

ASSET CONFISCATION UPDATE – 23 December 2013

*Stay of Proceeds of
Crime Act proceedings
pending determination
of criminal charges*



Commissioner of the Australian Federal Police v Safadi [2013] VCC 2057

On 23 December 2013, Judge Millane published her ruling in *AFP v Safadi*, granting a stay of the forfeiture proceedings under the *Proceeds of Crime Act 2002* (Commonwealth) (POCA) pending the hearing of the criminal trial against Mr Safadi.

The ruling in *Safadi* appears to be the first ruling by which an accused has succeeded in staying proceedings under the POCA pending the determination of the criminal charges.

The ruling closely follows the unsuccessful application made by an accused in *Qing Zhao & Anor v AFP*, decided by judge Lacava only three weeks ago (which was the subject of discussion in the newsletter of 3 December 2013). That ruling is now the subject of leave to appeal.

As today's ruling demonstrates, in order to succeed with a stay application on behalf of an accused it is necessary to demonstrate a real risk of prejudice to an accused arising from the overlap between the issues to be dealt with in the criminal proceeding and the forfeiture proceeding.

Further information

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

About the author

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