

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

## **EXPLANATORY MEMORANDUM**

This Bill amends the *Corruption, Crime and Misconduct Act 2003* and the *Criminal Property Confiscation Act 2000* to confer upon the Corruption and Crime Commission ("the CCC") powers and functions to investigate unexplained wealth and to initiate and conduct civil confiscation proceedings relating to unexplained wealth. This Bill also restores the CCC's powers to investigate certain types of misconduct by Members of Parliament.

### **PART 1 - Preliminary**

#### **Clause 1 -- Short title**

This clause provides that the short title of the Act is the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2017.

#### **Clause 2 - Commencement**

This clause provides that Part 1 of the Act comes into operation on the day it receives Royal Assent and that the rest of the Act comes into operation on a day fixed by proclamation.

## **PART 2 — CORRUPTION, CRIME AND MISCONDUCT ACT 2003 AMENDED**

#### **Clause 3 - Act amended**

This clause states that the Act makes amendments to the *Corruption, Crime and Misconduct Act 2003*.

#### **Clause 4 - Long title**

This clause provides that the Act amends the Long title of the *Corruption, Crime and Misconduct Act 2003*. The Long title is amended to include the CCC's new functions with respect to the confiscation of unexplained wealth and criminal benefits under the *Criminal Property Confiscation Act 2000*.

### **Part 1 — Preliminary**

#### **Division 1 — Introduction**

#### **Clause 5 - Section 3 amended**

This clause amends section 3(1) by inserting several new definitions into the *Corruption, Crime and Misconduct Act 2003*.

The term "authorised officer" has the meaning given in section 184(1), namely officers appointed to exercise certain investigative powers (and other powers under written law) relevant to the CCC's functions under the *Corruption, Crime and Misconduct Act 2003*.

Under the amendments to the *Corruption, Crime and Misconduct Act 2003*, an "authorised officer" will also exercise powers as an "authorised CCC officer" as specified in the *Criminal Property Confiscation Act 2000* (see clause 22).

The definitions of the terms "criminal benefit" and "unexplained wealth" have been inserted which have the same meanings as in the *Criminal Property Confiscation Act 2000*.

Section 3(2) is amended to broaden the definition of "investigation" to include investigations conducted by the CCC into unexplained wealth and criminal benefits under the *Criminal Property Confiscation Act 2000* pursuant to proposed section 21AD of the *Corruption, Crime and Misconduct Act 2003*.

Section 3(3) is amended to insert the word "exclusively" after the words "determinable by a House of Parliament." This amendment restores the CCC's powers with respect to the investigation of allegations of certain types of misconduct by Members of Parliament which powers existed prior to the *Corruption and Crime Commission Amendment (Misconduct) Act 2014*.

## **Division 2 — Purpose**

### **Clause 6 - Section 7A amended**

This clause amends section 7A(b) by inserting the word "sector;" to replace "sector" This amendment is required because of the insertion of section 7A(c).

This clause also inserts proposed section 7A(c), to state that one of the main purposes of the *Corruption, Crime and Misconduct Act 2003* is to facilitate the exercise of the CCC's functions under the *Criminal Property Confiscation Act 2000*.

### **Clause 7 - Section 7B amended**

This clause inserts proposed section 7B(7) so that section 7 states that the CCC is able to achieve the purposes of the *Corruption, Crime and Misconduct Act 2003* by, inter alia, investigating unexplained wealth and criminal benefits matters by exercising the powers available to it under the *Criminal Property Confiscation Act 2000*. The CCC's unexplained wealth function enables it to investigate unexplained wealth and criminal benefits obtained by persons who otherwise may not be subject to confiscation proceedings (predominantly in circumstances where they cannot be linked to criminal offending).

## **Part 2 — The Corruption and Crime Commission**

### **Division 2 — Functions of Corruption and Crime Commission**

#### **Clause 8 - Section 21AD inserted**

This clause inserts proposed section 21AD which confers on the CCC an "unexplained wealth function". The CCC's new unexplained wealth function confers powers on the CCC under the *Criminal Property Confiscation Act 2000* to investigate

unexplained wealth and criminal benefits as defined by that Act and to conduct confiscation proceedings in accordance with that Act.

