

Criminal Property Confiscation (Consequential Provisions) Bill 2000

CONTENTS

1 .	Short title	1
2 .	Commencement	2
3 .	Interpretation	2
4 .	<i>Crimes (Confiscation of Profits) Act 1988</i> repealed	2
5 .	<i>Misuse of Drugs Act 1981</i> amended	2
6 .	Applications to court under repealed law — savings	3
7 .	Court orders under repealed law — savings	3
8 .	Holding orders and embargo notices — savings	4
9 .	Warrants issued under repealed law — savings	4
10 .	Property subject to a forfeiture order	4
11 .	Real property subject to forfeiture order	6
12 .	<i>Director of Public Prosecutions Act 1991</i> — amendment and savings	8
13 .	<i>Environmental Protection Act 1986</i> — amendment and savings	9
14 .	<i>Evidence Act 1906</i> — amendment and savings	10
15 .	<i>Financial Transaction Reports Act 1995</i> — amendment and savings	10

Western Australia

LEGISLATIVE ASSEMBLY

Criminal Property Confiscation (Consequential Provisions) Bill 2000

A Bill for

An Act —

- to repeal the *Crimes (Confiscation of Profits) Act 1988*;
- to amend the *Misuse of Drugs Act 1981*;
- to amend the *Director of Public Prosecutions Act 1991*;
- to amend the *Environmental Protection Act 1986*;
- to amend the *Evidence Act 1906*;
- to amend the *Financial Transaction Reports Act 1995*,

and for other purposes relating to the enactment of the *Criminal Property Confiscation Act 2000*.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Criminal Property Confiscation (Consequential Provisions) Act 2000*.

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2. Commencement

This Act comes into operation on the day on which the *Criminal Property Confiscation Act 2000* comes into operation.

3. Interpretation

- 5 In this Act, unless the contrary intention appears —
- “**appeal period**”, in relation to a forfeiture order, has the same meaning as in the repealed Act;
- “**embargo notice**” has the same meaning as in the repealed Part;
- 10 “**forfeiture order**” has the same meaning as in the repealed Act;
- “**holding order**” has the same meaning as in the repealed Part;
- “**interstate forfeiture order**” has the same meaning as in the repealed Act;
- 15 “**interstate restraining order**” has the same meaning as in the repealed Act;
- “**repealed Act**” means the *Crimes (Confiscation of Profits) Act 1988* as in force before its repeal by section 4;
- 20 “**repealed Part**” means Part IV of the *Misuse of Drugs Act 1981* as in force before its repeal by section 5.

4. *Crimes (Confiscation of Profits) Act 1988* repealed

The *Crimes (Confiscation of Profits) Act 1988* is repealed.

5. *Misuse of Drugs Act 1981* amended

- (1) Part IV of the *Misuse of Drugs Act 1981** is repealed.

- (2) Section 32A(1) of the *Misuse of Drugs Act 1981* is amended by deleting “an appropriate officer” and inserting instead —

“

the Director of Public Prosecutions or a police prosecutor

”.

- (3) Section 32A(3) of the *Misuse of Drugs Act 1981* is amended by deleting the definition of “appropriate officer”.

[* Reprinted as at 11 November 1996.

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p.65, and Act No 24 of 2000.]

6. Applications to court under repealed law — savings

If an application made to a court under the repealed Act or the repealed Part was not withdrawn, discontinued or otherwise finally determined before the commencement of this Act, the application may be dealt with on and after that commencement as if the repealed Act or the repealed Part had not been repealed.

7. Court orders under repealed law — savings

- (1) If an order made by a court under the repealed Act or the repealed Part was in force immediately before the commencement of this Act, the order has effect on and after that commencement, and may be executed, varied, discharged, set aside or appealed against, as if the repealed Act or repealed Part had not been repealed.
- (2) If an interstate forfeiture order or interstate restraining order was registered under the repealed Act, and its registration was not cancelled before the commencement of this Act, Part 10 of the *Criminal Property Confiscation Act 2000* applies, on and after that commencement, to the order and to any charge created under the repealed Act on the property to which the order relates, as if the order were an interstate confiscation order or interstate freezing order registered under section 118 of the

Criminal Property Confiscation Act 2000 and as if the charge had been created under section 123 of the *Criminal Property Confiscation Act 2000*.

