



Western Australia

Criminal Property Confiscation Act 2000

**Incorporating the amendments proposed by
the *Corruption, Crime and Misconduct and
Criminal Property Confiscation Amendment
Bill 2017 Pt. 3 (Bill No. 21-1)***

Note:

Pt. 6, 9 and 12 have been omitted as they are not amended by
Bill No. 21-1

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Western Australia

Criminal Property Confiscation Act 2000

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.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Property Confiscation Act 2000*¹.

2. Commencement

This Act comes into operation on a day fixed by proclamation¹.

3. Terms used (Glossary)

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

4. Confiscable property, what is

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

- (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 144);
- (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 145);
- (c) property used in or in connection with the commission of a confiscation offence, or property of equal value (***crime-used property*** — see section 146);
- (d) property derived directly or indirectly from the commission of a confiscation offence (***crime-derived property*** — see section 148);
- (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 159).

5. Application of Act to confiscable property

- (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 —
- (a) whether the relevant confiscation offence was committed in Western Australia or elsewhere; and
 - (b) whether the relevant confiscation offence was committed before or after the commencement of this Act; and
 - (c) whether or not anyone has been charged with, or convicted of, the relevant confiscation offence; and
 - (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 —
- (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. When property is confiscated

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. When frozen property is confiscated automatically

- (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 —
 - (a) the objection, or each objection if there are more than one, is finally determined; and
 - (b) where the property is subject to a freezing notice — the freezing notice is not cancelled or set aside; and
 - (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. Declared drug trafficker, certain property of confiscated

- (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;
 - (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 159(2), the following property is confiscated —
 - (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.
- (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 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 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.

9. Registrable real property, time and effect of confiscation of under s. 6, 7 or 8

- (1) Registrable real property that is confiscated under section 6, 7 or 8 vests absolutely in the State when —
 - (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) —
 - (a) the property vests free from all interests, whether registered or not, including trusts, mortgages, charges, obligations and estates, (except rights-of-way, easements and restrictive covenants); and
 - (b) any caveat in force in relation to the property is taken to have been withdrawn; and
 - (c) 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),

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sections 50 and 51 and Part 7 apply to the property as if it were subject to a freezing order.

10. Other property, time and effect of confiscation of under s. 6, 7 or 8

- (1) Property (except registrable real property) that is confiscated 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 the *Personal Property Securities Act 2009* (Commonwealth) or an enactment is confiscated, the [DPP or the CCC, as the case requires, must notify the relevant DPP](#) ~~must notify the~~ registrar of the confiscation.

[Section 10 amended by No. 42 of 2011 s. 10; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 26.](#)]

Part 3 — Identifying and recovering confiscable property

Division 1 — Unexplained wealth

11. Unexplained wealth declarations, applying for

- (1) The DPP [or the CCC](#) 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.

[\[Section 11 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 27.\]](#)

12. Unexplained wealth declarations, making

- (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 [respondent's person's](#) wealth is greater than the value of the [respondent's person's](#) lawfully acquired wealth.
- (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 the respondent's income and expenditure at any time or at all times.
- (4) When making a declaration, the court is to —
 - (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.

[\[Section 12 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 28\]](#)

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Part 3 Identifying and recovering confiscable property

Division 2 Criminal benefits

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13. Unexplained wealth, assessing value of

- (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.
- (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.
- (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.
- (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; or
 - (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; or
 - (c) any property, service, advantage or benefit in relation to which a criminal benefits declaration has been made.

14. Unexplained wealth declaration, effect of

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.

Division 2 — Criminal benefits

15. Criminal benefits declarations, applying for

- (1) The DPP [or the CCC](#) 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.

[Section 15 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 29]

16. Criminal benefits declarations for crime-derived property, making

- (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; and
 - (b) the respondent is or was involved in the commission of a confiscation offence; and
 - (c) the property, service, advantage or benefit was wholly or partly derived or realised, directly or indirectly, as a result of the respondent's involvement in the commission of the confiscation offence, whether or not it was lawfully acquired.
- (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.
- (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.

17. Criminal benefits declarations for unlawfully acquired property, making

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

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Part 3 Identifying and recovering confiscable property

Division 2 Criminal benefits

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- (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. Criminal benefits declarations, limits on making and ancillary orders for

- (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; or
 - (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 declaration against the respondent.
- (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. Criminal benefits, assessing value of

- (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. Criminal benefits declaration, effect of

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. Crime-used property substitution declaration, applying for

- (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.

22. Crime-used property substitution declarations, making

- (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; or
 - (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, a de facto partner or a dependant of the respondent; or
 - (c) in any other case — the property has been sold or otherwise disposed of, or cannot be found for any other reason.
- (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.
- (4) If the respondent has not been convicted of the relevant confiscation offence, but the applicant establishes that it is more

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Part 3 Identifying and recovering confiscable property

Division 4 Recovery of confiscable property

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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.

- (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 —
 - (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.

[Section 22 amended by No. 28 of 2003 s. 40.]

23. Crime-used property, assessing value of

- (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 purpose of obtaining or making criminal use of the property, or did not outlay an amount equal to its full value for that purpose.
- (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. Crime-used property substitution declaration, effect of

- (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.
- (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. Amounts payable under s. 14, 20 and 24, when payable and recovery of

- (1) The amount payable by a respondent under section 14, 20 or 24 is payable —
 - (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.

26. Frozen property, use of to meet liability under s. 14, 20 or 24

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

27. Confiscable property declarations, applying for

- (1) The DPP [or the CCC](#) may apply to the court for a confiscable property declaration.

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Part 3 Identifying and recovering confiscable property

Division 4 Recovery of confiscable property

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- (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.

[Section 27 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 30]

28. Confiscable property declarations, making

- (1) On hearing an application under section 27 the court may declare that property that is not owned by the respondent is available to satisfy the respondent's liability under section 14, 20 or 24 if it is more likely than not that —
- (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; or
 - (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.
- (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. Property available to meet liability under s. 14, 20 or 24

- (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.
- (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, applying for and making

- (1) The DPP or the CCC 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.

[Section 30 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 31]

31. Applicant's duty to lodge memorial of confiscation

~~Declaration under s. 30, DPP's duties to lodge memorial of etc.~~

- (1) When the court declares under section 30 that registrable real property has been confiscated, the applicant for the declaration ~~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 the *Personal Property Securities Act 2009* (Commonwealth) or any enactment except the *Transfer of Land Act 1893* has been confiscated, the applicant for the declaration must lodge with the relevant ~~DPP must lodge with the~~ registrar —
 - (a) a copy of the declaration; and
 - (b) a notice giving particulars of the confiscation.