The new provision is drafted in wide terms (similar to its serious misconduct function) to ensure that the CCC is able to most effectively conduct unexplained wealth investigations with support and assistance from any relevant person or body. The CCC may commence investigations into unexplained wealth and criminal benefits acting on information received from any source, including information received by the CCC in the performance of its other functions under the *Corruption, Crime and Misconduct Act 2003*. It may investigate cooperatively with other relevant bodies and consult and exchange information with relevant persons or bodies.

The unexplained wealth function empowers the CCC to exercise existing powers under the *Corruption, Crime and Misconduct Act 2003* (for the purpose of an unexplained wealth investigation). The Commissioner will be empowered to make examination orders under section 58 of the *Criminal Property Confiscation Act 2000* and the conduct of examinations will utilise specified provisions in Part 7 of the *Corruption, Crime and Misconduct Act 2003*. Under the *Criminal Property Confiscation Act 2000* the CCC may exercise the same functions and powers as the DPP and the Western Australia Police with respect to unexplained wealth and criminal benefits. The functions include the power to apply to a court for a declaration for unexplained wealth and criminal benefits, to apply for a production order, freezing order, or monitoring or suspension order (with respect to criminal benefits). The CCC will be able to apply for a search warrant and to seize property and will have the same duties as Western Australia Police or the DPP with respect to the control and management of frozen or confiscation property.

## **PART 5 — REPORTING**

### **Division 2 — General reports**

#### **Clause 9 - Section 91 amended**

This clause amends section 91 and requires the CCC to include in the annual report to Parliament an additional matter, namely a description of its activities in the performance of its unexplained wealth function.

## **PART 6 — POWERS**

### **Division 1 — Particular powers to require information or attendance**

#### **Clause 10 - Section 94 amended**

This clause amends section 94.

Section 94(1) is amended to limit the exercise of the CCC's power to obtain information from a public officer or public authority for the purpose of a serious misconduct investigation.

Section 94(1A) is inserted and subsections 94(3)(a) and 94(4)(c) are amended to permit the CCC to exercise the power to compel a statement of information from any

person in relation to an unexplained wealth investigation. The notice specifies the information required. This supports the power to compel information from a financial institution under section 54 of the *Criminal Property Confiscation Act 2000* and the CCC's powers in relation to examination orders made by the CCC under section 58 of the *Criminal Property Confiscation Act 2000*.

Section 94(5) is amended and proposed section 94(5A) is inserted to provide that a statement of information obtained from a person may be used in any proceedings initiated by the CCC under the *Criminal Property Confiscation Act 2000*, including confiscation, unexplained wealth declaration or criminal benefits declarations.

**Clause 11 - Section 122 amended**

This clause amends section 122.

Section 122(2) limits controlled operation authorities to investigations into alleged misconduct of police officers or a person of a class prescribed by regulations under the *Corruption, Crime and Misconduct Act 2003*.

Proposed new section 122(2A) extends the authority to conduct a controlled operation to matters relating to the CCC's unexplained wealth function.

**Clause 12 - Section 136 amended**

This clause amends section 136 by authorising the exercise of the CCC's ancillary powers in relation to its unexplained wealth function.

**Clause 13 - Section 137 amended**

This clause amends section 137 by inserting proposed section 137(2). \which states that the CCC may only conduct examinations in the exercise of its unexplained wealth functions pursuant to specified provisions set out in section 60A of the *Criminal Property Confiscation Act 2000* (see clause 48).

**Clause 14 - Section 144 amended**

This clause amends section 144.

Proposed section 144(1A) specifies the requirements made by the CCC of a person or authority which relate to the exercise of the unexplained wealth function.

Proposed section 144(3), (4) and (5) are inserted with the effect that where the CCC imposes a requirement on a person to produce information, documents or things under sections 94 and 95 of the *Corruption, Crime and Misconduct Act 2003* legal professional privilege is expressly abrogated (see also clause 18). This is similar in effect to the withdrawal of legal professional privilege in relation to requirements imposed under the *Criminal Property Confiscation Act 2000* in relation to property-tracking documents (see section 139 *Criminal Property Confiscation Act 2000*).

