



# Police Federation of Australia

The National Voice of Policing

## ***SUBMISSION to the***

The Secretary  
Parliamentary Joint Committee on Law Enforcement  
PO Box 6100  
Parliament House  
Canberra ACT 2600

via - [le.committee@aph.gov.au](mailto:le.committee@aph.gov.au)

## **Challenges and opportunities for law enforcement in addressing Australia's illicit drug problem**

The Police Federation of Australia (PFA) is the national body representing the professional and industrial interests of Australia's more than 66,000 police officers, across all state, territory, and the federal police jurisdictions.

<b>Membership as at: 31 December 2021</b>	
Police Association of South Australia	4,774
Western Australia Police Union of Workers	7,100
Queensland Police Union of Employees	12,190
The Police Association (Victoria)	17,791
Police Association of NSW	17,174
Police Association of Tasmania	1,419
Northern Territory Police Association	1,616
Australian Federal Police Association	3,965
<b>Police Federation of Australia</b>	<b>66,029</b>

The PFA notes the broad terms of reference for this inquiry and a number of the already provided submissions that focus on the respective strategies, enforcement activities and proposed legislative and other requirements that would enhance the policing of illicit drugs in the various jurisdictions.

In our numerous submissions to this, and other Committee's over the years on drug and organised crime issues, our key focus and recommendations have been on 'following the money' of those involved in the illicit trade.

The drug trade is extremely lucrative due to the large financial rewards for those involved, and the PFA has consistently argued that the best way to attack the issue is to make it easier for those financial rewards to be confiscated.

The PFA was one of the instigators of the debate around unexplained wealth in 2007/08 with the then Parliamentary Joint Committee on the Australian Crime Commission. Since then, the PFA have been arguing for the notion of 'joined up' policing, particularly as it relates to tackling serious and organised crime and targeting criminal assets gained illegally, and for many years have strongly supported a nationally consistent unexplained wealth regime.

As Justice Moffitt, former President of the NSW Court of Appeal said,

*"It has long been accepted that tax authorities can call on taxpayers to account for assets which appear to exceed that which their income could be expected to produce. It is difficult to see why in the face of serious organised crime a statute could not be drawn to provide that in prescribed circumstances the owner or custodian of money or assets may be called on to explain how he came by them..."*

Unexplained wealth provisions enable the courts to confiscate the proceeds of crime without having to establish a predicate offence linked to the holder of those proceeds. It does so by requiring persons of interest to show that wealth was obtained lawfully in order to keep it, rather than the onus being on law enforcement agencies to show it was obtained unlawfully in order to confiscate it. This is a necessary tool in combating organised crime

because the big crime bosses are the people who benefit most from criminal activity but are often able to separate themselves from the actual commission of the offence through complex hierarchical structures and business fronts. Importantly, it targets the wealth behind organised crime, prevents further crime by taking away money that could fund criminal activity, and acts as a deterrent by making true the old saying 'crime doesn't pay'.

We believe the evidentiary burden to call upon someone to explain their wealth should not be too challenging for authorities. If the wealth was gained legally, then there should be little problem explaining how their taxable assets are consistent with their actual assets.

The PFA believes the most effective formulation of unexplained wealth powers is a rebuttable presumption, whereby:

If a person has:

- a) Income in excess of income declared in taxation returns, or obtained in years for which no taxation return was filed, or
- b) Assets inconsistent with taxation declared income, or obtained in years for which no taxation return was filed, or
- c) Cash over a specified amount.

Those assets are presumed to be derived from an offence.

This presumption can be rebutted by establishing, to the satisfaction of the court, that the wealth was obtained by lawful means. If it is not rebutted, the assets in question are confiscated.

The PFA understands that the biggest obstacle to attaining national consistent unexplained wealth legislation, has been getting an agreement across all jurisdictions.

The PFA is of the view that agreement regarding consistent unexplained wealth legislation across jurisdictions should be expedited. Such legislation should ensure provisions that do not allow the person of interest to use the wealth in question in the legal proceedings. This encourages excessive litigation, as they may as well defend the case to the death because

they might lose all the assets anyway. Far more appropriate would be a legal aid system, which is used for other categories of confiscation in the *Proceeds of Crime Act*. An agreement across jurisdictions should also be developed for the distribution of any funds seized under such legislation, particularly where unexplained wealth is seized during joint operations.

In support of our stance on serious and organised crime issues, specifically the sale and distribution of illicit drugs, the PFA made a submission to *the Senate Standing Committee on Legal and Constitutional Affairs, 2021 Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime*.

In that submission we identified that the PFA was, not only the instigator of the debate around unexplained wealth legislation, we were one of the first organisations to call for a national criminal intelligence data base, which has now morphed into the National Criminal Intelligence System (NCIS).

We argued that stronger legislation to target money laundering and counter-terrorism financing was a very important step in pursuing criminals linked to serious and organised crime activities and reiterated our position on 'following the money' strategy.

