

Serial 108
Criminal Property Forfeiture Amendment Bill 2019
Ms Fyles

A Bill for an Act to amend the *Criminal Property Forfeiture Act 2002*

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL PROPERTY FORFEITURE AMENDMENT ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Criminal Property Forfeiture Act 2002*

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Criminal Property Forfeiture Amendment Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Criminal Property Forfeiture Act 2002*.

4 Section 5 amended (Definitions)

(1) Section 5, definitions ***corresponding law*** and ***unexplained wealth***
omit

(2) Section 5
insert

corresponding law:

(a) for Part 10A – see section 130A; or

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- (b) otherwise – means a law of the Commonwealth, a State or another Territory that is prescribed by regulation as a law that corresponds to this Act.

unexplained wealth:

- (a) for Part 10A – see section 130A; or
(b) otherwise – see section 68.

5 Part 10A inserted

After section 130

insert

Part 10A National cooperative scheme on unexplained wealth

Division 1 Preliminary matters

130A Definitions

In this Part:

CJC means the Cooperating Jurisdiction Committee established under the Intergovernmental Agreement and consisting of representatives from each participating jurisdiction.

CJC subcommittee, see section 130H(1)(b).

confiscation includes forfeiture.

contributing jurisdiction means any of the following that make a contribution for the purposes of the NCS:

- (a) the Commonwealth;
- (b) a participating State;
- (c) a cooperating State;
- (d) the Australian Capital Territory.

contribution, for the NCS, see section 130B.

cooperating State, see section 14F of the *Proceeds of Crime Act 2002* (Cth).

corresponding law means a law of the Territory that is declared by the *Proceeds of Crime Regulations 2019* (Cth) to be a law that corresponds to the *Proceeds of Crime Act 2002* (Cth).

corresponding proceeds, for the NCS, means an amount that:

- (a) is paid to the Territory under a corresponding law; and
- (b) corresponds to, or is similar to, an amount that is proceeds of confiscated assets under the *Proceeds of Crime Act 2002* (Cth) and is paid in relation to a relevant application or a relevant order.

decision-making period means the 6 month period after the Territory notifies the CJC of a matter mentioned in section 130G.

foreign jurisdiction means a jurisdiction outside Australia.

forfeiting jurisdiction, for the NCS, means the jurisdiction that:

- (a) obtains a final order in relation to proceeds of confiscated assets under the *Proceeds of Crime Act 2002* (Cth) or corresponding proceeds of a State or Territory; or
- (b) enters into a negotiated settlement, or receives any other amount, in relation to proceeds mentioned in paragraph (a).

forfeiture action means a proceeding in relation to a relevant application or a relevant order.

forfeiture proceeds means proceeds arising from a forfeiture action that are paid or payable to the Territory under a relevant order.

Intergovernmental Agreement means the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, as in force from time to time.

NCS means the National Cooperative Scheme on Unexplained Wealth established by the Intergovernmental Agreement and entered into by the Territory on 7 December 2018.

NCS threshold means:

- (a) \$100 000; or
- (b) if another amount is prescribed by regulation – that other amount.

participating jurisdiction means the following:

- (a) the Territory;
- (b) a participating State;
- (c) the Australian Capital Territory.

participating State, see section 14C of the *Proceeds of Crime Act 2002* (Cth).

payment period, for the NCS, means 6 months from the date of realisation of the assets in their entirety, or when the maximum amount likely to be realised from a final order or negotiated settlement has been realised, whichever is the later.

relevant application means:

- (a) an application for a declaration under section 36A of the *Misuse of Drugs Act 1990* that a person is a drug trafficker; or
- (b) an application prescribed by regulation for this definition.

relevant order, see section 130C.

shareable proceeds, see section 130D.

unexplained wealth means property or wealth that might not have been lawfully acquired.

130B Making a contribution for the NCS

A jurisdiction is taken to make a **contribution** for the NCS in the following circumstances:

- (a) the jurisdiction has made a contribution including but not limited to:
 - (i) the provision of specific intelligence of relevance to the confiscation action, investigation action, a criminal or civil proceeding, restraining assets for the purposes of an application, holding and managing restrained assets or recovering the debt created by the order; or
 - (ii) securing, or contributing to the securing of, a conviction that can be considered to have contributed to the confiscation action and the recovery of proceeds;

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- (b) the Commonwealth has relied on an offence of that jurisdiction in an unexplained wealth matter (whether or not it has also relied on a Commonwealth offence or an offence of another jurisdiction).

130C Meaning of *relevant order*

A ***relevant order*** is any of the following:

- (a) a restraining order under section 44(1)(b)(ii);
- (b) a declaration of forfeiture under section 94;
- (c) a forfeiture order under section 97 or 100;
- (d) an order prescribed by regulation for this section.

