a bold and draconian amendment that is hard to see how it warranted.
- Liberty opposes with the Bill broadening this definition from indictable offences under State and Territory law, to any offence under State or Territory laws.

Crimes Act 1914 (Cth)“The Crimes Act”

Schedule 2 – Search Warrants

- The proposed new section 3LA of the Crimes Act makes it an offence to fail to comply with order to assist with access to a computer system (2 years imprisonment). Liberty believes this should include a defence where a person has made all reasonable efforts to comply with such an order.

Witness Protection Act 1994 (Cth)

Schedule 3 – Witness Protection

- Clause 52 of the Bill substitutes section 22 with witness participant information disclosure offences (penalty 2 years imprisonment). In particular, disclosure of information about a Commonwealth or Territory participant is a strict liability offence. Liberty’s view is that given the broad definition of information adopted and the possibility for accidental or unknowing disclosure, it should require knowing or reckless disclosure of said information. The same criticism is leveled at sections 22A & 22B.
- Liberty opposes the inclusion of clause 22C of the Bill. This would make it an offence to disclose information to courts, tribunals or inquiries (including Royal Commissions). It is argued that preventing disclosure to superior courts and Royal Commissions runs counter to the principle of the rule of law and more broadly government accountability. Liberty is confident that such forums are capable of keeping such information secret. It is of great concern to Liberty that the executive arm of government would have the final say when it comes to such a serious and important protective regime.

We thank you for the opportunity to comment and time extension provided. Should you wish to discuss any aspect of this submission please contact Julian Burnside AO QC on (03) 9225 7488 or

Aggy Kapitaniak on (03) 9225 8746.

Yours faithfully

A handwritten signature in black ink, appearing to read "Michael Pearce". The signature is written in a cursive style with a large, prominent initial "M".

Michael Pearce SC
President
Liberty Victoria