

**CRIMINAL PROPERTY CONFISCATION (CONSEQUENTIAL PROVISIONS) BILL 2000**

*Second Reading - Division*

Question put and a division taken with the following result -

Ayes (25)

Hon Kim Chance	Hon Peter Foss	Hon M.D. Nixon	Hon Bob Thomas
Hon J.A. Cowdell	Hon G.T. Giffard	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon M.J. Criddle	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Dexter Davies	Hon Ray Halligan	Hon B.M. Scott	Hon Muriel Patterson ( <i>Teller</i> )
Hon E.R.J. Dermer	Hon Tom Helm	Hon Greg Smith	
Hon B.K. Donaldson	Hon Barry House	Hon Tom Stephens	
Hon Max Evans	Hon N.F. Moore	Hon W.N. Stretch	

Noes (5)

Hon Helen Hodgson ( <i>Teller</i> )	Hon J.A. Scott	Hon Giz Watson	Hon Christine Sharp
Hon Norm Kelly			

Question thus passed.

Bill read a second time.

**CRIMINAL PROPERTY CONFISCATION BILL 2000**

*Committee*

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

**Clauses 1 to 4 put and passed.**

**Clause 5: Application of Act to confiscable property -**

Hon HELEN HODGSON: I have a problem with this clause because, as I read it, it places no time limit on when a property that has been acquired can be taken into account. That property may have been acquired 20 or 30 years ago. As I indicated yesterday, the burden of proof may be very difficult, even to the civil standard. The precedents that I have been able to uncover make it clear that the burden of proof is on the person who is trying to disprove the assessment. That is particularly enforced in this Bill, because the onus of proof continually reverts to the person who is the subject of the confiscation order. Civil law generally has a statute of limitations of six years, and other jurisdictions with similar legislation have a limit of between six and 10 years for these offences. Why has no time limit been placed on the acquisition of property under this Bill? It will make it extremely difficult for people to prove their case.

Hon PETER FOSS: I know this is a slightly different matter, but there is no limitation period on the recovery of stolen property. If stolen property is recovered, it does not matter for how long the person has had that stolen property.

Hon Helen Hodgson interjected.

Hon PETER FOSS: That is exactly the rule that does that. I will give a further example which is quite interesting: If a person who lives in Western Australia had property of this nature which should be available to be seized but which was overseas, the only way we could access that property under this Bill would be if that person spent in Western Australia the money that he had derived from that property. Therefore, the Christopher Skases of this world are unlikely to be caught by this Bill. If a person had received a large quantity of money in fraudulent circumstances and had secreted that money overseas, and if that person's acquisition of that money went back a considerable time, we could not get at that money until such time as that person brought it back into Western Australia. Therefore, it is fairly important that on every occasion that property is brought into Western Australia we have the capacity to make an application for an unexplained wealth declaration. The difficulty is that if a time limit were placed on this matter, it would be easy for a person to stash the money away for six years - the person might actually be in jail during that time - and after six years bring it back into the State, and Bob's your uncle. From a practical point of view, there must be no time limit.

It is important to remember that a person may have acquired unexplained wealth years ago but we are not aware of it, and it is not until something happens to bring it to the attention of the authorities that we think, "Where did all this wealth come from?" People may have had the money, but it is not until they start to spend it that we

realise they have it. They may have had the money or property stashed away somewhere, and it is not until they start to become a bit more flamboyant in their use of that money or property that we realise they have it. I remember the great train robber, Mr Biggs, who went to Brazil. He certainly managed to keep his money for a substantial time outside the reach of the British authorities, and I think he eventually spent it all. He has managed to stay in Brazil and father a child, and I understand his life in Brazil is quite pleasant. From the practical point of view, there is no alternative.

**Clause put and passed.**

**Clauses 6 and 7 put and passed.**

**Clause 8: Drug trafficker's property -**

Hon HELEN HODGSON: Subclauses (1) and (2) relate to the property of a person who has been declared a drug trafficker. My concern is that on my reading of this Bill, it appears that if a person is a drug trafficker, all the property that he owns is confiscated even if he can show that it has been acquired lawfully. We may have a situation where a spouse has been working and property has been acquired through the earnings of that spouse, or a person has inherited a property and it can be shown clearly that there is no connection between the unlawful activities of the declared drug trafficker and that inheritance, yet that property is still liable to confiscation. If this is meant to be a criminal penalty for a drug trafficker as punishment for that person's offence, why is it included in this confiscation regime? Is it not more appropriate for it to be a penalty under the Misuse of Drugs Act or the Criminal Code? It seems to me that this regime is incorporating an element of punishment as opposed to confiscation, and I am not sure this is the right Bill under which that should occur.