8. Holding orders and embargo notices — savings

- 5 (1) If a holding order or an embargo notice was in force under the repealed Part immediately before the commencement of this Act, the holding order or embargo notice has effect on and after that commencement, and the repealed Part continues to apply to the holding order or embargo notice, as if the repealed Part had not been repealed.
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- (2) Without limiting subsection (1), if, immediately before the commencement of this Act, a person was entitled under section 19 of the *Misuse of Drugs Act 1981* to apply for an order in respect of the property to which a holding order or embargo notice relates, the person may apply for the order after that commencement, and the application may be dealt with, as if the repealed Part had not been repealed.
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- (3) However, subsection (2) does not entitle the person to apply for the order more than 21 days after the date of the holding order or embargo notice.
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9. Warrants issued under repealed law — savings

If, immediately before the commencement of this Act, a warrant issued under the repealed Act or the repealed Part was capable of execution to any extent, then the warrant may be executed on and after that commencement, to that extent, as if the repealed Act or the repealed Part had not been repealed.

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10. Property subject to a forfeiture order

- (1) This section applies to property for which a forfeiture order was made under the repealed Act if —
- 30 (a) the appeal period for the forfeiture order had not ended before the commencement of this Act; or

- 5 (b) if the appeal period has ended (whether before or after the commencement of this Act), but the forfeiture order has not been discharged, and the property was not disposed of or otherwise dealt with under section 11(5) of the repealed Act before that commencement.
- (2) Sections 11(3), 11(4), 11(6), 12, 13 and 14 of the repealed Act continue to apply in relation to the forfeiture order and the property as if the repealed Act had not been repealed.
- 10 (3) If the appeal period for the forfeiture order has not ended, sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it were subject to a freezing order under that Act.
- (4) If the appeal period for the forfeiture order has ended, and the order has not been discharged —
- 15 (a) sections 89, 90, 92 and 94 of the *Criminal Property Confiscation Act 2000* apply to the property as if it had been confiscated under that Act; and
- (b) if the property has vested in the Crown, whether under clause 11(3)(b) or under the repealed Act, the property is to be disposed of as if it had been confiscated under the *Criminal Property Confiscation Act 2000*.
- 20 (5) The following are to be paid into the Confiscation Proceeds Account established under section 130 of the *Criminal Property Confiscation Act 2000* —
- 25 (a) subject to section 11(4) of the repealed Act as continued by subsection (2), any money vested in the Crown under section 11 of the repealed Act that has not been disposed of or otherwise dealt with under the repealed Act;
- (b) any proceeds obtained by the Crown after the commencement of this Act from the disposal of property under the repealed Act;
- 30 (c) any proceeds obtained from the disposal of property under subsection (4)(b).

s. 11

- (6) Nothing in this section limits the generality of section 7(1) in its application to a forfeiture order.

11. Real property subject to forfeiture order

- 5 (1) If property to which section 10 applies is land registered under the *Transfer of Land Act 1893*, then, without limiting the application of section 10 to the property, this section also applies to the property.
- 10 (2) If the property has not vested in the Crown under section 11 of the repealed Act, the Director of Public Prosecutions may lodge with the Registrar of Titles a memorial of the forfeiture order in a form approved by the Registrar.
- (3) When a memorial is lodged under subsection (2) —
- 15 (a) the Registrar of Titles is to register the memorial;
- (b) on the registration of the memorial, the property vests in the State of Western Australia free from all interests, whether registered or not, including trusts, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive covenants);
- 20 (c) any caveat in force in relation to the property is taken to have been withdrawn; and
- (d) the title in the property passes to the State.
- (4) When a memorial is lodged under subsection (2) then, in addition to registering the memorial, the Registrar of Titles is to —
- 25 (a) register the State of Western Australia as the proprietor of the property; and
- 30 (b) endorse the certificate of title of the property to the effect that, when the memorial was registered, the property ceased to be subject to or affected by any interests recorded on the certificate of title, including caveats, mortgages, charges, obligations and estates (except rights-of-way, easements and restrictive

covenants) to which it was subject immediately before the registration of the memorial, or by which it was affected immediately before the registration of the memorial.

- 5 (5) The Registrar of Titles may dispense with the production of any duplicate certificate of title or any duplicate instrument for the purposes of entering on the duplicate certificate or duplicate instrument any memorandum that would, but for this subsection, be required to be entered under the *Transfer of Land Act 1893* as a result of registering a memorial under
10 subsection (3) or of doing anything else required or permitted by this section.
- (6) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title or duplicate
15 instrument —
- (a) the Registrar must endorse the certificate of title to the effect that the memorandum concerned has not been entered on the duplicate certificate of title or the duplicate instrument; and
- 20 (b) any subsequent dealing in the property has effect as if the memorandum had been entered on the duplicate certificate of title or the duplicate instrument.
- (7) If, under subsection (5), the Registrar of Titles dispenses with the production of a duplicate certificate of title, then, on the
25 application of the registered proprietor, the Registrar may cancel the certificate of title for which the duplicate was issued, and create and register a new certificate of title for the property.
- (8) The Registrar of Titles is not required to obtain the consent or direction of the Commissioner of Titles to perform a function
30 conferred on the Registrar under this section.
- (9) To the extent that a provision of this section relating to any property is inconsistent with the *Transfer of Land Act 1983*, the

s. 12

provision prevails, but this section does not otherwise affect the operation of that Act in relation to the property.

