

ASSET CONFISCATION UPDATE – 21 May 2008

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Foley's List

DPP v Ali

Justice Smith today handed down his decision in *DPP v Ali*. The decision contains a detailed analysis of the “civil forfeiture” regime under the *Confiscation Act*.

Facts

Mr Ali had been charged with conspiring to traffic methylamphetamine. On the basis of those charges, a restraining order had been obtained over property registered to Mr Ali, said to have been used in the manufacture of the drugs.

Mr Ali was acquitted of the charges, but his co-defendants were convicted.

The restrained property was “tainted property” for the purposes of the *Confiscation Act*, it having been used in or in connection with the commission of the manufacture of drugs.

Upon Mr Ali's acquittal, the restraining order ceased to have

effect by operation of s.27 of the *Confiscation Act*.

Thereafter, the DPP applied for a further restraining order over the same property under the “civil forfeiture” regime.

It was argued on behalf of Mr Ali that the DPP was precluded from having “a second bite at the cherry”, namely relying on civil forfeiture after the charge based restraining order ceased to operate after the acquittal.

Held

Justice Smith refused the DPP's application for a civil forfeiture restraining order.

In refusing the DPP's application, Justice Smith held that:

- civil forfeiture restraining orders can only be made in circumstances where no charges are laid [52]; and

- The DPP cannot seek to restrain the same property twice [54].

This is an important decision because it is the first time that a Victorian Court has critically analysed the civil forfeiture regime under the *Confiscation Act*.

Therefore, the civil forfeiture regime operates only when no charges are laid.

Under that regime, the DPP can apply for a restraining order over property which “a member of the police force suspects on reasonable grounds” to be tainted property in relation to a Schedule 2 offence (see s.16(2)(a)).

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.

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