



Amendments to the Proceeds of Crime Act 2002

ASSET CONFISCATION UPDATE

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Critical amendments to the POCA

The *Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015 (Bill)* will shortly introduce critical amendments to the *Proceeds of Crime Act 2002 (POCA)*.

The amendments are twofold.

Firstly, the amendments will negate the effect of the ruling in *Commissioner of the Australian Federal Police v Zhan (Ruling No1)* [2015] VSC 390, in which T Forrest J determined that an application for forfeiture by the Commissioner must be heard and determined prior to the hearing and determination of an exclusion application.

The Bill will introduce a new section 315A(2) to the POCA, which will provide that, where the Commissioner applies for a forfeiture order and there are extant applications under sections 29 or 29A of the POCA, the Court may only hear the application for forfeiture *after* it has determined the exclusion applications.

Critically, the amendment will apply only to applications made after the commencement of

section 315A(2). The amendment is not intended to have retrospective effect. Hence, practitioners should act promptly to make any applications for exclusion orders before the commencement of the operation of the new section, where property is restrained either under section 18 or section 19.

Secondly, the amendments will substitute a new section 319, which will expressly provide, amongst other things, that the court *must not* stay POCA proceedings on the ground the criminal proceedings have been, or are proposed to be or may be instituted or commenced (whether or not under the POCA) against the person subject to the POCA proceedings or another person in respect of matters relating to the subject matter of the POCA proceedings.

In short, the amendment is intended to overcome the decision of the High Court in *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378. The Commissioner is determined not to delay proceedings under the POCA concurrent criminal proceedings.

These amendments are intended to apply to all proceedings under the POCA, whenever commenced. In other words, they are intended to have retrospective effect.

However, in so far as any stay application has been heard and determined and a stay granted, it is the author's view that such orders cannot be disturbed in reliance upon the proposed amended section 319.

It follows that if practitioners act for clients who would be well advised to obtain stay orders, they should act promptly to obtain such orders prior to the commencement of the proposed section 319.

About the author

Christian Juebner is a barrister at the Victorian Bar and practices extensively in confiscation and proceeds of crime litigation in all Australian jurisdictions.

He was admitted to practice in 1996 and, prior to coming to the Bar in 2004, was a partner with Deacons (now Norton Rose Fulbright).

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Christian is available to advise on proceeds of crime litigation in all Australian jurisdictions. He regularly appears in proceeds of crime matters throughout Australia.

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