[Section 31 amended by No. 42 of 2011 s. 11; Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 32.]

32. Varying declarations

If the court has made a declaration under this Part, the applicant for the declaration ~~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.

[Section 32 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 33.]

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

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Part 4 — Preventing dealings in confiscable property

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

33. Property, powers to seize etc.

- (1) A police officer may seize any property if there are reasonable grounds for suspecting that the property —
 - (a) is crime-used property; or
 - (b) is crime-derived property; or
 - (c) is owned or effectively controlled by a person who has 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 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 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 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. Freezing notices, application for and issue of

- (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.

- (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 —
- (a) the person has been charged with an offence, or the applicant for the notice advises the Justice of the Peace 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.
- (4) A freezing notice may be issued under subsection (3) for all or any property that is owned or effectively controlled by the person, whether or not any of the property is described or identified in the application.
- (5) A freezing notice may be issued under subsection (3) for all property acquired after the order is made —
- (a) by the person; or
 - (b) by another person at the request or direction of the first-mentioned person.
- (6) When considering an application for a freezing notice, a Justice of the Peace must —
- (a) consider each matter that is alleged by the applicant as a ground for issuing the freezing notice; and
 - (b) if the justice decides to issue the freezing notice — set out in the notice each ground that the justice finds is a ground on which the notice may be issued.
- (7) 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. Freezing notices, contents of

- (1) A freezing notice must —
- (a) describe the property covered by the notice; and
 - (b) include an estimate of the value of the property; and
 - (c) if the property has been removed from the place in which it was found — indicate where, when and from whom it was taken; and
 - (d) summarise the effect of the notice; and
 - (e) advise the recipient to the effect that the property described in the order may be confiscated automatically

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

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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; and

- (f) tell the recipient that he or she may be eligible to file an objection to the confiscation of the property; and
 - (g) give details of the recipient's obligations under section 37; and
 - (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.
- (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. Freezing notices, service, notice and filing of

- (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;
 - (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 the *Personal Property Securities Act 2009* (Commonwealth) or any enactment except the *Transfer of Land Act 1893*, the applicant must notify the [relevant](#) registrar of the issue of the notice.
- (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.

- (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).
- (6) The applicant must ensure that —
- (a) the freezing notice is filed in the court specified in the notice; and
 - (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.

[Section 36 amended by No. 42 of 2011 s. 12; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 34.](#)]

37. Person served with freezing notice to declare any other interested party

- (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.
- (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
 - (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. Freezing notices for registrable real property, duration of and notices about

- (1) A freezing notice for registrable real property comes into force when a memorial of the issue of the freezing notice is registered under section 113(1).

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- (2) A freezing notice for registrable real property stops being in force when a memorial under subsection (4) or (5) in relation to the property is registered under section 113(1).
- (3) However, if the freezing notice was issued on 2 or more grounds, but a memorial has not been lodged under subsection (4) or (5) in relation to each of those grounds, the freezing notice continues in force as if it had been made on each remaining ground.
- (4) If a freezing notice under section 34(2) is in force for registrable real property, the applicant for the freezing notice must lodge a memorial with the Registrar of Titles if —
 - (a) the freezing notice is cancelled under section 40; or
 - (b) the freezing notice is set aside under Part 6; or
 - (c) the property is confiscated under section 6, 7 or 8.
- (5) If a freezing notice for registrable real property was issued under section 34(3) on the basis that a person has been or is likely to be charged with an offence, the applicant for the freezing notice must lodge a memorial with the Registrar of Titles if —
 - (a) when the notice was issued on the basis of advice given under section 34(3)(a) — the person is not charged with the offence within 21 days after the date of the freezing notice; or
 - (b) the charge against the person is disposed of; or
 - (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*; or
 - (d) the freezing notice is cancelled under section 40; or
 - (e) the freezing notice is set aside under Part 6; or
 - (f) the property is confiscated under section 6, 7 or 8.

39. Freezing notices for other property, duration of and notices about

- (1) A freezing notice for any property except registrable real property comes into force when the notice is issued.
- (2) A freezing notice issued under section 34(2) 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;
 - (b) the freezing notice is cancelled under section 40;

- (c) the freezing notice is set aside under Part 6.
- (3) A freezing notice for property (except registrable real property) issued under section 34(3) 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 —
- (a) where the notice was issued on the basis of advice given under section 34(3)(a) — the person is not charged with the offence within 21 days after the date of the freezing notice; or
 - (b) the charge against the person is disposed of; or
 - (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*; or
 - (d) the freezing notice is cancelled under section 40; or
 - (e) the freezing notice is set aside under Part 6; or
 - (f) the property is confiscated under section 6, 7 or 8.
- (4) However, if the freezing notice was issued on 2 or more grounds, but the notice has not ceased to be in force under subsection (3) or (4) in relation to each of those grounds, the freezing order continues in force as if it had been made on each remaining ground.
- (5) When a freezing notice stops being in force for property (except registrable real property) that is registrable under the *Personal Property Securities Act 2009* (Commonwealth) or an enactment, the applicant for the notice must notify the [relevant](#) registrar to that effect.

[Section 39 amended by No. 42 of 2011 s. 13; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 35.](#)]

40. Freezing notices, cancelling etc.

- (1) A police officer or the DPP must cancel a freezing notice issued under section 34(2) 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 —
- (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; and
 - (b) if the notice has been filed in a court — a notice of the cancellation is filed in the court; and

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- (c) any property covered by the notice that is being guarded under section 33(2)(b) is released from guard; and
- (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 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 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. Freezing orders, applying for

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

[\[Section 41 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 36.\]](#)

42. Proceedings for freezing orders, court's powers in

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

- (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;
- (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, making

(1) The court may make a freezing order for property if —

- (a) an examination order, a monitoring order or a suspension order obtained by the applicant for the freezing order is in force in relation to the property; or
- (b) the applicant for the freezing order advises the court that the applicant has applied for an examination order, monitoring order or suspension order in relation to the

property or is likely to apply for such an order within 21 days after the freezing order is made; or

(c) the CCC advises the court that the CCC has made an examination order in relation to the property, or is likely to make an examination order in relation to the property within 21 days after the freezing order is made.

~~(1) The court may make a freezing order for property if —~~

~~(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 has been made in relation to the property, or is likely to be made in relation to the property 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 examination order, monitoring order or suspension 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 —

(a) a production order has been made against the person; or

(b) 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

(c) the applicant for the freezing order ~~DPP~~ advises the court that such an application is likely to be made within 21 days after the freezing order is made.