#### **Clause 15 - Section 145 amended**

This clause amends section 145.

Under section 145 statements and disclosures made by a witness subject to examination are not admissible in evidence other than as provided for in that section.

Proposed section 145(1)(a) states that statements or disclosure made by a witness subject to examination are not admissible in criminal proceeding other than for proceedings against the *Corruption, Crime and Misconduct Act 2003*. This proposed section renders a statement or disclosure made by a witness in answer subject to examination admissible in evidence in any *Criminal Property Confiscation Act 2000* proceeding or other civil proceedings.

Proposed section 145(3) provides that the transcript of a witness is admissible as evidence of the statement or disclosure of the witness that is subject to examination by the CCC.

#### **Clause 16 - Section 148 amended**

This clause amends section 148 by inserting proposed section 148(1A) which provides the CCC with power to issue a warrant for the arrest of a person who fails to attend for examination when served with an examination order made by the CCC under the *Criminal Property Confiscation Act 2000*.

#### **Clause 17 - Section 151 amended**

This clause amends section 151(1)(c) by broadening the definition of "restricted matter" to include the contents of any document, or a description of any thing, seized by an authorised officer under the *Criminal Property Confiscation Act 2000*.

Section 151 prohibits disclosure of specified matters generally related to evidence given to the CCC, information or statements produced to the CCC or facts relating to examination of a person conducted by the CCC. This provision extends the prohibition in section 151 to items produced to, or seized by, the CCC or to examinations conducted by the CCC in the exercise of its unexplained wealth functions.

#### **Clause 18 - Section 157 amended**

This clause amends section 157 by providing that a witness who fails to produce any document or thing to the CCC when required to do so, cannot seek to claim that the document or thing is subject to legal professional privilege as an excuse for failing to do so.

**Clause 19 - Section 160A inserted**

This clause inserts proposed section 160A to establish offences of contempt under the *Corruption, Crime and Misconduct Act 2003* relevant to the CCC's exercise of its unexplained wealth function. Proposed section 160A specifies certain conduct as a contempt of the CCC. It is a contempt if a person served with an examination order fails, without reasonable excuse, to attend or to produce document or other things, as required to do so under an examination order. It is also a contempt of the CCC for a person subject to an examination order under the *Criminal Property Confiscation Act 2000* to refuse or fail to be sworn or make an affirmation or to fail to answer a question relevant to the examination that a person is required to answer. The proposed section complements existing contempt provisions under the *Corruption, Crime and Misconduct Act 2003* section 162 which will also apply (see clause 20).

**Clause 20 - Section 162 amended**

This clause amends section 162 by inserting proposed section 162(1A) which widens the definition of "examination" to include examinations conducted by the CCC under the *Criminal Property Confiscation Act 2000*. The effect of this amendment is to ensure that all forms of contempt of the CCC set out in the provision apply to examinations conduct by the CCC in the exercise of its serious misconduct and unexplained wealth functions.

**Clause 21 - Section 163 amended**

This clause amends section 163 by amending section 163(5) by clarifying that the section only applies to a person served with a summons under section 96 of the *Corruption, Crime and Misconduct Act 2003*. Section 96 summons powers do not apply to unexplained wealth matters as a person is compelled to attend under examination order. This amendment is consequential upon changes made to section 157 (clause 18 and 19 above).

**Clause 22 - Section 184 amended**

This clause amends section 184 by inserting proposed section 184(3BA) which provides that an authorised officer of the CCC has the same powers of an "authorised CCC officer" as specified under the *Criminal Property Confiscation Act 2000* (see clause 5 - definition of authorised officer).

This clause also deletes the reference in section 184(3) to "(3b)" and inserts "(3BA)". The effect of this amendment will ensure that authorised officers may exercise powers proposed in section 184(3BA).

**Clause 23 - Section 217 amended**

This clause amends section 217 by inserting proposed section 217(4) which provides that a document purporting to confirm that an examination order has been made by the CCC is evidence of that fact and may be used to establish that fact in proceedings under the *Criminal Property Confiscation Act 2000*.

