

ASSET CONFISCATION UPDATE – 7 December 2009

by Christian Juebner
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***Bow Ye Investments Pty Ltd (in liq)
v DPP (No. 2) [2009] VSCA 278***

A final word on the question of costs

On 7 December 2009, the Court of Appeal (Warren CJ, Buchanan JA and Vickery AJA) delivered its unanimous decision in relation to section 133A of the *Confiscation Act* 1997. That section “governs” the award of costs in confiscation proceedings.

The thrust of the Court of Appeal’s decision is set out at [18], where the Court stated:

“The purpose of s.133A is not to exclude the Director from obtaining an award for costs; it is to govern the circumstances under which an order for costs may be made against the director. If the intention is to exclude the Director from being awarded costs, the language of the provision must expressly provide for that to be the case.”

Accordingly, where applicants for exclusion fail in such applications, it is now clear that section 133A of the *Confiscation Act* 1997 does not stand

in the way of an application for costs by the DPP.

Although the origin of confiscation litigation is the criminal law, litigation under the *Confiscation Act* 1997 is clearly civil litigation.

Practitioners should expect (and warn their clients to expect) that orders for costs will, absent offers of compromise (or similar devices), usually follow the event.

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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