(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.

(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 —

(a) the person has been charged with an offence, or the applicant for the freezing order ~~DPP~~ advises the court that a person is likely to be charged with an offence

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

[Section 43 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 37.]

44. Freezing orders, court's duties when considering applications for

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

- (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. Freezing orders, court's powers when making

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;
- (b) if the property is moveable — direct that the property is not to be moved except in accordance with the order;

- (c) appoint the [applicant for the order](#), ~~DPP~~, the Public Trustee or the Commissioner of Police to manage the property while the order is in force;
- (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.

[Section 45 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 38.]

46. Freezing orders, service and notice of

- (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;
 - (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 making of the order with the Registrar of Titles.
- (3) If the property is registrable under the *Personal Property Securities Act 2009* (Commonwealth) or any enactment except the *Transfer of Land Act 1893*, the applicant must notify the [relevant](#) registrar of the making of the order.
- (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.
- (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

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for the property is not affected by any service outside the requirements of subsection (1) or (4).

- (6) The notice must —
- (a) summarise the effect of the order; and
 - (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; and
 - (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.

[Section 46 amended by No. 42 of 2011 s. 14; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 39.](#)]

47. Person served with freezing order to declare any other interested party

- (1) A person who is served under section 46 with a copy of a freezing order and a notice must give a statutory declaration to the [applicant for the order](#). ~~DPP.~~
- (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 —
- (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.

[Section 47 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 40.](#)]

48. Freezing orders for registrable real property, duration of and notices about

- (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).
- (2) A freezing order for registrable real property stops being in force when a memorial under subsection (4), (5), (6) or (7) in relation to the property is registered under section 113(1).
- (3) However, if the freezing order was made on 2 or more grounds, but a memorial has not been lodged under subsection (4) or (5) in relation to each of those grounds, the freezing order continues in force as if it had been made on each remaining ground.
- (4) 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, [or that an examination order is likely to be made by the CCC](#), the applicant for the freezing order must lodge a memorial with the Registrar of Titles if —
 - (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; or
 - [\(ab\) where the freezing order was made on the basis of advice given to the court under section 43\(1\)\(c\) that an examination order is likely to be made — the examination order is not made within 21 days after the date of the freezing order; or](#)
 - (b) the application for the other order is withdrawn; or
 - (c) the application for the other order is finally determined but the court does not make the other order; or
 - (d) the freezing order is set aside at the request of the applicant for the freezing order or in proceedings on an objection; or
 - (e) the property is confiscated under section 6, 7 or 8.
- (5) 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 —
 - (a) where the freezing order was made on the basis of advice given to the court under section 43(3)(c) — an application for the declaration or other order is not made within 21 days after the date of the freezing order; or

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- (b) the application for the declaration or other order is withdrawn; or
 - (c) the application for the declaration or other order is finally determined, but the court does not make the declaration or other order; or
 - (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; or
 - (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.
- (6) 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 —
- (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; or
 - (b) the charge against the person is disposed of; or
 - (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*; or
 - (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
 - (e) the property is confiscated under section 6, 7 or 8.
- (7) 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.

[Section 48 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 41.]

49. Freezing orders for other property, duration of and notices about

- (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, or that an examination order is likely to be made by the CCC, 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;
 - (ab) if the freezing order was made on the basis of advice given to the court under section 43(1)(c) that an examination order is likely to be made — the examination order is not made within 21 days after the date of the freezing 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 (except registrable real property) 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 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(3)(c) — 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;
 - (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

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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;
 - (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 —
- (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;
 - (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) 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 —
- (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.
- (6) However, if the freezing order was made on 2 or more grounds, but the order has not stopped being in force under subsection (2), (3), (4) or (5) in relation to each of those grounds, the freezing order continues in force as if it had been made on each remaining ground.

[Section 49 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 42.]

Division 4 — Dealing with seized or frozen property

50. Prohibited dealings

- (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 —
 - (a) a person acting in accordance with an order under section 45(c), 91(2) or 93(2); or
 - (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
 - (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 accused 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 section 33(2) at the relevant time.
- (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.
- (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.

[Section 50 amended by No. 84 of 2004 s. 82.]

51. Effect of prohibited dealings in frozen property

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.

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Part 4 Preventing dealings in confiscable property

Division 4 Dealing with seized or frozen property

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52. Permitted dealings in mortgaged property

If mortgaged property is frozen, nothing in this Act —

- (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
- (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. Financial institutions may volunteer information

A financial institution that has information about a transaction with the institution may give the information to the [DPP, a police officer or an authorised CCC officer](#) ~~DPP or a police officer~~ if there are reasonable grounds for suspecting that the information —

- (a) may be relevant to the investigation of a confiscation offence; or
- (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
- (c) may otherwise facilitate the operation of this Act or the regulations.

[Section 53 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017](#) cl. 43.]

54. Financial institutions may be required to give information

- (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, a police officer or an authorised CCC officer](#) ~~DPP or a police officer~~ may require a financial institution to do any or all of the following —

- (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;
- (e) give information about the existence of any other kind of transaction between the institution and a person described in the requirement;

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- (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.

(1A) Without limiting subsection (1), an authorised CCC officer may require a financial institution to do any or all of the actions set out in subsection (1)(a) to (f) for the purposes of any of the following —

- (a) any proceeding under the *Corruption, Crime and Misconduct Act 2003* that relates to the performance of the CCC's functions under section 21AD of that Act;
- (b) assisting the CCC to decide whether to make an examination order under this Act;
- (c) assisting the CCC to decide whether to apply for, or make, any order under the *Corruption, Crime and Misconduct Act 2003* that relates to the performance of the CCC's functions under section 21AD of that Act.

- (2) A requirement must —
- (a) be in writing served on the institution; and
- (b) specify the information required.
- (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.

[Section 54 amended by the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017* cl. 44.]

55. Financial institution giving information under s. 53 or 54, protection for

- (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
- (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

- (b) an officer of the financial institution who is acting within his or her authority.

56. Financial institution giving false or misleading information under s. 53 or 54, offence

A financial institution commits an offence if the institution knowingly —

- (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

57. Examination of person, applying for order for

- (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. Court and CCC powers when making examination order ~~Examination orders, court's powers when making~~

- (1) The court or the CCC 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;
 - (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;

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Division 2 Examinations

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- (g) the nature, location and source of any property-tracking documents.
- (2) The examination order may do any or all of the following —
- (a) require the person to give to the court [or the CCC, as the case requires](#), any documents (including property-tracking documents) or information in the person's possession or control about the property described in the order;
 - (b) require the person to give to the court [or the CCC, as the case requires](#), any documents (including property-tracking documents) or information in the person's possession or control about the person's wealth, liabilities, expenditure or income;
 - (c) require the person to give to the court [or the CCC, as the case requires](#), any documents (including property-tracking documents) or information in the person's possession or control about another person's wealth, liabilities, expenditure or income;
 - (d) require the person to give to the court [or the CCC, as the case requires](#), 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 [or before the CCC at a place specified in the order, as the case requires](#), for examination, or both;
 - (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.

