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# Proceeds of crime: some contemporary issues

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*OPP Proceeds of Crime Conference: Civil Forfeiture and  
Unexplained Wealth*  
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# Some contemporary proceeds of crime issues

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- Trend away from conviction based forfeiture to ‘civil’ forfeiture
  - What is the public policy that underpins these schemes?
  - Are the various legislative schemes of sufficient breadth and strength to support this policy?
- The reach, nature and efficacy of civil forfeiture regimes
  - Are unexplained wealth schemes effective? Any research?
  - Are they ‘the most revolutionary weapon in the confiscation armoury’ with ‘potential to do great good and harm’?
  - Are civil forfeiture regimes more useful than ‘anti bokie gang laws’?

# Some contemporary proceeds of crime issues

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- Have the legislative and executive branches of government formed an effective ‘partnership’ with the courts in dealing with proceeds of crime issues?
  - Is there a clash between public policy and legal policy?
  - Are courts using their discretionary powers to promote this public policy?
  
- Have the police and prosecuting authorities formed an effective ‘partnership’ when applying proceeds of crime laws?
  - Is there sufficient expertise within these agencies?
  - Is it possible (necessary?) to use external experts sometimes?

# Some contemporary proceeds of crime issues

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- Do we need one national proceeds of crime scheme rather than separate Commonwealth, State and Territory schemes?
- How could this be achieved?
  - Referral of powers
  - Use of existing Commonwealth powers
  - Mirror legislation
- How do we cope with international issues?
  - Extraterritorial laws
  - Greater international co-operation

## A broader context

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- Modern governments are under great pressure to prevent crime and to be seen to be doing so
  - Numerous ‘recent’ legislative schemes aimed at preventing crime
  - Some of this legislation produces tension between the branches of government, e.g. sentencing, post-release detention.
- Modern Australian parliaments sometimes produce ‘blockbuster’ legislation with the following attributes
  - Unclear purposes
  - Unclear means of achieving unclear purposes
  - Highly detailed procedural and substantive provisions
  - Unfamiliar roles for the courts.

## A broader context

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- There is a growing tendency to be less reliant upon courts when imposing legal obligations on individuals
  - Growth in statutory (automatic) individual consequence schemes
  - More individual decision making responsibilities given to administrators with merits review
  - Greater use of tribunals rather than courts
- Is this trend desirable or do we need to do more work on creating effective ‘partnerships’?
- The expectations of police are changing
  - More multi-agency partnerships?
  - Acceptance of a broader role for policing services?