Hon PETER FOSS: It applies only to property that the drug trafficker owns, not property that the defendant may own.

Hon Helen Hodgson: What about joint property?

Hon PETER FOSS: That would be caught. One of the things we looked at was the situation in which assets have been acquired using that person's unexplained wealth, because quite a lot of these assets would be derived from that unexplained wealth. In respect of crime-derived property and crime-used property, that has been allowed for, but it has not been allowed for in the case of drug traffickers. It is similar to the situation that used to exist for felonies, when there was a forfeiture of property and all property was lost irrespective of the basis upon which it had been acquired. The member is right. This is one of the matters that is conviction-based, and it is as a result of a declaration by the court relating to a conviction.

Hon HELEN HODGSON: Am I correct that there is an element of punishment as opposed to only confiscation of illegal proceeds? By taking away lawfully acquired properties we are increasing the criminal penalty on the person.

Hon PETER FOSS: It is a consequence of the criminal penalty on that person, and it is a civil consequence, similar to the civil consequence that used to follow when a person was convicted of a felony in that his or her property was forfeited. That is exactly what happens in this case. It has an effect on the person's civil right to property. It is similar to the situation that used to exist for a felony.

**Clause put and passed.**

**Clauses 9 to 32 put and passed.**

**Clause 33: Seizure of crime-used or crime-derived property -**

Hon HELEN HODGSON: This clause deals with the power of the police to seize property. It is my understanding that a police officer may seize any property, and there is no requirement for a warrant or any other form of application to a higher authority prior to seizing that property. The clause refers to "reasonable grounds" for suspecting that the property is crime used or crime derived. I have serious reservations about extending police powers once again. Greater safeguards should be in place to ensure that the powers given to the police are vetted and authorised. Because of my other parliamentary duties, members of this Chamber have spent more time than I have looking into these matters. However, it is not unknown for police officers to act improperly for whatever reasons they may have for doing so.

Hon Derrick Tomlinson: Oh!

Hon HELEN HODGSON: I note Hon Derrick Tomlinson is absolutely aghast at that suggestion! However, it is an aspect of which members must be aware. Although the vast majority of police officers will use this power appropriately, it is possible that it will be abused. I have serious reservations about the fact that in many pieces of legislation we are now extending police powers without appropriate guidelines and without appropriate oversight by judicial authorities. To give the police power to seize property on reasonable grounds initiates the

whole process of trying to recover that property. To do that, the police must enter into the whole parameter of this legislation; that extension of power is unwarranted.

Hon PETER FOSS: I first draw the member's attention to the fact that the property can be seized for only 72 hours before the court process must start. The capacity to seize crime-used property already exists. However, not only does this Bill allow the police to seize it, which they can do anyway, but also it becomes the first step in the process of forfeiture. Limited rights under the Misuse of Drugs Act can be used to seize crime-derived property and I agree that this Bill considerably extends that right. The member is correct that the ability to seize property that is potentially the property of a drug trafficker is an extension of power. However, it is for only 72 hours and if it extends beyond that time, the other procedures in the Bill must be followed.

**Clause put and passed.**

**Clause 34: Issue of freezing notices -**

Hon HELEN HODGSON: I referred to an issue about this clause in my contribution to the second reading debate; that is, whether it is appropriate for a justice of the peace to be responsible for the issue of a freezing notice. Clearly, significant consequences flow from the initial issuing of a freezing notice - for example, automatic confiscation after 28 days if no objection is filed. These ramifications mean that justices of the peace will be placed in a very invidious position when dealing with these applications and may not be appropriately qualified to handle them. I refer to issues that I have come up against in work done on restraining orders and the training of JPs. Will JPs receive adequate training so that they will know the limit of their powers and in what circumstances the freezing notices may be issued? How many applications does the Attorney expect in areas with no magistrate?