[Section 58 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 45.]

59. Examination orders, service of

- (1) The applicant for an examination order [or, if the examination order is made by the CCC, the CCC](#) must arrange for a copy of the order to be served personally on the person to be examined.

- (2) A copy of the order is not to be served on anyone except the person to be examined.

[Section 59 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 46.]

60. Examinations, conduct of and representation at

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

60A. Examination by CCC

The Corruption, Crime and Misconduct Act 2003 sections 135, 136, 138(3), 141, 142, 143 and 147 apply in relation to an examination order made by the CCC and to an examination conducted by the CCC under this Division as if the examination were being conducted for the purposes of an investigation under that Act.

[Section 60A inserted by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 47.]

61. Examination orders, contravening and admissibility of information given under

- (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 —
- (a) the owner is not entitled to file an objection to the confiscation of the property; and
 - (b) if the owner has already filed an objection — the objection is of no effect; and
 - (c) the owner commits an offence.
- (2) A person convicted of an offence under subsection (1)(c) is liable to a fine of \$100 000 or an amount equal to the value of the property, whichever is greater, or imprisonment for 5 years, or both.
- (3) If a person examined under an examination order in connection with another person's wealth, liabilities, income or expenditure

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Division 2 Examinations

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contravenes the order, or the examiner's requirements under the order, the person commits an offence and is liable —

- (a) to a maximum fine of an amount equal to the value of the frozen property or of \$50 000, whichever is greater; or
 - or
 - (b) to imprisonment for a maximum of 2 years; or
 - (c) to both a fine under paragraph (a) and imprisonment under paragraph (b).
- (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
 - (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 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.
- (5A) Subsection (5) applies in relation to an examination order made by the CCC and an examination conducted by the CCC under this Division despite the *Corruption, Crime and Misconduct Act 2003* section 147(3) as applied under section 60A.
- (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 otherwise.
- (7) A statement or disclosure made by a person in the course of complying with an examination order made by the court is admissible as evidence against the person —
- (a) in a proceeding against the person for an offence under this section; and
 - (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.

(8) The Corruption, Crime and Misconduct Act 2003 section 145 applies in relation to the admissibility in evidence of a statement or disclosure made by a person in the course of complying with an examination order made by the CCC.

[Section 61 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 48.]

Division 3 — Production of documents

62. Production orders, applying for

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

[Section 62 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 49.]

63. Production orders, making

- (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.

(2) The order may direct the person —

(a) to give the property-tracking document to —

(i) the DPP or a police officer, if the DPP applied for the order; or

(ii) the CCC or an authorised CCC officer, if the CCC applied for the order;

or

(b) to make the property-tracking document available to —

(i) the DPP or a police officer for inspection, if the DPP applied for the order; or

(ii) the CCC or an authorised CCC officer, if the CCC applied for the order.

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- ~~(2) The order may direct the person —~~
- ~~(a) to give the property tracking document to the DPP or a police officer; or~~
- ~~(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.

[Section 63 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 50.]

64. Property-tracking documents, inspection etc. of

- (1) When a property-tracking document is given to the DPP, a police officer, the CCC or an authorised CCC officer ~~DPP or a police officer~~ in accordance with a direction under section 63(2)(a), the DPP, police officer, CCC or authorised CCC officer ~~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;
 - (d) retain the document for as long as its retention is reasonably required for the purposes of this Act.
- (2) If the DPP, police officer, CCC or authorised CCC officer ~~DPP or police officer~~ retains the property-tracking document, the DPP, police officer, CCC or authorised CCC officer ~~DPP or police officer~~ must, on the request of the person required by the order to produce the document —
- (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, police officer, CCC or authorised CCC officer ~~DPP or police officer~~ in writing to be a true copy of the document.

- (3) When a property-tracking document is made available to the DPP, a police officer, the CCC or an authorised CCC officer ~~DPP or a police officer~~ for inspection in accordance with a direction under section 63(2)(b), the DPP, police officer, CCC or authorised CCC officer ~~DPP or police officer~~ may do any one or more of the following —
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document.

[Section 64 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 51.]

65. Production orders, contravening and admissibility of information given under

- (1) A person who contravenes a production order without reasonable excuse commits an offence.
- (2) A person commits an offence if the person, in purported compliance with a production order, produces or makes available to the DPP, a police officer, the CCC or an authorised CCC officer ~~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 —
- (a) tells the DPP, a police officer, the CCC or an authorised CCC officer ~~DPP or a police officer~~ that the document is false or misleading; and
 - (b) indicates the respects in which it is false or misleading; and
 - (c) gives the DPP, a police officer, the CCC or an authorised CCC officer ~~DPP or a police officer~~ any correct information which is in the person's possession or control.
- (4) A person convicted of an offence under subsection (1) or (2) is liable to a fine of \$100 000 or imprisonment for 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 incriminate the person or render him or her liable to a penalty.

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Division 4 Monitoring financial transactions

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- (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 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 —
 - (a) in a proceeding against the person for an offence under this section; and
 - (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.

[Section 65 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 52.]

66. Production orders, varying

- (1) If a production order requires a person to give a property-tracking document to the [DPP, a police officer, the CCC or an authorised CCC officer](#), ~~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, a police officer or the CCC \(as the case requires\) for 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.

[Section 66 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 53.]

Division 4 — Monitoring financial transactions

67. Monitoring orders and suspension orders, applying for

- (1) The DPP [or the CCC](#) may apply to the District Court for a monitoring order.
- (2) The DPP [or the CCC](#) may apply to the District Court for a suspension order.

- (3) An application may be made ex parte.

[Section 67 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 54.]

68. Monitoring orders and suspension orders, making

- (1) The court may order a financial institution to give information about all transactions carried out through an account held with the institution by a person named in the order —

- (a) the DPP or a police officer, if the DPP applied for the order; or
(b) the CCC, if the CCC applied for the order.

