UNEXPLAINED WEALTH REVIEW

CRIME (CONFISCATION OF PROFITS) ACT

The *Crime (Confiscation of Profits) Act 1993* (the Act) allows for the confiscation of the proceeds of crime. Part 9 of the Act primarily deals with ‘unexplained wealth’, which is wealth that has not been lawfully acquired.

Part 9 of the Act commenced on 1 March 2014. It contains provisions relating to, amongst other things:

* restraining, forfeiting and valuing property;
* investigations;
* searches;
* applications and declarations; and
* an independent review of Part 9.

An independent review of Part 9 of the Act was undertaken in 2017 by Mr Damian Bugg AM QC and tabled in Parliament on 17 August 2017. The report made a number of recommendations to amend Part 9 of the Act. The report and its recommendations can be viewed at <http://www.parliament.tas.gov.au/ha/tpapers/2017/p2017/HATP1_17_8_2017.pdf> .

The *Crime (Confiscation of Profits) Amendment Bill 2018* (the Bill) implements most of the recommendations made in the report on the independent review of Part 9.

The key features of the Bill:

* clarify that Part 9 applies to a club or association and any associated office holder (Section 80);
* make it clear that written notices issued to banks and other financial institutions by the Director of Public Prosecutions can require the provision of records, information, material or things that are relevant to unexplained wealth proceedings or persons specified in the notice and associated provisions (Section 87);
* allow a person to also be examined about the nature, location and source of property (Section 92(2));
* allow for a statement or disclosure that is made by a person who complies with an examination order to be used in any proceeding under the Act that may lead to the forfeiture of property (Section 94);
* allow for information contained in a property tracking document, or statement or disclosure made by a person in the course of complying with a document productions order to be used in any proceeding under the Act that may lead to the forfeiture of property (Section 99);
* allow for a person to be examined about whether his or her own wealth is lawfully acquired (Subdivision 2 (Examinations) of Division 2 of Part 9);
* allow for a production order to be made in respect to a person’s own wealth (subdivision 3 (Production of Documents) of Part 9);
* provide that an interim wealth restraining order has effect for 3 days after it was made (excluding Saturdays, Sundays or statutory holidays) or for a further period that is determined by the Court (Section 116);
* provide that the Court may refuse to make an interim wealth restraining order, if the Director of Public Prosecutions refuses or fails to give an undertaking that the court considers appropriate in relation to the payment of damages or costs (Section 116);
* provide that the Supreme Court may only make a wealth restraining order in relation to property of a person named in an application, if the Supreme Court is satisfied that the Director of Public Prosecutions intends to make an application for an unexplained wealth declaration or document production order within a reasonable period (which is not less than 21 days) after the wealth restraining order is made (Section 118);
* provide that the Court may refuse to make a wealth restraining order if the Director of Public Prosecutions refuses or fails to give an undertaking to the court that the court considers appropriate in relation to the payment of damages or costs (Section 118); and
* amend the Act and *Crime (Confiscation of Profits) Regulations* to clarify that the Public Trustee may recover fees and expenses incurred for the work performed by the Public Trustee (Section 169 and Regulation 9).

Public submissions can be made until COB 27 July 2018. Submissions can be made by email to HaveYourSay@justice.tas.gov.au, or via post to:

 Department of Justice

 Office of the Secretary

 GPO Box 825 Hobart TAS 7001

Please note that this consultation process is subject to the Government’s ‘Publication of Submissions Received by Tasmanian Government Departments in Response to Consultation on Major Policy Issues’ policy, available at:

[http://www.dpac.tas.gov.au/\_\_data/assets/pdf\_file/0009/361368/Publication\_of\_public\_submi ssions\_-\_Policy\_and\_guidelines\_-\_FINAL.PDF](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0009/361368/Publication_of_public_submi%20ssions_-_Policy_and_guidelines_-_FINAL.PDF)

If you would like your submission to be treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission, clearly identifying the parts of your submission you want to remain confidential and the reasons why. In this case, your submission will not be published to the extent of that request.

Under this policy, submissions will be made publicly available on the Department of Justice website unless the submitting party requests that their submission remain confidential.