

CHIEF JUSTICE OF WESTERN AUSTRALIA

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Your ref: 00625/2016 AEB/IOB
Our ref: CCCO1001

7 March 2017

CONFIDENTIAL

The Hon John McKechnie QC
Commissioner
Corruption & Crime Commission
186 St George's Terrace
PERTH WA 6000

Dear Commissioner,

Unexplained Wealth Proposal

Thank you for your letter of 28 February 2017, and for the invitation to comment upon the draft Cabinet proposal enclosed with your letter.

As I would understand the proposal, its only impact upon the exercise by courts of the jurisdiction to make a declaration of unexplained wealth (usually at the Supreme Court) would be to shift responsibility for the commencement and prosecution of such proceedings from the Director of Public Prosecutions to your Commission. I infer from the terms of the draft submission that it could reasonably be anticipated that one consequence of this transfer of responsibility would be a likely increase in the number of cases of this kind brought before the courts including most usually the Supreme Court.

The question of which agency of Executive Government is best placed to undertake the efficient discharge of the function of investigating and prosecuting proceedings relating to unexplained wealth is in my view essentially a matter for Executive Government and is not a matter upon which I wish to comment. Viewed from the perspective of the exercise of the jurisdiction conferred upon the court I can see no basis for any suggestion that the Commission is any less able or less appropriate an organisation to undertake the function to which I have referred, especially given that the Commission enjoys the same independence from executive direction as the Director of Public Prosecutions and, in the event that court proceedings are commenced, would no doubt act through legal practitioners who are subject to the same professional obligations as members of the Office of the Director of Public Prosecutions.



However, if I am correct in my assumption that it might be anticipated that the transfer of responsibility proposed would result in an increase in proceedings seeking a declaration of unexplained wealth, there would obviously be implications for the resources of the court. As you are only too well aware, the last decade or so has seen a marked tendency for Government to expand the jurisdiction of the court, thereby increasing the demands upon the judicial and other resources of the court without a corresponding increase in those resources. While on occasions the increase in demand upon limited resources might, in itself, not be of profound significance, over time the cumulative effect of a number of increases in demand without any corresponding increase in resources can and has had a detrimental affect upon the court's capacity to discharge its jurisdiction in a timely fashion.

For these reasons I would respectfully request that the possible implications of the proposal, in terms of an increase in the volume of proceedings brought before the court, and the consequential effect upon the court's resources be expressly drawn to the attention of Executive Government at the time the proposal is advanced. I accept that it would be difficult to make an accurate estimate now of the likely impact of this proposal on the resources of the court, or to quantify the cost of that impact, but if the proposal proceeds, it would be desirable to expressly acknowledge that this aspect of it should be reviewed after some experience of the revised arrangements has been gained.

I trust these observations are sufficient for your purposes and would of course be pleased to discuss or expand upon any aspect of them at your convenience.

Yours sincerely

A handwritten signature in cursive script, reading "Wayne Martin", written in black ink on a white background. The signature is written over a horizontal line.

The Hon Wayne Martin AC
Chief Justice of Western Australia



00626/2016

CHIEF JUDGE'S CHAMBERS
DISTRICT COURT OF WESTERN AUSTRALIA
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PERTH, WESTERN AUSTRALIA 6000

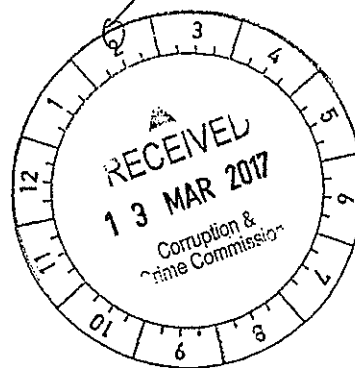
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Our Ref: C1030
Your Ref: 00625/2016 AEB/IOB

7 March 2017 9 - 42

The Hon John McKechnie QC
Commissioner
Corruption and Crime Commission
PO Box 7667
Cloisters Square
PERTH WA 6850



John

Dear Commissioner,

Unexplained Wealth Proposal

Thank you for your letter dated 28 February 2017 providing me with the opportunity to give feedback on the proposal of assigning to the Corruption and Crime Commission the functions and powers currently held by the DPP and the WA Police to investigate and conduct civil confiscation proceedings in relation to unexplained wealth.

I am reluctant to make any submissions on the proposal given the independent position of the courts.

However, one issue that might require consideration is the possible obligation to give discovery in civil proceedings and the extent that this may create awkwardness in view of the Commission's functions and powers.

