

Criminal Property Confiscation Bill 2000

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Meaning of terms used in this Act	2
4.	Confiscable property — synopsis	2
5.	Application of Act to confiscable property	3

Part 2 — Confiscation of property

6.	Unexplained wealth, criminal benefits, substituted property	4
7.	Automatic confiscation of certain property	4
8.	Drug trafficker's property	4
9.	Effect of confiscation — registrable real property	6
10.	Effect of confiscation — other property	6

Part 3 — Identifying and recovering confiscable property

Division 1 — Unexplained wealth

11.	Applications for unexplained wealth declarations	7
12.	Unexplained wealth declarations	7
13.	Assessing the value of unexplained wealth	8
14.	Unexplained wealth payable to State	9

Division 2 — Criminal benefits

15.	Applications for criminal benefits declarations	9
16.	Criminal benefits declarations — crime-derived property	9
17.	Criminal benefits declarations — unlawfully acquired property	10

Contents

18.	Limitations and ancillary orders	10
19.	Assessing the value of criminal benefits	11
20.	Criminal benefits payable to State	11
	Division 3 — Crime-used property substitution	
21.	Applications for crime-used property substitution declaration	12
22.	Crime-used property substitution declarations	12
23.	Assessing the value of crime-used property	13
24.	Substituted property payable to State	14
	Division 4 — Recovery of confiscable property	
25.	Recovery of unexplained wealth, criminal benefits or substituted property	14
26.	Use of frozen property to meet liability	15
27.	Use of effectively controlled property or gifts to meet liability	15
28.	Confiscable property declarations	15
29.	Restrictions on confiscation of declared confiscable property	16
30.	Declarations of confiscation	17
31.	Notice of confiscation of registrable property	17
32.	Variation of declarations	17
	Part 4 — Preventing dealings in confiscable property	
	Division 1 — Seizure of crime-used and crime-derived property	
33.	Seizure of crime-used or crime-derived property	18
	Division 2 — Freezing notices for crime-used and crime-derived property	
34.	Issue of freezing notices	19
35.	Form of freezing notice	19
36.	Service and filing of freezing notices	20
37.	Statutory declarations required under freezing notice	21
38.	Duration of freezing notice — registrable real property	22
39.	Duration of freezing notice — other property	22
40.	Cancellation of freezing notices	23

Division 3 — Freezing orders for confiscable property		
41.	Applications for freezing orders	24
42.	Proceedings for freezing orders	24
43.	Freezing orders	24
44.	Grounds specified in freezing orders	26
45.	Scope of freezing orders	26
46.	Service of freezing orders	27
47.	Statutory declarations about frozen property	28
48.	Duration of freezing orders — registrable real property	29
49.	Duration of freezing orders — other property	31
Division 4 — Dealing with seized or frozen property		
50.	Prohibited dealings	33
51.	Effect of dealings in frozen property	34
52.	Permitted dealings in mortgaged property	34
Part 5 — Investigation and search		
Division 1 — Preliminary inquiries		
53.	Information volunteered by financial institutions	35
54.	Preliminary inquiries from financial institutions	35
55.	Protection for financial institutions	36
56.	Giving false or misleading information	37
Division 2 — Examinations		
57.	Applications for orders for examination	37
58.	Orders for examination	37
59.	Service of orders for examination	39
60.	Conduct of examinations	39
61.	Complying with examination orders	39
Division 3 — Production of documents		
62.	Application for production orders	41
63.	Production orders	41
64.	Inspection of property-tracking documents	42
65.	Complying with production orders	42
66.	Variation of production orders	44
Division 4 — Monitoring financial transactions		
67.	Applications for monitoring and suspension orders	44

Contents

68.	Monitoring orders and suspension orders	44
69.	Compliance with monitoring or suspension order	46
	Division 5 — Secrecy requirements	
70.	Restricted disclosures	46
71.	Making restricted disclosures	47
72.	Disclosure to court	49
	Division 6 — Detention, search and seizure	
73.	Power to detain persons	49
74.	Search warrants	50
75.	Searching detained persons	51
76.	Additional powers	51
77.	Later-made documents	53
78.	Warrants under other enactments	53
	Part 6 — Objections to confiscation	
79.	Objections to confiscation of frozen property	54
80.	Parties to objection proceedings	54
81.	Release of frozen property	54
82.	Release of crime-used property	55
83.	Release of crime-derived property	56
84.	Setting aside orders: other frozen property	57
85.	Applications for release of confiscated property	57
86.	Parties to proceedings	57
87.	Orders to release confiscated property	58
	Part 7 — Management of seized, frozen and confiscated property	
	Division 1 — Control and management of property	
88.	Management of seized property	60
89.	Management of frozen or confiscated property	60
90.	DPP's capacity to carry out transactions	61
91.	Applications by owner for control and management	61
92.	Duties of responsible person	61
	Division 2 — Disposal of deteriorating or undesirable property	
93.	Destruction of property on grounds of public interest	62
94.	Sale of deteriorating property	62
95.	Valuation and inventory of frozen property	63

Division 3 — Management of property by Public Trustee

96.	Public Trustee’s power to appoint a manager	63
97.	Public Trustee’s liability for charges on frozen property	63
98.	Managing interstate property	64
99.	Fees payable to Public Trustee	64
100.	Obstructing Public Trustee	64

Part 8 — Court jurisdiction and evidentiary matters

101.	Courts’ jurisdiction	65
102.	Proceedings	66
103.	Appearance by Attorney General	66
104.	Stays of proceedings	67
105.	Opinion evidence	67
106.	Evidence that property is crime-used or crime-derived	68
107.	Evidence of offence proceedings	68
108.	Transcripts of examinations	68
109.	Hearsay evidence	69
110.	Evidence of compliance with production orders	69
111.	Certificates under <i>Misuse of Drugs Act 1981</i>	69
112.	Enforcing compliance with Act or court order	69

Part 9 — Interests in registrable property

113.	Registration of interests in registrable real property	70
114.	Registration of interests in other property	71
115.	Imputation of knowledge that property is frozen	71
116.	Instruments lodged with the Registrar of Titles	72

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

Division 1 — Registration of WA orders in other jurisdictions

117.	Interstate registration of freezing notices and orders	73
------	--	----

Division 2 — Recognition of orders of other jurisdictions		
118.	Registration of interstate orders	73
119.	Effect of registration of interstate freezing orders	74
120.	Effect of registration of interstate confiscation declarations	74
121.	Duration of registration of interstate orders	74
122.	Cancellation of registration of interstate orders	75
Division 3 — Charges on interstate property		
123.	Creation of charge	75
124.	Cessation of charge	76
125.	Priority of charge	77
126.	Registration of charge on land	77
127.	Registration of charge on property except land	77
Part 11 — Miscellaneous		
128.	Act binds States and Commonwealth	79
129.	Property protected from seizure and confiscation	79
130.	Confiscation Proceeds Account	80
131.	Payments into and out of the Confiscation Proceeds Account	80
132.	Obstructing police officers	82
133.	Later applications, notices, orders or findings	82
134.	DPP's power to delegate	82
135.	Orders relating to sham transactions	83
136.	Proceedings against body corporate	83
137.	Liability for carrying out functions under this Act	84
138.	Effect of owner's death	84
139.	Regulations	85
Part 12 — Interpretation		
140.	Confiscation offences	87
141.	Confiscable property	87
142.	The constituents of a person's wealth	88
143.	Unexplained wealth	89
144.	Acquiring criminal benefits	89
145.	Crime-used property	90
146.	Criminal use of property	91
147.	Crime-derived property	91

148.	Lawful acquisition of property	92
149.	Service cut off date	92
150.	Dealing with property	93
151.	Value of property sold by State	93
152.	Innocent parties	94
153.	Transfer of property for value	95
154.	Property-tracking documents	95
155.	Effective control of property	96
156.	Conviction of a confiscation offence	96
157.	Charges for an offence	98
158.	Drug traffickers and declared drug traffickers	98
159.	Absconding in connection with an offence	99
160.	Sham transactions	99

Glossary

Western Australia

LEGISLATIVE ASSEMBLY

Criminal Property Confiscation Bill 2000

A Bill for

An Act to provide for the confiscation in certain circumstances of property acquired as a result of criminal activity and property used for criminal activity, to provide for the reciprocal enforcement of certain Australian legislation relating to the confiscation of profits of crime and the confiscation of other property, and for connected purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Property Confiscation Act 2000*.

5 **2. Commencement**

This Act comes into operation on a day fixed by proclamation.

3. Meaning of terms used in this Act

The Glossary at the end of this Act defines or affects the meaning of some of the words and expressions used in this Act.

10 **4. Confiscable property — synopsis**

Property of the following kinds is confiscable to the extent provided by this Act —

- 15 (a) property equal in value to any amount by which the total value of a person's wealth exceeds the value of the person's lawfully acquired wealth ("**unexplained wealth**" — see section 143);
- 20 (b) certain property, services, advantages and benefits obtained by a person who has been involved in the commission of a confiscation offence ("**criminal benefits**" — see section 144);
- (c) property used in or in connection with the commission of a confiscation offence, or property of equal value ("**crime-used property**" — see section 145);
- 25 (d) property derived directly or indirectly from the commission of a confiscation offence ("**crime-derived property**" — see section 147);

- 5 (e) property owned, effectively controlled or given away by a person who is declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981*, or who absconds before a declaration can be made (“**declared drug trafficker**” — see section 158).

5. Application of Act to confiscable property

- 10 (1) This Act applies to a person’s unexplained wealth whether any property, service, advantage or benefit that is a constituent of the person’s wealth was acquired before or after the commencement of this Act.
- (2) This Act applies to criminal benefits, crime-used property and crime-derived property —
- 15 (a) whether the relevant confiscation offence was committed in Western Australia or elsewhere;
- (b) whether the relevant confiscation offence was committed before or after the commencement of this Act;
- (c) whether or not anyone has been charged with, or convicted of, the relevant confiscation offence; and
- 20 (d) if someone has been convicted of the relevant confiscation offence — whether the conviction took place before or after the commencement of this Act.
- (3) This Act applies —
- 25 (a) to property in Western Australia; and
- (b) to the fullest extent of the capacity of the Parliament to make laws with respect to property outside the State, to property outside Western Australia.

Part 2 — Confiscation of property

6. Unexplained wealth, criminal benefits, substituted property

5 Property is confiscated when it is given or taken in satisfaction of a person's liability under section 14, 20 or 24 to pay the amount specified in an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration.

7. Automatic confiscation of certain property

10 (1) Frozen property is confiscated if an objection to the confiscation of the property is not filed on or before the 28th day after the service cut off date for the property.

(2) If an objection to the confiscation of frozen property is filed on or before the 28th day after the service cut off date for the property, the property is confiscated if —

- 15 (a) the objection, or each objection if there are more than one, is finally determined;
- (b) where the property is subject to a freezing notice — the freezing notice is not withdrawn; and
- 20 (c) where the property is subject to a freezing order — the freezing order is not set aside.

(3) However, property frozen under a freezing notice is not confiscated under subsection (1) or (2) until the freezing notice is filed in accordance with section 36(6)(a).

8. Drug trafficker's property

25 (1) When a person is declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981* as a result of being convicted of a confiscation offence that was committed

after the commencement of this Act, the following property is confiscated —

- (a) all the property that the person owns or effectively controls at the time the declaration is made;
 - 5 (b) all property that the person gave away at any time before the declaration was made, whether the gift was made before or after the commencement of this Act.
- (2) When a person is taken to be a declared drug trafficker under section 158(2), the following property is confiscated —
- 10 (a) all the property that the person owned or effectively controlled at the time that the person absconded;
 - (b) all property that the person gave away at any time before the person absconded, whether the gift was made before or after the commencement of this Act.
- 15 (3) Nothing in subsection (1) or (2) prevents the confiscation of crime-derived property or crime-used property owned, effectively controlled or given away by a person, whether the relevant confiscation offence was committed, or is likely to have been committed, before or after the commencement of this
- 20 Act.
- (4) Nothing in subsection (1) or (2) prevents a criminal benefits declaration from being made against a person, whether the relevant confiscation offence was committed, or is likely to have been committed, before or after the commencement of this
- 25 Act.
- (5) Nothing in subsection (1) or (2) prevents an unexplained wealth declaration from being made against a declared drug trafficker or a person who has been charged with an offence that may lead to his or her being declared a drug trafficker.

s. 9

9. Effect of confiscation — registrable real property

- (1) Registrable real property that is confiscated under section 6, 7 or 8 vests absolutely in the State when —
- 5 (a) the court declares under section 30 that the property has been confiscated; and
- (b) a memorial of the making of the declaration is registered under section 113(1).
- (2) When registrable real property vests in the State under subsection (1) —
- 10 (a) any caveat in force in relation to the property is taken to have been withdrawn; and
- (b) the title in the property passes to the State.
- (3) If registrable real property has been confiscated under section 6, 7 or 8, but has not vested in the State under subsection (1),
- 15 sections 50 and 51 and Part 7 apply to the property as if it were subject to a freezing order.

10. Effect of confiscation — other property

- (1) Property (except registrable real property) that is confiscated
- 20 under section 6, 7 or 8 vests absolutely in the State when the section takes effect in relation to the property.
- (2) When property (except registrable real property) that is registrable under an enactment is confiscated, the DPP must notify the registrar of the confiscation.

Part 3 — Identifying and recovering confiscable property

Division 1 — Unexplained wealth

11. Applications for unexplained wealth declarations

- 5 (1) The DPP may apply to the court for an unexplained wealth declaration against a person.
- (2) An application may be made in conjunction with an application for a freezing order, in proceedings for the hearing of an objection to confiscation, or at any other time.

10 12. Unexplained wealth declarations

- (1) On hearing an application under section 11(1), the court must declare that the respondent has unexplained wealth if it is more likely than not that the total value of the person's wealth is greater than the value of the person's lawfully acquired wealth.
- 15 (2) Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.
- (3) Without limiting the matters to which the court may have regard, for the purpose of deciding whether the respondent has unexplained wealth, the court may have regard to the amount of
20 the respondent's income and expenditure at any time or at all times.
- (4) When making a declaration, the court is to —
- 25 (a) assess the value of the respondent's unexplained wealth in accordance with section 13; and
- (b) specify the assessed value of the unexplained wealth in the declaration.

- (5) The court may make any necessary or convenient ancillary orders.