We encouraged the Senate Standing Committee, as we do the PJCLE, to provide police with the necessary legislative tools to continue to combat organised crime, particularly in the sale and distribution of illicit drugs. While a national unexplained wealth regime is one way of assisting in this endeavor, ensuring that the facilitators who assist criminals by building complex hierarchical structures and business fronts to launder the ill-gotten gains of their criminal activity are also targeted. Such legislative provisions will also assist in taking away money that could fund further criminal activity and act as a deterrent by making true the old saying 'crime doesn't pay'.

We also noted that it was important key regulators, including AUSTRAC, the ATO and ASIC are provided with appropriate resources. Resources to ensure they can undertake their important role in identifying potential breaches of anti-money laundering legislation,

providing intelligence to the appropriate agencies and identifying when police need to be involved.

The PFA strongly advocates that anyone who derives profit from crime should be held to account.

While some suggested that the anti-money laundering and counter-terrorism financing proposals represented a quantum leap in law enforcement strategy, we argued that the sophisticated methods by often highly skilled professional facilitators in gatekeeper industries, employed by criminals to transform illicit wealth into legitimate assets, should be subject to stringent obligations that reflect the diversity and roles of professions that are involved in such criminal activity.

Those sophisticated methods employed by organised crime and their facilitators should be matched by technology provided to law enforcement and other relevant agencies to allow greater opportunities for computer matching issues such as – tax, employment records, banking data, company records, real estate and vehicle registrations, just to name a few.

In our submission on AML/CTF we also supported the list of professions that should come under this regime, identified in the ACIC Report “Serious Financial Crime in Australia 2017”.

That list included –

- Lawyers;
- Accountants/Financial Advisors;
- Liquidation/Pre-Insolvency Advisors;
- Offshore Service Providers;
- ICT Professionals; and
- Real Estate Agents.

As we pointed out, the Australian community expects a fair and just system and by ensuring that such professions are subject to the same scrutiny as financial institutions, it will go a long way to protecting their integrity by deterring them from being involved in facilitating organised crime. The proposed AML/CTF legislation will not only impact on criminals based in Australia, but also those who might seek to hide their illegal wealth gained offshore, by

investing in Australian assets. Not having the capacity to do so, damages Australia's reputation, internationally.

The ability to have legislation to support police to investigate who has beneficial ownership of companies, trusts or partnerships, and to trace, restrain and confiscate the benefits that criminals and identified facilitators derive from their offences, particularly in relation to the sale and distribution of illicit drugs, is a vital part of any effective criminal justice system by ensuring that such funds are not able to be used for further criminal activity. Those seized funds and assets should then go to further crime prevention measures.

The PFA has also made recent submission to this Committee in 2020 on public communications campaigns targeting drug and substance abuse.

In that inquiry we indicated our support for the National Drugs Strategy and the National Drugs Campaign. And while we will always advocate for strong law enforcement strategies to be an integral element of any anti-drugs campaign, we also strongly supported a comprehensive communications arm, with specific focus on younger people, with a particular emphasis on digital communications as well as traditional advertising.

We pointed out in that submissions that any such communications strategy must have, as a key element, a focus on recreational drug taking, including 'party drugs' and 'ice', particularly highlighting that a conviction for a criminal offence involving drugs may cause inhibitors to future employment prospects in a range of areas and overseas travel to numerous countries. Any such communications campaign should also have a specific stream targeting parents, and how they can support their children who may become involved in drugs or other substance abuse, and be tailored for Indigenous communities and culturally and linguistically diverse groups.

We also note that the 2021 inquiry into the impact of illicit drugs being traded on-line lapsed due to the calling of the 2022 election. The PFA believes there would be some benefit to the committee to review the submissions made to that inquiry for information that may be relevant to this current inquiry. In that context, we note comments in the "2018-19 Australian Criminal Intelligence Commission Illicit Drug Data Report" referring to

'un-regulated on-line pharmacies' where small scale organised crime groups were establishing and operating clandestine laboratories producing doping substances, and the increased use of social media and those pharmacies on-line presence for the advertisement and sale of such substances including anabolic substances.

The PFA has for some time had concerns about roadside drug testing for impairment due to cannabis use, due to the amount of time that cannabis can be detected in someone's system after use. This is particularly of concern in those jurisdictions that are discussing or have sought to decriminalise cannabis use.

Unlike roadside testing for alcohol, there is no widely accepted process for assessing impairment for cannabis. As such, the PFA does not support any proposals to decriminalise cannabis, or other drugs, until agreed impairment testing regimes have been established for any drug that a government may seek to decriminalise.

The PFA is also a strong supporter of the ACIS's Waster Water Monitoring program.

Whilst the PFA comes to illicit drug issues with a strong law enforcement focus, we encourage the Committee to take advice from a range of subject matter experts within the illicit drug space, to ensure that it gets a broad range of views to assist in its development of recommendations from this Inquiry.

As always, I would be happy to appear before the Committee to expand on any aspects of this submission.

Sincerely yours



Scott Weber APM  
Chief Executive Officer  
13 January 2023