~~(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 —

- (a) to notify the following persons immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order —

- (i) the DPP or a police officer, if the DPP applied for the order;
(ii) the CCC, if the CCC applied for the order;

and

- (b) to notify the following persons immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account —

- (i) the DPP or a police officer, if the DPP applied for the order;
(ii) the CCC, if the CCC applied for the order;

and

~~(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; and~~

~~(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~~

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- (c) to refrain from completing or effecting the transaction for 48 hours.
- (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; or
 - (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.
- (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 —
 - (a) the financial institution to which the order applies; and
 - (b) the name or names in which the account is believed to be held; and
 - (c) the class of information that the institution is required to give; and
 - (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 —
 - (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.

[Section 68 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 55.]

69. Contravening monitoring order or suspension order, offence

A person commits an offence if the person knowingly —

- (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

70. Disclosure of certain information restricted, offence

- (1) A person must not make a disclosure to anyone, except as permitted under section 71, about —
 - (a) the fact that a financial institution, or an officer of a financial institution, intends to give or has given information to the [DPP, a police officer or an authorised CCC officer](#)~~DPP~~ under section 53; or
 - (b) the nature of any information given under section 53; or
 - (c) the fact that a requirement or a response to it has been or is to be made under section 54; or
 - (d) the content of a requirement or response made under section 54; or
 - (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
 - (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 —
 - (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; or
 - (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; or
 - (c) makes or keeps a record of any information about a requirement or response under section 54; or
 - (d) discloses anything about the existence or operation of an examination order, a production order, a monitoring order or a suspension order; or
 - (e) discloses information to a person from which the person could reasonably be expected to infer anything about the

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existence or operation of an examination order, a production order, a monitoring order or a suspension order; or

- (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.

[Section 70 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 56.]

71. Who restricted disclosures may be made to

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

(a) the DPP or a police officer, if the restricted disclosure relates to —

(i) information intended to be given to, or that has been given to, the DPP or a police officer under section 53; or

(ii) a requirement made by, or response given to, the DPP or a police officer under section 54; or

(iii) a production order, examination order, monitoring order or suspension order for which the DPP applied;

(aa) the CCC or an authorised CCC officer, if the restricted disclosure relates to —

(i) information intended to be given to, or that has been given to, the CCC or an authorised CCC officer under section 53; or

(ii) a requirement made by, or response given to, the CCC or an authorised CCC officer under section 54; or

(iii) an examination order made by the CCC or a monitoring order or suspension order for which the CCC applied;

~~(a) the DPP or a police officer;~~

(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 any one or more of the following —

(a) the DPP or a police officer, if the restricted disclosure relates to —

(i) information intended to be given to, or that has been given to, the DPP or a police officer under section 53; or

(ii) a requirement made by, or response given to, the DPP or a police officer under section 54; or

(iii) a production order, examination order, monitoring order or suspension order for which the DPP applied;

(b) the CCC or an authorised CCC officer, if the restricted disclosure relates to —

(i) information intended to be given to, or that has been given to, the CCC or an authorised CCC officer under section 53; or

(ii) a requirement made by, or response given to, the CCC or an authorised CCC officer under section 54; or

(iii) an examination order made by the CCC or a monitoring order or suspension order for which the CCC applied;

(c) a legal practitioner, but only for the purpose of obtaining legal advice or representation in relation to an examination order, if the restricted disclosure is about information intended to be given to or that has been given to, the DPP, a police officer, the CCC or an authorised CCC officer.

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~~(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) 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.
- (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.

[Section 71 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 57.]

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

73. Confiscable property etc., powers to search etc. people for

- (1) A police officer or an authorised CCC 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.

- (2) A police officer or an authorised CCC 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.
- (3) For the purpose of exercising their ~~his or her~~ powers under subsection (1) or (2), a police officer or an authorised CCC officer may stop and detain a vehicle.
- (4) When a police officer or an authorised CCC 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) When exercising their ~~his or her~~ powers under this section, a police officer or an authorised CCC officer may use any necessary force and any assistance the officer thinks necessary.

[Section 73 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 58.]

74. Search warrants

- (1) A police officer or an authorised CCC officer may apply to a Justice of the Peace for a search warrant.
- (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 —
 - (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 or an authorised CCC officer to do any or all of the following, using any necessary force and with any assistance the officer thinks necessary —
 - (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;

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(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.

[Section 74 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 59.]

75. Search of person under s. 73 or 74, who may perform

(1) When a police officer or an authorised CCC officer exercises ~~their 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 or authorised CCC officer may —

(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.

[Section 75 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 60.]

76. Additional powers for powers under s. 73 and 74

(1) When a police officer or an authorised CCC officer exercises ~~any of their 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 —

(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;

- (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;
 - (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).

[Section 76 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017](#) cl. 61.]

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Part 5 Investigation and search

Division 6 Detention, search and seizure

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77. Warrant under s. 74 extends to documents produced later

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 [or an authorised CCC officer](#) may take the action when the document becomes available.

[Section 77 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017](#) cl. 62.]

78. Other laws on search warrants not affected

Nothing in this Act affects the operation of any other enactment requiring or authorising a police officer [or an authorised CCC officer](#) to obtain a warrant to enter or search property.

[Section 78 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017](#) cl. 63.]

Part 7 — Management of seized, frozen and confiscated property

Division 1 — Control and management of property

88. Seized property, control etc. of

- (1) The Commissioner of Police has responsibility for the control and management of property seized by a police officer, whether under section 33(1) or under a warrant under section 74.

(1A) The CCC has responsibility for the control and management of property seized by an authorised CCC officer under a warrant under section 74.

- (2) The power conferred by section 9 of the *Police Act 1892* is 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.

[Section 88 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 64.]

89. Frozen and confiscated property, control etc. of

- (1) The DPP has responsibility for the control and management of frozen property (except frozen property to which subsection (1A) relates) unless the court otherwise orders under section 45(c) or 91(2).

(1A) The CCC has responsibility for the control and management of frozen property that is subject to a freezing order applied for by the CCC 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 (except confiscated property to which subsection (2A) relates) until it is disposed of.

(2A) Until the property is disposed of, the CCC has responsibility for the control and management of confiscated property that is —

(a) property confiscated under section 6 to pay the amount specified in an unexplained wealth declaration or criminal benefits declaration obtained by the CCC; or

(b) frozen property confiscated under section 7 that is the subject of a freezing order obtained by the CCC.

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Part 7 Management of seized, frozen and confiscated property

Division 1 Control and management of property

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- (3) The DPP or the CCC ~~The DPP~~ may appoint any of the following persons to manage property for which the DPP or CCC (as the case requires) has responsibility under this section — ~~the DPP has responsibility under subsection (1) or (2) —~~

- (a) the Public Trustee;
- (b) the Commissioner of Police;
- (c) in the case of frozen property — a person who owns the property.