**Clause 24 - Section 223A amended**

This clause amends section 223A by extending the requirements of the *Criminal and Found Property Disposal Act 2006* to anything seized by an authorised officer of the CCC under the *Criminal Property Confiscation Act 2000*.

**PART 3 — CRIMINAL PROPERTY CONFISCATION ACT 2000  
AMENDED**

**Clause 25 - Act amended**

This clause provides that Part 3 of the Act makes amendments to the *Criminal Property Confiscation Act 2000*.

**Clause 26 - Section 10 amended**

This clause amends section 10(2) of the *Criminal Property Confiscation Act 2000* by inserting a requirement that the CCC must notify the relevant registrar of the confiscation of property (other than registrable real property) that is registrable under the *Personal Property Securities Act 2009* (Cth) which has been confiscated under sections 6, 7 or 8.

**Part 3 — Identifying and recovering confiscable property**

**Division 1 — Unexplained wealth**

**Clause 27 - Section 11 amended**

This clause amends section 11(1) of the *Criminal Property Confiscation Act 2000* by inserting the words "or the CCC". The effect of this amendment is to provide the CCC with power to apply for unexplained wealth declarations.

**Clause 28 - Section 12 amended**

This clause amends section 12 by removing the reference to a "person" and inserting the term "respondent" where the term respondent is more consistent with the wording of the provision, and the *Criminal Property Confiscation Act 2000*.

**Division 2 — Criminal benefits**

**Clause 29 - Section 15 amended**

This clause amends section 15(1) by inserting the words "or the CCC". The effect of this amendment is to provide the CCC with power to apply for a criminal benefits declaration.

**Clause 30 - Section 27 amended**

This clause amends section 27(1) by inserting the words "or the CCC". The effect of this amendment is to provide the CCC with power to apply for a confiscable property declaration.

**Clause 31 - section 30 amended**

This clause amends section 30 by inserting the words "CCC". The effect of this amendment is to provide the CCC with power to apply for a declaration that property has been confiscated.

**Clause 32 - Section 31 amended**

Clause 31 amends section 31 to delete reference to the "DPP" and to insert the terms "applicant for the declaration" and "relevant registrar" to ensure that the applicant (either the DPP or the CCC) has the duty to lodge a memorial of declaration with the relevant registrar.

The heading to the section is also amended for consistency.

**Clause 33 - Section 32 amended**

This clause amends section 32 to delete reference to the "DPP" and insert the term "applicant" for the declaration" to enable either the DPP or the CCC to apply to vary a declaration regarding confiscable property.

**Part 4 — Preventing dealings in confiscable property**

**Division 2 — Freezing notices for crime-used and crime-derived property**

**Clause 34 - Section 36 amended**

This clause amends section 36(3) insert the word "relevant" before the word "applicant" for consistency with amendments proposed to sections 10(2) and 31(2).

**Clause 35 - Section 39 amended**

This clause amends section 39 to insert the word "relevant" before the word "applicant" for consistency with amendments proposed to sections 10(2), 31(2) and 36(3).

**Division 3 — Freezing orders for confiscable property**

**Clause 36 - Section 41 is amended**

This clause amends section 4(1)1 to insert the words "or the CCC" to provide the CCC with power to apply for a freezing order.

**Clause 37 - Section 43 amended**

This clause amends section 43(1)(a) - (c) by inserting a provision which allows the CCC to make an application for a freezing order on the basis that it has, or is likely to make an examination order. This ensures that the court is able to make freezing orders in the same manner as currently permitted under the Act but in the circumstance where the CCC has exercised its power to make an examination order. Sections 43(3)(c) and (5)(a) are also amended to delete the reference to the "DPP" and insert a reference to "the applicant for the freezing order". This provides consistency



with the use of these terms in other provisions where both the CCC and DPP may be the applicant.

**Clause 38 - Section 45 amended**

This clause amends section 45(c) by deleting the reference to the "DPP" and inserting a reference to the "applicant for the order". This provides consistency with the use of these terms in other provisions where both the CCC and DPP may be the applicant.