13. Assessing the value of unexplained wealth

- 5 (1) The value of the respondent's unexplained wealth is the amount equal to the difference between —
- (a) the total value of the respondent's wealth; and
 - (b) the value of the respondent's lawfully acquired wealth.
- 10 (2) For the purposes of subsection (1), the value of any property, service, advantage or benefit that has been given away, used, consumed or discarded, or that is for any other reason no longer available, is the greater of —
- (a) its value at the time that it was acquired; and
 - (b) its value immediately before it was given away, or was used, consumed or discarded, or stopped being available.
- 15 (3) The value of any other property, service, advantage or benefit is the greater of —
- (a) its value at the time that it was acquired; and
 - (b) its value on the day that the application for the unexplained wealth declaration was made.
- 20 (4) However, when assessing the value of the respondent's unexplained wealth, the court is not to take account of —
- (a) any property that has been confiscated under this Act or any other enactment;
 - 25 (b) any property, service, advantage or benefit that was taken into account for the purpose of making an earlier unexplained wealth declaration against the respondent;
 - (c) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made; or

- (d) any property, service, advantage or benefit that has been taken into account for the purpose of making a crime-used property substitution declaration against the respondent.

5 **14. Unexplained wealth payable to State**

When the court makes an unexplained wealth declaration, the respondent is liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the respondent's unexplained wealth.

10

Division 2 — Criminal benefits

15. Applications for criminal benefits declarations

- (1) The DPP may apply to the court for a criminal benefits declaration.
- (2) An application may be made in conjunction with an application for a freezing order, in proceedings for the hearing of an objection to confiscation, or at any other time.

16. Criminal benefits declarations — crime-derived property

- (1) On hearing an application under section 15(1), the court must declare that the respondent has acquired a criminal benefit if it is more likely than not that —
 - (a) the property, service, advantage or benefit described in the application is a constituent of the respondent's wealth;
 - (b) the respondent is or was involved in the commission of a confiscation offence; and
 - (c) the property, service, advantage or benefit was directly or indirectly acquired as a result of the respondent's involvement in the commission of the confiscation offence, whether or not it was lawfully acquired.

Criminal Property Confiscation Bill 2000

Part 3 Identifying and recovering confiscable property

Division 2 Criminal benefits

s. 17

(2) For the purposes of subsection (1)(b), if the respondent has been convicted of the confiscation offence, the respondent is conclusively presumed to have been involved in the commission of the offence.

5 (3) The property, service, advantage or benefit is presumed to have been directly or indirectly acquired as a result of the respondent's involvement in a confiscation offence unless the respondent establishes otherwise.

10 **17. Criminal benefits declarations — unlawfully acquired property**

(1) On hearing an application under section 15(1), the court must declare that the respondent has acquired a criminal benefit if it is more likely than not that —

15 (a) the property, service, advantage or benefit described in the application is a constituent of the respondent's wealth; and

(b) the property, service, advantage or benefit was not lawfully acquired.

20 (2) If the respondent has been convicted of a confiscation offence, or it is more likely than not that the respondent is or has been involved in the commission of a confiscation offence, then it is presumed that the property, service, advantage or benefit was not lawfully acquired unless the respondent establishes the contrary.

18. Limitations and ancillary orders

25 (1) The court is not to make a criminal benefits declaration in relation to any property, service, advantage or benefit if —

(a) a criminal benefits declaration has already been made in relation to the property, service, advantage or benefit;

- 5
- (b) the property, service, advantage or benefit has been confiscated under this Act or any other enactment; or
 - (c) the property, service, advantage or benefit, or its value, has been taken into account for the purpose of making an unexplained wealth order or a crime-used property substitution declaration against the respondent.
- 10
- (2) When making a criminal benefits declaration, the court is to —
 - (a) assess the value of the criminal benefit acquired by the respondent in accordance with section 19; and
 - (b) specify the assessed value of the criminal benefit in the declaration.
 - (3) When making a criminal benefits declaration, the court may make any necessary or convenient ancillary orders.

19. Assessing the value of criminal benefits

- 15
- (1) The value of any property, service, advantage or benefit that has been given away, used, consumed or discarded, or that is for any other reason no longer available, is the greater of —
 - (a) its value at the time that it was acquired; and
 - (b) its value at the time that it was given away, or was used, consumed or discarded, or stopped being available.
 - (2) The value of any other property, service, advantage or benefit is the greater of —
 - (a) its value at the time that it was acquired; and
 - (b) its value on the day that the application for the criminal benefits declaration was made.
- 20
- 25

20. Criminal benefits payable to State

When the court makes a criminal benefits declaration, the respondent is liable to pay to the State an amount equal to the

amount specified in the declaration as the assessed value of the criminal benefit acquired by the respondent.

Division 3 — Crime-used property substitution

21. Applications for crime-used property substitution declaration

5

- (1) The DPP may apply to the court for a crime-used property substitution declaration against a person.
- (2) An application may be made in conjunction with an application for a freezing order, in proceedings for the hearing of an objection to the confiscation of property, or at any other time.

10

22. Crime-used property substitution declarations

- (1) On hearing an application under section 21, the court must declare that property owned by the respondent is available for confiscation instead of crime-used property if —
 - (a) the crime-used property is not available for confiscation as mentioned in subsection (2); and
 - (b) it is more likely than not that the respondent made criminal use of the crime-used property.
- (2) For the purposes of subsection (1)(a), the crime-used property is not available for confiscation if —
 - (a) the respondent does not own, and does not have effective control of, the property;
 - (b) where the property was or is owned or effectively controlled by the respondent, and was or is frozen — the freezing notice or freezing order has been or is to be set aside under section 82(3) in favour of the spouse or a dependant of the respondent; or

15

20

25

(c) in any other case — the property has been sold or otherwise disposed of, or cannot be found for any other reason.

5 (3) If the respondent has been convicted of the relevant confiscation offence, it is presumed that the respondent made criminal use of the property unless the respondent establishes the contrary.

10 (4) If the respondent has not been convicted of the relevant confiscation offence, but the applicant establishes that it is more likely than not that the crime-used property was in the respondent's possession at the time that the offence was committed or immediately afterwards, then it is presumed that the respondent made criminal use of the property unless the respondent establishes the contrary.

15 (5) In any circumstances except those set out in subsection (3) or (4), the applicant bears the onus of establishing that the respondent made criminal use of the property.

(6) When making a declaration, the court is to —
20 (a) assess the value of the crime-used property in accordance with section 23; and
(b) specify the assessed value of the crime-used property in the declaration.

(7) The court may make any necessary or convenient ancillary orders.

23. Assessing the value of crime-used property

25 (1) The value of crime-used property is the amount equal to the value of the property at the time that the relevant confiscation offence was or is likely to have been committed.

(2) The value of the crime-used property is taken to be its full value even if the respondent did not outlay any amount for the

Criminal Property Confiscation Bill 2000

Part 3 Identifying and recovering confiscable property

Division 4 Recovery of confiscable property

s. 24

purpose of obtaining or making criminal use of the property, or did not outlay an amount equal to its full value for that purpose.

- 5 (3) The court may make a crime-used property substitution declaration against 2 or more respondents in respect of the same crime-used property, whether or not the applications for the respective declarations are heard in the same proceedings.

24. Substituted property payable to State

- 10 (1) When a court makes a crime-used property substitution declaration, the respondent is liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the crime-used property.
- 15 (2) If a crime-used property substitution declaration is made against 2 or more respondents in respect of the same crime-used property, the respondents are jointly and severally liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the property.

Division 4 — Recovery of confiscable property

25. Recovery of unexplained wealth, criminal benefits or substituted property

- 20 (1) The amount payable by a respondent under section 14, 20 or 24 is payable —
- 25 (a) within one month after the date on which the respective unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration was made; or
- (b) within any further time allowed by the court.
- (2) The court may allow further time even if the due date has passed.

- (3) If part or all of the amount is not paid within the time allowed, the unpaid amount is recoverable from the respondent by the State in a court of competent jurisdiction as a debt due to the State.

5 **26. Use of frozen property to meet liability**

- (1) Frozen property owned by a respondent may be taken, with the respondent's consent, in payment or part-payment of an amount payable by the respondent under section 14, 20 or 24.

- 10 (2) However, if part or all of the amount payable by the respondent is not paid within the time allowed under section 25(1), then despite any other provision of this Act, any frozen property that is owned by the respondent is available for the purpose of satisfying the respondent's liability as if the property had been taken from the respondent's possession under a writ, warrant or other process of execution.
- 15

- (3) Nothing in subsection (1) or (2) limits any other means of satisfying a debt due to the State under subsection 25(3).

27. Use of effectively controlled property or gifts to meet liability

- 20 (1) The DPP may apply to the court for a confiscable property declaration.

- (2) An application may be made in the course of proceedings for an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration, or at any other time.
- 25

28. Confiscable property declarations

- (1) On hearing an application under section 27 the court may declare that property that is not owned by the respondent is

Criminal Property Confiscation Bill 2000

Part 3 Identifying and recovering confiscable property

Division 4 Recovery of confiscable property

s. 29

available to satisfy the respondent's liability under section 14, 20 or 24 if it is more likely than not that —

- 5 (a) if the property is frozen — the respondent effectively controlled the property at the time that the freezing notice was issued or the freezing order was made for the property;
 - 10 (b) if the property is not frozen — the respondent effectively controlled the property at the time that the application for the unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration was made; or
 - (c) the respondent gave the property away at any earlier time.
- 15 (2) It is presumed that the respondent effectively controlled the property at the material time, or gave the property away, unless the respondent establishes the contrary.
- (3) The court may make any necessary or convenient ancillary orders.

29. Restrictions on confiscation of declared confiscable property

- 20 (1) Property that is effectively controlled, or was given away, by a respondent is not available to satisfy the respondent's liability under section 14, 20 or 24 unless the property is specified in a confiscable property declaration against the respondent.
- 25 (2) The property specified in a confiscable property declaration is only available to satisfy the respondent's liability —
- (a) in accordance with the declaration; and
 - (b) to the extent that property owned by the respondent is not available or is insufficient to satisfy the liability.

30. Declarations of confiscation

- (1) The DPP may apply to the court for a declaration that property has been confiscated.
- (2) On considering an application, if the court finds that the property described in the application has been confiscated under section 6, 7 or 8, the court must make a declaration to that effect.

31. Notice of confiscation of registrable property

- (1) When the court declares under section 30 that registrable real property has been confiscated, the DPP must lodge a memorial of the confiscation with the Registrar of Titles.
- (2) When the court declares under section 30 that property that is registrable under any enactment except the *Transfer of Land Act 1893* has been confiscated, the DPP must lodge with the registrar —
- (a) a copy of the declaration; and
 - (b) a notice giving particulars of the confiscation.

32. Variation of declarations

If the court has made a declaration under this Part, the DPP may at any time apply to the court for a variation of the declaration, or for a further declaration, to give effect, or better to give effect, to the previous declaration.

Part 4 — Preventing dealings in confiscable property

Division 1 — Seizure of crime-used and crime-derived property

33. Seizure of crime-used or crime-derived property

- 5 (1) A police officer may seize any property if there are reasonable grounds for suspecting that the property —
- (a) is crime-used property;
 - (b) is crime-derived property; or
 - (c) is owned or effectively controlled by a person who has
10 been charged with an offence, and who could be declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981* if he or she is convicted of the offence.
- (2) A police officer may —
- (a) at any time remove the seized property from the place in
15 which it was found and retain it; or
 - (b) guard the property in the place in which it was found.
- (3) A police officer may retain or guard the property —
- (a) if a freezing notice is issued for the property within
20 72 hours after it was seized — while the freezing notice is in force; or
 - (b) if not — for not more than 72 hours after the property was seized.
- (4) Any income or other property derived from seized property
25 while it is being retained or guarded is taken for all purposes to be part of the seized property.

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

34. Issue of freezing notices

- 5 (1) The DPP or a police officer may apply to a Justice of the Peace
for the issue of a freezing notice.
- (2) A Justice of the Peace may issue a freezing notice for any
property if there are reasonable grounds for suspecting that the
property is crime-used or crime-derived.
- 10 (3) A Justice of the Peace may issue a freezing notice for all or any
property that is owned or effectively controlled by a person, or
that the person has at any time given away if —
- 15 (a) the person has been charged with an offence, or the
applicant for the notice advises the court that the person
is likely to be charged with an offence within 21 days
after the day on which the freezing notice is issued; and
- (b) the person could be declared to be a drug trafficker
under section 32A(1) of the *Misuse of Drugs Act 1981* if
he or she is convicted of the offence.
- 20 (4) Any income or other property derived from the property while
the freezing notice is in force is taken to be part of the property.

35. Form of freezing notice

- 25 (1) A freezing notice must —
- (a) describe the property covered by the notice;
- (b) include an estimate of the value of the property;
- (c) if the property has been removed from the place in
which it was found — indicate where, when and from
whom it was taken;
- (d) summarise the effect of the notice;

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

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

s. 36

- 5
- (e) advise the recipient to the effect that the property described in the order may be confiscated automatically under this Act unless an objection to the confiscation of the property is filed in the court specified in the notice within 28 days after the date of service of the notice;
- (f) tell the recipient that he or she may be eligible to file an objection to the confiscation of the property;
- (g) give details of the recipient's obligations under section 37; and
- 10 (h) give any directions necessary for the security and management of the property while the notice is in force.
- (2) For the purposes of subsection(1)(b), a police officer may estimate the value of the property, or may have the property valued by an appropriately qualified valuer.
- 15 (3) For the purposes of subsection(1)(h), a police officer or the DPP may arrange for an inventory to be taken of any fittings, fixtures or moveable goods in or on the property.

36. Service and filing of freezing notices

- 20 (1) As soon as practicable after a freezing notice is issued, the applicant for the notice must arrange for a copy of it to be served personally on each of the following persons —
- (a) if the property covered by the notice was taken from a person — that person;
- 25 (b) if, at the time that the freezing notice is issued, the applicant is aware of any other person who is, or may be, or claims to be, an interested party — that person.
- (2) If the property is registrable real property, the applicant must lodge a memorial of the issue of the notice with the Registrar of Titles.

- (3) If the property is registrable under any enactment except the *Transfer of Land Act 1893*, the applicant must notify the registrar of the issue of the notice.
- 5 (4) If, as a result of information in a statutory declaration given, in accordance with section 37, by a person who was served with a copy of the freezing notice under subsection (1), the applicant becomes aware that any other person is or may be or claims to be an interested party, then the applicant must arrange for a copy of the notice to be served on the person personally, as soon as practicable.
- 10 (5) Nothing in subsection (1) or (4) prevents the applicant from serving a copy of the notice at any time on any other person whom the applicant becomes aware is, or may be or claims to be an interested party, but the service cut off date for the property is not affected by any service outside the requirements of subsection (1) or (4).
- 15 (6) The applicant must ensure that —
- (a) the freezing notice is filed in the court specified in the notice;
- 20 (b) an affidavit of service is endorsed on a copy of each copy of the freezing notice that is served on a person; and
- (c) each endorsed copy is filed in the court.