Although I recognise the Bill provides for a statewide regime, I anticipate most of the notices will be issued in areas where a magistrate is available to issue these orders. Is this clause necessary to have the proposed Act administered efficiently, or will JPs find it an extra onerous duty which has huge responsibilities attached to it but which are never required to be exercised?

Hon PETER FOSS: Hon Helen Hodgson has touched on a subject close to my heart; that is, the role of JPs and their training in Western Australia. Since we introduced the requirement for all JPs to undertake a JP training course, the JPs who attend that course are appropriately qualified for the duties we have already put upon them.

I have carried out a rigorous examination of the activities of JPs to get an idea of the real number in the State who are carrying out those duties so that I can determine the training required, work out rosters and consider the appointment of new JPs. The historical data we have is reliable only insofar as it states who is on the JP list, but it does not indicate who is doing hard work. I want to ensure that we have a sufficient, well-trained group of JPs. They do a fantastic job and I do not believe they should be in the justice system purely to save money. I believe they are a vital part of community involvement in justice. I have therefore tried to enhance and improve the role of JPs; however, I recognise that with that comes a need to train them. Regular training courses take place when there are changes made to the law, and I will review those courses when I have a better handle on the number of JPs we have and who needs to participate in them.

I would not for one moment suggest that it is a wieldy group. Large numbers of them are spread across the State. There is a very keen core who do most of the work and who are keen to keep up with the law and keep themselves properly trained. I will be giving assistance to those JPs on the implementation of this Bill - what are their duties, what they need to know and the aspects about which they must be satisfied. I express confidence in that task, bearing in mind the limitations of dealing with a rather large and unwieldy group of people. However, given that the system is a good system and given that any good system has limitations, I believe we can do it.

Hon HELEN HODGSON: The Attorney General has not addressed one issue; that is, the numbers of applications that would be made outside areas that have a magistrate on duty. I know the Attorney will say that it is an unknown quantity because it is new legislation. However, I understand a magistrate is usually on call if these matters arise in the metropolitan area and other judicial districts. Does the Attorney General expect many of these cases to arise in areas that are so remote that a magistrate would not be available?

Hon PETER FOSS: I am not aware that magistrates are always on call in the metropolitan area. There is a duty magistrate for telephone restraining orders. Hon Helen Hodgson probably knows they have been a total failure, mainly due to the police processes that have been put in front of them. However, I do not know whether the cases will occur in the city. I imagine a lot would occur in the city during the day. One could very well go to a magistrate rather than a JP. I would be happy to investigate with the Commissioner of Police some form of internal instruction advising the police to use a magistrate where possible rather than a JP. However, one of the problems in this State is making laws that are not applicable in many parts of this State. The classic example was the Bail Act, in which there was a difference between what happened in the metropolitan area and the rest of

Western Australia. We should more frequently recognise the limitations on how we do things not only in the remote areas of this State but also in the country areas. There may be a magistrate for an area who services it by regularly travelling around it but it can be a month between visits. It would, therefore, not be practical to do that. However, I am happy to explore that matter with the Minister for Police. I am certainly happy to look more frequently at the processes we have in and out of the metropolitan area, and having got Parliament to accept that once, it might be something we can look at on a regular basis.

Hon HELEN HODGSON: In that case, I hope I am not missing an interconnection with something else. This clause refers to the fact that the Director of Public Prosecutions or a police officer may apply to a justice of the peace. It does not refer to a justice of the peace or a magistrate. Does that mean that magistrates are always justices of the peace? I believe usually they are.

Hon Peter Foss: They are ex officio.

Hon HELEN HODGSON: They are ex officio; therefore, an internal instruction could be issued that the JP should be a magistrate.

**Clause put and passed.**

**Clauses 35 to 44 put and passed.**

**Clause 45: Scope of freezing orders -**

Hon HELEN HODGSON: I particularly refer to clause 45(e), which states -

- (e) provide for meeting the reasonable living and business expenses of the owner of the property.

During the second reading debate I went into some detail about living expenses, and the Attorney General has responded to that. However, my question relates to the living expenses of a dependant. Does that come under clause 45(e), or would separate provision have to be made? Why are they not specifically provided for in that clause?

