

ASSET CONFISCATION UPDATE – 15 September 2009

by Christian Juebner
Barrister, Victorian Bar
Clerk: Barristers Logistics

McMunn v DPP (No. 2) ***Costs in confiscation litigation***

On 8 September 2009, Harper J handed down an important decision concerning costs in *McMunn v DPP* [2009] VSC 379.

In summary, after a trial, Harper J dismissed Mrs McMunn’s application for an exclusion order under s.20 of the *Confiscation Act*. Thereafter, the DPP applied for costs of the proceeding against Mrs McMunn. The application for costs was opposed.

Harper refused the DPP’s application for costs and found that the Court had no power to award such costs.

In deciding the application, Harper J followed the reasoning of Osborn J in *DPP v Tat Sang Loo* [2007] VSC 437.

In short, Harper J found that s.133A of the *Confiscation Act* covered the field with respect to costs in the types of proceedings mentioned within it. Since s.133A did not grant power to the Court to

make orders for costs in favour of the DPP, no such order could be made.

Importantly, Harper J stated that ss.133A(2)(b) and (c) “*in no way described the type of proceeding to which the section refers*”. In other words, an application will fall within the ambit of s.133A (and therefore the DPP cannot obtain an order for costs) if a person brings, or appears at, proceedings under the *Confiscation Act* before a Court in order:

- (a) to prevent a forfeiture order or restraining order from being made against property of the person; or
- (b) to have property of the person excluded from a forfeiture order or restraining order.

It is likely that there will shortly be some further guidance on the question of costs since the Court of Appeal has reserved its costs rulings in two unrelated confiscation proceedings.

About the author

Christian Juebner is a barrister at the Victorian Bar. Christian practices predominantly in confiscations and proceeds of crime.

Before coming to the Bar, Christian was a partner with Deacons. Through his commercial experience, he has a detailed knowledge of property, equity and trust issues, all of which are relevant to and impact on proceedings under the Confiscation Act.

Christian can be contacted on:

T (03) 9640 3216

M 0410 657 177

cjuebner@melbchambers.com.au

Clerk: Barristers Logistics

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