130D Meaning of *shareable proceeds*

Forfeiture proceeds are ***shareable proceeds*** for the NCS if:

- (a) the proceeds are:
 - (i) for the Commonwealth – proceeds of confiscated assets under the *Proceeds of Crime Act 2002* (Cth) paid to the Commonwealth in relation to an order or a proceeding of the kind described in Appendix B of the Intergovernmental Agreement; or
 - (b) for non-Commonwealth parties – corresponding proceeds of a State or Territory; and
- (b) the amount specified in the relevant application or relevant order, as part of a negotiated settlement, or that is otherwise forfeited under a corresponding law, exceeds the NCS threshold (whether or not the full amount is realised).

Note for section 130D

If the full amount mentioned in paragraph (b) is not realised, and the amount realised is less than or equal to the NCS threshold, the proceeds are still shareable.

130E Application of Part

This Part applies if:

- (a) a relevant application is made and the amount of shareable proceeds involved exceeds the NCS threshold; or
- (b) a court makes a relevant order and the amount of shareable proceeds involved exceeds the NCS threshold; or

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- (c) a payment is made to the Territory in relation to a relevant application mentioned in paragraph (a) or a relevant order mentioned in paragraph (b).

Division 2 CJC and CJC subcommittee

130F Territory representative on CJC

The Commissioner of Police may from time to time nominate a person to be the Territory representative on the CJC.

130G Territory to notify CJC

- (1) The Territory must notify the CJC when:
 - (a) a relevant application is made and the amount involved exceeds the NCS threshold; or
 - (b) a court makes a relevant order and the amount involved exceeds the NCS threshold; or
 - (c) shareable proceeds are received by the Territory in relation to a relevant application mentioned in paragraph (a) or a relevant order mentioned in paragraph (b), whether or not the realised shareable proceeds exceed the NCS threshold.
- (2) The notice must:
 - (a) be in writing; and
 - (b) be given within 60 days after the application or order is made or shareable proceeds are received; and
 - (c) provide sufficient information to allow participating jurisdictions to identify whether they may have contributed to the application or order.

Examples for subsection (2)(c)

The name of the person against whom a proceeding was brought, the name of the person from whom money was recovered, the name of the police operation, the amount of money recovered, any known contribution by a participating jurisdiction.

- (3) Despite subsection (1), the Territory need not notify the CJC in the following circumstances:
 - (a) the Commissioner of Police determines that the matter is not, and will not become, a cross-jurisdictional matter;

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- (b) the Commissioner of Police is satisfied that the matter will not give rise to operational inconsistencies with another jurisdiction.
- (4) In addition, the Territory must notify the CJC within 30 days after any of the following happens:
- (a) a CJC subcommittee decides that a non-cooperating State made a contribution in relation to a matter and what (if any) proportion of realised shareable proceeds is to be paid to that jurisdiction;
 - (b) a CJC subcommittee decides to alter the presumption of equal shares and, if so, what (if any) proportion of realised shareable proceeds is to be paid to each jurisdiction involved;
 - (c) the shareable proceeds are realised in their entirety, or a maximum amount from a final order, negotiated settlement or other forfeiture has been realised;
 - (d) the Territory receives payment of funds as shareable proceeds from a forfeiting jurisdiction, or makes payment of shareable proceeds to other contributing jurisdictions.

130H CJC subcommittee

- (1) Within the decision-making period after the Territory notifies the CJC of a matter in accordance with section 130G(1), the CJC must:
- (a) determine whether the Commonwealth, a participating jurisdiction or a cooperating State made a contribution in relation to the forfeiture action; and
 - (b) form a **CJC subcommittee** comprising the Territory representative on the CJC and a representative of each jurisdiction determined by the CJC to have made a contribution as mentioned in paragraph (a).
- (2) A determination mentioned in subsection (1) must be unanimous.

Division 3 Contribution by other jurisdictions

130J Sharing among contributing jurisdictions

- (1) There is a presumption that each contributing jurisdiction and the forfeiting jurisdiction share the net realised proceeds of a forfeiture action in equal proportions.

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- (2) However, the CJC subcommittee must, within the decision-making period, determine whether the presumed proportions mentioned in subsection (1) are appropriate in each forfeiture action and, if not, what are the appropriate proportions of each share.
 - (3) A determination mentioned in subsection (2) must be unanimous.
 - (4) If a unanimous determination is not achieved, the presumption of sharing in equal proportions prevails.
 - (5) In this section:

net realised proceeds means the remainder of the realised proceeds after payments in accordance with sections 130K and 130L are taken into account.

130K Contribution by certain other jurisdictions

- (1) The CJC subcommittee must, within the decision-making period, determine whether a non-participating non-cooperating jurisdiction has made a contribution in relation to the forfeiture action for which the subcommittee was formed.
- (2) A determination mentioned in subsection (1) must be unanimous.
- (3) If a unanimous determination is not achieved in relation to a jurisdiction, that jurisdiction is taken not to have made a contribution in relation to that forfeiture action.
- (4) If the subcommittee determines that a non-participating non-cooperating jurisdiction has made a contribution in relation to the forfeiture action, the subcommittee must determine the appropriate proportion of the shareable proceeds that is payable to the jurisdiction.

Note for subsection (4)

The Territory must notify the CJC of the subcommittee's determinations within 30 days after the determination is made – see section 130G(4)(a).