37. Statutory declarations required under freezing notice

- 25 (1) A person who is served with a copy of a freezing notice under section 36 must give a statutory declaration to the officer in charge of the police station specified in the notice.
- (2) The statutory declaration must be given within 7 days after the day on which the copy of the freezing notice was served on the person.
- 30

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

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

s. 38

(3) In the statutory declaration, the declarant must —

(a) state the name and, if known, the address of any other person whom the declarant is aware is or may be, or claims to be, an interested party; or

5 (b) if the declarant is not aware of any other person who is or may be, or claims to be, an interested party — make a statement to that effect.

Penalty: \$5 000.

38. Duration of freezing notice — registrable real property

10 (1) A freezing notice for registrable real property takes effect when a memorial of the issue of the freezing notice is registered under section 113(1).

(2) A freezing notice for registrable real property stops being in force when a memorial under subsection (3) in relation to the property is registered under section 113(1).

15 (3) If —

(a) registrable real property is confiscated under section 6, 7 or 8, but was subject to a freezing notice immediately before confiscation; or

20 (b) a freezing notice for registrable real property is cancelled under section 40, or set aside under Part 6,

then the applicant for the freezing notice must lodge a memorial of the confiscation, cancellation or setting aside with the Registrar of Titles.

25 **39. Duration of freezing notice — other property**

(1) A freezing notice for any property except registrable real property comes into force when the notice is issued.

- (2) A freezing notice for any property except registrable real property stops being in force as soon as any of the following happens —
- (a) the property is confiscated under section 6, 7 or 8;
 - 5 (b) the freezing notice is cancelled under section 40;
 - (c) the freezing notice is set aside under Part 6.
- (3) When a freezing notice stops being in force for property (except registrable real property) that is registrable under an enactment, the applicant for the notice must notify the registrar to that effect.

10 **40. Cancellation of freezing notices**

- (1) A police officer or the DPP must cancel a freezing notice for property if the grounds for suspecting that the property is crime-used or crime-derived no longer exist.
- (2) A police officer or the DPP must ensure that —
- 15 (a) notice of the cancellation is served personally, as soon as practicable, on each person on whom a copy of the notice was served under section 36;
 - (b) if the notice has been filed in a court — a notice of the cancellation is filed in the court;
 - 20 (c) any property covered by the notice that is being guarded under section 33(2)(b) is released from guard;
 - (d) any property covered by the notice that is being retained under section 33(3) is returned to the person from whom it was seized unless it is to be otherwise dealt with under
25 this Act or another enactment; and
 - (e) if the police officer or the DPP is aware that the person to whom the property is to be returned under
30 paragraph (d) is not the owner of the property — the owner is notified, where practicable, of the cancellation and return.

Division 3 — Freezing orders for confiscable property

41. Applications for freezing orders

- (1) The DPP may apply to the court for a freezing order for property.
- 5 (2) An application may be made ex parte.

42. Proceedings for freezing orders

In proceedings for a freezing order, the court may do any or all of the following —

- 10 (a) order that the whole or any part of the proceedings is to be heard in closed court;
- (b) order that only persons or classes of persons specified by the court may be present during the whole or any part of the proceedings;
- 15 (c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.

43. Freezing orders

- (1) The court may make a freezing order for property if —
- 20 (a) an examination order, a monitoring order or a suspension order is in force in relation to the property; or
- (b) the DPP advises the court that an application for an examination order, a monitoring order or a suspension order is likely to be made in relation to the property
- 25 within 21 days after the freezing order is made.
- (2) The court may make a freezing order under subsection (1) whether or not the person against whom the order is made, or is to be sought, owns or effectively controls the property.

- (3) The court may make a freezing order for all or any property that is owned or effectively controlled by the person or that the person has at any time given away if —
- 5 (a) an application has been made against the person for an unexplained wealth declaration, criminal benefits declaration, crime-used property substitution declaration or production order; or
- (b) the DPP advises the court that such an application is likely to be made within 21 days after the freezing order is made.
- 10 (4) The court is not to refuse to make a freezing order for property under subsection (3) only because the value of the property exceeds, or could exceed, the amount that a person could be liable to pay under section 14, 20 or 24 if the declaration is made.
- 15 (5) The court may make a freezing order for all or any property that is owned or effectively controlled by a person, or that the person has at any time given away if —
- 20 (a) the person has been charged with an offence, or the DPP advises the court that a person is likely to be charged with an offence within 21 days after the day on which the freezing order is made; and
- (b) the person could be declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981* if he or she is convicted of the offence.
- 25 (6) A freezing order may be made under subsection (3) or (5) for all property owned or effectively controlled by the person, whether or not any of the property is described or identified in the application.
- (7) A freezing order may be made under subsection (3) or (5) for all property acquired after the order is made —
- 30 (a) by the person; or

(b) by another person at the request or direction of the first-mentioned person.

5 (8) The court may make a freezing order for property if there are reasonable grounds for suspecting that the property is crime-used or crime-derived.

44. Grounds specified in freezing orders

When considering an application for a freezing order, the court must —

- 10 (a) consider each matter that is alleged by the applicant, either in the application or in the course of the proceedings, as a ground for making the order; and
- (b) set out in the order each ground that the court finds is a ground on which the order may be made.

45. Scope of freezing orders

15 In a freezing order, the court may do any or all of the following —

- (a) direct that any income or other property derived from the property while the order is in force is to be treated as part of the property;
- 20 (b) if the property is moveable — direct that the property is not to be moved except in accordance with the order;
- (c) appoint the DPP, the Public Trustee or the Commissioner of Police to manage the property while the order is in force;
- 25 (d) give any other directions necessary to provide for the security and management of the property while the order is in force;
- (e) provide for meeting the reasonable living and business expenses of the owner of the property.

46. Service of freezing orders

- 5 (1) As soon as practicable after a freezing order is made, the applicant for the order must arrange for a copy of the order and a notice that complies with subsection (6) to be served personally on each of the following persons —
- (a) if the frozen property was taken from a person, or is in the custody of a person — that person;
- 10 (b) if, at the time that the freezing order is made, the applicant is aware of any other person who is, or may be, or claims to be, an interested party — that person.
- (2) If the property is registrable real property, the applicant must lodge a memorial of the issue of the notice with the Registrar of Titles.
- 15 (3) If the property is registrable under any enactment except the *Transfer of Land Act 1893*, the applicant must notify the registrar of the issue of the notice.
- 20 (4) If, as a result of information in a statutory declaration given, in accordance with section 47, by a person who was served with a copy of the freezing order under subsection (1), the applicant becomes aware that any other person is or may be or claims to be an interested party, then the applicant must arrange for a copy of the freezing order and a notice that complies with subsection (6) to be served on the person personally, as soon as practicable.
- 25 (5) Nothing in subsection (1) or (4) prevents the applicant from serving a copy of the freezing order and a notice at any time on any other person whom the applicant becomes aware is, or may be or claims to be an interested party, but the service cut off date for the property is not affected by any service outside the
- 30 requirements of subsection (1) or (4).

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

Division 3 Freezing orders for confiscable property

s. 47

- (6) The notice must —
- (a) summarise the effect of the order;
 - (b) advise the recipient to the effect that the property described in the order may be confiscated automatically under this Act unless an objection to the confiscation of the property is filed in the court specified in the notice within 28 days after the date of service of the notice;
 - (c) tell the recipient that he or she may be eligible to file an objection to the confiscation of the property; and
 - (d) give details of the recipient's obligations under section 47.
- (7) When service is effected on a person under this section, the server must file an affidavit to that effect stating the name and address of the person served.
- 15 **47. Statutory declarations about frozen property**
- (1) A person who is served in accordance with section 46 with a copy of a freezing order and a notice must give a statutory declaration to the officer in charge of the police station specified in the notice.
 - 20 (2) The statutory declaration must be given within 7 days after the day on which the notice was served on the person.
 - (3) In the statutory declaration, the declarant must —
 - 25 (a) state the name and, if known, the address of any other person whom the declarant is aware is or may be, or claims to be, an interested party; or
 - (b) if the declarant is not aware of any other person who is or may be, or claims to be, an interested party — make a statement to that effect.

Penalty: \$5 000.

48. Duration of freezing orders — registrable real property

- (1) A freezing order for registrable real property comes into force when a memorial of the making of the order is registered under section 113(1).
- 5 (2) A freezing order for registrable real property stops being in force when a memorial under subsection (3), (4), (5) or (6) in relation to the property is registered under section 113(1).
- (3) If a freezing order for registrable real property was made under section 43(1) on the basis that an application for another order has been or is likely to be made, the applicant for the freezing order must lodge a memorial with the Registrar of Titles if —
- 10 (a) where the freezing order was made on the basis of advice given to the court under section 43(1)(b) — an application for the other order is not made within 21 days after the date of the freezing order;
- 15 (b) the application for the other order is withdrawn;
- (c) the application for the other order is finally determined but the court does not make the other order;
- (d) the freezing order is set aside at the request of the applicant for the freezing order or in proceedings on an objection; or
- 20 (e) the property is confiscated under section 6, 7 or 8.
- (4) If a freezing order for registrable real property was made under section 43(3) on the basis that an application for a declaration or another order has been or is likely to be made, the applicant for the freezing order must lodge a memorial with the Registrar of Titles if —
- 25 (a) where the freezing order was made on the basis of advice given to the court under section 43(3)(b) — an application for the declaration or other order is not made within 21 days after the date of the freezing order;
- 30

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

Division 3 Freezing orders for confiscable property

s. 48

- 5
- (b) the application for the declaration or other order is withdrawn;
- (c) the application for the declaration or other order is finally determined, but the court does not make the declaration or other order;
- 10
- (d) in the case of a declaration — the declaration is made, and the respondent's liability to pay an amount under section 14, 20 or 24 is satisfied, whether or not any or all of the frozen property is given or taken in satisfaction of the liability;
- (e) the freezing order is set aside on all grounds at the request of the applicant for the freezing order or in proceedings on an objection; or
- (f) the property is confiscated under section 6, 7 or 8.
- 15
- (5) If a freezing order for registrable real property was made under section 43(5) on the basis that a person has been or is likely to be charged with an offence, the applicant for the freezing order must lodge a memorial with the Registrar of Titles if —
- 20
- (a) where the freezing order was made on the basis of advice given to the court under section 43(5)(a) — the person is not charged with the offence within 21 days after the date of the freezing order;
- (b) the charge against the person is disposed of;
- 25
- (c) the charge is finally determined, but the person is not declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981*;
- (d) the freezing order is set aside on all grounds at the request of the applicant for the freezing order or in proceedings on an objection; or
- 30
- (e) the property is confiscated under section 6, 7 or 8.

(6) If a freezing order was made under section 43(8) for registrable real property on the basis that the property was suspected of being crime-used or crime-derived, the applicant for the freezing order must lodge a memorial with the Registrar of Titles if —

- (a) the freezing order is set aside at the request of the applicant for the freezing order or in proceedings on an objection; or
- (b) the property is confiscated under section 6, 7 or 8.

10 **49. Duration of freezing orders — other property**

(1) A freezing order for property (except registrable real property) comes into force when the freezing order is made.

(2) If a freezing order for property (except registrable real property) was made under section 43(1) on the basis that an application for another order has been or is likely to be made, the freezing order stops being in force as soon as one of the following happens —

- (a) if the freezing order was made on the basis of advice given to the court under section 43(1)(b) — an application for the other order is not made within 21 days after the date of the order;
- (b) the application for the other order is withdrawn;
- (c) the application for the other order is finally determined but the court does not make the other order;
- (d) the freezing order is set aside at the request of the applicant for the freezing order or in proceedings on an objection;
- (e) the property is confiscated under section 6, 7 or 8.

(3) A freezing order for property made under section 43(3) on the basis that an application for a declaration or another order has

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

Division 3 Freezing orders for confiscable property

s. 49

been or is likely to be made stops being in force as soon as one of the following happens —

- 5
- (a) if the freezing order was made on the basis of advice given to the court under section 43(3)(b) — an application for the declaration or other order is not made within 21 days after the date of the freezing order;
- (b) the application for the declaration or other order is withdrawn;
- 10 (c) the application for the declaration or other order is finally determined, but the court does not make the declaration or other order;
- (d) in the case of a declaration — the declaration is made, and the respondent's liability to pay an amount under section 14, 20 or 24 is satisfied, whether or not any or all of the frozen property is given or taken in satisfaction of the liability;
- 15 (e) the freezing order is set aside on all grounds at the request of the applicant for the freezing order or in proceedings on an objection;
- 20 (f) the property is confiscated under section 6, 7 or 8.
- (4) A freezing order for property (except registrable real property) made under section 43(5) on the basis that a person has been or is likely to be charged with an offence stops being in force as soon as one of the following happens —
- 25 (a) if the freezing order was made on the basis of advice given to the court under section 43(5)(a) — the person is not charged with the offence within 21 days after the date of the order;
- (b) the charge against the person is disposed of;
- 30 (c) the charge is finally determined, but the person is not declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981*;

- (d) the freezing order is set aside on all grounds at the request of the applicant for the freezing order or in proceedings on an objection;
 - (e) the property is confiscated under section 6, 7 or 8.
- 5 (5) A freezing order made under section 43(8) for property (except registrable real property) on the basis that it was suspected of being crime-used or crime-derived stops being in force as soon as one of the following happens —
- 10 (a) the freezing order is set aside on all grounds at the request of the applicant for the freezing order or in proceedings on an objection;
 - (b) the property is confiscated under section 6, 7 or 8.

Division 4 — Dealing with seized or frozen property

50. Prohibited dealings

- 15 (1) A person must not deal with seized or frozen property in any way.
- Penalty: \$100 000 or the value of the property, whichever is greater, or imprisonment for 5 years, or both.
- (2) Subsection (1) does not apply to —
- 20 (a) a person acting in accordance with an order under section 45(c), 91(2) or 93;
 - (b) in the case of seized property — a police officer acting under section 33, or a person acting under the direction of a police officer who is acting in accordance with this Act; or
 - 25 (c) in the case of frozen property — a person acting in accordance with the freezing notice or freezing order.
- (3) It is a defence to a prosecution for an offence under subsection (1) in relation to seized property if the defendant

Criminal Property Confiscation Bill 2000

Part 4 Preventing dealings in confiscable property

Division 4 Dealing with seized or frozen property

s. 51

establishes that he or she did not know, and can not reasonably be expected to have known, that the property was being retained or guarded under subsection 33(2) at the relevant time.

- 5 (4) It is a defence to a prosecution for an offence under subsection (1) in relation to frozen property if the respondent establishes that he or she did not know, and can not reasonably be expected to have known, that the freezing notice or freezing order was in force at the material time.
- 10 (5) Subsection (1) does not prevent a person from being dealt with for a contempt of the court for a contravention of a freezing order, but the person is not punishable for both a contempt and an offence under subsection (1) arising from the same contravention.

51. Effect of dealings in frozen property

15 Despite any other enactment, any dealing with property that contravenes section 50 has no effect, whether at law, in equity or otherwise, on the rights of the State under this Act.

