

ASSET CONFISCATION UPDATE – 22 March 2014

*Lawfully Acquired –
Markovski v DPP [2014]
VSCA 35*



Lawfully Acquired

On 19 March 2014, the Court of Appeal (Redlich, Wheelan and Santamaria JJA) delivered reasons in *Markovski v DPP* [2014] VSCA 35.

The Court considered the meaning of the expression “*lawfully acquired*”, which forms part of the exclusion test in, inter alia, s.22 of the *Confiscation Act*.

A question arose whether, in order to demonstrate that property was lawfully acquired, it is also necessary to demonstrate that the money used to acquire the property was itself lawfully acquired.

Redlich JA stated at [1]:

A party seeking the exclusion of property from the operation of a restraining order under s 22(a)(i) of the Confiscation Act 1997 (the Confiscation Act) must satisfy

the court that the property was ‘lawfully acquired’ by him. I agree for the reasons given by Whelan JA and the further reasons of Santamaria JA that a property will not be ‘lawfully acquired’ if the funds used to acquire the property came from the proceeds of criminal activity

Further, the Court noted (without deciding that, since the acquisition of property using money derived from illegal activity constitutes dealing in proceeds of crime, any transaction involving such money could not lead to a lawful acquisition.

In practice, the result does not impose any additional burden on an applicant for exclusion since such applicant must, in any event, show that the relevant property is not “derived property” (which is property derived or realized, or substantially derived or realized, directly or indirectly, from any unlawful activity).

Further information

For further information concerning litigation under the *Confiscation Act* 1997, visit www.confiscation.com.au.

About the author

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