**Clause 39 - Section 46 amended**

This clause amends section 46(3) by inserting the word "relevant" before the word "applicant" for consistency with amendments proposed to sections 10(2), 31(2), 36(3) and 39.

**Clause 40 - Section 47 amended**

This clause amends section 47 by deleting the reference to "DPP" and inserting a reference to "applicant for the order". This provides consistency with the use of these terms in other provisions where both the CCC and DPP may be the applicant.

**Clause 41 - Section 48 amended**

This clause amends section 48(4)(a) by inserting the words "or that an examination order is likely to be made by the CCC" to support the new basis upon which a freezing order for registrable real property may be made as set out in section 43(1)(c) (see clause 37).

A further consequential amendment is included in proposed section 48(4)(ab) to deal with the requirement to lodge a memorial where the CCC does not make an examination order within 21 days after the date of the freezing order.

**Clause 42 - Section 49 amended**

This clause amends sections 49(2) and inserts proposed section 49(2)(ab) as consequential amendments similar to those provided for in section 48(4)(a) and (ab) to support the new basis upon which a freezing order for other property may be made as set out in section 43(1)(c) and which may affect the duration of a freezing order for other property (see clauses 37 and 41).

**Part 5 — Investigation and search**

**Division 1 — Preliminary inquiries**

**Clause 43 - Section 53 amended**

This clause amends section 53 by inserting the words "or an authorised CCC officer". The effect of the amendment is to empower a CCC officer authorised under section 184 *Corruption, Crime and Misconduct Act 2003* to receive information volunteered by a financial institution.

**Clause 44 - Section 54 amended**

This clause amends section 54(1) by inserting the words "or an authorised CCC officer". The effect of the amendment is to empower a CCC officer authorised under section 184 *Corruption, Crime and Misconduct Act 2003* to compel a financial institution to give to them certain specified information.

This provision supports the exercise of the CCC's unexplained wealth functions, including the decision as to the exercise of examination powers or orders under the *Corruption, Crime and Misconduct Act 2003*.

**Division 2 — Examinations**

**Clause 45 - Section 58 amended**

This clause amends section 58(1) by inserting the words "or the CCC" to provide the CCC with power to make an examination order.

Consequential amendments are made to insert "or the CCC, as the case requires" into sections 58(2)(a), (b), (c), (d) and to insert at subsection 58(2)(e) the words "or before the CCC at a place specified in the order, as the case requires". The effect of these amendments is to give effect to the CCC's powers to make examination orders under this provision.

Currently, the *Criminal Property Confiscation Act 2000* provides for the court to make an order for examination by ex parte hearing. Any examination is conducted by the court in camera.

The amendment to this provision empowers the CCC to make an examination order pursuant to section 58(2) of the *Criminal Property Confiscation Act 2000*. In exercising this power, the CCC will have regard to the requirements currently only imposed on a court making such an order as set out in section 58(1) of the *Criminal Property Confiscation Act 2000* the scope of examination, and the requirements that may be placed on a person subject to an examination order under section 58(2).

The CCC will be empowered to make an examination order in lieu of the court such that the CCC will not be required to apply to a court for an examination order. The effect of this change is that the CCC will determine whether an examination will be conducted in relation to an unexplained wealth investigation itself. This will make use of powers currently exercised by the CCC in relation to serious misconduct investigations and will improve the capacity of the CCC to conduct efficient and effective unexplained wealth and criminal benefits investigations. The conduct of the examination including provisions relating to admissibility of evidence or statements obtained from a witness is governed by specified provisions in Part 7 of the *Corruption, Crime and Misconduct Act 2003* (see clauses 47, 48 and 13).

The heading to this section is also amended for consistency.

**Clause 46 - Section 59 amended**

This clause amends section 59 by deleting the words "examination order" and inserting the words "or, if the examination order is made by the CCC, the CCC". The effect of this amendment is to require the CCC to serve the person ordered to be examined by the CCC.

**Clause 47 - Section 60A amended**

This clause inserts proposed section 60A. Proposed section 60A provides that an examination order made by the CCC, and any examination by the CCC, will be conducted in accordance with specified provisions in the *Corruption, Crime and Misconduct Act 2003*.