Yours sincerely,

Kevin Sleight

Kevin Sleight
Chief Judge

CCC 100789



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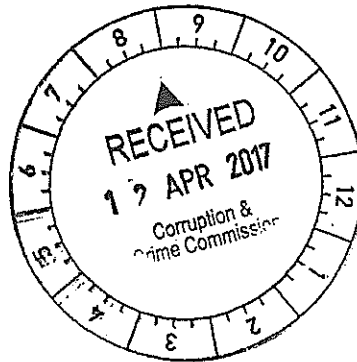


WESTERN AUSTRALIA POLICE

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Mr John McKechnie, QC
Commissioner
Crime and Corruption Commission
PO Box 7667 Cloisters Square
PERTH WA 6850

Dear Commissioner McKechnie

Unexplained Wealth Draft Cabinet Submission

Thank you for your correspondence dated 28 February 2017, which refers to a proposed cabinet submission seeking an amendment to the *Criminal Property Confiscation Act 2000 (CPCA)*, allowing the Crime and Corruption Commission (CCC) to carry out Unexplained Wealth (UeW) investigations. The cabinet submission proposes to amend the CPCA to assign powers through sections 11 – 14 of the CPCA to the CCC. At present the Department of Public Prosecutions (DPP) and Western Australia Police (WA Police) manage these sections jointly.

The effect of the amendment is to extend these powers to the CCC, enabling your office to investigate UeW. The draft states the CCC has adequate staff to carry out these types of investigations and sufficient resources to carry out hearings as deemed necessary.

To date UeW investigations conducted by WA Police and the DPP have not been markedly successful with no UeW action commenced since 2011. The majority of CPCA investigations are criminal investigations with the accused charged with a criminal offence, primarily the possession of trafficable quantities of illicit drugs.

In my view, a single agency response to target UeW investigations has merit.

I hereby offer my support for the draft cabinet submission to amend the CPCA to allow the CCC to conduct UeW investigations.

Yours sincerely

KARL J O'CALLAGHAN APM
COMMISSIONER OF POLICE

7 April 2017



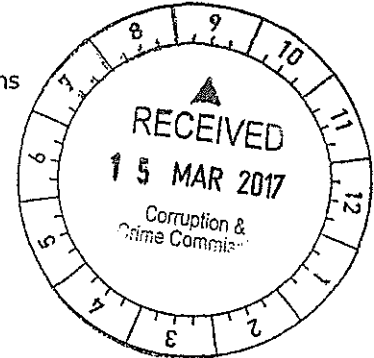
DIRECTOR OF PUBLIC PROSECUTIONS
for WESTERN AUSTRALIA

Level 1, 26 St Georges Terrace, PERTH WA 6000

00625/2016

Office of the Director

Your ref: 00625/2016 AEB/IOB
Our Ref: ADM2017/54-02:ALF:JJ:yab
Contact: Yanina Boschini
Legal Administrator for the Director of Public Prosecutions
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Mr John McKechnie QC
Commissioner
Corruption and Crime Commission
186 St Georges Tce
PERTH WA 6000

Dear Commissioner

UNEXPLAINED WEALTH PROPOSAL

Thank you for your letter dated 28 February 2017 with attachments and the opportunity to provide feedback in relation to the unexplained wealth proposal.

I broadly support a proposal to confer the functions and powers under the *Criminal Property Confiscation Act 2000* ('the Act') in connection with unexplained wealth upon an agency other than the ODPP.

However, the appropriate model by which unexplained wealth proceedings are to be investigated, commenced and litigated is a matter of policy on which I do not seek to comment at this time.

It is difficult to provide a complete response regarding the effects of the proposed course upon the ODPP without seeing drafting instructions to Parliamentary Counsel. Some parts of the draft submission do not set out what role, if any, it is contemplated the ODPP have in relation to these matters. I appreciate that the Cabinet submission is still in draft form. For this reason, the feedback I do have at this stage should be regarded as preliminary only.

Specific matters I raise in relation to the draft submission are:

1. It would be preferable that conferral of unexplained wealth functions on another agency should not be to the exclusion of my Office. Despite not requiring them as stand-alone functions, there may be occasions on which my Office will need to rely upon those functions as an adjunct to confiscation action under other provisions of the Act.
2. The draft Cabinet submission is silent in relation to what is proposed regarding the management of frozen and confiscated property arising

from unexplained wealth actions undertaken by a party other than the ODPP. Section 89 of the Act gives my Office primary responsibility for the control and management of such property. Clearly, it would not be appropriate for my Office to retain that responsibility in relation to matters initiated by another agency.

I would welcome an opportunity to consider any drafting instructions to Parliamentary Counsel in relation to the proposed amendments to the Act at an appropriate time. This would assist with an understanding of the full ambit of the proposal and ensure that a full assessment of any potential issues as they affect my Office can be made.

Yours sincerely


Amanda Forrester SC
ACTING DIRECTOR OF PUBLIC PROSECUTIONS

✓
14 March 2017

Corruption and Crime Commission	
	Obj Ref
Commissioner	<input checked="" type="checkbox"/>
Exec. Director	<input checked="" type="checkbox"/>
General Counsel	<input type="checkbox"/>
Director	<input checked="" type="checkbox"/>
Manager	<input checked="" type="checkbox"/>
Case Officer	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

Commissioner.....

cc R Warnes, Wendy EB, L Storey

c Phillip-Clarke, V Sharp