[Section 89 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 65.]

90. Capacity of DPP or CCC to carry out transactions ~~Disposal of property, DPP's powers as to contracts for etc.~~

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

[Section 90 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 66.]

91. Control etc. of frozen property by owner, court may order

- (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 —
 - (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. Person controlling etc. property, duties of

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 —

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

- (b) another person becomes responsible for the control and management of the property; or
- (c) the property is sold or destroyed; or
- (d) the property is otherwise disposed of.

Division 2 — Disposal of deteriorating or undesirable property

93. Destruction of seized etc. property on grounds of public interest, court may order

- (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. Deteriorating frozen property, sale of

- (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 —
 - (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.
- (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 —
 - (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.
- (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.

Criminal Property Confiscation Act 2000

Part 7 Management of seized, frozen and confiscated property

Division 3 Management of property by Public Trustee

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95. Frozen property, valuation and inventory of

- (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.
- (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 may appoint person to control etc. property

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

97. Taxes etc. on frozen property, Public Trustee's liability for

- (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.
- (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.

98. Interstate property, management of

- (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.

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

99. Public Trustee entitled to fees for controlling etc. frozen or confiscated property

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

100. Obstructing Public Trustee, offence

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 for this Act

- (1) The Supreme Court has jurisdiction in any proceedings under this Act.
- (2) The District Court has jurisdiction in any proceedings 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 the jurisdictional limit (within the meaning of section 6 of the *District Court of Western Australia Act 1969*).
- (3) The Magistrates Court has jurisdiction in proceedings 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 the jurisdictional limit (within the meaning of section 4 of the *Magistrates Court (Civil Proceedings) Act 2004*).
- (4) Despite subsection (3), the Magistrates Court has no jurisdiction in proceedings for an unexplained wealth declaration or an examination order.
- (5) Despite subsections (3) and (4), if both the applicant and the respondent consent, the Magistrates Court may hear and determine —
 - (a) an objection; or
 - (b) an application for —
 - (i) an unexplained wealth declaration; or
 - (ii) a criminal benefits declaration; or
 - (iii) a crime-used property substitution declaration.
- (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.
- (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.

- (8) Nothing in this section affects the jurisdiction of a court in criminal proceedings under this Act.

[Section 101 amended by No. 59 of 2004 s. 141; No. 2 of 2008 s. 61(2).]

102. Proceedings, general provisions about

- (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 —
- (a) a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act; and
 - (b) the rules of evidence applicable in civil proceedings apply in proceedings under this Act; and
 - (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 decided on the balance of probabilities.

103. Attorney General entitled to appear in proceedings

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

[Section 103 amended by the [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 67.](#)]

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 of some people admissible

- (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

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activities involving prohibited plants or prohibited drugs, about the following matters —

- (a) the amount that was the market value at a particular time of a particular kind of prohibited plant or prohibited drug;
 - (b) the amount, or range of amounts, ordinarily paid at a particular time for doing anything in relation to a particular kind of prohibited plant or prohibited 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.

106. Findings that property is crime-used or crime-derived, making

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 —

- (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; and
- (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 as to confiscation offence may be used in confiscation proceedings

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;

- (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.

108. Examination orders, admissibility of transcript of proceedings under

(1) ~~For the~~ For the purposes of section 61(7), the transcript of an examination of a person under an examination order made by the court 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.

(2) *The Corruption, Crime and Misconduct Act 2003 section 145 applies in relation to the admissibility in evidence of a statement or disclosure made by a person in the course of complying with an examination order made by the CCC.*

[Section 108 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 68.]

109. Hearsay evidence etc., use of

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. Production orders, admissibility of documents produced etc.

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 offence under section 65.

111. *Misuse of Drugs Act 1981 s. 38(2)*, effect of certificate under

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.

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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 —
 - (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 10 — Mutual recognition of freezing orders and confiscation of property

Division 1 — Registration of WA orders in other jurisdictions

117. Freezing notices and orders, content of for interstate registration and effect of interstate

- (1) For the purpose of enabling a freezing notice or freezing order to be registered under a corresponding law of another State or a Territory, the notice or order may be expressed to apply to property in the State or Territory.
- (2) The notice or order does not apply to property in another State or a Territory except to the extent that —
 - (a) a corresponding law of the State or Territory provides that the notice or order has effect in the State or Territory when it is registered under that law; or
 - (b) if the property is moveable — when the order took effect, the property was not located in a State or Territory in which a corresponding law is in force.

Division 2 — Recognition of orders of other jurisdictions

118. Interstate orders, registration of

- (1) If an interstate freezing order, or an interstate confiscation declaration, expressly applies to property that is in this State, the order may be registered under this Act.
- (2) An order is registered under this Act when a copy of the order, sealed by the court that made the order, is registered in accordance with the rules of the Supreme Court.
- (3) Any amendments made to an interstate freezing order or an interstate confiscation declaration may be registered in the same way, whether the amendments were made before or after the registration of the original declaration, but the amendments are of no effect until they are registered.
- (4) An application for registration may be made by the applicant for the interstate order or declaration or amendments, by the DPP, [the CCC](#) or by any person affected by the order or amendments.

[\[Section 118 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 69.\]](#)

Criminal Property Confiscation Act 2000

Part 10 Mutual recognition of freezing orders and confiscation of property

Division 2 Recognition of orders of other jurisdictions

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119. Registered interstate freezing orders, effect of

- (1) A registered interstate freezing order may be enforced in this State as if the order had been made under section 43.
- (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. Registered interstate confiscation declarations, effect of

- (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.
- (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. Registered interstate freezing orders etc., duration of

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. Registered interstate freezing orders etc., cancelling

- (1) The Supreme Court may cancel the registration of an interstate freezing order or interstate confiscation declaration if —
 - (a) registration was improperly obtained; or
 - (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, [the CCC](#) or by a person affected by the order.

[Section 122 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 70.]

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 —
 - (a) the order was made in connection with a confiscation offence committed interstate by the owner of the property; and
 - (b) an interstate criminal benefits declaration is made against the person in connection with the confiscation offence; and
 - (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 registered in a court of this State.
- (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

- (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;
 - (c) the amount due under or as a result of the declaration is paid;
 - (d) the owner of the property becomes, according to the *Interpretation Act 1984* section 13D, a 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;
 - (f) the property is sold or otherwise disposed of in accordance with subsection (2).