12. Director of Public Prosecutions Act 1991 — amendment and savings

- 5 (1) Section 16(2)(b) of the *Director of Public Prosecutions Act 1991** is amended by deleting “*Crimes (Confiscation of Profits) Act 1988*” and inserting instead —
- “ *Criminal Property Confiscation Act 2000* ”.
- 10 (2) After subsection (2) of the *Director of Public Prosecutions Act 1991* the following subsection is inserted —
- “
- 15 (3) Without limiting subsection (1), except as otherwise explicitly provided in the *Criminal Property Confiscation Act 2000* (in this subsection called “the Confiscation Act”), it is a function of the Director to take any proceedings —
- (a) that arise under the Confiscation Act;
- (b) that arise from proceedings under the Confiscation Act;
- 20 (c) that are required to give effect to a freezing notice under the Confiscation Act;
- (d) that are required to give effect to an order of a court under the Confiscation Act or a declaration of a court under the Confiscation Act;
- 25 (e) that are required to locate or recover any property as defined in the Confiscation Act that is subject to a freezing notice under the Confiscation Act or a freezing order under the Confiscation Act, or that has been confiscated under the Confiscation Act;
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- (f) that are required to give effect to Part 10 of the Confiscation Act; or
- (g) that for any other reason arise from the administration of the Confiscation Act or are required to give effect to the Confiscation Act.

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- (3) Despite the amendment effected by subsection (1), the *Director of Public Prosecutions Act 1991* as in force before the commencement of this Act continues to apply in relation to the administration of the *Crimes (Confiscation of Profits) Act 1988* to the extent that the operation of the latter Act is continued by this Act.

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[* *Act No. 12 of 1991.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, p.68.]

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13. *Environmental Protection Act 1986* — amendment and savings

- (1) Section 99U(4) of the *Environmental Protection Act 1986** is amended by deleting “*Crimes (Confiscation of Profits) Act 1988*” and inserting instead —

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“ *Criminal Property Confiscation Act 2000* ”.

- (2) Despite the amendment effected by subsection (1), section 99U(4) of the *Environmental Protection Act 1986* as in force before the commencement of this Act continues to apply to any exercise under this Act of the court’s powers under the *Crimes (Confiscation of Profits) Act 1988*.

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[* *Reprinted as at 7 July 2000.*]

14. Evidence Act 1906 — amendment and savings

- (1) The *Evidence Act 1906** is amended by deleting the following from Part 5 of the Second Schedule —

“

5 s.18(2) Dealing with property to which an embargo notice relates

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- (2) Despite the amendment effected by subsection (1), the *Evidence Act 1906* as in force before the commencement of this Act continues to apply on and after that commencement in relation to an embargo notice that has effect under section 8 of this Act.

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[* *Reprinted as at 22 November 1999.*

For subsequent amendments see 1999 Index to Legislation of Western Australia, Table 1, pp.82-4, and Act No 17 of 2000.]

15. Financial Transaction Reports Act 1995 — amendment and savings

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- (1) The *Financial Transaction Reports Act 1995** is amended as follows:

(a) in section 6(2)(b) by deleting “*Crimes (Confiscation of Profits) Act 1988*” and inserting instead —

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“ *Criminal Property Confiscation Act 2000* ”;

(b) in section 7(1)(b) by deleting “*Crimes (Confiscation of Profits) Act 1988*” and inserting instead —

“ *Criminal Property Confiscation Act 2000* ”;

(c) in section 7(7)(b) by deleting “*Crimes (Confiscation of Profits) Act 1988*” and inserting instead —

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“ *Criminal Property Confiscation Act 2000* ”.

- (2) Despite the amendment effected by subsection (1), the *Financial Transaction Reports Act 1995* as in force before the commencement of this Act continues to apply in relation to the enforcement of the *Crimes (Confiscation of Profits) Act 1988* to

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the extent that the operation of the latter Act is continued by this Act.

[*Act No. 10 of 1995.]

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