

Criminal Law Amendment (Criminal Property) Bill 2004

EXPLANATORY MEMORANDUM

This Bill amends **The Criminal Code** to extend the application of the law concerning money laundering to include being in possession of money or assets that were used or intended to be used in the commission of an offence (regardless of whether any money or assets are shown to be proceeds of crime) as an additional offence. This Bill also amends the **Sentencing Act 1995** to clarify when the confiscation of an offender's assets can and cannot mitigate against sentence.

- Clause 1 sets out the short title of the Bill.
- Clause 2 provides that the Act comes into operation on the day it receives Royal Assent, with the exception of Part 3 which comes into operation on a day fixed by proclamation.
- Clause 3 provides that the amendments are to *The Criminal Code*.
- Clause 4 (1) amends section 563A of the Code by replacing "a major offence" with "offence".

Section 563A was formerly limited to money or property the proceeds of a major offence. This amendment broadens the matters that can be caught by this section to any offence.

(2) amends section 563A(1) to ensure that moneys and property cannot be put out of reach of the law by the act of crediting them to an account; giving them away or exchanging them.

(3) amends section 563A(3) which is the definition section.

(3) defines "offence" and deletes references to "major offence".

- Clause 5 inserts a new section 563B regarding dealing with property used in connection with an offence.

The proposed section 563B provides that a person who deals with any money or other property that is being used, or is intended to be used, in connection with an offence is guilty of a crime and liable to imprisonment for up to 20 years.

Section 563B(2) provides that a person may be convicted of this offence regardless of whether:

- (a) they did anything to facilitate or procure commission of the offence
- (b) they did or omitted to do anything that constitutes all or part of the offence
- (c) anyone involved with the offence is identified, charged or convicted, or
- (d) the offence is subsequently committed.

Section 563B(3) provides a defence if the accused proves that he or she did not know, did not believe or suspect or did not have reasonable grounds to believe or suspect that the money or property was intended to be used in connection with the offence or was assisting with law enforcement.

Because of the serious nature of the offence, section 563B(4) provides that any prosecution under this section must not be commenced without the consent of the Director of Public Prosecutions.

Section 563B(5) defines “deals with”, as including receiving, possessing, controlling, concealing or attempting to conceal, passing to another or disposing of the money or property in any other way.

Section 563B(5) defines “offence” as being against a laws of Western Australia, the Commonwealth, or another State or Territory.

Section 563B(5) defines “used in connection with an offence” as used in connection with the commission of an offence or facilitating or procuring an offence.

Clause 6 provides that the amendments in Part 3 are to the *Sentencing Act 1995*.

Clause 7 repeals section 8(3) of the Act and inserts a replacement section. Section 8(3) formerly provided

that forfeiture of crime used property is not a mitigating factor.

Proposed section 8(3) states that that fact that criminal property confiscation has occurred or may occur is not a mitigating factor. Proposed section 8(3a) states that except in the case of property derived from crime, facilitation by the offender of criminal property confiscation is a mitigating factor. These proposed sections specify that the only time the confiscation of an offender's assets can be used by a Court in mitigating sentence is when the offender has facilitated the confiscation of property which is not derived property.

Proposed section 8(6) defines "criminal property confiscation" as (a) confiscation of derived property or any other property under section 6, 7 or 8 of the *Criminal Property Confiscation Act 2000* or (b) confiscation or forfeiture to the Crown of derived property under any other written law.

Proposed section 8(6) then defines "derived property" to mean property derived or realised, directly or indirectly, by the offender, or that is subject to the effective control of the offender as a result of the commission of the offence.

Clause 8 amends section 16(1)(f) of the Act by deleting "forfeiture to the Crown" and inserting "confiscation or forfeiture to the Crown (otherwise than under the *Criminal Property Confiscation Act 2000*)". This enables the adjournment of sentencing of an offender for the making of a determination of an application for confiscation or forfeiture under any written law except the *Criminal Property Confiscation Act 2000*. The unique provisions under the *Criminal Property Confiscation Act 2000* do not require the adjournment of sentencing to enable a court to determine whether an offender has facilitated the confiscation of his or her property under that Act.