

**CORRUPTION, CRIME AND MISCONDUCT AND CRIMINAL PROPERTY
CONFISCATION AMENDMENT BILL 2017**

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.18 pm]: I move —

That the bill be now read a second time.

This bill amends the Criminal Property Confiscation Act 2000 and the Corruption, Crime and Misconduct Act 2003 to equip the Corruption and Crime Commission with important powers in the fight against corruption and organised crime in this state. With the passage of the Criminal Property Confiscation Act, Western Australia became the first Australian jurisdiction to implement legislation providing for the confiscation of unexplained wealth. The Criminal Property Confiscation Act's unexplained wealth provisions allow for the confiscation of assets and wealth in circumstances in which a court is satisfied that a person's total wealth is greater than their lawfully acquired wealth. Serious and organised criminals are motivated principally by greed, money and power. The objective of unexplained wealth laws is to deter crime, particularly organised crime, by removing the primary financial motivation for it. Targeting unexplained wealth in turn targets figures in criminal organisations who play a key role in directing and financing criminal operations but arrange their affairs so that they can enjoy the proceeds of their crimes without personally taking part in them.

The Australian Criminal Intelligence Commission conservatively estimates that serious and organised crime costs Australia \$36 billion annually. The source of that figure is the Australian Crime Commission's report "The Costs of Serious and Organised Crime in Australia 2013–14", published in December 2015. The profitability of crime comes at a cost to the entire community. The illicit drug market in particular is known to be a main source of profit. The Australian Criminal Intelligence Commission assesses methylamphetamine as posing, by far, the greatest threat to the Australian public of all illicit drug types. More than 60 per cent of Australia's highest risk serious and organised crime targets are involved in the methylamphetamine trade.

The 2013 National Drug Strategy Household Survey found that methylamphetamine was used more by people in Western Australia than by people in any other state or territory. The results of the 2016 National Drug Strategy Household Survey will be released later this year. The Australian Criminal Intelligence Commission's report "National Wastewater Drug Monitoring Program: Report 2", published in July 2017, found that regional Western Australia had the highest levels of methylamphetamine consumption in the country. The result is that Western Australia is an attractive and profitable market for serious and organised criminals. The Criminal Property Confiscation Act's unexplained wealth laws are there to disrupt them. Unexplained wealth laws do not require proof that an asset's owner has committed a criminal offence. As a result, the Criminal Property Confiscation Act provides a powerful mechanism for confiscating assets obtained with unexplained wealth that cannot be recovered using traditional conviction-based means. Under the Criminal Property Confiscation Act, Western Australia Police, in conjunction with the Director of Public Prosecutions, is empowered to investigate unexplained wealth. It is the function of the Director of Public Prosecutions to initiate and conduct unexplained wealth confiscation proceedings.

Although Western Australia was the first jurisdiction to implement what was considered to be ground-breaking legislation providing for the confiscation of unexplained wealth, those powers have seldom been used. In the 16 years since the commencement of the Criminal Property Confiscation Act, a total of 28 applications for unexplained wealth declarations have been made. However, since 2011, only one application has been made. This is because the DPP simply has not had the resources to pursue those applications. The result is that the Criminal Property Confiscation Act has not significantly benefited the fight against serious and organised crime in this state. The fight against organised crime is greatly enhanced by legislation that ensures that crime does not pay. Western Australia is armed with such legislation, but it is not being used.

The first purpose of this bill is to grant the Corruption and Crime Commission powers and functions to investigate and to initiate and conduct civil confiscation proceedings relating to unexplained wealth, and to seek orders from the court freezing assets in circumstances in which there is evidence of unexplained wealth. The bill also grants the Corruption and Crime Commission powers to investigate and to initiate and conduct civil confiscation proceedings relating to criminal benefits, and to seek orders from the court freezing assets in circumstances in which there is evidence of a criminal benefit. Under the Criminal Property Confiscation Act, criminal benefits are a form of unexplained wealth.

The bill does not propose that the conferral of powers upon the Corruption and Crime Commission in relation to unexplained wealth and criminal benefits be a transfer of those functions to the exclusion of the Director of Public Prosecutions. The DPP's power in relation to unexplained wealth and criminal benefits will remain. The DPP will maintain exclusive jurisdiction over investigating or initiating proceedings in relation to crime-used property, crime-derived property and drug trafficker declarations. These conviction-based means of confiscation align closely with the functions of the DPP.