Hon PETER FOSS: I must confess that this clause does not lend itself to having those words added. It would be appropriate to say at this stage that I believe if that person about whom we are talking has responsibilities for dependants, it would be appropriate within that term to interpret that the living expenses of that person include the expenses for which they are responsible for people who are dependent upon them.

**Clause put and passed.**

**Clauses 46 to 60 put and passed.**

**Clause 61: Complying with examination orders -**

Hon HELEN HODGSON: This clause imposes some very hefty fines if a person fails to comply with an examination order - a fine of \$100 000 or five years' imprisonment. This is a bit of a myth that I would like to dispel. We keep talking about the Mr Bigs and the massive profits, but this legislation is not limited to those people. We could be talking about a relatively minor offence, to which a fine of \$100 000 is attached, when the property in question may be worth only a fraction of that.

If a person contravenes an examination order or the examiner's requirements, he commits an offence, he is subject to penalties, an objection has no effect, and he is not entitled to file an objection. Is any flexibility provided there? If, for example, an order is served and the person is unable to attend for some reason, how would the court processes apply to ensure that the person is able to respond and have an alternative time or date set so that he or she does not inadvertently commit an offence, to which this massive potential penalty is attached?

Hon PETER FOSS: The member is right in saying that this clause applies to all offences and not just to the Mr Bigs, although certain areas of this legislation are very unlikely to be used unless a substantial amount of money is involved because it would not be sensible for the State to expend vast quantities of money chasing small quantities of money. For instance, there will be confiscable property, whether it has been used for an offence or it is crime derived. As the member knows, the court has discretion. I am sure that if the member is able to see the distinction between a Mr Big, from whom we might be chasing \$50m worth of property, and a person who has a small holiday house, and that is all he has, she will see that the ability of the court to decide what the penalty should be is obviously a discretion it has. I am sure the court would see the same sorts of distinctions as the member sees. It is the same as with any matter before the court. If a person is served with a witness summons, for instance, it says, "Turn up", but if the person cannot turn up on that particular date, he has an obligation to have somebody ask the court to provide an extension of time and to excuse him. If the court believes the person has a genuine excuse, it will usually allow for a change, but if it does not believe what is said, it will deal with the matter accordingly. The legislation contains nothing that deals with those alternatives,

in the same way that there is nothing in the legislation relating to the issuing of witnesses' summonses. The court is able to deal with that issue, and I see no reason for the examiner to not exercise the judicial functions in the same way, and to accord natural justice to people who have no capacity to comply with the order.

Hon HELEN HODGSON: I also want to place on record my fundamental concerns about clause 61(5)(a) and (6). These two subclauses completely override existing legal practice and legal rights; that is, legal professional privilege and the right to not incriminate oneself. We think these are two fundamental problems with this legislation.

**Clause put and passed.**

**Clauses 62 to 81 put and passed.**

**Clause 82: Release of crime-used property -**

Hon HELEN HODGSON: This clause permits the release of crime-used property. I note that it relates to only crime-used property and not to crime-derived property. This is one of the clauses dealing with third party rights - I probably should say it fails to deal with third party rights - in ways that are adequate. The requirements of subclause (3), for example, are cumulative, so a person must be a spouse or dependant; be innocent or less than 18 years old; be usually resident at the time the confiscation offence was committed; be usually resident at the time the objection was filed; have no other residence; suffer undue hardship; and it must not be practicable to make adequate provision for the objector by some other means. Those requirements will eliminate a vast number of people before there can be any sort of consideration under the release of crime-used property provision. For example, under subclause (3)(d) - "usually resident on the property at the time the objection was filed" - if a freezing notice has been placed on the property, what happens? Is the person allowed to continue to live on the property? If he is not allowed to continue to live there, how could he possibly comply? If he is still living on that property, has a guard been put on the property, in which case would the person want to continue living there or would he want to go and live at nanna's? If the person is living at nanna's, he no longer meets the requirement of being usually resident at the time the objection was lodged. I can see that there will be many difficulties in a dependant being able to fulfil those requirements, particularly when we look at paragraph (g). If a person has a nanna with a spare room, does that mean that that is adequate provision by some other means, which will prevent the person from getting any relief under this provision? This is woefully inadequate for the provision for dependants; it is, in essence, punishing the family for the sins of the person who has committed the offence. The ultimate effect of this legislation is that it will put the burden of maintaining these people back on the State in the short or the long term, which is a cost to the public that could well outweigh the benefits of having such a strict provision in the legislation.