Criminal Property Confiscation Act 2000

Part 10 Mutual recognition of freezing orders and confiscation of property

Division 3 Charges on interstate property

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- (2) For the purposes of subsection (1)(f), property may be sold or otherwise disposed of —
- (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; or
 - (b) by the owner of the property with the consent of the court that made the interstate criminal benefits declaration; or
 - (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.

[Section 124 amended by No. 18 of 2009 s. 27.]

125. Priority of charge

- (1) A charge created on property under section 123(1) —
- (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; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to section 124, is not affected by any change of ownership of the property.
- (2) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 73(2)(a), it is declared that section 73(2) of that Act applies to a charge created on property under section 123(1).

[Section 125 amended by No. 42 of 2011 s. 15.]

126. Charge on land, registration of memorial of

- (1) If a charge is created on land under section 123, the [DPP](#), the [CCC 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.
- (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.

- (3) If the charge ceases to have effect, the [DPP](#), the [CCC](#) ~~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.

[Section 126 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 71.]

127. Charge on property other than land, registration of

- (1) The [DPP](#), the [CCC](#) ~~DPP~~ or the Public Trustee may lodge a memorial of a charge on property of a kind other than land under the *Personal Property Securities Act 2009* (Commonwealth) or any enactment that provides for the registration of interests in property of that kind, and the memorial may be registered in accordance with that Act or the enactment.
- (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.
- (3) If the charge ceases to have effect, the [DPP](#), the [CCC](#) ~~DPP~~ or the Public Trustee may withdraw the memorial in accordance with the *Personal Property Securities Act 2009* (Commonwealth) or the enactment, and the registration of the memorial may be cancelled in accordance with that Act or the enactment.

[Section 127 amended by No. 42 of 2011 s. 16; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 72.](#)]

Part 11 — Miscellaneous

128. Act binds States, Territories and Commonwealth

- (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

- (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.
- (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.
- (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 section 75(1)(c) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (4) Property that is protected from confiscation —
 - (a) is not confiscated under section 6, 7 or 8; and
 - (b) is not to be frozen; and
 - (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, creation and administration of

- (1) An agency special purpose account called the Confiscation Proceeds Account is established under section 16 of the *Financial Management Act 2006*.
- (2) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* 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 Management Act 2006*, 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.

[Section 130 amended by No. 77 of 2006 Sch. 1 cl. 40.]

131. Confiscation Proceeds Account, funds and purposes of

- (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;
 - (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;
 - (d) money that the *Road Traffic Act 1974* section 80J(7)(j)(ii) requires to be paid to the credit of the account.
- (2) Money may be paid out of the Confiscation Proceeds Account at the direction of the Attorney General, as reimbursement or otherwise —
 - (a) for a purpose associated with the administration of this Act; and
 - (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; and
 - (c) to provide support services and other assistance to victims of crime; and

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- (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; and
- (e) to carry out operations authorised by the Commissioner of Police or the CCC for the purpose of identifying or locating confiscable property; and
- (f) to cover any costs of storing, seizing or managing frozen or confiscated property that are incurred by the Police Force, the DPP, the CCC~~DPP~~ or a person appointed under this Act to manage the property; and
- (g) for any other purposes in aid of law enforcement.

[Section 131 amended by No. 4 of 2007 s. 26; Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 73.]

132. Obstructing police officers or authorised CCC officers~~Obstructing police officers, offence~~

- (1) A person commits an offence if the person wilfully delays or obstructs a police officer or an authorised CCC officer in the performance of the officer's functions~~in the performance of the functions of a police officer~~ under this Act, or a person assisting a police officer or an authorised CCC officer~~assisting a police officer~~ in the performance 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 or an authorised CCC officer in the performance of the~~in the performance of the~~ ~~police~~ officer's functions under this Act, or a person assisting a police officer or an authorised CCC officer~~assisting a police officer~~ in the performance of those functions.

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

[Section 132 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 74.]

133. Subsequent applications, notices, orders etc. not prevented

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. Delegation by DPP

- (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; and
 - (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.

134A. CCC's power to delegate

- (1) The CCC may delegate to an officer of the CCC the performance of any of the functions of the CCC under this Act, except the following —
 - (a) the power to make an order under section 58(1);
 - (b) the power to examine a person under oath;
 - (c) this power of delegation.
- (2) A delegation —
 - (a) must be made by written instrument; and
 - (b) is made on behalf of and subject to the direction and control of the CCC; and
 - (c) may be made generally or as otherwise provided by the instrument.

[Section 134A inserted by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 75.]

135. Sham transactions, orders as to

- (1) The DPP or the CCC 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 —
 - (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.

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- (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 —
 - (a) dealing with property; and
 - (b) the disposition of any proceeds from the sale of property; and
 - (c) making payments of money; and
 - (d) creating a charge on property in favour of any person and the enforcement of the charge.
- (4) The court may rescind or vary an order made under this section.

[Section 135 amended by the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 76.]

136. Offences by body corporate, liability of officers of in case of etc.

- (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 member in connection with the member's functions of management as if the member were a director of the body corporate.
- (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
 - (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 precautions and exercised due diligence to avoid the conduct.

137. Protection from personal liability

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. Death of owner, effect of

- (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.
- (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.
- (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.

139. Legal professional privilege withdrawn

- (1) A person is not entitled to contravene an order or requirement under this Act in relation to any information or any property-tracking document or other document, on the basis that the information, property-tracking document or other document is subject to legal professional privilege, or contains or is likely to contain information that would, apart from this subsection, be subject to legal professional privilege.
- (2) A warrant under section 74 may be issued and executed in relation to a property-tracking document whether or not the document would, apart from this subsection, be subject to legal professional privilege, or contains or is likely to contain

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information that would, apart from this subsection, be subject to legal professional privilege.

- (3) Any information or property-tracking document or other document produced or obtained under or for the purposes of this Act, or any information in a property-tracking document or other document produced or obtained under or for the purposes of this Act is not inadmissible in any proceedings under this Act only because the information, property-tracking document or other document would, apart from this subsection, be subject to legal professional privilege.

140. 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.
- (2) Without limiting subsection (1), the regulations may —
- (a) provide for carrying out the destruction of property under an order under section 93; and
 - (b) provide for carrying out the sale of deteriorating property under an order under section 94; and
 - (c) provide for obtaining possession of confiscated property; and
 - (d) provide for the storage and management of confiscated property; and
 - (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.