Whilst the CCC has the same powers of the court making an examination order in accordance with section 58(1), the specified provisions of the *Corruption, Crime and Misconduct Act 2003* will apply as if the examination were being conducted for the purposes of an investigation under the *Corruption, Crime and Misconduct Act 2003*.

**Clause 48 - Section 61 amended**

This clause amends section 61 by inserted proposed section 61(5A) to clarify that a person is not entitled to contravene an examination order made by the CCC or the examiner's requirements on the grounds that it might incriminate the person or render them liable to penalty or could result in confiscation of property.

A witness subject to an examination order made by the CCC will be subject to the same liabilities and obligations regarding contravention of that examination order as a witness who is subject to an examination order made by the Court under the *Criminal Property Confiscation Act 2000*. Sections 61(1) - (5) apply to that witness and set out what may constitute contravention or non-compliance with an examination order and the penalties that may apply for contravention or non-compliance.

This clause also amends section 61(7) to insert the words "made by the court" after the words "examination order" so that the section does not apply to examination orders made by the CCC. Section 145 of the *Corruption, Crime and Misconduct Act 2003* governs the admissibility of statements, disclosures or transcripts of evidence given by a witness subject to an examination order made pursuant to the *Criminal Property Confiscation Act 2000* (see clause 15).

This clause also inserts proposed section 61(8) to make it clear that the admissibility of a statement or disclosure made by the examinee in the course of complying with an examination order made by the CCC is governed by section 145 *Corruption, Crime and Misconduct Act 2003*.

### **Division 3 — Production of documents**

#### **Clause 49 - Section 62 amended**

This clause amends section 62 by inserting the words "or the CCC" after the word "DPP" to provide the CCC with power to apply for a production order.

#### **Clause 50 - Section 63 amended**

This clause amends sections 63(2)(a) and (b) to ensure that the court making a production order may direct a person to give, or make available, a property tracking document, to the agency who applied for the production order (that is, the CCC or the DPP as the case may be).

#### **Clause 51 - Section 64 amended**

This clause amends section 64(1) and (2) to add references to the "CCC" and "authorised CCC officer" where the Act makes references to DPP or police officer. The effect of these changes is to grant the CCC, or an authorised CCC officer (as relevant) the same powers as the DPP or a police officer with respect to inspection and retention of a property-tracking document.

#### **Clause 52 Section 65 amended**

This clause amends section 65(2) and (3) to add references to "the CCC or an authorised CCC officer". The effect of the amendment is to grant the CCC or an authorised CCC officer the same powers as the DPP or a police officer in relation to contravention and admissibility of information given under a production order.

#### **Clause 53 - Section 66 amended**

This clause amends section 66 by inserting the words "or the CCC or an authorised CCC officer". The effect of this amendment is to provide the CCC with power to apply to vary a production order.

### **Division 4 — Monitoring financial transactions**

#### **Clause 54 - Section 67 amended**

This clause amends section 67(1) and (2) by inserting the words "or the CCC" after the word "DPP". The effect of this amendment is to provide the CCC with power to make an application to the District Court for a monitoring order or a suspension order.

#### **Clause 55 - Section 68 amended**

This clause amends section 68(1) and (2) by ensuring that the court may make orders for giving information to, and / or notifying, either the DPP, a police officer or the CCC, depending on who applied for the monitoring or suspension order.

### **Division 5 — Secrecy requirements**

#### **Clause 56 - Section 70 amended**

This clause amends section 70(1) by substituting the reference to the "DPP" with a reference to the "DPP, a police officer or an authorised CCC officer". This amendment extends the provisions relating to restricted disclosure to information provided voluntarily by a financial institution to the CCC in the same way the restrictions apply with respect to information provided to the DPP or a police officer.

#### **Clause 57 - Section 71 amended**

This clause amends section 71 to permit restricted disclosures made to either the DPP or a police officer, or to the CCC or authorised CCC officer. This provision sets out the circumstances in which a restricted disclosure may be made, including the circumstances and nature of information that may be disclosed, by whom and to which specified person or authority.