Hon PETER FOSS: The effect of the freezing order is to freeze the property, not to freeze the physical use of that property by those people. The whole idea of this provision is to allow for the unusual case in which the freezing order should be set aside because one can show all these things, in particular that the person is living there. If the person is not living there, there is little point setting it aside. The alternative provisions that could be made are to give people, for instance, a life tenancy or a long lease of the property to guarantee their interest in the property and their right to live in it, notwithstanding that the freezing order will continue to apply to that property. The clause is specifically for the purpose of people who currently live on the property, and lived there at the time it was frozen. That is why they ask that the order be set aside, and say they cannot be provided for by a life tenancy or a long lease.

Hon HELEN HODGSON: The idea of a life tenancy or long lease had not been brought to my attention before now. My understanding is that when property is frozen that places an obligation on the Director of Public Prosecutions, the Public Trustee or the Commissioner of Police to maintain and look after that property. How is that consistent with the idea of a life tenancy or a long lease of the property?

Hon PETER FOSS: There are two different issues, but I certainly do not think they are inconsistent. If I wanted to maintain a residential property, I would prefer that it not be empty. Anybody who has seen a property which has been left empty for any period of time will know that it is not merely the difficulty of maintaining the property, but also that it loses the feeling of inhabitation. I do not know what it is about a place that has not been lived in, but it is pretty obvious when it occurs. It is not merely a matter of the dust on the shelves or the garden being overgrown; it is that a house that is lived in has a totally different feel from one that is not. Having tenants in the property is in no way inconsistent with that, but I do not think they are two sides of the same coin.

Hon HELEN HODGSON: I was thinking more of matters like maintenance, payment of rates and those sorts of practical issues. Effectively, will the State, in the form of the DPP or the Public Trustee, pick up those charges to provide for the dependants when it is their usual residence and a life tenancy or lease has been granted?

Hon PETER FOSS: Generally speaking, a life tenant is responsible for those charges. In a tenancy, the conditions upon which people stay in a property are normally determined in the lease. If people were to remain

in the property, one would expect them to meet those normal outgoings. That would be useful from the point of view of the DPP, rather than it being necessary to find somebody else to do it.

Hon HELEN HODGSON: Clause 82(4) deals with other third parties. It looks as though it is designed to deal with joint and co-owners. I am very concerned about the extent to which an innocent business partner, for example, may be caught up in the confiscation processes. Is it likely that if a business premises were involved with a third party, the other business proprietors would be allowed to continue to manage the business, particularly in light of the provisions later in the Bill which deal with the DPP and the Public Trustee taking an interest in the maintenance of the property?

Hon PETER FOSS: I do not think one can lay down any rule other than the rule in the clause. I see no reason that that could not occur. I can also think of possible cases when it could not occur. I do not rule that out as a logical inconsistency, but I do not think one can answer except with the facts.

Hon HELEN HODGSON: I would not dare suggest that a property would not be managed properly under the auspices of the DPP or the Public Trustee, but I see the possibility of property losing its value. Depreciating property may have been sold rather than held. This could have a real impact on a third party. Are there any provisions for third parties to receive compensation if they can prove that they genuinely had no role in the offence that gave rise to the freezing notice? Will they get back their share of the money which may come from the profits and potential sale of a business? If the property is devalued as a result of a freezing order, will they have any claim for compensation for the amount by which their equity has been reduced?

Hon PETER FOSS: Subclause (4) allows them to get the property back because they can have the freezing order removed. Subclause (5) is virtually like a form of receivership or sequestration in that their interest is realised and they receive it. That may necessarily carry with it the reduced value of having to sell it as opposed to its being an ongoing business, but I believe it is inherent in that clause that if it is sold it is sold for its value. People will get their proportion of that value, not the value as a continuing business but as a business that has been sold. The member asked what were the responsibilities of the DPP or Public Trustee. To a large extent they are not defined in the Bill, and that would be controlled by the general law. In particular, I do not think the Bill deals with the question of waste because there is no reference to waste in the Bill.

