

TASMANIA

**CRIME (CONFISCATION OF PROFITS)
AMENDMENT BILL 2018**

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**CRIME (CONFISCATION OF PROFITS)
AMENDMENT BILL 2018**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
25 September 2018

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Crime (Confiscation of Profits) Act 1993* and the *Crime (Confiscation of Profits) Regulations 2014*

Be it enacted by Her 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Crime (Confiscation of Profits) Amendment Act 2018*.

2. Commencement

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

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Part 1 – Preliminary

3. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.

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

4. Principal Act

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

5. Section 80 amended (Interpretation)

Section 80 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the avoidance of doubt, if under this Part a requirement is made of, or an obligation is held by, a body of persons, whether corporate or unincorporated, the requirement is made of, or obligation is held by, each person within that body of persons, in so far as that person can fulfil the requirement, or satisfy the obligation, in his or her actual, or apparent, authority as a member of that body of persons.

6. Section 87 amended (Notice to financial organisations to provide information)

Section 87 of the Principal Act is amended as follows:

*No. 20 of 1993

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- (a) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) provide each record, information, material or thing in the custody or possession, or under the control, of the organisation that may be relevant to unexplained wealth proceedings, or persons, specified in the notice;
- (b) by inserting the following subsections after subsection (2):
 - (2A) In requiring a financial organisation to provide a record, information, material or thing in the custody or possession, or under the control, of the organisation, the DPP may direct that the record, information, material or thing be delivered –
 - (a) at a place specified in the notice; and
 - (b) to the DPP or any other person specified in the notice; and
 - (c) in person, by certified mail or in another specified manner.
 - (2B) If the DPP has required a financial organisation to provide a record, information, material or

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thing in the custody or possession, or under the control, of the organisation –

- (a) the DPP may retain that record, information, material or thing for so long as is necessary for the purposes of this Part; and
 - (b) if possible and on the request of a person who would be entitled to possession of that record, information, material or thing if it were not in the possession of the DPP, the DPP must provide that person with a certified copy of the record, information, material or thing as soon as practicable.
- (2C) A certified copy of a record, information, material or thing provided under subsection (2B)(b) is to be received in all courts and elsewhere as evidence of the matters contained in the copy as if it were the original.

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7. Section 90 amended (Giving false or misleading information)

Section 90(1)(c) of the Principal Act is amended by omitting “section 88” and substituting “section 87 or 88”.

8. Section 92 amended (Examination orders)

Section 92 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “another person’s” and substituting “the person’s, or another person’s,”;
- (b) by omitting from subsection (2)(a) “another person” and substituting “a person”;
- (c) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) 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 that is not lawfully acquired;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):

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- (ba) the identity of any person who may have possession, control, custody or management of –
- (i) 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; and
 - (ii) the wealth, liabilities, income and expenditure of the person to be examined; and
 - (iii) any property-tracking documents;
- (e) by omitting from subsection (2)(c) “another person’s” first occurring and substituting “the person’s, or another person’s,”;
- (f) by omitting from subsection (2)(c) “another person’s” second occurring and substituting “that”;
- (g) by omitting from subsection (3)(b) “another” and substituting “the”;
- (h) by omitting from subsection (3)(c) “another person’s” first occurring and substituting “the person’s, or another person’s,”;

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- (i) by omitting from subsection (3)(c) “another person’s” second occurring and substituting “that”.

9. Section 94 amended (Complying with examination orders)

Section 94(7) of the Principal Act is amended as follows:

- (a) by omitting “against the person” first occurring;
- (b) by inserting in paragraph (b) “against the person” after “proceeding”;
- (c) by omitting from paragraph (c) “property owned, effectively controlled or given away by the person, but only for the purpose of facilitating the identification of such property.” and substituting “property.”.

10. Section 97 amended (Document production orders)

Section 97(1)(a) of the Principal Act is amended by omitting “another” and substituting “a”.

11. Section 99 amended (Complying with document production orders)

Section 99(5) of the Principal Act is amended as follows:

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- (a) by omitting “against the person” first occurring;
 - (b) by inserting in paragraph (b) “against the person” after “proceeding”;
 - (c) by omitting from paragraph (c) “property owned, effectively controlled or given away by the person, but only for the purpose of facilitating the identification of such property.” and substituting “property.”.

12. Section 108 amended (Disclosure not permitted)

Section 108(1)(g) of the Principal Act is amended by omitting “another” and substituting “a”.

13. Section 116 amended (Interim wealth-restraining orders)

Section 116 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (4):
 - (4A) The Magistrates Court or Supreme Court may refuse to make an interim wealth-restraining order under subsection (3) if the DPP, on behalf of the State, refuses or fails to give to the court such undertakings as the court

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considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(b) by omitting subsection (6) and substituting the following subsection:

(6) An interim wealth-restraining order has effect until the expiration of –

(a) 3 days after it was made, excluding any Saturdays, Sundays or statutory holidays as defined in the *Statutory Holidays Act 2000*; or

(b) such further period as is specified in the interim wealth-restraining order by the court making the order.

14. Section 118 amended (Wealth-restraining orders)

Section 118 of the Principal Act is amended as follows:

(a) by omitting from subsection (2)(c) “within 21 days” and substituting “within a reasonable period that is not less than 21 days”;

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(b) by inserting the following subsection after subsection (2):

(2A) The Supreme Court may refuse to make a wealth-restraining order under this section if the DPP, on behalf of the State, refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

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

Section 169 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(5) For the purpose of this section, a reference in section 35, 36 or 37 to the Public Trustee having custody and control of property under a restraining order is taken to be a reference to the Public Trustee having control or management of the property under this Part.

16. Section 206 inserted

After section 205 of the Principal Act, the following section is inserted in Part 10:

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206. Further amendment of regulations not prevented

The amendment, by the *Crime (Confiscation of Profits) Amendment Act 2018*, of a provision of the regulations made under this Act does not prevent that, or any other, provision of those regulations from being amended or rescinded by a later regulation.

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

17. Principal Regulations

In this Part, the *Crime (Confiscation of Profits) Regulations 2014** are referred to as the Principal Regulations.

18. Regulation 9 amended (Prescribed purpose under section 79(5)(e) of Act)

Regulation 9 of the Principal Regulations is amended by inserting after paragraph (a) the following paragraph:

- (ab) the reimbursement to the Public Trustee of any reasonable costs or expenses, incurred by the Public Trustee as a result of having control or management of property under Part 9 of the Act, that are not otherwise reimbursed under the Act;

*S.R. 2014, No. 117