52. Permitted dealings in mortgaged property

If mortgaged property is frozen, nothing in this Act —

- 20 (a) prevents the mortgagor from making payments to the mortgagee in accordance with the mortgage if the payments are made with money that has not been seized or frozen; or
- 25 (b) prevent the mortgagee from accepting payments from the mortgagor in accordance with the mortgage.

Part 5 — Investigation and search

Division 1 — Preliminary inquiries

53. Information volunteered by financial institutions

5 A financial institution that has information about a transaction with the institution may give the information to the DPP or a police officer if there are reasonable grounds for suspecting that the information —

- 10 (a) may be relevant to the investigation of a confiscation offence;
- (b) may assist a court in deciding whether or not to make an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration; or
- 15 (c) may otherwise facilitate the operation of this Act or the regulations.

54. Preliminary inquiries from financial institutions

- 20 (1) For the purposes of any proceedings under this Act, or for the purposes of deciding whether to apply for a freezing notice, or for any order, declaration or warrant under this Act, the DPP or a police officer may require a financial institution to do any or all of the following —
 - 25 (a) give information about whether a person described in the requirement holds an account with the institution;
 - (b) give information about whether or not an account described in the requirement is held with the institution;
 - (c) identify an account held with the institution;
 - (d) identify the holder of an account held with the institution;

Criminal Property Confiscation Bill 2000

Part 5 Investigation and search

Division 1 Preliminary inquiries

s. 55

- (e) give information about the existence of any other kind of transaction between the institution and a person described in the requirement;
- 5 (f) if a transaction referred to in paragraph (e) has taken place, is taking place or is to take place — give prescribed particulars of the transaction.
- (2) A requirement must —
- (a) be in writing served on the institution; and
- (b) specify the information required.
- 10 (3) Service of the requirement on the institution may be effected by properly addressed email or fax, or by any other means provided by section 76 of the *Interpretation Act 1984*.
- (4) The financial institution must comply with the requirement.
Penalty: \$500 000.

15 **55. Protection for financial institutions**

- (1) An action, suit or proceeding in relation to the giving of information under section 53 does not lie against —
- (a) the financial institution that gives the information; or
- 20 (b) an officer of the institution acting within his or her authority.
- (2) An action, suit or proceeding in relation to a financial institution's response to a requirement under section 54 does not lie against —
- (a) the financial institution; or
- 25 (b) an officer of the financial institution who is acting within his or her authority.

56. Giving false or misleading information

A financial institution commits an offence if the institution knowingly —

- 5
- (a) provides false or misleading information under section 53; or
 - (b) provides false or misleading information in purported compliance with a requirement under section 54.

Penalty: \$500 000.

Division 2 — Examinations

10 **57. Applications for orders for examination**

- (1) The DPP may apply to the District Court for an order for the examination of a person.
- (2) An application may be made ex parte.

58. Orders for examination

- 15
- (1) The court may order a person to submit to an examination about any or all of the following —
 - (a) the nature, location and source of frozen property;
 - (b) the nature, location and source of property that is not frozen, but is suspected on reasonable grounds of being confiscable;
 - (c) the wealth, liabilities, income and expenditure of a person who has been convicted of a confiscation offence;
 - (d) the wealth, liabilities, income and expenditure of a person who is suspected on reasonable grounds of being involved or of having been involved in the commission of a confiscation offence;
- 20
- 25

Criminal Property Confiscation Bill 2000

Part 5 Investigation and search

Division 2 Examinations

s. 58

- 5
- (e) the wealth, liabilities, income and expenditure of a person who has, or is suspected on reasonable grounds of having, unexplained wealth;
 - (f) the wealth, liabilities, income and expenditure of a declared drug trafficker;
 - (g) the nature, location and source of any property-tracking documents.
- 10
- (2) The examination order may do any or all of the following —
- (a) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about the property described in the order;
 - 15 (b) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about the person's wealth, liabilities, expenditure or income;
 - 20 (c) require the person to give to the court any documents (including property-tracking documents) or information in the person's possession or control about another person's wealth, liabilities, expenditure or income;
 - 25 (d) require the person to give to the court any information in the person's possession or control that could help to locate, identify or quantify any property, property-tracking documents, other documents or information referred to in subsection (1);
 - (e) require the person to give any required information by affidavit, or require the person to attend the court for examination, or both;
 - 30 (f) give any directions, or make any ancillary orders, that are necessary or convenient for giving effect to the examination order or for ensuring that the person complies with the order.

59. Service of orders for examination

- (1) The applicant for an examination order must arrange for a copy of the order to be served personally on the person to be examined.
- 5 (2) A copy of the order is not to be served on anyone except the person to be examined.

60. Conduct of examinations

- (1) An examination is to be held in camera.
- (2) The person to be examined may be represented by his or her legal representative.
- 10

61. Complying with examination orders

- (1) If an owner of frozen property, who is to be examined in connection with the property under an examination order, contravenes the order or the examiner's requirements under the order —
- 15 (a) the owner is not entitled to file an objection to the confiscation of the property;
- (b) if the owner has already filed an objection — the objection is of no effect; and
- 20 (c) the owner commits an offence.
- (2) A person who commits an offence under subsection (1)(c) is liable —
- (a) to a maximum fine of an amount equal to the value of the frozen property or of \$100 000, whichever is greater;
- 25 (b) to imprisonment for a maximum of 5 years; or
- (c) to both a fine under paragraph (a) and imprisonment under paragraph (b).

Criminal Property Confiscation Bill 2000

Part 5 Investigation and search

Division 2 Examinations

s. 61

- (3) If a person examined under an examination order in connection with another person's wealth, liabilities, income or expenditure contravenes the order, or the examiner's requirements under the order, the person commits an offence and is liable —
- 5 (a) to a maximum fine of an amount equal to the value of the frozen property or of \$50 000, whichever is greater;
- (b) to imprisonment for a maximum of 2 years; or
- (c) to both a fine under paragraph (a) and imprisonment under paragraph (b).
- 10 (4) Without limiting subsection (1), (2) or (3), a person who is examined under an examination order contravenes the order for the purposes of the respective subsection if —
- (a) the person fails to disclose material information, or gives false information or a false document, in purported compliance with the order; and
- 15 (b) the person was aware, or could reasonably have been expected to have been aware, that the information was material, or that the information or document was false.
- (5) A person is not entitled to contravene an examination order or the examiner's requirements under the order on the grounds that
- 20 complying with the order —
- (a) might incriminate the person or might render him or her liable to a penalty; or
- (b) could result in the confiscation of property.
- 25 (6) A person is not excused from complying with an examination order on the grounds that complying with the order would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose under an enactment or
- 30 otherwise.

(7) A statement or disclosure made by a person in the course of complying with an examination order is admissible as evidence against the person —

- 5 (a) in a proceeding against the person for an offence under this section;
- (b) in any civil proceeding; and
- 10 (c) in any proceeding under this Act that could lead to the confiscation of property owned, effectively controlled or given away by the person, but only for the purpose of facilitating the identification of such property.

Division 3 — Production of documents

62. Application for production orders

- (1) The DPP may apply to the District Court for a production order for a property-tracking document.
- 15 (2) An application may be made ex parte.

63. Production orders

- (1) On hearing an application under section 62, the court must order a person identified in the application to produce the property-tracking document described in the application if there are reasonable grounds for suspecting that the person has the document in his or her possession or control.
- 20 (2) The order may direct the person —
- (a) to give the property-tracking document to the DPP or a police officer; or
- 25 (b) to make it available to the DPP or a police officer for inspection.
- (3) The order must specify the time and place for the document to be given or made available.

64. Inspection of property-tracking documents

- 5 (1) When a property-tracking document is given to the DPP or a police officer in accordance with a direction under section 63(2)(a), the DPP or police officer may do any or all of the following —
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document;
 - 10 (d) retain the document for as long as its retention is reasonably required for the purposes of this Act.
- (2) If the DPP or police officer retains the property-tracking document, the DPP or police officer must, on the request of the person required by the order to produce the document —
- 15 (a) permit the person to inspect the document, take extracts from it or make copies of it; or
 - (b) give the person a copy of the document certified by the DPP or police officer in writing to be a true copy of the document.
- 20 (3) When a property-tracking document is made available to the DPP or a police officer for inspection in accordance with a direction under section 63(2)(b), the DPP or police officer may do any one or more of the following —
- (a) inspect the document;
 - (b) take extracts from the document;
 - 25 (c) make copies of the document.

65. Complying with production orders

- (1) A person who contravenes a production order without reasonable excuse commits an offence.

- 5
- (2) A person commits an offence if the person, in purported compliance with a production order, produces or makes available to the DPP or a police officer a document that the person knows, or could reasonably be expected to know, is false or misleading in a material particular.
- (3) However, the person does not commit an offence under subsection (2) if, as soon as practicable after becoming aware that the document is false or misleading, the person —
- 10
- (a) tells the DPP or a police officer that the document is false or misleading;
- (b) indicates the respects in which it is false or misleading; and
- (c) gives the DPP or a police officer any correct information which is in the person's possession or control.
- 15
- (4) A person convicted of an offence under subsection (1) or (2) is liable to a fine not exceeding \$100 000 or imprisonment for a period not exceeding 5 years, or both.
- (5) A person is not excused from complying with a production order on the grounds that complying with the order would tend to
- 20
- incriminate the person or render him or her liable to a penalty.
- (6) A person is not excused from complying with a production order on the grounds that complying with the order would be in breach of an obligation of the person not to disclose the existence or contents of the document, whether the obligation
- 25
- arose under an enactment or otherwise.
- (7) Any information contained in a property-tracking document produced under a production order, or any statement or disclosure made by a person in the course of complying with a production order, is admissible in evidence against the person —
- 30
- (a) in a proceeding against the person for an offence under this section;

- 5
- (b) in any civil proceeding; and
 - (c) in any proceeding under this Act that could lead to the confiscation of property owned, effectively controlled or given away by the person, but only for the purpose of facilitating the identification of such property.

66. Variation of production orders

- 10
- (1) If a production order requires a person to give a property-tracking document to the DPP or a police officer, the person may apply to the court that made the order to vary it so that it requires the person to make the document available to the DPP or a police officer for inspection.
 - (2) The court may vary the order accordingly if it finds that the document is essential to the business activities of the person.

Division 4 — Monitoring financial transactions

15 **67. Applications for monitoring and suspension orders**

- (1) The DPP may apply to the District Court for a monitoring order.
- (2) The DPP may apply to the District Court for a suspension order.
- (3) An application may be made ex parte.

68. Monitoring orders and suspension orders

- 20
- (1) The court may order a financial institution to give information to the DPP or a police officer about all transactions carried out through an account held with the institution by a person named in the order.
 - (2) The court may order a financial institution —
25
 - (a) to notify the DPP or a police officer immediately of any transaction that has been initiated in connection with an

- account held with the institution by a person named in the order;
- 5 (b) to notify the DPP or a police officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and
- (c) to refrain from completing or effecting the transaction for 48 hours.
- 10 (3) The court may make a monitoring order or suspension order if there are reasonable grounds for suspecting that the named person —
- (a) has been, or is about to be, involved in the commission of a confiscation offence;
- 15 (b) has acquired, or is about to acquire, directly or indirectly, any crime-derived property; or
- (c) has benefited, or is about to benefit, directly or indirectly, from the commission of a confiscation offence.
- 20 (4) A monitoring order or suspension order applies to all transactions carried out or to be carried out through the bank account during the monitoring period or suspension period specified in the order.
- (5) The monitoring order or suspension order must specify —
- 25 (a) the financial institution to which the order applies;
- (b) the name or names in which the account is believed to be held;
- (c) the class of information that the institution is required to give;
- (d) the manner in which the information is to be given; and

(e) the monitoring period, or suspension period, in accordance with subsection (6).

(6) The monitoring period or suspension period —

- 5
- (a) is not to commence earlier than the day on which notice of the order is served on the financial institution; and
 - (b) is not to end more than 3 months after the date of the order.

69. Compliance with monitoring or suspension order

A person commits an offence if the person knowingly —

- 10
- (a) contravenes a monitoring order or suspension order; or
 - (b) provides false or misleading information in purported compliance with the order.

Penalty: \$100 000.

Division 5 — Secrecy requirements

15 **70. Restricted disclosures**

(1) A person must not make a disclosure to anyone, except as permitted under section 71, about —

- 20
- (a) the fact that a financial institution, or an officer of a financial institution, intends to give or has given information to the DPP under section 53;
 - (b) the nature of any information given under section 53;
 - (c) the fact that a requirement or a response to it has been or is to be made under section 54;
 - (d) the content of a requirement or response made under section 54;
 - (e) the fact that the person or anyone else is or has been subject to a production order, an examination order, a monitoring order or a suspension order; or
- 25

- (f) the contents of any examination order, production order, monitoring order or suspension order.

Penalty: \$100 000, or imprisonment for 5 years, or both.

- (2) Without limiting subsection (1), a person makes a disclosure for the purposes of the subsection if the person —

5

- (a) discloses information to a person from which the person could reasonably be expected to infer that a requirement or response under section 54 has been or is to be made;

10

- (b) discloses information to a person from which the person could reasonably be expected to infer anything about the nature or contents of a requirement or response under section 54;

15

- (c) makes or keeps a record of any information about a requirement or response under section 54;

- (d) discloses anything about the existence or operation of an examination order, a production order, a monitoring order or a suspension order;

20

- (e) discloses information to a person from which the person could reasonably be expected to infer anything about the existence or operation of an examination order, a production order, a monitoring order or a suspension order; or

25

- (f) makes or keeps a record of any information about the existence or operation of an examination order, a production order, a monitoring order or a suspension order.

71. Making restricted disclosures

- (1) A corporation, or an officer of a corporation, may make a restricted disclosure to any one or more of the following —

30

- (a) the DPP or a police officer;

Criminal Property Confiscation Bill 2000

Part 5 Investigation and search

Division 5 Secrecy requirements

s. 71

- 5
- 10
- 15
- 20
- 25
- 30
- (b) an officer of the corporation, for the purpose of giving information under section 53;
 - (c) an officer of the corporation, for the purpose of ensuring that a requirement under section 54 is complied with;
 - (d) an officer of the corporation, for the purpose of ensuring that an examination order, a production order, a monitoring order or a suspension order is complied with;
 - (e) a legal practitioner, for the purpose of obtaining legal advice or representation in relation to giving information under section 53 or complying with a requirement under section 54;
 - (f) a legal practitioner, for the purpose of obtaining legal advice or representation in relation to an examination order, a production order, a monitoring order or a suspension order.
- (2) An individual who is not acting in the capacity of an officer of a corporation or of a legal practitioner may make a restricted disclosure to either or both of the following —
- (a) the DPP or a police officer; or
 - (b) a legal practitioner, for the purpose of obtaining legal advice or representation in relation to an examination order.
- (3) A legal practitioner to whom a restricted disclosure is made under subsection (1) or (2) may make a restricted disclosure to a person to whom the disclosure could have been made under the respective subsection for the purpose of giving legal advice or representing a person in relation to the matter disclosed.
- (4) A person (except a legal practitioner) to whom a restricted disclosure is made under subsection (1) or (2) may make a restricted disclosure to a person to whom the disclosure could have been made under the respective subsection.