**Clause put and passed.**

**Clause 83: Release of crime-derived property -**

Hon HELEN HODGSON: The last clause dealt with crime-used property and this clause deals with crime-derived property. The provisions in this clause for third parties are even more restrictive. There is no equivalent of subclause (3) which deals with dependants and family members. I would like the Government to state on the record why it does not think it appropriate for family members and dependants to have any rights to object in respect of crime-derived property?

Hon PETER FOSS: It is very simple; crime-used property could very well be property that was properly gained without any involvement of crime and that somebody then decided to use. I see no argument for people being able to use something that has been derived from crime. Had there been no crime, they would not have it in the first place. It is a very unworthy argument for someone to ask for his house back when he would not have had the house had the crime not been committed. Nobody is entitled to ask for his house back, if that house has been derived from the proceeds of crime.

Hon HELEN HODGSON: My concern is for the dependants to have income, support and shelter during the time the freezing order is in place. Shifting responsibility for maintenance from the person who owns the property to the State is an inevitable consequence of these provisions. The provisions are excessive and draconian, and will end up hurting the innocent victims of crime, who in this case are the family of the person who is the subject of the necessary freezing order. The Government's attitude is short-sighted, because this is a cost-shifting exercise rather than one that will do anything to aid the general public.

Hon PETER FOSS: Most of these matters are dealt with under part 7, in which the responsibilities, rights and duties of the various people involved are set out. I return to my earlier point that the property is not totally incapable of use while frozen.

*Sitting suspended from 1.01 to 2.00 pm*

**Clause put and passed.**

**Clauses 84 to 86 put and passed.**

**Clause 87: Orders to release confiscated property -**

Hon HELEN HODGSON: I find clause 87 to be a little anomalous. Clauses 82 and 83 deal with the freezing notice and the freezing order, and the confiscated property is a third step along the chain. The provisions to allow the release of that property are slightly easier to satisfy than are clauses 82 and 83. Why is that the case? For example, with the release of the objector's share of the property, one need not meet all the requirements. One can get further release without meeting the final requirements. Provision is made by which one can be paid out for the proportion of the property. Why is it handled differently in that situation?

Hon PETER FOSS: We are not sure that they are different. Maybe the member's comments relate to the situation that applied before the other provision was amended.

**Clause put and passed.**

**Clauses 88 to 101 put and passed.**

**Clause 102: Proceedings -**

Hon HELEN HODGSON: This provision relates to a briefing I had earlier this week about the issue of costs. I was informed that as it is a civil proceeding, the Director of Public Prosecutions will be liable for such costs if an action failed. I want it clarified on the record that when the DPP does not succeed in a matter, costs can be awarded against the DPP. What is the basis for that situation?

Hon PETER FOSS: Yes. As it is civil proceedings, the ordinary rules apply. A provision against the awarding of costs applies only in criminal proceedings.

**Clause put and passed.**

**Clauses 103 to 130 put and passed.**

**Clause 131: Payments into and out of the Confiscation Proceeds Account -**

Hon GIZ WATSON: As I said in the second reading debate, I am concerned that the payments out of the account are solely at the direction of the Attorney General as a reimbursement or otherwise. It then lists a range of purposes to which that money can be directed, including any other purpose in aid of law enforcement. I have concern, first, about a healthy slush fund for the Attorney General. Second, if this Bill supposedly deals with drug-related activities, it should say something about money being paid out to deal with the health aspects rather than only the law enforcement aspects of drugs. The emphasis does not address the underlying health issues. I have some serious concerns about how this money will be allocated.

Hon PETER FOSS: The clause covers the health aspect. Clause 131(2) reads -

Money can be paid out of the Confiscation Proceeds Account . . .

(b) for the development and administration of programmes or activities designed to prevent or reduce . . . the abuse of prohibited drugs;

That would definitely include health programs to prevent drug abuse. It refers to medical-type programs.

Hon GIZ WATSON: Is it intended that some of the money in this account would be directed in that way?

Hon PETER FOSS: Very much so.

**Clause put and passed.**

**Clauses 132 to 138 put and passed.**

**Clause 139: Legal professional privilege withdrawn -**

Hon HELEN HODGSON: The withdrawal of legal professional privilege has been brought to my attention by a number of legal practitioners and other people. It has some serious implications. Although I can understand that the Attorney General may wish to remove legal professional privilege in the confiscation processes, the problem is that the documents and information could become available in the course of the criminal action that may follow the confiscation proceedings. Given that all this can happen within 28 days, it is likely that the criminal processes will follow the confiscation proceedings. I would be very concerned if the withdrawal of legal professional privilege could make further information available to the Director of Public Prosecutions in the prosecution of the criminal offence. We should not allow that to happen.