### **Division 6 — Detention, search and seizure**

#### **Clause 58 - Section 73 amended**

This clause amends section 73 by inserting the words "or an authorised CCC officer" after each occurrence of the words "police officer". The effect of this amendment is to provide authorised CCC officers with the same powers of a police officer in relation to stopping and detaining people or vehicles and searching for and seizing confiscable property or property-tracking documents.

Minor amendments to pronouns used in this provision are also made.

#### **Clause 59 - Section 74 amended**

This clause amends section 74 by inserting the words "or an authorised CCC officer" after the words "police officer". The effect of this amendment is to provide authorised CCC officers with the same powers as police officers to apply for a search warrant and to exercise powers under that warrant.

#### **Clause 60 - Section 75 amended**

This clause amends section 75 by inserting the words "or an authorised CCC officer" after the words "police officer". The effect of this amendment is to provide authorised CCC officers with the same duties as police officers when performing a search of a person under warrant.

#### **Clause 61 - Section 76 amended**

This clause amends section 76 by inserting the words "or an authorised CCC officer" after the words "police officer". The effect of this amendment is to provide authorised CCC officers with the same ancillary powers as police officers when exercising powers under a search warrant.

#### **Clause 62 - Section 77 amended**

This clause amends section 77 by inserting the words "or an authorised CCC officer" after the words "police officer". The effect of this amendment is to enable authorised CCC officers to take action under warrants with respect to documents in the same way as police officers.

**Clause 63 - Section 78 amended**

This clause amends section 78 by inserting the words "or an authorised CCC officer" after the words "police officer". The effect of this amendment is to make authorised CCC officers subject to the same obligations as police officers with respect to other laws requiring or authorising search warrants.

**Part 7 — Management of seized, frozen and confiscated property**

**Division 1 — Control and management of property**

**Clause 64 - Section 88 amended**

This clause amends section 88(1) by inserting the words "by a police officer, whether" after the word "seized". The effect of this amendment is that the Commissioner of Police has responsibility for control and management of property seized by a police officer under section 33(1) or under a warrant under section 74. The powers in section 33(1) relate to seizure of suspected crime-used property, suspected crime-derived property or property suspected to be owned or effectively controlled by a person charged with an offence against whom a drug trafficker declaration may be made if convicted.

This clause also inserts proposed section 88(1A) which states that where an authorised CCC officer seizes property under a warrant under section 74, the CCC has responsibility for its control and management.

**Clause 65 - Section 89 amended**

This clause amends section 89(1) by inserting the words "(except frozen property to which subsection (1A) relates)" after the words "frozen property". The effect of this amendment is that the control and management of frozen property will be the responsibility of the DPP.

This clause also inserts proposed section 89(1A) which states that where the CCC applies for a freezing order, the CCC has responsibility for control and management of the property unless the court otherwise appoints the Public Trustee or the Commissioner of Police, or the owner to manage the property.

This clause amends section 89(2) and inserts proposed section 89(2A) to ensure that where the CCC obtains an order to confiscate frozen property to pay the amount specified in an unexplained wealth declaration or an criminal benefits declaration, or subject to a freezing order obtained by the CCC, the CCC (and not the DPP) has responsibility to control and manage that property until it is disposed of.

This clause amends section 89(3) by inserting the words "or the CCC (as the case requires)". The effect of this amendment is to permit the CCC (in addition to the DPP) to appoint the Public Trustee, Commissioner of Police, or the owner of the property to manage the frozen property.

**Clause 66 - Section 90 amended**

This clause amends section 90 by inserting the words "or the CCC" after the word "DPP". The effect of the amendment is to permit the CCC to carry out transactions for the disposal of frozen or confiscated property.

The heading of the section is also amended accordingly.

**Part 8 — Court jurisdiction and evidentiary matters**

**Clause 67 - Section 103 amended**

This clause amends section 103 is amended by inserting the words "or the CCC" after the word "DPP". The effect of the amendment is to entitle the Attorney General to appear in proceedings under the *Criminal Property Confiscation Act 2000* whether or not the CCC is also a party.