- 5 (5) However, if a restricted disclosure about a particular matter may only be made under subsection (1) or (2) in particular circumstances or for a particular purpose, then a person must not make a restricted disclosure under subsection (4) about the matter except in those circumstances or for that purpose.
- 10 (6) If a person to whom a restricted disclosure about a particular matter is made under this section stops being a person of a kind to whom the disclosure may be made, the person must not, in any circumstances, make a restricted disclosure about the matter to anyone.

72. Disclosure to court

A person is not required to make a restricted disclosure to any court for any purpose.

Division 6 — Detention, search and seizure

15 **73. Power to detain persons**

- (1) A police officer may, at any time, stop and detain a person if there are reasonable grounds for suspecting that the person has confiscable property, or property-tracking documents, in his or her possession.
- 20 (2) A police officer may, at any time, stop and detain a person if there are reasonable grounds for suspecting that another person is holding confiscable property, or property-tracking documents, on behalf of the person to be detained.
- 25 (3) For the purpose of exercising his or her functions under subsection (1) or (2), a police officer may stop and detain a vehicle.
- (4) When a police officer detains a person under subsection (1) or (2), the officer may —
- (a) search the person in accordance with section 75; and

(b) search any baggage, package, vehicle or anything else apparently in the possession or under the control of the person.

5 (5) When exercising his or her functions under this section, a police officer may use any necessary force and any assistance the officer thinks necessary.

74. Search warrants

(1) A police officer may apply to a Justice of the Peace for a search warrant.

10 (2) A Justice of the Peace may issue a warrant to search any vehicle, premises or place if satisfied, by information on oath, that there are reasonable grounds for suspecting that any confiscable property, or any property-tracking documents —

- 15 (a) is or are in or on the vehicle, premises or place; or
(b) will be in or on the vehicle, premises or place within the next 72 hours.

(3) The search warrant may authorise a police officer to do any or all of the following, using any necessary force and with any assistance the officer thinks necessary —

- 20 (a) enter the vehicle, premises or place described in the warrant;
(b) search the vehicle, premises or place;
(c) search any baggage, package or anything else found in or on the vehicle, premises or place;
25 (d) detain any person in or on the vehicle, premises or place and search the person in accordance with section 75.

(4) A warrant —
(a) may be executed at any time of night or day; and

- (b) continues in force for 30 days after the day on which it was issued.

75. Searching detained persons

- 5 (1) When a police officer exercises his or her power to search a person under section 73 or under a warrant under section 74, the officer must ensure that the person is searched by a person of the same sex or a medical practitioner.
- (2) If a suitable person is not available to search the detained person as required by subsection (1), the police officer may —
 - 10 (a) continue to detain the person for as long as is reasonably necessary for a suitable person to become available; and
 - (b) if appropriate, convey the person to a place where a suitable person is available.

76. Additional powers

- 15 (1) When a police officer exercises any of his or her powers under section 73 or under a warrant under section 74, the officer may do any or all of the following —
 - 20 (a) seize and detain any documents found in the course of exercising those powers if there are reasonable grounds for suspecting that they are property-tracking documents;
 - (b) take extracts from or make copies of, or download or print out, any property-tracking documents found in the course of exercising those powers;
 - 25 (c) require a person who has control of any property-tracking documents found in the course of exercising those powers to make copies of, or download or print out, any property-tracking documents found in the course of exercising those powers;

Criminal Property Confiscation Bill 2000

Part 5 Investigation and search

Division 6 Detention, search and seizure

s. 76

- 5
- 10
- 15
- 20
- 25
- 30
- (d) require a person to give to the officer any information within the person's knowledge or control that is relevant to locating property that is reasonably suspected of being confiscable;
 - (e) require a person to give to the officer any information within the person's knowledge or control that is relevant to determining whether or not property is confiscable;
 - (f) require a person to give the officer, or arrange for the officer to be given, any translation, codes, passwords or other information necessary to gain access to or to interpret and understand any property-tracking documents or information located or obtained in the course of exercising the officer's powers under the warrant.
- (2) A person who, without lawful excuse, contravenes a requirement commits an offence.
Penalty: \$100 000 or imprisonment for 5 years, or both.
- (3) Without limiting subsection (2), a person contravenes a requirement if the person —
- (a) does not disclose material information of which the person had knowledge, or gives false information or a false document, in purported compliance with the requirement; and
 - (b) was aware, or could reasonably have been expected to have been aware, that the information was material, or that the information or document was false.
- (4) A person is not excused from complying with a requirement on the grounds that complying with it would tend to incriminate the person or render him or her liable to a penalty, but any information given in compliance with the requirement is not admissible in evidence in proceedings against the person for any offence except an offence under subsection (2).

77. Later-made documents

5 If a warrant under section 74 authorises any action to be taken
 in relation to a document that was in existence at the time that
 the warrant was issued, but at the time that the warrant was
 executed it was physically impossible for the document to be
 produced, then a police officer may take the action when the
 document becomes available.

78. Warrants under other enactments

10 Nothing in this Act affects the operation of any other enactment
 requiring or authorising a police officer to obtain a warrant to
 enter or search property.

Part 6 — Objections to confiscation

79. Objections to confiscation of frozen property

- (1) A person may file an objection to the confiscation of frozen property.
- 5 (2) If a copy of the freezing notice or freezing order was served on the objector, the objection must be filed —
 - (a) within 28 days after the day on which the copy of the notice or order was served on the objector; or
 - (b) within any further time allowed by the court.
- 10 (3) If a copy of the freezing notice or freezing order was not served on the objector, the objection must be filed —
 - (a) within 28 days after the day on which the objector becomes aware, or could reasonably be expected to have become aware, that the property has been frozen; or
 - 15 (b) within any further time allowed by the court.
- (4) The court may allow further time under subsection (2) or (3) even if the time for filing the objection has expired.

80. Parties to objection proceedings

The State is a party to proceedings on an objection.

81. Release of frozen property

- 20 (1) On hearing an objection to the confiscation of frozen property, the court may set aside the freezing notice or freezing order to the extent permitted under section 82, 83 or 84.
- 25 (2) However, if the property was frozen on 2 or more grounds, but the court does not set aside the freezing notice or freezing order in relation to both or all the grounds, the freezing notice or

freezing order continues in force as if it had been made on each remaining ground.

82. Release of crime-used property

- 5 (1) The court may set aside a freezing notice or freezing order for property that was frozen on the ground that it is crime-used if the objector establishes that it is more likely than not that the property is not crime-used.
- 10 (2) If the court finds that the property is crime-used, or is not required to decide whether the property is crime-used, the court may make an order under subsection (3) or (4).
- (3) The court may set aside the freezing notice or freezing order for the property if the objector establishes that it is more likely than not that —
- 15 (a) the objector is the spouse or a dependant of an owner of the property;
- (b) the objector is an innocent party, or is less than 18 years old;
- 20 (c) the objector was usually resident on the property at the time the relevant confiscation offence was committed, or is most likely to have been committed;
- (d) the objector was usually resident on the property at the time the objection was filed;
- (e) the objector has no other residence at the time of hearing the objection;
- 25 (f) the objector would suffer undue hardship if the property is confiscated; and
- (g) it is not practicable to make adequate provision for the objector by some other means.

s. 83

- (4) The court may set aside the freezing notice or freezing order if the objector establishes that is more likely than not that —
- (a) the objector is the owner of the property, or is one of 2 or more owners of the property;
 - 5 (b) the objector is an innocent party in relation to the property; and
 - (c) each other owner (if there are more than one) is an innocent party in relation to the property.
- (5) If the objector establishes the matters set out in paragraphs (4)(a) and (b), but fails to establish the matter set out in subsection (4)(c), the court may order that, when the property is sold after confiscation, the objector is to be paid an amount equal to the amount that bears to the net proceeds of the sale of the property the same proportion as the objector's share of the property bears to the whole property.
- 10
- 15
- (6) In an order under subsection (5), the court is to specify the proportion that it finds to be the objector's share of the property.
- (7) On the application of the DPP or an owner of the property, the court may set aside the freezing notice or freezing order for the property if it also orders the objector to pay to the State an amount equal to the value of the property.
- 20
- (8) Sections 22(6), 22(7), 23, 24, 25 and 26 apply in relation to making an order under subsection (7) and to the objector as if the order was a crime-used property substitution declaration and the objector was the respondent in relation to the declaration.
- 25

83. Release of crime-derived property

The court may set aside a freezing notice or freezing order for property that was frozen on the ground that it is crime-derived if the objector establishes that it is more likely than not that the property is not crime-derived.

30

84. Setting aside orders: other frozen property

- 5 (1) The court may set aside a freezing order for property that was frozen under section 43(3) if the court finds that it is more likely than not that the person who is or will be the respondent to the unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration does not own or effectively control the property, and has not at any time given it away.
- 10 (2) The court may set aside a freezing order for property that was frozen under section 43(5) if the court finds that it is more likely than not that the person who is or will be charged with the offence does not own or effectively control the property, and has not at any time given it away.
- (3) The court may make any necessary or convenient ancillary orders.

15 **85. Applications for release of confiscated property**

- (1) A person may apply to the court for the release of property that has been confiscated under section 6 or 7.
- 20 (2) The application must be made within 28 days after the person became aware, or can reasonably be expected to have become aware, that the property has been confiscated.

86. Parties to proceedings

The State is a party to proceedings on an application under section 85.

s. 87

87. Orders to release confiscated property

- (1) On hearing an application under section 85, the court may order the release of any property except crime-derived property if it is more likely than not that —
- 5 (a) immediately before the confiscation of the property, the applicant owned the property, or was one of 2 or more owners of the property;
- 10 (b) the applicant did not become aware, and can not reasonably be expected to have become aware, until after the property was confiscated, that the property was liable to confiscation under section 6 or 7;
- (c) the applicant is or was an innocent party in relation to the property; and
- 15 (d) each other owner (if there are more than one) is or was an innocent party in relation to the property.
- (2) If the court orders the release of the property —
- (a) if the property is money — an amount equal to the amount of the money is to be paid to the objector from the Confiscation Proceeds Account;
- 20 (b) if the property is not money, and has not been disposed of — the property is to be given to the objector; and
- (c) if the property is not money, and has been sold — an amount equal to the net proceeds of the sale is to be paid to the objector from the Confiscation Proceeds Account.
- 25 (3) If the objector establishes the matters set out in subsection (1)(a), (b) and (c), but fails to establish the matter set out in subsection (1)(d), the court may order the release of the objector’s share of the property.
- 30 (4) In an order under subsection (3) the court is to specify the proportion that it finds to be the objector’s share of the property.

- (5) If the court makes an order under subsection (3), the objector is to be paid out of the Confiscation Proceeds Account —
- (a) if the property is money — an amount equal to the objector's share of the money; and
 - 5 (b) if the property is not money — an amount equal to the amount that bears to the net proceeds of the sale of the property the same proportion as the objector's share of the property bears to the whole property.
- 10 (6) The court may make any necessary or convenient ancillary orders.

Part 7 — Management of seized, frozen and confiscated property

Division 1 — Control and management of property

88. Management of seized property

- 5 (1) The Commissioner of Police has responsibility for the control
and management of property seized under section 33(1) or
under a warrant under section 74.
- (2) The power conferred by section 9 of the *Police Act 1892* is
10 taken to include power to make orders as to the performance by
members of the Police Force on behalf of the Commissioner of
Police of functions conferred on the Commissioner of Police by
this Act.

89. Management of frozen or confiscated property

- 15 (1) The DPP has responsibility for the control and management of
frozen property unless the court otherwise orders under
section 45(c) or 91(2).
- (2) The DPP has responsibility for the control and management of
confiscated property until it is disposed of.
- 20 (3) The DPP may appoint any of the following persons to manage
property for which the DPP has responsibility under
subsection (1) or (2) —
- (a) the Public Trustee;
 - (b) the Commissioner of Police;
 - 25 (c) in the case of frozen property — a person who owns the
property.

90. DPP's capacity to carry out transactions

To facilitate the destruction, sale or other disposal of property under this Act, the DPP may enter into a contract, and may execute a transfer or other instrument.

5 **91. Applications by owner for control and management**

(1) An owner of frozen property may apply to the court for an order under subsection (2) in relation to the property.

(2) On hearing an application, the court may, if it thinks fit, by order appoint the person —

10 (a) to control and manage the property while the freezing notice or freezing order is in force; or

(b) to sell or destroy the property.

92. Duties of responsible person

15 A person who has responsibility for the control or management of property under this Act or under an order under this Act, must take reasonable steps to ensure that the property is appropriately stored or appropriately managed, and that it is appropriately maintained, until one of the following happens in accordance with this Act —

20 (a) the property is returned to the person from whom it was seized or to a person who owns it;

(b) another person becomes responsible for the control and management of the property;

(c) the property is sold or destroyed; or

25 (d) the property is otherwise disposed of.

Division 2 — Disposal of deteriorating or undesirable property

93. Destruction of property on grounds of public interest

- 5 (1) A person who has responsibility for the control or management of seized, frozen or confiscated property may apply to the court for an order under subsection (2).
- (2) On hearing an application, the court may order that the property is to be destroyed if it would not be in the public interest to preserve the property.

94. Sale of deteriorating property

- 10 (1) A person who has responsibility for the control or management of frozen property may apply to the court for an order under subsection (2).
- (2) The court may order that the property is to be sold if it is more likely than not that —
- 15 (a) the property is or will be subject to substantial waste or loss of value if it is retained until it is dealt with under another provision of this Act; or
- (b) the cost of managing or protecting the property will exceed the value of the property if it is retained until it is dealt with under another provision of this Act.
- 20 (3) If the Public Trustee has the control or management of frozen property under this Act, the Public Trustee may sell the property in the circumstances referred to in subsection (2), without obtaining an order under that subsection, if —
- 25 (a) the Public Trustee gives adequate notice of the proposed sale to the owner of the property; and
- (b) the owner does not file an objection to the sale in the court that made the freezing order.

- 5 (4) When frozen property is sold under an order under subsection (1), or under subsection (2), the net proceeds of the sale are taken to be frozen property that is subject to the freezing notice or freezing order made in respect of the sold property.

95. Valuation and inventory of frozen property

- 10 (1) A person who has the control or management of frozen property under this Act may do either or both of the following —
- (a) arrange for the property to be valued by an appropriately qualified valuer;
 - (b) arrange for an inventory to be taken of any fittings, fixtures or moveable goods in or on the property.
- 15 (2) The person must arrange for a copy of the inventory to be served on each person on whom a copy of the freezing notice or freezing order was served under section 36 or 46.