Glossary

[s. 3]

1. Terms used

In this Act —

abscond, in connection with an offence, has the meaning given in section 160;

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;

agent includes, if the agent is a corporation, an officer of the corporation;

authorised CCC officer means an authorised officer as defined in the *Corruption, Crime and Misconduct Act 2003* section 184(1);

CCC means the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003* section 8(1);

charge, in relation to an offence, has the meaning given in section 158;

confiscable, in relation to property, has the meaning given in section 142;

confiscable property declaration means a declaration made under section 28;

confiscated, in relation to property, means confiscated under section 6, 7 or 8;

confiscation offence has the meaning given in section 141;

Confiscation Proceeds Account means the account established under section 130;

conviction, in relation to a confiscation offence, has the meaning given in section 157;

corporation means —

- (a) a financial institution; or
- (b) a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of section 66A of that Act;

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 —

- (a) in relation to making an application under this Act — a court having jurisdiction under section 101 to hear and determine the application; or

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

crime-derived, in relation to property, has the definition given in section 148;

crime-used, in relation to property, has the meaning given in section 146;

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

criminal benefit has the definition given in section 145;

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 147;

deal, in relation to property, has the meaning given in section 151;

declared drug trafficker has the meaning given in section 159;

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

- (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; or
- (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
- (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; or
- (b) dismiss; or
- (c) file a nolle prosequi in relation to the charge or discontinue the prosecution of it;

document includes —

- (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);

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

effective control, in relation to property, has the definition given in section 156;

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);

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 —

- (a) an ADI within the meaning of section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of section 51(xiii) of the Commonwealth Constitution; or
- [(d) *deleted*]
- (e) a co-operative registered under the *Co-operatives Act 2009* that is permitted under that Act to accept money on deposit; or
- (f) a financial corporation within the meaning of section 51(xx) of the Constitution of the Commonwealth; or
- (g) 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;

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;

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 153;

instrument, in relation to a dealing with registrable real property, means —

- (a) a memorial under this Act; or
- (b) an instrument as defined in the *Transfer of Land Act 1893*;

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;

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;

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;

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;

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 149;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

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

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

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;

police officer, in relation to a function, includes a person authorised to carry out the function under regulations made under section 140(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*;

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
- (b) a legal or equitable interest in any property referred to in paragraph (a);

property-tracking document has the meaning given in section 155;

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 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;

registration, in relation to an instrument relating to a dealing in registrable real property, has the same meaning as in section 52 of the *Transfer of Land Act 1893*;

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 —

- (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 declaration 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 declaration is made;

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 150;

sham transaction has the meaning given in section 161;

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);

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;

unexplained wealth has the meaning given in section 144;

unexplained wealth declaration means a declaration under section 12;

valuable consideration, in relation to the transfer of property, does not include —

- (a) any consideration for the transfer arising from the fact of a family relationship between the transferor and transferee; or
- (b) if the transferor is the spouse or de facto partner of the transferee — the making by the transferor of a deed in favour of the transferee; or
- (c) a promise by the transferee to become the spouse or de facto partner of the transferor; or
- (d) any consideration arising from the transferor's love or affection for the transferee; or
- (e) the transfer of the property as a result of the distribution of a deceased estate; or
- (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
- (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; and
- (b) a person's wealth — has the meaning given in section 144(2); and
- (c) a person's lawfully acquired wealth — has the meaning given in section 144(3); and
- (d) property sold by or for the State — has the meaning given in section 152; and
- (e) the transfer of property — has the meaning given in section 154;

wealth has the meaning given in section 143.

[Glossary amended by No. 12 of 2001 s. 51; No. 20 of 2003 s. 19; No. 28 of 2003 s. 42; No. 17 of 2005 s. 25; No. 2 of 2008 s. 61(3); No. 22 of 2008 Sch. 3 cl. 17; No. 24 of 2009 s. 508 and 513; No. 19 of 2010 s. 51; No. 35 of 2010 s. 60; [Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 cl. 77.](#)]

Notes

¹ This is a compilation of the *Criminal Property Confiscation Act 2000* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Property Confiscation Act 2000</i>	68 of 2000	6 Dec 2000	s. 1 and 2: 6 Dec 2000; Act other than s. 1 and 2: 1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
<i>Building Societies Amendment Act 2001</i> s. 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 7	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 15	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Housing Societies Repeal Act 2005</i> s. 25	17 of 2005	5 Oct 2005	10 Jul 2010 (see s. 2(3) and <i>Gazette</i> 9 Jul 2010 p. 3239)
Reprint 1: The <i>Criminal Property Confiscation Act 2000</i> as at 9 Dec 2005 (includes amendments listed above except those in the <i>Housing Societies Repeal Act 2005</i>)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 40	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Road Traffic Amendment Act 2007</i> s. 26	4 of 2007	11 Apr 2007	1 May 2007 (see s. 2 and <i>Gazette</i> 27 Apr 2007 p. 1831)
<i>Criminal Law and Evidence Amendment Act 2008</i> s. 61	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Medical Practitioners Act 2008</i> Sch. 3 cl. 17	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
Reprint 2: The <i>Criminal Property Confiscation Act 2000</i> as at 20 Mar 2009 (includes amendments listed above except those in the <i>Housing Societies Repeal Act 2005</i>)			
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 27	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

Criminal Property Confiscation Act 2000

Short title	Number and year	Assent	Commencement
<i>Co-operatives Act 2009</i> s. 508 and 513	24 of 2009	22 Oct 2009	s. 508: 1 Sep 2010 (see s. 2(b) and <i>Gazette</i> 13 Aug 2010 p. 3975); s. 513: 1 Sep 2012 (see s. 2(c) and <i>Gazette</i> 13 Aug 2010 p. 3975)
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 18	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> Pt. 3 Div. 1	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Reprint 3: The Criminal Property Confiscation Act 2000 as at 4 May 2012 (includes amendments listed above except those in the <i>Co-operatives Act 2009</i> s. 513)			
<i>Criminal Organisations Control Act 2012</i> s. 176(1)-(4)	49 of 2012	29 Nov 2012	2 Nov 2013 (see s. 2(b) and <i>Gazette</i> 1 Nov 2013 p. 4891)
<u><i>Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017</i> Pt. 3</u>		<u>Current Bill No. 21-1</u>	

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Criminal Organisations Control Act 2012</i> s. 176(5) ³	49 of 2012	29 Nov 2012	To be proclaimed (see s. 2(b))

² Repealed by the *Sentencing (Consequential Provisions) Act 1995* s. 77.

³ On the date as at which this compilation was prepared, the *Criminal Organisations Control Act 2012* s. 176(5) had not come into operation. It reads as follows:

176. Criminal Property Confiscation Act 2000 amended

(5) In section 159(2) after paragraphs (b) and (c) insert:

and

