

CRIMINAL PROPERTY CONFISCATION (CONSEQUENTIAL
PROVISIONS) ACT 2000
(NO. 69 OF 2000)

**CRIMINAL PROPERTY CONFISCATION
(CONSEQUENTIAL PROVISIONS) BILL 2000**

Explanatory Notes

Clause 1 Short Title
Short title of the Act

Clause 2 Commencement
As the Act deals with the consequential provisions to the enactment of the *Criminal Property Confiscation Bill 2000* the Act should come into operation on the day on which the *Criminal Property Confiscation Bill 2000* comes into operation.

Clause 3 Interpretation
Clause 3 defines specified terms in accordance with the meaning in the relevant Acts.

Clause 4 Crimes (Confiscation of Profits) Act 1988 repealed
Clause 4 provides for the repeal of the *Crimes (Confiscation of Profits) Act 1988* as the *Criminal Property Confiscation Bill 2000* which replaces it.

Clause 5 Misuse of Drugs Act 1981 amended
Subclause (1) provides that Part IV of the *Misuse of Drugs Act 1981* ("the MDA") is repealed. Part IV of the MDA deals with the location, seizure, detention and disposal of property connected with the commission of offences. Upon the commencement of the *Criminal Property Confiscation Bill 2000* Part IV of the MDA will not be required as the *Criminal Property Confiscation Bill 2000* will deal with the matters currently referred to in Part IV.

Section 32A(1) of the *Misuse of Drugs Act 1981* provides that in specified circumstances a Court must declare a person to be a drug trafficker on the application of "an appropriate officer". Section 32A(3) of the *Misuse of Drugs Act 1981* defines "appropriate officer" as having the meaning given by the *Crimes (Confiscation of Profits) Act 1988*. The *Crimes (Confiscation of Profits) Act 1988* will be repealed on the date the *Criminal Property Confiscation Bill 2000* comes into operation. Therefore it is necessary to delete the reference to "an appropriate officer" and specify those persons who can seek such a declaration.

Clause 6 Applications to Court Under Repealed Law - Savings
Clause 6 is necessary to enable applications made to a Court prior to relevant repeals to be continued after these repeals to avoid delays and unnecessary expense being incurred by all parties and the Courts and resources would be lost if all applications had to be recommenced under the *Criminal Property Confiscation Bill 2000*.

Clause 7 Court Orders Under Repealed Law - Savings
Subclause (1) is necessary to ensure that orders made under the *Crimes (Confiscation of Profits) Act 1988* or Part IV of the *Misuse of Drugs Act 1981* have effect notwithstanding the repeal of that Act and Part.

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Subclause (2) is necessary to facilitate the effective operation of interstate forfeiture orders and interstate restraining orders notwithstanding the repeal of the *Crimes (Confiscation of Profits) Act 1988*.

Clause 8 Holding Orders and Embargo Notices - Savings

It is necessary to ensure that holding orders and embargo notices granted under Part IV of the *Misuse of Drugs Act 1981* before its repeal have full force and effect. Notwithstanding the repeal to avoid delays and unnecessary expense being incurred by all parties and the Courts.

Clause 9 Warrant Issued Under Repealed Law - Savings

It is necessary to ensure that warrants used under the *Crimes (Confiscation of Profits) Act 1988* or Part IV of the *Misuse of Drugs Act 1981* before its repeal to avoid unnecessary delays and expenses being incurred.

Clause 10 Property Subject to a Forfeiture Order

Clause 10 is necessary because of the limitations under the *Crimes (Confiscation of Profits) Act 1988* as to when the forfeited property may be dealt with.

Subclause (1) is required to specify the circumstances in which Clause 10 applies. Section 11(5) of the *Crimes (Confiscation of Profits) Act 1988* provides that if at the end of the appeal period the forfeiture order hasn't been discharged the property may be disposed of or dealt with under direction of the Attorney General or a person authorised by the Attorney General.

In order to ensure the effective and efficient operation of the forfeiture orders made under the *Crimes (Confiscation of Profits) Act 1988*, subclause (2) provides that specified sections of the *Crimes (Confiscation of Profits) Act 1988* continue to apply, namely Section 11(3) (in relation to the power of the Court to giving directions necessary to give effect to a forfeiture order), 11(4) (in relation to the limitation on the time at which forfeited property may be dealt with), 11(6) (in relation to the definition of appeal period for the purposes of subsection (4) and (5)), 12 (in relation to the effect of forfeiture orders on third parties), 13 (in relation to the discharge of forfeiture orders) and 14 (in relation to the effect of the discharge of forfeiture orders).

Subclauses (3) and (4) are necessary to ensure that specified provisions of the *Criminal Property Confiscation Act 2000* apply to ensure the effective and efficient operation of forfeiture orders made under the *Crimes (Confiscation of Profits) Act 1988*.

Subclause (5) provides for the payment of specified funds obtained under the *Crimes (Confiscation of Profits) Act 1988* to be paid to the Confiscation Proceeds Account for consistency of operations of the *Criminal Property Confiscation Act 2000*.

Clause 11 Real Property Subject to Forfeiture Order

Clause 11 is in similar terms to Clause 9 and 113 of the *Criminal Property Confiscation Bill 2000*.

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Clause 12 Director of Public Prosecutions Act 1991 – amendment and savings
Section 16(2)(b) of the *Director of Public Prosecutions Act 1991* (“DPP Act”) provides that it is a function of the DPP to be the officer principally assisting the administration of the *Crimes (Confiscation of Profits) Act 1988* is committed. As the *Criminal Property Confiscation Bill 2000* replaces the *Crimes (Confiscation of Profits) Act 1988* the DPP Act needs to be amended to make clear the functions of the DPP arising from the introduction of the *Criminal Property Confiscation Bill 2000*.

Clause 13 Environmental Protection Act 1986 – amendment and savings
Section 99U(4) of the *Environmental Protection Act 1986* provides that the relevant powers of the Court to make forfeiture orders under that Act do not limit the Court’s power under the *Crimes (Confiscation of Profits) Act 1988*. As the *Crimes (Confiscation of Profits) Act 1988* will be replaced by the *Criminal Property Confiscation Bill 2000* proposed amendments to Section 99U(4) is required.

Clause 14 Evidence Act 1906 – amendment and savings
Section 9 and Part 5 of the Second Schedule of the *Evidence Act 1906* provides that the spouse of a defendant shall, subject to that Act, be compellable to give evidence on behalf of the prosecution if the defendant is charged with an offence against s18(2) of the *Misuse of Drugs Act 1981*. Section 18(2) is in Part IV of the *Misuse of Drugs Act 1981* which will be repealed on the commencement of the *Criminal Property Confiscation Bill 2000*.

Clause 15 Financial Transaction Reports Act 1995 – amendment and savings
Section 6(2)(b) of the *Financial Transaction Reports Act 1995* provides that in specified circumstances further information can be requested from a cash dealer if it may be of assistance in the enforcement of the *Crimes (Confiscation of Profits) Act 1988*.

Section 7(1)(b) of *Financial Transaction Reports Act 1995* provides that in certain circumstances a cash dealer must take specified action in relation to the enforcement of the *Crimes (Confiscation of Profits) Act 1988*,

Section 7(7)(b) of the *Financial Transaction Reports Act 1995* provides that in specified cases a cash dealer must provide information which may be of assistance in the enforcement of the *Crimes (Confiscation of Profits) Act 1988*.

The *Crimes (Confiscation of Profits) Act 1988* will be repealed and replaced by the *Criminal Property Confiscation Bill 2000*.