Division 3 — Management of property by Public Trustee

96. Public Trustee's power to appoint a manager

20 If the Public Trustee has the control or management of property under this Act, the Public Trustee may appoint a person to exercise all or any of the Public Trustee's functions in relation to the property.

97. Public Trustee's liability for charges on frozen property

- 25 (1) If State taxes imposed on frozen or confiscated property fall due while the property is under the control or management of the Public Trustee, the Public Trustee is liable for the taxes only to the extent of any rents and profits received by the Public Trustee in respect of the property.

Criminal Property Confiscation Bill 2000

Part 7 Management of seized, frozen and confiscated property

Division 3 Management of property by Public Trustee

s. 98

- (2) If the property is a business, the Public Trustee is not liable for —
- (a) any payment in respect of long service leave for which the business or the owner of the business is liable; or
 - (b) any payment in respect of long service leave to which a person employed by the Public Trustee to manage the business, or the legal personal representative of such a person, becomes entitled as a result of managing the business, after the date of the freezing order.

10 **98. Managing interstate property**

(1) The Public Trustee may make an agreement for the management of property frozen under a registered interstate freezing order with an official who is required under the order to take control of the property.

15 (2) The Public Trustee may exercise, in accordance with the agreement, the same functions in relation to the property as the official would be able to exercise under the order if the property were in the State in which the order was made.

99. Fees payable to Public Trustee

20 The Public Trustee is entitled to receive the fees prescribed by or under the *Public Trustee Act 1941* for exercising its functions under this Act in relation to frozen or confiscated property.

100. Obstructing Public Trustee

25 A person must not hinder or obstruct the Public Trustee, or a Deputy Public Trustee, or an officer, servant or agent of the Public Trustee, in exercising the functions of the Public Trustee under this Act.

Penalty: \$100 000 or imprisonment for 5 years, or both.

Part 8 — Court jurisdiction and evidentiary matters

101. Courts' jurisdiction

- (1) The Supreme Court has jurisdiction in any proceedings on an application under this Act.
- 5 (2) The District Court has jurisdiction to hear and determine an application under this Act in connection with property if —
 - (a) the property is not registrable real property; and
 - (b) the value of the property is not more than \$250 000.
- 10 (3) A Local Court has jurisdiction to hear and determine an application in relation to property for a declaration or order of a kind listed in subsection (4) if —
 - (a) the property is not registrable real property; and
 - (b) the value of the property is not more than \$25 000.
- 15 (4) For the purposes of subsection (3), the following declarations and orders are listed —
 - (a) a criminal benefits declaration;
 - (b) a crime-used property substitution declaration;
 - (c) a freezing order;
 - (d) a production order;
 - 20 (e) a monitoring order;
 - (f) a suspension order.
- 25 (5) With the consent of both the applicant and the respondent, the court of petty sessions may hear and determine an objection or an application for an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration.

s. 102

- (6) A declaration, order, finding or decision of a court under this Act in relation to property is not invalid only because the value of the property exceeds the maximum permitted to be dealt with by the court under this section.
- 5 (7) Part VI of the *District Court of Western Australia Act 1969* applies to proceedings on an application under this Act as if a reference in the first-mentioned Act to an action were a reference to an application under this Act.
- 10 (8) Nothing in this section affects the jurisdiction of a court in criminal proceedings under this Act.

102. Proceedings

- (1) Proceedings on an application under this Act are taken to be civil proceedings for all purposes.
- (2) Except in relation to an offence under this Act —
- 15 (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act;
- (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act;
- 20 (c) the rules of evidence applicable only in criminal proceedings do not apply in proceedings under this Act; and
- (d) a question of fact to be decided by a court in proceedings on an application under this Act is to be
- 25 decided on the balance of probabilities.

103. Appearance by Attorney General

The Attorney General may appear in any proceedings under this Act in which the State has an interest, whether or not the DPP is also a party to the proceedings.

104. Stays of proceedings

The fact that criminal proceedings under this Act or any other enactment have been instituted or have commenced is not a ground on which the court may stay proceedings under this Act that are not criminal proceedings.

105. Opinion evidence

(1) For the purposes of making an unexplained wealth declaration or a criminal benefits declaration, the court may receive evidence of the opinion of a person of a kind listed in subsection (2) who is experienced in the investigation of illegal activities involving plants or drugs, about the following matters —

(a) the amount that was the market value at a particular time of a particular kind of plant or drug;

(b) the amount, or range of amounts, ordinarily paid at a particular time for doing anything in relation to a particular kind of plant or drug.

(2) For the purposes of subsection (1), the following persons are listed —

(a) a police officer of Western Australia;

(b) a member of the Australian Federal Police;

(c) an officer of Customs within the meaning of the *Customs Act 1901* of the Commonwealth;

(d) the DPP.

(3) Subsections (1) and (2) have effect despite any other enactment, or any practice, relating to hearsay evidence.

s. 106

106. Evidence that property is crime-used or crime-derived

A finding that particular property is crime-used or crime-derived, or that there are reasonable grounds for suspecting that it is crime-used or crime-derived, and any decision, declaration or order based on such a finding —

5

(a) need not be based on a finding as to the commission of a particular confiscation offence, but may be based on a finding that some confiscation offence or other has been committed;

10

(b) may be made whether or not anyone has been charged with or convicted of the relevant confiscation offence; and

(c) may be made whether or not anyone who owns or effectively controls the property has been identified.

107. Evidence of offence proceedings

15

In any proceedings under this Act in relation to property, if a person has been convicted of the relevant confiscation offence, the court may have regard to any or all of the following —

(a) a transcript of the evidence given in any proceedings for the offence;

20

(b) the sentencing transcript;

(c) any statement, deposition, exhibit or other material before a court in any proceedings for the offence;

(d) a copy of any statement that was served on the person, or that would have been served on the person if the person had not absconded.

25

108. Transcripts of examinations

For the purposes of section 61(7), the transcript of an examination of a person under an examination order is admissible in any proceedings under this Act or under any other

law in force in Western Australia as evidence of a statement or disclosure made by the person in the course of complying with the examination order.

109. Hearsay evidence

5 A decision under this Act, except under Part 6, about the existence of grounds for doing or suspecting anything may be based on hearsay evidence or hearsay information.

110. Evidence of compliance with production orders

10 When a person produces a document, or makes a document available, under a production order, the production or making available of the document, or any information, document or anything else acquired as a direct or indirect consequence of complying with the order, is not admissible against the person in evidence in any criminal proceedings except proceedings for an
15 offence under section 65.

111. Certificates under *Misuse of Drugs Act 1981*

In any proceedings under this Act, a certificate referred to in section 38(2) of the *Misuse of Drugs Act 1981* is sufficient evidence of the facts stated in the certificate.

20 **112. Enforcing compliance with Act or court order**

(1) If a person fails to take any action necessary to comply with or give effect to this Act or an order under this Act —

25 (a) at the direction of the Supreme Court or a judge, the Registrar of the Supreme Court may take the necessary action; and

(b) the action of the Registrar has effect for all purposes as if it had been done by the person.

(2) The person is liable to pay any costs incurred as a result of taking the action.

Part 9 — Interests in registrable property

113. Registration of interests in registrable real property

- (1) When a memorial is lodged under this Act with the Registrar of Titles, the Registrar is to —
- 5 (a) register the memorial; and
- (b) do anything else necessary to give effect to the change of circumstances to which the memorial relates.
- (2) Nothing in this Act prevents a person from lodging with the Registrar of Titles —
- 10 (a) a caveat relating to frozen registrable real property;
- (b) a memorial of a dealing or purported dealing in registrable real property that is frozen at the time that the memorial is lodged; or
- 15 (c) a memorial of a dealing or purported dealing in registrable real property that was frozen at the time that the dealing or purported dealing was carried out.
- (3) Nothing in this Act prevents the Registrar of Titles from —
- 20 (a) giving notice to a person that a caveat has been lodged in relation to frozen registrable real property;
- (b) accepting a memorial of a dealing or purported dealing in registrable real property that is frozen at the time that the memorial is lodged; or
- 25 (c) accepting a memorial of a dealing or purported dealing in registrable real property that was frozen at the time that the dealing or purported dealing was carried out.

(4) However, if a memorial (other than a memorial lodged under this Act) is lodged or registered in relation to frozen registrable real property —

- 5 (a) the memorial and its lodgement or registration have no effect, at law, in equity or otherwise, while the freezing notice or freezing order is in force; and
- 10 (b) if the freezing notice or freezing order ceases to be in force, and the property is not confiscated, then the memorial, and its lodgement or registration (if any), have effect as if the property had not been frozen at the time that the memorial was lodged or registered.

114. Registration of interests in other property

15 If a registrar of property registered under any enactment except the *Transfer of Land Act 1893* is notified under this Act that a freezing order or freezing order for the property has been issued or made, or has ceased to be in force, or that the property has been confiscated, the registrar is to note the relevant particulars in the register.

115. Imputation of knowledge that property is frozen

- 20 (1) If a memorial of the issue of a freezing notice or the making of a freezing order for registrable real property has been registered under section 113(1), any person who deals with the property while the freezing notice or freezing order is in force is taken to have notice, for all purposes, that the freezing notice or freezing order is in force.
- 25
- (2) If particulars of a freezing notice or freezing order for any property (except registrable real property) have been noted in the register under section 114, any person who deals with the property while the freezing notice or freezing order is in force is taken to have notice, for all purposes, that it is in force.
- 30

s. 116

116. Instruments lodged with the Registrar of Titles

- (1) The Registrar of Titles may approve the form of memorials or any other instruments lodged with the Registrar under or for the purposes of this Act.
- 5 (2) A memorial or other instrument lodged with the Registrar under or for the purposes of this Act must be in a form approved under subsection (1).

Criminal Property Confiscation Bill 2000

Part 10 Mutual recognition of freezing orders and confiscation of property

Division 2 Recognition of orders of other jurisdictions

s. 119

registration of the original declaration, but the amendments are of no effect until they are registered.

- 5 (4) An application for registration may be made by the applicant for the interstate order or declaration or amendments, by the DPP, or by any person affected by the order or amendments.

119. Effect of registration of interstate freezing orders

- (1) A registered interstate freezing order may be enforced in this State as if the order had been made under section 43.
- 10 (2) This Act (except sections 41 and 46) applies to a registered interstate freezing order as if the order had been made under section 43.

120. Effect of registration of interstate confiscation declarations

- 15 (1) A registered interstate confiscation declaration may be enforced in this State as if the property to which it relates had been confiscated under section 6, 7 or 8.
- (2) A registered interstate confiscation declaration does not operate so as to vest property in any person or entity except this State.
- 20 (3) A registered interstate confiscation declaration does not operate so as to vest property in this State if the order has already operated to vest the property in the Commonwealth, a Territory or another State, or in some other person or entity.

121. Duration of registration of interstate orders

25 A registered interstate freezing order or registered interstate confiscation declaration is enforceable in this State under this Act until its registration is cancelled under section 122, even if the order has already ceased to be in force under the law of the Commonwealth, or of the State or Territory, under which the order was made.

122. Cancellation of registration of interstate orders

- (1) The Supreme Court may cancel the registration of an interstate freezing order or interstate confiscation declaration if —
- (a) registration was improperly obtained; or
 - 5 (b) the order ceases to be in force under the law of the Commonwealth, or of the State or Territory, under which the order was made.
- (2) An application for the cancellation of the registration may be made by the person who applied for its registration, by the DPP,
- 10 or by a person affected by the order.

Division 3 — Charges on interstate property

123. Creation of charge

- (1) A charge is created on property that is frozen under a registered interstate freezing order if —
- 15 (a) the order was made in connection with a confiscation offence committed interstate by the owner of the property;
 - (b) an interstate criminal benefits declaration is made against the person in connection with the confiscation offence; and
 - 20 (c) the interstate criminal benefits declaration is registered in a court of this State under the *Service and Execution of Process Act 1992* of the Commonwealth.
- (2) The charge is created as soon as both the interstate freezing order and the interstate criminal benefits declaration are
- 25 registered in a court of this State.

Criminal Property Confiscation Bill 2000

Part 10 Mutual recognition of freezing orders and confiscation of property

Division 3 Charges on interstate property

s. 124

- (3) The charge is created to the extent necessary to secure the payment of the amount due under the interstate criminal benefits declaration.

124. Cessation of charge

- 5 (1) A charge created on property under section 123(1) ceases to have effect as soon as any one of the following happens —
- (a) the interstate criminal benefits declaration that gave rise to the charge ceases to have effect;
 - (b) the declaration is set aside by a court;
 - 10 (c) the amount due under or as a result of the declaration is paid;
 - (d) the owner of the property becomes bankrupt;
 - (e) the property is sold to a purchaser in good faith for value who, at the time of purchase, had no notice of the charge;
 - 15 (f) the property is sold or otherwise disposed of in accordance with subsection (2).
- (2) For the purposes of subsection (1)(f), property may be sold or otherwise disposed of —
- 20 (a) under an order made by a court under the corresponding law of the Commonwealth, or of the State or Territory, under which the interstate criminal benefits declaration was made;
 - (b) by the owner of the property with the consent of the court that made the interstate criminal benefits declaration; or
 - 25 (c) where an order of a court directs a person to take control of the property — by the owner of the property with the consent of the person.

125. Priority of charge

A charge created on property under section 123(1) —

- 5
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
 - (b) has priority over all other encumbrances; and
 - (c) subject to section 124, is not affected by any change of ownership of the property.

126. Registration of charge on land

- 10
- (1) If a charge is created on land under section 123, the DPP or the Public Trustee may lodge a memorial of a charge on an interest in land under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856* and the memorial may be registered in accordance with the respective Act.
- 15
- (2) Anyone who purchases or otherwise acquires an interest in the property after the memorial is lodged is taken to have notice of the charge, for the purposes of section 124(1)(e), at the time of the purchase or acquisition.
- 20
- (3) If the charge ceases to have effect, the DPP or the Public Trustee may withdraw the memorial in accordance with the Act under which it was registered, and the registration may be cancelled in accordance with that Act.

127. Registration of charge on property except land

- 25
- (1) The DPP or the Public Trustee may lodge a memorial of a charge on property of a kind other than land under any enactment that provides for the registration of interests in property of that kind, and the memorial may be registered in accordance with the enactment.

Criminal Property Confiscation Bill 2000

Part 10 Mutual recognition of freezing orders and confiscation of property

Division 3 Charges on interstate property

s. 127

- (2) Anyone who purchases or otherwise acquires an interest in the property after the memorial is lodged is taken to have notice of the charge, for the purposes of section 124(1)(e), at the time of the purchase or acquisition.
- 5 (3) If the charge ceases to have effect, the DPP or the Public Trustee may withdraw the memorial in accordance with the enactment, and the registration of the memorial may be cancelled in accordance with the enactment.

