

TASMANIA

**CRIME (CONFISCATION OF PROFITS)
AMENDMENT BILL 2007**

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**CRIME (CONFISCATION OF PROFITS)
AMENDMENT BILL 2007**

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

**An Act to amend the *Crime (Confiscation of Profits) Act
1993***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Crime
(Confiscation of Profits) Amendment Act 2007*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Principal Act

In this Act, the *Crime (Confiscation of Profits)
Act 1993** is referred to as the Principal Act.

*No. 20 of 1993

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4. Section 4 amended (Interpretation)

Section 4(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “forfeiture order”:

“instrument of crime” means property that is used in the commission of, in connection with, or to facilitate the commission of, a serious offence;

- (b) by omitting the definition of “serious offence” and substituting the following definition:

“serious offence” means –

- (a) an offence against a law of Tasmania which may be dealt with as an indictable offence even though it may, in some circumstances, be dealt with summarily; or
- (b) an offence against a law of another State, a Territory, the Commonwealth or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had

been committed in
Tasmania;

(c) by omitting paragraph (a) from the
definition of “tainted property” and
substituting the following paragraph:

(a) an instrument of crime; or

5. Section 7 substituted

Section 7 of the Principal Act is repealed and the
following section is substituted:

7. Meaning of “dealing with property or proceeds”

For the purposes of this Act, dealing with
the property of a person or the proceeds
of crime includes –

(a) receiving, possessing or disposing
of the property or proceeds; and

(b) bringing the property or proceeds,
or causing the property or
proceeds to be brought, into
Tasmania, or removing the
property or proceeds from
Tasmania including transferring
the property or proceeds, or
causing the property or proceeds
to be transferred, by electronic
communication; and

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- (c) engaging, directly or indirectly, in a transaction involving the property or proceeds, including receiving or making a gift of the property or proceeds; and
- (d) if a debt is owed by the person, making a payment of the property or proceeds in reduction of the amount of the debt.

6. Part 6A inserted

After section 66 of the Principal Act, the following Part is inserted:

PART 6A – MONEY LAUNDERING

66A. Dealing with proceeds of crime

- (1) A person must not deal with proceeds of crime –
 - (a) knowing that it is proceeds of crime; and
 - (b) intending to conceal that it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 20 years.

- (2) A person must not deal with proceeds of crime knowing that it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 15 years.

- (3) A person must not deal with proceeds of crime being reckless as to whether or not it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 10 years.

- (4) A person must not deal with proceeds of crime being negligent as to whether or not it is proceeds of crime.

Penalty: Imprisonment for a term not exceeding 5 years.

- (5) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

66B. Dealing with property suspected of being proceeds of crime

- (1) A person who deals with property, if there are reasonable grounds to suspect that the property is proceeds of crime, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 2 years.

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- (2) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the property was substantially derived or realised, directly or indirectly, from an act or omission constituting an offence against a law in force in the Commonwealth, a State or a Territory.

66C. Dealing with property which subsequently becomes an instrument of crime

- (1) If –
- (a) the person deals with property intending that the property will become an instrument of crime; and
 - (b) the property subsequently becomes an instrument of crime –
- the person is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 15 years.

- (2) If –
- (a) the person deals with property being reckless as to whether or not the property will become an instrument of crime; and

- (b) the property subsequently becomes an instrument of crime –

the person is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 10 years.

- (3) If –

- (a) the person deals with property being negligent as to whether or not the property will become an instrument of crime; and

- (b) the property subsequently becomes an instrument of crime –

the person is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 5 years.

- (4) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that he or she dealt with the property in order to assist the enforcement of a law of the Commonwealth, a State or a Territory.

66D. Alternative verdicts

- (1) If, on the trial of a person for an offence under section 66A(1), the jury is not satisfied that the defendant is guilty of the offence with which he or she is

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charged, but is satisfied that the defendant is guilty of an offence under section 66A(2), (3) or (4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.

- (2) If, on the trial of a person for an offence under section 66A(2), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66A(3) or (4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (3) If, on the trial of a person for an offence under section 66A(3), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66A(4), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.
- (4) If, on the trial of a person for an offence under section 66C(1), the jury is not satisfied that the defendant is guilty of the offence with which he or she is

charged, but is satisfied that the defendant is guilty of an offence under section 66C(2) or (3), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.

- (5) If, on the trial of a person for an offence under section 66C(2), the jury is not satisfied that the defendant is guilty of the offence with which he or she is charged, but is satisfied that the defendant is guilty of an offence under section 66C(3), it may find the defendant not guilty of the offence with which he or she is charged but guilty of the other offence, and the defendant is liable to punishment accordingly.

66E. Proof of other offences not required

- (1) To avoid doubt, it is not necessary, in order to prove for the purposes of an offence under this Part that property is proceeds of crime, to establish that –
- (a) a particular offence was committed in relation to the property; or
 - (b) a particular person committed an offence in relation to the property.

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- (2) To avoid doubt, it is not necessary, in order to prove for the purposes of an offence under this Part that property will become an instrument of crime, to establish –
- (a) an intention or risk that a particular offence will be committed in relation to the property; or
 - (b) an intention or risk that a particular person will commit an offence in relation to the property.

66F. Transitional provision

This Part applies to or in respect of acts or omissions in relation to proceeds of crime arising from serious offences committed before or after the commencement of this Part.

7. Section 67 repealed

Section 67 of the Principal Act is repealed.

8. Section 68 amended (Prosecution of offences)

Section 68(1) of the Principal Act is amended by inserting “66A, 66B, 66C,” after “57,”.