

## CLAUSE NOTES

### *Crime (Confiscation of Profits) Amendment Bill 2018*

#### PART 1 – PRELIMINARY

**Clause 1: Short title**

Cites the Bill as the *Crime (Confiscation of Profits) Amendment Bill 2018*.

**Clause 2: Commencement**

Provides for the Bill to commence on Royal Assent.

**Clause 3: Repeal of Act**

Provides for the repeal of the Bill a year from the day it commences.

#### PART 2 – CRIME (CONFISCATION OF PROFITS) ACT 1993 AMENDED

**Clause 4: Principal Act**

Cites the Principal Act as the *Crime (Confiscation of Profits) Act 1993*.

**Clause 5: Section 80 amended (Interpretation)**

Provides that in order to remove doubt, a requirement may be made of or an obligation held by a body of persons, such as an incorporated or unincorporated club or association.

Further, where that requirement is made or obligation held, it is also held by each person within that club or association to the extent that the person can fulfil the requirement or satisfy the obligation given their actual or apparent authority within the club or association.

**Clause 6: Section 87 amended (Notice to financial organisations to provide information)**

Amends section 87 of the Act by clarifying that the Director of Public Prosecutions may by written notice require financial organisations to provide any record, information, material or thing that may be relevant to unexplained wealth proceedings or persons specified in a notice.

A number of additional minor amendments are made to section 87 to give effect to this requirement, including:

- describing how the item is to be delivered to the Director of Public Prosecutions;
- providing that the Director of Public Prosecutions may retain the item for as long as is necessary;

- that the Director of Public Prosecutions must if possible, provide a certified copy of the record, information, material or thing to a person who would otherwise be entitled to be in possession of it; and
- a provision which specifies that a certified copy of the record, information, material or thing is to be received in all Courts and elsewhere as evidence of the matters contained in the copy as if it were the original.

**Clause 7: Section 90 amended (Giving false or misleading information)**

Provides that the offence of giving false or misleading information also applies to section 87 of the Act.

**Clause 8: Section 92 amended (Examination Orders)**

Extends the operation of examination orders to allow a person to be examined about whether his or her own wealth is lawfully acquired.

Provides that a person may be examined about the nature, location and source of property that forms or may form part of the wealth, liabilities, income and expenditure of a person who has or is suspected on reasonable grounds of having wealth this is not lawfully acquired.

Provides that a person may be examined about the identity of any person who may have possession, control, custody or management of:

- the wealth, liabilities, income and expenditure of a person who has or is suspected on reasonable grounds of having wealth that is not lawfully acquired;
- the wealth, liabilities income and expenditure of the person to be examined; and
- any property-tracking documents.

**Clause 9: Section 94 amended (Complying with examination orders)**

Extends the provisions relating to the admissibility of statements or disclosures made by persons to allow for statements and disclosures that have been made by persons, including the subject of unexplained wealth proceedings to be used for proceedings under the Act that may lead the forfeiture of property.

**Clause 10: Section 97 amended (Document production orders)**

Extends the operation of document production orders so that they may also apply to the subject of unexplained wealth proceedings.

**Clause 11: Section 99 amended (Complying with document production orders)**

Extends the provisions relating to the admissibility of information contained in a property tracking document or statement or disclosure made by a person in complying with a document production order, to allow for those documents to be used for proceedings under the Act that may lead the forfeiture of property.

**Clause 12: Section 108 amended (Disclosure not permitted)**

Extends the operation of the disclosure offence provision to disclosure that relates to a person.

**Clause 13: Section 116 amended (Interim wealth-restraining orders)**

Provides that an interim wealth-restraining order lasts for 3 days, (excluding Saturdays, Sundays or statutory holidays) or for a further period as the Court specifies.

Further provides that the Magistrates Court or Supreme Court may refuse to make an interim wealth-restraining order if the Director of Public Prosecutions refuses or fails to give such undertakings as the Court considers appropriate in relation to the payment of damages or costs, or both.

**Clause 14: Section 118 amended (Wealth-restraining orders)**

Provides that the Supreme Court may only make a wealth restraining order if satisfied that the Director of Public Prosecutions intends to make an unexplained wealth declaration application within a reasonable period that is not less than 21 days.

Further provides that the Supreme Court may refuse to make a wealth restraining order if the Director of Public Prosecutions refuses or fails to give to the Court such undertakings as the Court considers appropriate in relation to the payment of damages or costs, or both.

**Clause 15: Section 169 amended (Application of Act to property held by Public Trustee under this Part)**

Makes minor textual amendments to section 169 of the Act to address inconsistency in the wording that is used in Part 9 and sections 35, 36 and 37 of the Act.

**Clause 16: Section 206 inserted  
Further amendment of regulations not prevented**

Provides that the Bill does not prevent the Regulations from being amended or rescinded in the future.

**PART 3 – CRIME (CONFISCATION OF PROFITS) REGULATIONS 2014 AMENDED**

**Clause 17: Principal Regulations**

Cites the *Crime (Confiscation of Profits) Regulations 2014* as the Principal Regulations.

**Clause 18: Regulation 9 amended (Prescribed purpose under section 79(5)(e) of Act)**

Provides for the Public Trustee to be reimbursed for any reasonable costs or expenses incurred as a result of having control or management of property under Part 9, where those costs or expenses have not already been reimbursed.