Part 11 — Miscellaneous

128. Act binds States and Commonwealth

- 5
- (1) This Act binds this State, the Commonwealth, each other State, the Australian Capital Territory and the Northern Territory, to the extent that the legislative power of Parliament permits.
 - (2) Nothing in this Act renders this State, the Commonwealth, another State or a Territory liable to prosecution for an offence.

129. Property protected from seizure and confiscation

- 10
- (1) Property of any of the following kinds is protected from confiscation if it is not crime-used property —
 - (a) family photographs;
 - (b) family portraits;
 - (c) necessary clothing.
 - 15 (2) Property of any of the following kinds is protected from confiscation if it is not crime-used property or crime-derived property —
 - (a) ordinary tools of trade;
 - (b) professional instruments;
 - (c) reference books.
 - 20 (3) However, ordinary tools of trade, professional instruments and reference books that are owned or effectively controlled by the same person are protected from confiscation only to the extent that the combined value of the tools, instruments and books does not exceed the amount prescribed for the purposes of
25 section 75(1)(c) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

s. 130

- (4) Property that is protected from confiscation —
- (a) is not confiscated under section 6, 7 or 8;
 - (b) is not to be frozen;
 - (c) is not to be taken, under a warrant of execution or otherwise, for the purpose of satisfying a person's liability under section 14, 20 or 24; and
 - (d) is not to be seized under this Act or under a warrant under this Act.

130. Confiscation Proceeds Account

- (1) An account called the Confiscation Proceeds Account is established as part of the Trust Fund provided for by section 9 of the *Financial Administration and Audit Act 1985*.
- (2) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to the Confiscation Proceeds Account.
- (3) For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the administration of the Confiscation Proceeds Account is to be regarded as a service of the department principally assisting the Minister in the administration of this Act.

131. Payments into and out of the Confiscation Proceeds Account

- (1) The following are to be paid into the Confiscation Proceeds Account —
- (a) money that, under this Act, is paid to the State, recovered by the State or confiscated;
 - (b) proceeds of the disposal of other confiscated property;

- 5 (c) money paid to the State under the *Proceeds of Crime Act 1987* of the Commonwealth from the Confiscated Assets Reserve established under that Act or any other fund established for a similar purpose under a law of the Commonwealth.
- (2) Money may be paid out of the Confiscation Proceeds Account at the direction of the Attorney General, as reimbursement or otherwise —
- 10 (a) for a purpose associated with the administration of this Act;
- (b) for the development and administration of programmes or activities designed to prevent or reduce drug-related criminal activity and the abuse of prohibited drugs;
- 15 (c) to provide support services and other assistance to victims of crime;
- (d) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating persons involved in the commission of a confiscation offence;
- 20 (e) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating confiscable property;
- (f) to cover any costs of storing, seizing or managing frozen or confiscated property that are incurred by the Police Force, the DPP or a person appointed under this Act to manage the property; and
- 25 (g) for any other purposes in aid of law enforcement.

s. 132

132. Obstructing police officers

(1) A person commits an offence if the person wilfully delays or obstructs a police officer in the exercise of the functions of a police officer under this Act, or a person assisting a police officer in the exercise of those functions.

Penalty: \$100 000 or imprisonment for 5 years, or both.

(2) A person commits an offence if the person wilfully does not produce any property to, or wilfully conceals or attempts to conceal any property from, a police officer in the exercise of the police officer's functions under this Act, or a person assisting a police officer in the exercise of those functions.

Penalty: \$100 000 or imprisonment for 5 years, or both.

133. Later applications, notices, orders or findings

The fact that a freezing notice has been issued for property or that an application, order or finding has been made under this Act in relation to any property, person or confiscation offence does not prevent another freezing notice from being issued for the property, or prevent another application, order or finding, or a different application, order or finding, from being made under this Act in relation to the property, the person or the offence.

134. DPP's power to delegate

(1) The DPP may delegate the performance of any of the functions of the DPP under this Act, except this power of delegation, to an officer referred to in section 30 of the *Director of Public Prosecutions Act 1991*.

(2) A delegation —

- (a) must be made by written instrument;
- (b) is made on behalf of and subject to the direction and control of the DPP; and

- (c) may be made generally or as otherwise provided by the instrument.

135. Orders relating to sham transactions

- 5 (1) The DPP may apply to the court for an order under subsection (2).
- (2) On hearing an application, if the court is satisfied that a person is carrying out, or has carried out, a sham transaction, the court may, to defeat the purpose of the transaction, by order —
 - 10 (a) declare that the transaction is void in whole or in part; or
 - (b) vary the operation of the transaction in whole or in part.
- (3) The court may make any ancillary orders that are just in the circumstances for or with respect to any consequential or related matter, including orders relating to —
 - 15 (a) dealing with property;
 - (b) the disposition of any proceeds from the sale of property;
 - (c) making payments of money; and
 - (d) creating a charge on property in favour of any person and the enforcement of the charge.
- 20 (4) The court may rescind or vary an order made under this section.

136. Proceedings against body corporate

- 25 (1) If a body corporate commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of an officer of the body corporate, or a person purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits the offence.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a

s. 137

member in connection with the member's functions of management as if the member were a director of the body corporate.

- 5 (3) If, in proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that —
- (a) the conduct was engaged in by an officer of the body corporate within the scope of his or her actual or apparent authority; and
- 10 (b) the officer had that state of mind.
- (4) If an officer of a body corporate engages in conduct on behalf of the body corporate within the scope of his or her actual authority then, for the purposes of proceedings under this Act, the body corporate is taken also to have engaged in the conduct unless the body corporate establishes that it took reasonable
- 15 precautions and exercised due diligence to avoid the conduct.

137. Liability for carrying out functions under this Act

20 A person on whom this Act confers a function is not personally liable in civil proceedings, and the State is not liable, for anything done or default made by the person in good faith for the purpose of carrying this Act into effect.

138. Effect of owner's death

- 25 (1) A reference in this Act to property of a person who is dead is to be read as a reference to property owned or effectively controlled by the person immediately before his or her death, or given away by the person at any time before his or her death.
- (2) An order may be applied for and made under this Act —

- (a) in respect of property that is or was owned or effectively controlled or given away by a person even if the person is dead; and
 - (b) on the basis of the activities of a person who is dead.
- 5 (3) If a person who owns frozen property dies, this Act continues to apply to the property in all respects as if the person had not died, regardless of whether the administrator of the person's estate or any other person in whom the property vests as a result of the death is an innocent party in relation to the property.
- 10 (4) Without limiting the remainder of this section, if a person who is a joint tenant of frozen property dies —
- (a) the person's death does not operate to vest the property in the surviving joint tenant or tenants; and
 - (b) the freezing notice or freezing order continues to apply to the property as if the person had not died.
- 15

139. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.
- 20
- (2) Without limiting subsection (1), the regulations may —
- (a) provide for carrying out the destruction of property under an order under section 93;
 - (b) provide for carrying out the sale of deteriorating property under an order under section 94;
 - (c) provide for obtaining possession of confiscated property;
 - (d) provide for the storage and management of confiscated property;
- 25

s. 139

- (e) provide for the disposal of confiscated property that has vested in the State; and
- (f) 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.

5

Part 12 — Interpretation

140. Confiscation offences

(1) In this Act, “**confiscation offence**” means —

- 5 (a) an offence against a law in force anywhere in Australia that is punishable by imprisonment for 2 years or more; or
- (b) any other offence that is prescribed for the purposes of this definition.

10 (2) An offence of a kind referred to in paragraph (1)(a) is a confiscation offence even if a charge against a person for the offence is dealt with by a court whose jurisdiction is limited to the imposition of sentences of imprisonment of less than 2 years.

141. Confiscable property

15 Property is confiscable for the purposes of this Act if the property is —

- (a) owned or effectively controlled, or has at any time been given away, by a person who has unexplained wealth;
- 20 (b) owned or effectively controlled, or has at any time been given away, by a person who has acquired a criminal benefit;
- (c) crime-used property;
- (d) crime-derived property; or
- 25 (e) owned or effectively controlled, or has at any time been given away, by a declared drug trafficker.

s. 142

142. The constituents of a person's wealth

- (1) The following property, services, advantages and benefits together constitute a person's wealth —
- 5 (a) all property that the person owns, whether the property was acquired before or after the commencement of this Act;
 - (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Act;
 - 10 (c) all property that the person has given away at any time, whether before or after the commencement of this Act;
 - (d) all other property acquired by the person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded;
 - 15 (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Act; and
 - 20 (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Act, including consumer goods and consumer durables that have been consumed or discarded.
- 25 (2) Without limiting subsection (1), a reference in that subsection to property, services, advantages or benefits acquired by a person or by another person at the request or direction of the first-mentioned person is to be read as including a reference to
- 30 any thing of monetary value acquired, in Australia or elsewhere, from the commercial exploitation of any product, or of any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication

depends on or is derived from the first-mentioned person's involvement in the commission of a confiscation offence, whether or not the thing was lawfully acquired and whether or not the first-mentioned person has been charged with or convicted of the offence.

5

143. Unexplained wealth

(1) For the purposes of this Act, a person has unexplained wealth if the value of the person's wealth under subsection (2) is greater than the value of the person's lawfully acquired wealth under subsection (3).

10

(2) The value of the person's wealth is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth.

15

(3) The value of the person's lawfully acquired wealth is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit, that both is a constituent of the person's wealth and was lawfully acquired.

144. Acquiring criminal benefits

20

(1) For the purposes of this Act, a person has acquired a criminal benefit if —

25

(a) any property, service, advantage or benefit that is a constituent of the person's wealth was directly or indirectly acquired as a result of the person's involvement in the commission of a confiscation offence, whether or not the property, service, advantage or benefit was lawfully acquired; or

30

(b) the person has been involved in the commission of a confiscation offence, and any property, service, advantage or benefit that is a constituent of the person's

s. 145

wealth was not lawfully acquired, whether or not the property, service, advantage or benefit was acquired as a result of the person's involvement in the commission of the offence.

- 5 (2) Without limiting subsection (1), the person has acquired a criminal benefit —
- (a) whether the property, service, advantage or benefit was acquired before, during or after the confiscation offence was or is likely to have been committed;
 - 10 (b) whether or not the property, service, advantage or benefit was acquired before or after the commencement of this Act; and
 - (c) whether or not the confiscation offence was committed before or after the commencement of this Act.

15 **145. Crime-used property**

- (1) For the purposes of this Act, property is crime-used if —
- (a) the property is or was used, or intended for use, directly or indirectly, in or in connection with the commission of a confiscation offence, or in or in connection with facilitating the commission of a confiscation offence;
 - 20 (b) the property is or was used for storing property that was acquired unlawfully in the course of the commission of a confiscation offence; or
 - (c) any act or omission was done, omitted to be done or facilitated in or on the property in connection with the commission of a confiscation offence.
- 25
- (2) Without limiting subsection (1), property described in that subsection is crime-used whether or not —
- 30 (a) the property is also used, or intended or able to be used, for another purpose;

- 5
- (b) anyone who used or intended to use the property as mentioned in subsection (1) has been identified;
 - (c) anyone who did or omitted to do anything that constitutes all or part of the relevant confiscation offence has been identified; or
 - (d) anybody has been charged with or convicted of the relevant confiscation offence.
- 10
- (3) Without limiting subsection (1) or (2), any property in or on which an offence under Chapter XXII or XXXI of *The Criminal Code* is committed is crime-used property.

146. Criminal use of property

15 For the purposes of this Act, a person makes criminal use of property if the person, alone or with anyone else (who need not be identified) uses or intends to use the property in a way that brings the property within the definition of crime-used property.

147. Crime-derived property

- 20
- (1) Property that is wholly or partly derived or realised, directly or indirectly, from the commission of a confiscation offence is crime-derived, whether or not —
- (a) anyone has been charged with or convicted of the offence;
 - (b) anyone who directly or indirectly derived or realised the property from the commission of the offence has been identified; or
 - (c) anyone who directly or indirectly derived or realised the property from the commission of the offence was involved in the commission of the offence.
- 25

s. 148

(2) Without limiting subsection (1), property of the following kinds is crime-derived —

- (a) stolen property;
- 5 (b) property bought with or exchanged for crime-derived property;
- (c) property acquired by legitimate means that could not have been acquired if crime-derived property had not been used for other purposes;
- 10 (d) any thing of monetary value acquired, in Australia or elsewhere, from the commercial exploitation of any product, or of any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from a person's involvement in the commission
- 15 of a confiscation offence, whether or not the thing was lawfully acquired and whether or not anyone has been charged with or convicted of the offence.

148. Lawful acquisition of property

Any property, service, advantage or benefit is lawfully acquired only if —

- 20 (a) the property, service, advantage or benefit was lawfully acquired; and
- (b) any consideration given for the property, service, advantage or benefit was lawfully acquired.

25 **149. Service cut off date**

For the purpose of determining when frozen property is confiscated under section 7, the service cut off date is —

- 30 (a) for property frozen under a freezing notice — the date of the last day on which a copy of the freezing notice was served on anyone under section 36(4); and

- (b) for property frozen under a freezing order — the date of the last day on which a copy of the freezing order was served on anyone under section 46(4).

150. Dealing with property

5 A reference in this Act to dealing with property includes a reference to doing or attempting to do any of the following —

- (a) sell the property or give it away;
- (b) dispose of the property in any other way;
- (c) move or use the property;
- 10 (d) accept the property as a gift;
- (e) take any profit, benefit or proceeds from the property;
- (f) create, increase or alter any legal or equitable right or obligation in relation to the property;
- (g) effect a change in the effective control of the property.

15 **151. Value of property sold by State**

(1) If property is sold by or for the State under this Act, the value of the property is taken to be equal to the proceeds of the sale after taking account of the following —

- (a) costs, charges and expenses arising from the sale;
- 20 (b) if a freezing notice or freezing order is or was in force for the property — expenses incurred by the State or a person appointed to manage the property while the notice or order was in force;
- (c) if the property has been confiscated — any expenses
25 incurred by the State or a person appointed to manage the property after it was confiscated;
- (d) any charges on the property.

s. 152

- 5 (2) If the property is subject to a mortgage which is also security against other property then, despite any other enactment and any inconsistent term of the mortgage, the extent of the security over the sold property is the proportion that the value of the sold property bore to the total value of all the secured property at the time that the security over the sold property was given.

