

Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017

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* in the year 2000, 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 where a court is satisfied that a person's total wealth is greater than their lawfully acquired wealth.

Serious and organised criminals are principally motivated 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 costs of serious and organised crime In Australia 2013-2014* - Australian Crime Commission, 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% of Australia's highest risk serious and organised crime targets are involved in the methylamphetamine trade. The Australian Criminal Intelligence Commission's July 2017 National Wastewater Drug Monitoring Program report found that regional WA had the highest levels of methylamphetamine consumption in the country. The 2013 National Drug Strategy Household Survey found that methylamphetamine was used by more people in WA than in any other state or territory. In the 2016 National Drug Strategy Household Survey methylamphetamine is the drug perceived to be of most concern for the general community.

The result is that WA is an attractive and profitable market for serious and organised criminals. The *Criminal Property Confiscation Act's* unexplained wealth laws provide an important means to disrupt them.

Unexplained wealth laws do not require proof that an asset's owner has committed a criminal offence. As a result, the Act provides a powerful mechanism of securing assets obtained with unexplained wealth that cannot be recovered using traditional conviction-based means.

Under *Criminal Property Confiscation Act*, the Western Australia Police Force in conjunction with the Director of Public Prosecutions are empowered to investigate unexplained wealth. It is the function of the DPP to initiate and conduct unexplained wealth confiscation proceedings.

While WA 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 them.

The result is that the *Criminal Property Confiscation Act* has not significantly benefitted 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 where 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 where there is evidence of a criminal benefit. Criminal benefits under the *Criminal Property Confiscation Act* 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 DPP. 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 or drug trafficker declarations.

In both New South Wales and Queensland, the state Crime Commissions are the sole agencies involved in the investigation and confiscation of unexplained wealth. In their December 2016 Report to the Criminology Research Advisory Council, 'Exploring the procedural barriers to securing unexplained wealth orders in Australia', the authors concluded, after conducting interviews with principal stakeholders throughout Australia, that the NSW Crime Commission's approach is the most efficient and effective approach to unexplained wealth in Australia. A number of positive attributes of the NSW 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 benefit functions upon the Commission, a single agency with experienced specialist financial investigators and coercive powers, would realise the same positive attributes of the New South Wales model for this State.

The *Review of the Corruption and Crime Commission Act 2003* by the Hon. Justice Gail Archer was tabled in Parliament in February 2008. That review recommended that the *Criminal Property Confiscation Act 2000* 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 report No. 28 of 2012 and No. 1 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 the investigative and confiscation proceeding functions. 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, 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 admissible evidence.

The Bill proposes that the *Corruption, Crime and Misconduct Act 2003* be amended to provide the Corruption and Crime Commission with the unexplained wealth functions that are conferred upon it under the *Criminal Property Confiscation Act*. The Bill provides the Corruption and Crime Commission with the power to investigate unexplained wealth and criminal benefits cooperatively with any other body, such as the Western Australia Police Force, the Australian Criminal Intelligence Commission or the Australian Tax 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 WA, and better facilitates the crime reduction purpose of the 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.

Pursuant to Legislative Council Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table the Explanatory Memorandum.