- (5) The Commissioner of Police must notify the Minister of the subcommittee's determination as soon as practicable after the determination is made.
- (6) In this section:

non-participating non-cooperating jurisdiction means a State that:

- (a) is not a participating State; and

(b) is not a cooperating State.

130L Contribution by foreign jurisdiction

- (1) The Commissioner of Police must, within the decision-making period:
 - (a) advise the Minister if, in the Commissioner's opinion, a foreign jurisdiction may have made a contribution in relation to a forfeiture action; and
 - (b) provide the Minister with the information necessary for the Minister to make a determination under subsection (2).
- (2) If the Minister receives advice in accordance with subsection (1), the Minister must determine whether the foreign jurisdiction has made a contribution in relation to the forfeiture action and, if so, the appropriate proportion of the shareable proceeds that is payable to the foreign jurisdiction.
- (3) The Minister must give the Commissioner of Police written notice of a determination under subsection (2).
- (4) The Commissioner of Police must advise the CJC of the Minister's determination.

130M Proportions may be determined before proceeds realised

Both the CJC subcommittee and the Minister may make determinations under this Division in relation to the proportions of forfeiture proceeds to be shared by jurisdictions whether or not the forfeiture proceeds have been fully realised.

Division 4 Sharing of realised proceeds

130N Payments out of realised proceeds

When forfeiture proceeds are realised, any payments required by this Act are payable before the remaining funds are distributed under this Division.

Note for section 130N

This Act provides for payments out of forfeiture proceeds under sections 103(1), 115(1), 117, 148(2) and 154(5).

130P Payment to foreign jurisdiction

- (1) The Minister may pay to a foreign jurisdiction determined under section 130L to have contributed to the forfeiture action the amount equal to the percentage of realised proceeds as determined under that section.
- (2) If the forfeiture proceeds are to be shared with any other contributing jurisdiction, the payment under subsection (1) must be made at the time the sharing payments are made.
- (3) If the forfeiture proceeds are not to be shared with other contributing jurisdictions, the payment must be made to the foreign jurisdiction before the end of the payment period.

130Q Payment to other contributing jurisdictions

The Minister must ensure that an amount payable to the Commonwealth, a State or another Territory under this Part is paid before the end of the payment period.

130R Payment to Commonwealth if agreement terminates

- (1) This section applies if:
 - (a) a forfeiture action has started; and
 - (b) shareable proceeds have not been distributed; and
 - (c) the Intergovernmental Agreement comes to an end or the Territory ceases to be a participating jurisdiction.
- (2) Any amount of shareable proceeds that would have been payable under this Part to the Commonwealth had the circumstance mentioned in subsection (1)(c) not occurred must still be paid as if the circumstance had not occurred.

Division 5 Record keeping

130S Commissioner of Police to keep records

- (1) The Commissioner of Police must keep records of actions taken under the NCS, including records of the following:
 - (a) the date a forfeiture action commenced and identifying details of the matter such as:
 - (i) the names of the parties involved; and

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- (ii) the name of a police operation related to the forfeiture action; and
 - (iii) other details considered relevant by the Commissioner;
- (b) the date of restraint of property and a good faith estimate of the value of the restrained property;
 - (c) the date of any final order, negotiated settlement, or other forfeiture and the relevant value;
 - (d) the jurisdictions determined by the CJC to have made a contribution to the action;
 - (e) the date and amount of distribution of forfeiture proceeds, including payments to foreign jurisdictions, court-ordered payments and other orders authorised by this Act or the *Proceeds of Crime Act 2002* (Cth).
- (2) The Commissioner of Police must retain the records as long as necessary to comply with the reporting requirements of the NCS.

Division 6 Reporting

130T Commissioner of Police to report

- (1) The Commissioner of Police must provide, as soon as practicable after 30 June of each year, a report to the Minister and to the Attorney-General, identifying the use (if any) by Territory Police of the investigative powers under the participating jurisdiction information gathering provisions under the NCS.
- (2) The report must include the number of times the powers mentioned in subsection (1) were exercised.
- (3) The Minister must, as soon as practicable after receiving the report, provide a copy to the responsible Commonwealth Minister.
- (4) In this section:

participating jurisdiction information gathering provisions means the provisions of Schedule 1 to the *Proceeds of Crime Act 2002* (Cth).

Territory Police means the Police Force of the Northern Territory established by section 5(1) of the *Police Administration Act 1978*.

6 Part 15 inserted

After section 167

insert

Part 15 Transitional matters for Criminal Property Forfeiture Amendment Act 2019**168 Forfeiture action already commenced**

- (1) This section applies in relation to a forfeiture action that started before the commencement.
- (2) The provisions of this Act as amended by the amending Act apply in relation to a relevant application made, or a relevant order obtained, after the commencement.
- (3) The provisions of this Act, as in force immediately before the commencement, continue to apply in relation to a relevant application made, or a relevant order obtained, before the commencement.
- (4) In this section:

amending Act means the *Criminal Property Forfeiture Amendment Act 2019*.

commencement means the commencement of the amending Act.

7 Repeal of Act

This Act is repealed on the day after it commences.