BRIEFING NOTE TO THE ATTORNEY GENERAL

UNEXPLAINED WEALTH

Proposal

The Commission seeks your support for amendments to the Criminal Property Confiscation Act 2000 (CPC Act) and the CCM Act to confer unexplained wealth functions upon the Commission in addition to the Director of Public Prosecutions.

The Commission’s expertise and experience as a multidisciplinary investigative agency is well suited to this function. The conferral of a new unexplained wealth function on the Commission will act as a measure to enable the Commission to fulfil its statutory purpose as a ‘Crime Commission' to combat and reduce the incidence of organised crime.

This proposal seeks to:

• give the Commission the function to conduct investigations into unexplained wealth and civil confiscation proceedings where there is evidence of unexplained wealth;
• enable the Commission to self-initiate unexplained wealth investigations or to act on a referral from another law enforcement agency (including intra-state or interstate, territory or Commonwealth);
• draw on the experience and resources of the Commission and make use of under-utilised unexplained wealth provisions in existing legislation;
• enable the Commission to use its existing compulsory powers under the CCM Act to complement those under the CPC Act.

The Commission’s unexplained wealth proposal does not diminish existing statutory functions available to the DPP and WA Police, but empowers the Commission to exercise a function provided for in the CPC Act which is not currently utilised by these agencies, particularly due to resourcing and operational limitations. Despite their relatively recent development in Australia, unexplained wealth legislative regimes have been implemented in most Australian jurisdictions and are considered an effective deterrent by removal of the financial incentive and profitability associated with criminal activity.

The Commission proposes initially to establish an unexplained wealth investigative team and legal practice using the Commission’s existing resources, however the diversion of funds to unexplained wealth will have an impact on other investigative outputs. It is envisaged that the ongoing costs of the unexplained wealth function may be realised by the success of confiscation proceedings. Accordingly, the Commission seeks a review and evaluation of its performance within three years after the conferral of an unexplained wealth function.
Background

Past efforts by the Commission to amend the Corruption, Crime and Misconduct Act 2003 (CCM Act) and confer upon the Commission a non-conviction based asset confiscation function have not effected legislative change. The impetus for conferral of unexplained wealth functions on the Commission was a recommendation by Gail Archer SC in the February 2008 Review of the Corruption and Crime Commission Act 2003. That recommendation was supported by the bi-partisan Joint Standing Committee on the Corruption and Crime Commission endorsed in two separate reports (No. 28 of 2012 and No.1 of 2013).

A draft bill, prepared in consultation with the Department of the Premier and Cabinet, was introduced into the Legislative Assembly on 21 June 2012 but lapsed with the prorogation of parliament.

The conferral of an unexplained wealth function on the Commission has had, and continues to have, the support of the Director of Public Prosecutions and the Commissioner of Police WA.

The objectives of the Commission's proposal are closely aligned to the Labor Government's Law Reform Initiatives, and particularly, the Methamphetamine Action Plan. Serious and organized crime are known to be heavily involved in the methylamphetamine trade. Crime reduction in this trade particularly will be greatly enhanced by enforcement of effective legislation that reiterates the message that crime does not pay.

Cabinet Submission

A Cabinet submission has been prepared for your consideration that seeks Cabinet approval to prepare a draft bill to grant the Corruption and Crime Commission powers and functions to investigate unexplained wealth and to conduct civil confiscation proceedings with respect to unexplained wealth.