**Clause 68 - Section 108 amended**

This clause amends section 108(1) by restricting the use of transcript of a person subject to examination orders conducted under the *Criminal Property Confiscation Act 2000* to use for the purposes of evidence of that person's statement or disclosure in compliance with the examination order conducted under the *Criminal Property Confiscation Act 2000*.

This clause also inserted proposed section 108(2) to apply the *Corruption, Crime and Misconduct Act 2003* provision governing admissibility of a statement or disclosure a person subject to a CCC examination order. Where the CCC conducts the examination, the evidence of a person subject to that examination is only admissible as permitted by section 145 *Corruption, Crime and Misconduct Act 2003*.

These amendments support provisions in the *Corruption, Crime and Misconduct Act 2003* governing the exercise of the CCC's powers in relation to examination of a person when performing its functions under the unexplained wealth function.

**Part 10 — Mutual recognition of freezing orders and confiscation of property**

**Division 2 — Recognition of orders of other jurisdictions**

**Clause 69 - Section 118 amended**

This clause amends section 118(4) by inserting the words "the CCC" after the word "DPP". The effect of the amendment is to provide the CCC with power to apply for registration / recognition of interstate confiscation or freezing orders that apply to property in the State of WA.

**Clause 70 - Section 122 amended**

This clause amends section 122(2) by inserting the words "the CCC" after the word "DPP". The effect of the amendment is to provide the CCC with power to make an application to cancel registration of an interstate freezing order or confiscation declaration in certain circumstances.

**Division 3 — Charges on interstate property**

**Clause 71 - Section 126 amended**

This clause amends section 126(1) and (3) by inserting the words "the CCC" after the words "DPP or the Public Trustee". The effect of the amendment is to require the CCC to lodge a memorial of a charge on an interest in land under the *Transfer of Land Act 1893* (WA) or the *Registration of Deeds Act 1856* (WA) and to withdraw the memorial if the charge ceases to have effect.

**Clause 72 - Section 127 amended**

This clause amends section 127(1) and (3) by inserting the words "the CCC". The effect of the amendment is to require the CCC to lodge a memorial of a charge on property other than land under the *Personal Property Securities Act 2009* (Cth) or any enactment that provides for the registration of interests in property of that kind.

**Part 11 — Miscellaneous**

**Clause 73 - Section 131 amended**

This clause amends section 131(2)(e) and (f) by inserting the words "or the CCC" after the words "DPP or the Public Trustee". The effect of the amendment is to provide for the Attorney General to pay money out of the Confiscation Proceeds Account as a reimbursement for costs incurred by the CCC in storing, seizing or managing frozen or confiscated property or to assist the CCC to use funds from the Consolidated Proceeds Account for the purpose of identifying or locating confiscable property.

**Clause 74 - Section 132 amended**

This clause amends section 132 by inserting the word "or an authorised CCC officer" after the words "police officer". The effect of the amendment is that if a person wilfully delays or obstructs an authorised CCC officer who is performing functions under the *Criminal Property Confiscation Act 2000*, they will commit an offence. The amendment ensures that it is an offence to obstruct both police officers and authorised CCC officers.

**Clause 75 - Section 134A**

This clause inserts proposed section 134A which provides the CCC with the power to delegate the performance of its functions under the *Criminal Property Confiscation Act 2000* to an officer of the CCC although there are specific functions, performed by the Commissioner of the CCC, that cannot be delegated. The powers which cannot be delegated are the power to make an examination order, the power to examine a person



under oath and the power of delegation itself. This provision reinforces similar non-delegable functions relating to examinations provided for in the *Corruption, Crime and Misconduct Act 2003*.

**Clause 76 - Section 135 amended**

This clause amends section 135 by inserting the words "or the CCC" after the word "DPP". The effect of the amendment is to permit the CCC to apply for a sham transaction order.

**Glossary**

**1. Terms used**

**Clause 77 - Glossary clause 1 amended**

This clause amends clause 1 of the Glossary (to insert two new definitions).

The term

"authorised CCC officer is defined to mean "an authorised officer as defined in the *Corruption, Crime and Misconduct Act 2003* section 184(1)".

The term "CCC" is defined to mean the "Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003* section 8(1);"