152. Innocent parties

- 10 (1) A person is an innocent party in relation to crime-used or crime-derived property if the person —
- (a) was not in any way involved in the commission of the relevant confiscation offence; and
- (b) did not know, and had no reasonable grounds for suspecting, that the relevant confiscation offence was being or would be committed, or took all reasonable steps to prevent its commission.
- 15 (2) A person is an innocent party in relation to crime-used property if the person —
- (a) did not know, and had no reasonable grounds for suspecting, that the property was being or would be used in or in connection with the commission of the relevant confiscation offence; or
- (b) took all reasonable steps to prevent its use.
- 20 (3) A person who owns or effectively controls crime-used or crime-derived property is an innocent party in relation to the property if —
- 25 (a) the person did not acquire the property or its effective control before the time that the relevant confiscation offence was committed or is likely to have been committed;

- 5
- (b) at the time of acquiring the property or its effective control, the person did not know and had no reasonable grounds for suspecting that the property was crime-used or crime-derived;
- (c) if the person acquired the property for valuable consideration — the consideration was lawfully acquired; and
- 10 (d) the person did not acquire the property, either as a gift or for valuable consideration, with the intention of avoiding the operation of this Act.

153. Transfer of property for value

For the purposes of this Act —

- (a) property transferred under a will or administration of an intestate estate is not taken to be transferred for value; and
- 15 (b) property transferred in the course of proceedings in the Family Court of Western Australia or the Family Court of Australia is taken to be transferred for value.

154. Property-tracking documents

20 For the purposes of this Act, a document is a property-tracking document if the document is relevant to —

- (a) identifying or locating crime-used property or crime-derived property;
- (b) determining the value of any crime-used property or crime-derived property;
- 25 (c) identifying or locating any or all constituents of a person's wealth;
- (d) determining the value of any or all constituents of a person's wealth; or

s. 155

- (e) identifying or locating any document relating to the transfer of frozen or confiscated property.

155. Effective control of property

- 5 (1) For the purposes of this Act, a person has effective control of property if the person does not have the legal estate in the property, but the property is directly or indirectly subject to the control of the person, or is held for the ultimate benefit of the person.
- 10 (2) Without limiting subsection (1), when determining whether a person has effective control of any property, the following matters may be taken into account —
 - (a) any shareholdings in, debentures over or directorships of any corporation that has a direct or indirect interest in the property;
 - 15 (b) any trust that has a relationship to the property;
 - (c) family, domestic and business relationships between persons having an interest in the property;
 - (d) family, domestic and business relationships between persons having an interest in or in a corporation that has a direct or indirect interest in the property;
 - 20 (e) family, domestic and business relationships between persons having an interest in a trust that has a relationship to the property;
 - (f) any other relevant matters.

156. Conviction of a confiscation offence

- 25 (1) For the purposes of this Act, a person is taken to have been convicted of a confiscation offence if —
 - (a) the person has been convicted of the confiscation offence, whether or not —

- (i) a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction; or
 - (ii) the conviction was deemed not to be a conviction by section 20 of the *Offenders Community Corrections Act 1963*;
 - (b) the person has been charged with and found guilty of a confiscation offence, but is discharged without conviction;
 - (c) the confiscation offence was taken into account by a court in sentencing the person for another confiscation offence; or
 - (d) the person was charged with a confiscation offence but absconded before the charge is finally determined.
- (2) For the purposes of this Act, a person's conviction is taken to have been quashed —
- (a) if the person is taken under subsection (1)(a) to have been convicted — if the conviction is quashed or set aside;
 - (b) if the person is taken under subsection (1)(b) to have been convicted — if the finding of guilt is quashed or set aside;
 - (c) if the person is taken under subsection (1)(c) to have been convicted — if the decision of the court to take the confiscation offence into account is quashed or set aside; or
 - (d) if the person is taken under subsection (1)(d) to have been convicted — if the person is brought before a court to answer the charge, and the person is discharged in respect of the confiscation offence.

s. 157

157. Charges for an offence

For the purposes of this Act, 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 —

- 5
- (a) a summons requiring the attendance of the person to answer the complaint has been issued; or
 - (b) a warrant for the arrest of the person has been issued.

158. Drug traffickers and declared drug traffickers

(1) In this Act, unless the contrary intention appears —

10 **“declared drug trafficker”** means —

- 15 (a) a person who is declared to be a drug trafficker under section 32A(1) of the *Misuse of Drugs Act 1981* as a result of being convicted of an offence that was committed, or is more likely than not to have been committed, after the commencement of this Act; or
- (b) a person who is taken to be a declared drug trafficker under subsection (2).

(2) For the purposes of this Act, a person is taken to be a declared drug trafficker if —

- 20
- (a) the person is charged with a serious drug offence within the meaning of section 32A(3) of the *Misuse of Drugs Act 1981*;
 - (b) the offence was committed, or is more likely than not to have been committed, after the commencement of this Act;
 - 25 (c) the person could be declared to be a drug trafficker under section 32A(1) of that Act if he or she is convicted of the offence;
 - (d) the charge is not disposed of or finally determined; and

- (e) the person absconds in connection with the offence.

159. Absconding in connection with an offence

- (1) A person charged with an offence is taken to abscond in connection with the offence if —

5

- (a) a warrant for the person's arrest for the offence is in force, or the person was arrested without warrant either before or after the person was charged with the offence;

- (b) the charge has neither been disposed of nor finally determined;

10

- (c) at least 6 months have passed since the warrant was issued; and

- (d) the person cannot be found.

- (2) A person charged with an offence is taken to abscond in connection with the offence if —

15

- (a) a warrant for the person's arrest for the offence is in force, or the person is arrested for the offence without warrant (whether before or after being charged with the offence);

20

- (b) the charge has neither been disposed of nor finally determined; and

- (c) the person dies.

160. Sham transactions

- (1) For the purposes of this Act, a person carries out a sham transaction if —

25

- (a) the person carries out a transaction within the meaning of subsection (2); and

s. 160

- (b) the transaction was carried out for the purpose of directly or indirectly defeating, avoiding, preventing or impeding the operation of this Act in any respect.
- 5 (2) For the purposes of subsection (1), the person carries out a transaction if the person carries out, makes, gives or designs —
 - (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
 - 10 (b) any scheme, plan, proposal, action, course of action, or course of conduct.

Glossary

[s. 3]

- 5 **“abscond”**, in connection with an offence, has the meaning given in section 159;
- “account”** means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for fixed term deposit and a safety deposit box;
- 10 **“agent”** includes, if the agent is a corporation, an officer of the corporation;
- “bank”** means —
- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of the *Banking Act 1959* of the Commonwealth;
- 15 (c) a person who carries on State banking within the meaning of section 51(xiii) of the Commonwealth Constitution;
- “building society”** means a society registered or incorporated under an enactment as a building society, permanent building society, cooperative housing society or similar society;
- 20 **“charge”**, in relation to an offence, has the meaning given in section 157;
- “confiscated”**, in relation to property, means confiscated under section 6, 7 or 8;
- “confiscable”**, in relation to property, has the meaning given in
- 25 section 141;
- “Confiscation Proceeds Account”** means the account established under section 130;
- “confiscable property declaration”** means a declaration made under section 28;
- 30 **“confiscation offence”** has the meaning given in section 140;
- “conviction”**, in relation to a confiscation offence, has the meaning given in section 156;

“corporation” means —

- (a) a financial institution; or
- (b) a corporation within the meaning of the *Companies (Western Australia) Code*;

5 **“corresponding law”**, in relation to the Commonwealth, another State or a Territory, means a law of the Commonwealth, State or Territory that is prescribed in the regulations as a law that corresponds to this Act;

“court” means —

- 10 (a) in relation to making an application under this Act — a court having jurisdiction under section 101 to hear and determine the application;
- (b) in relation to proceedings on an application under this Act — the court in which the application was filed, or
15 another court having jurisdiction, whether under this Act or another enactment, in the proceedings;
- (c) in relation to a freezing notice — the court in which the notice was filed; or
- 20 (d) in relation to a declaration or order under this Act — the court that made the order;

“credit union” means a society registered under an enactment as a credit union or credit society;

“crime-derived”, in relation to property, has the definition given in section 147;

25 **“crime-used”**, in relation to property, has the meaning given in section 145;

“crime-used property substitution declaration” means a declaration under section 22;

“criminal benefit” has the definition given in section 144;

30 **“criminal benefits declaration”** means a declaration under section 16 or 17;

“criminal use” in relation to a person and property, has the meaning given in section 146;

“deal”, in relation to property, has the meaning given in section 150;

“declared drug trafficker” has the meaning given in section 158;

“director”, in relation to a financial institution or a corporation,
means —

- 5
- (a) if the institution or corporation is a body corporate incorporated for a public purpose under a law of the Commonwealth or of a State or Territory — a constituent member of the body corporate;
 - 10 (b) a person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; or
 - 15 (c) a person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act;

“dispose of”, in relation to a charge, means —

- (a) withdraw;
- (b) dismiss; or
- (c) file a nolle prosequi in relation to the offence;

20 **“document”** includes —

- 25 (a) any publication and any matter written, expressed, or described, electronically or otherwise, upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter; and
- (b) a computer disk, computer or any other substance or equipment, whether electronic or not, used to create or store any publication or matter referred to in paragraph (a);

30 **“DPP”** means the holder of the office of Director of Public Prosecutions created by section 4 of the *Director of Public Prosecutions Act 1991*;

- 5 **“effective control”**, in relation to property, has the definition given in section 155;
- “encumbrance”**, in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property;
- “examination”** means examination under an order under section 58(1);
- “examination order”** means an order under section 58(1);
- 10 **“executive officer”**, in relation to a financial institution or a corporation, means any person, by whatever name called, and whether or not he or she is a director of the institution or corporation, who is concerned, or takes part, in the management of the institution or corporation;
- “financial institution”** means —
- 15 (a) a bank;
- (b) a building society;
- (c) a credit union;
- (d) a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth;
- 20 or
- (e) a body corporate that would be a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth if the body had been incorporated in Australia;
- 25 **“freezing notice”** means a freezing notice issued under section 34;
- “freezing order”** means an order under section 43;
- “frozen”**, in relation to property and in relation to a freezing notice or freezing order, means subject to the freezing notice or the freezing order;
- 30 **“give”**, in relation to property, includes transfer for consideration that is significantly less than the greater of —
- (a) the market value of the property at the time of transfer; and

(b) the consideration paid by the transferee;

“innocent party” has the meaning given in section 152;

“interested party”, in relation to frozen property, means a person who has an interest in the property that would enable the person to succeed on an objection to the confiscation of the property;

5

“interstate confiscation offence” means an offence (including a common law offence) against a law in force in another State or a Territory, being an offence in relation to which an interstate confiscation declaration or an interstate criminal benefits declaration may be made under a corresponding law of the State or Territory;

10

“interstate confiscation declaration” means a declaration or order (however described) that is made by or under a corresponding law of another State or a Territory and that is prescribed by the regulations for the purposes of this definition;

15

“interstate criminal benefits declaration” means a declaration or order (however described) that is made by or under a corresponding law of another State or a Territory and that is prescribed by the regulations for the purposes of this definition;

20

“interstate freezing order” means a notice or order (however described) that is made by or under a corresponding law of another State or a Territory and that is prescribed by the regulations for the purposes of this definition;

“lawfully acquired”, in relation to any property, service, advantage or benefit, has the meaning given in section 148;

25

“medical practitioner” has the same meaning as in the *Medical Act 1894*;

“monitoring order” means an order under section 68(1);

“objection” means an objection filed under section 79 to the confiscation of property;

30

“officer”, in relation to a corporation, means a director, secretary, executive officer, employee or agent of the corporation;

“owner”, in relation to property, means a person who has a legal or equitable interest in the property;

- 5 **“police officer”**, in relation to a function, includes a person authorised to carry out the function under regulations made under section 139(2)(f);
- “premises”** includes vessel, aircraft, vehicle, structure, building and any land or place whether built on or not;
- “production order”** means an order under section 63;
- “prohibited drug”** has the same meaning as in the *Misuse of Drugs Act 1981*;
- 10 **“prohibited plant”** has the same meaning as in the *Misuse of Drugs Act 1981*;
- “property”** means —
- (a) real or personal property of any description, wherever situated, whether tangible or intangible; or
- 15 (b) a legal or equitable interest in any property referred to in paragraph (a);
- “property-tracking document”** has the meaning given in section 154;
- “recipient”**, in relation to a freezing notice or freezing order, means a person on whom a copy of the notice or order is served under
- 20 section 36 or 46;
- “registered”**, in relation to an interstate freezing order or an interstate confiscation declaration, means registered under section 118;
- “registrable real property”** means property to which the *Transfer of Land Act 1893* applies;
- 25 **“relevant confiscation offence”**, in relation to confiscable property, means the confiscation offence or suspected confiscation offence that is relevant to bringing the property within the scope of this Act;
- “respondent”** means —
- 30 (a) in relation to an application for an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration —the person against whom the order is sought; or

- (b) in relation to an unexplained wealth declaration, a criminal benefits declaration or a crime-used property substitution declaration — the person against whom the order is made;
- 5 **“restricted disclosure”** means a disclosure about a matter of a kind referred to in a paragraph of section 70(1);
- “seized”**, in relation to property, means seized under section 33(1);
- “service cut off date”**, in relation to frozen property, has the meaning given in section 149;
- “sham transaction”** has the meaning given in section 160;
- 10 **“spouse”** includes de facto spouse;
- “State taxes”**, in relation to frozen property, means any rates, land tax, local government or other statutory charges imposed on the property under a law of this State;
- “suspension order”** means an order under section 68(2);
- 15 **“transaction”**, in relation to an account with a financial institution, includes —
- (a) the making of a fixed term deposit;
- (b) the transferring of the amount of a fixed term deposit, or any part of it, at the end of the term;
- 20 **“unexplained wealth”** has the meaning given in section 143;
- “unexplained wealth declaration”** means a declaration under section 12;
- “valuable consideration”**, in relation to the transfer of property, does not include —
- 25 (a) any consideration for the transfer arising from the fact of a family relationship between the transferor and transferee;
- (b) if the transferor is the legal or de facto spouse of the transferee — the making by the transferor of a deed in favour of the transferee;
- 30 (c) a promise by the transferee to become the legal or de facto spouse of the transferor;

Glossary

- (d) any consideration arising from the transferor's love or affection for the transferee;
 - (e) the transfer of the property as a result of the distribution of a deceased estate;
 - 5 (f) the transfer of the property by way of gift; or
 - (g) consideration that is significantly less than the greater of —
 - (i) the market value of the property at the time of transfer; and
 - 10 (ii) the consideration paid by the transferee;
- “value”**, in relation to —
- (a) a person's unexplained wealth — means the amount calculated in accordance with section 13;
 - 15 (b) a person's wealth — has the meaning given in section 143(2);
 - (c) a person's lawfully acquired wealth — has the meaning given in section 143(3);
 - (d) property sold by or for the State — has the meaning given in section 151; and
 - 20 (e) the transfer of property — has the meaning given in section 153;
- “wealth”** has the meaning given in section 142.