In both New South Wales and Queensland, the state crime commissions are the sole agencies involved in the investigation and confiscation of unexplained wealth. Marcus Smith and Russell Smith, in their December 2016 report to the Criminology Research Advisory Council entitled "Exploring the procedural barriers to securing unexplained wealth orders in Australia", concluded, after conducting interviews with principal stakeholders throughout Australia, that the New South Wales Crime Commission's approach is the most efficient and effective approach in Australia to unexplained wealth. A number of positive attributes of the New South Wales Crime Commission model were highlighted. These included that matters are dealt with by a single agency with experienced specialist financial intelligence analysts, are investigated using the agency's coercive powers to obtain information, and are settled in almost all cases without the need for costly litigation. Conferring an unexplained wealth and criminal-benefits function upon the commission—a single agency with experienced specialist financial investigators and coercive powers—would realise for this state the same positive attributes of the New South Wales model.

The "Review of the Corruption and Crime Commission Act 2003" by Hon Justice Gail Archer was tabled in Parliament in February 2008. That review recommended that the Criminal Property Confiscation Act be amended to allow the Corruption and Crime Commission to apply for, amongst others, unexplained wealth declarations and criminal benefits declarations. That recommendation was endorsed by the Joint Standing Committee on the Corruption and Crime Commission in its twenty-eighth report of 2012 and its first report of 2013. The Corruption and Crime Commission Amendment Bill 2012 was introduced into the Legislative Assembly on 21 June 2012. The 2012 bill proposed legislative amendments that provided the Corruption and Crime Commission with functions under the Criminal Property Confiscation Act. The 2012 bill lapsed and further proposals for this legislative reform have not, until now, been pursued.

The Corruption and Crime Commission is a multidisciplinary agency, employing lawyers, specialist financial investigators and covert operatives. The Corruption and Crime Commission has both the physical and technical capabilities required to investigate and conduct proceedings in relation to unexplained wealth. It is uniquely placed to successfully carry out both investigative and confiscation proceeding functions. The bill proposes that the Corruption and Crime Commission be given the power to conduct controlled covert operations and to use its coercive powers of issuing notices, requiring the production of information, documents and other things, to advance unexplained wealth and criminal benefits investigations. The bill provides the Corruption and Crime Commission with access to powers under the Criminal Property Confiscation Act to obtain search warrants and to seize documents, to seek production orders, and monitoring or suspension orders from the court. The bill proposes that the Corruption and Crime Commission be provided with powers under the Criminal Property Confiscation Act to make examination orders to enable it to use its coercive examination powers to compel evidence on oath from targets and witnesses about wealth and assets. The bill does not require the Corruption and Crime Commission to apply to the court for orders to conduct examinations. This proposal will reduce the time taken to undertake investigations into unexplained wealth. It will allow for proactive action and immediate applications to the court for freezing orders if assets are at risk of being disposed of.

The protection of individual rights is not altered by this bill. A decision to make a freezing order or an unexplained wealth or criminal benefits declaration remains with the court. Any application by the Corruption and Crime Commission to the court must be supported by the admissible evidence. The bill proposes that the Corruption, Crime and Misconduct Act 2003 be amended to provide the commission with the unexplained wealth functions that are conferred upon it under the Criminal Property Confiscation Act. The bill provides the commission with the power to investigate unexplained wealth and criminal benefits cooperatively with any other body, such as the Western Australia Police, the Australian Criminal Intelligence Commission or the Australian Taxation Office. The bill authorises the commission to consult and exchange information with independent agencies, appropriate authorities, and any other relevant persons and bodies regarding those investigations.

The Corruption and Crime Commission is both a corruption and a crime commission. By conferring powers and functions in relation to unexplained wealth and criminal benefits on the Corruption and Crime Commission, this bill addresses what is at present a deficiency in the sphere of law enforcement in Western Australia, and better facilitates the crime-reduction purpose of the Corruption and Crime Commission. The seizure of unexplained wealth is a major strategy to disrupt crime that would effectively employ the Corruption and Crime Commission's coercive powers and expertise in corruption investigation. This bill sends a clear message to those involved in organised crime at the upper levels that they are not untouchable and that, in fact, the Corruption and Crime Commission stands ready to engage them.

The second purpose of this bill is to restore the power and jurisdiction of other authorities, particularly the Corruption and Crime Commission, into misconduct by members of Parliament, which could constitute a breach of section 8 of the Parliamentary Privileges Act 1891 and a breach of the Criminal Code. The jurisdiction of the Corruption and Crime Commission to investigate members of Parliament for such breaches was removed by the Corruption and Crime Commission Amendment (Misconduct) Act 2014. The restoration of this power will be achieved by a minor amendment to the Corruption, Crime and Misconduct Act. The proposed amendment leaves the powers and privileges of Parliament unaffected.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.A. Katsambanis**.