Hon PETER FOSS: It depends what the member is talking about. Generally, legal professional privilege does not attach to criminal activities. A legal activity cannot be concealed by someone trying to hide it under a lawyer's advice. For instance if a lawyer's advice related to disposal of criminal assets, it would not be legally protected, nor, I suspect, would the person remain a lawyer for a long period.

Hon HELEN HODGSON: Why does the Attorney General believe it is necessary to remove legal professional privilege in these cases?

Hon PETER FOSS: For reasons of clarity.

**Clause put and passed.**

**Clause 140: Regulations -**

Hon HELEN HODGSON: With regard to what the regulations may do, subclause (2)(f) reads -

authorise persons or persons in a class of persons to carry out any or all of the functions of a police officer under this Act.

What “class of persons” does the Attorney General envisage being given these powers? I would be concerned if an untrained security officer were given the power to confiscate property. I am sure the Bill is not intended to go that far; it will be useful to have on the record a statement of the Government’s intention.

Hon PETER FOSS: Interstate police officers and officers of the Anti-Corruption Commission, the Australian Securities and Investments Commission and the National Crime Authority can be potentially authorised under the Bill.

Hon HELEN HODGSON: Is the Attorney General referring to other law enforcement officers who are not sworn police officers under the operations of this State’s Police Act?

Hon PETER FOSS: That is the intent.

**Clause put and passed.**

**Clause 141: Confiscation offences -**

Hon HELEN HODGSON: I think this has been clarified, but I would like it on the record. Subclause (1)(a) reads -

an offence against a law in force anywhere in Australia that is punishable by imprisonment for 2 years or more;

Often these offences can be either a summary offence or an indictable offence. Is this intended to include an offence that is dealt with in a summary jurisdiction, but which may have a maximum penalty of two years’ imprisonment?

Hon PETER FOSS: Yes. That is specifically dealt with under subclause (2).

**Clause put and passed.**

**Clauses 142 to 156 put and passed.**

**Clause 157: Conviction of a confiscation offence -**

Hon HELEN HODGSON: Subclause (1)(b) in relation to someone who is taken to have been convicted of a confiscation offence reads -

the person has been charged with and found guilty of a confiscation offence, but is charged without conviction;

In other words, the court may say that although a person is technically guilty of an offence, for some reason it will not record a conviction, but it can still confiscate all of the person’s property. What is the justification for that?

Hon PETER FOSS: This legislation does not want to trammel the mercy of the court in criminal matters by also making a consequence of that mercy a person’s being discharged freely of the civil consequences of his act. We must bear in mind the basis for this, which is a well-known common law civil matter; that is, the civil consequences of a matter follow from the delict, not from the conviction.

**Clause put and passed.**

**Clause 158: Charges for an offence -**

Hon HELEN HODGSON: A person is taken to have been charged with an offence if a complaint has been made against the person for the offence, whether or not a summons or a warrant has been issued. Once again, it appears that someone may be taken to have been charged with an offence, and this legislation will kick in before the criminal action commences. Why is that?

Hon PETER FOSS: It will not commence the criminal proceedings. It will commence the process as far as the civil consequences are concerned. For instance, if a person absconds before a complaint or a warrant can be issued, that process will be in place to apply as soon as the complaint is made.



Hon HELEN HODGSON: Is it a stopgap? Usually, these proceedings do not commence unless there is a warrant or summons, but if, for a technical reason, they cannot be issued, will this clause apply?

Hon PETER FOSS: No; it is a timing matter. It will not start the proceedings. The proceedings will proceed in the normal way. Certain matters are based on the fact that somebody has been charged with an offence. This clause will fix that point in time which must be determined as the time a person has been charged with an offence. If a person is to be charged with an offence, the criminal law covering charges and offences will deal with the criminal proceedings, but for the civil proceedings under this legislation, that point of time is established by this clause.

**Clause put and passed.**

**Clauses 159 to 161 put and passed.**

**Title put and passed.**