



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

**Inquiry into the Criminal
Property Forfeiture Amendment
Bill 2019**

December 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Criminal Property Forfeiture Amendment Bill 2019. The primary purpose of the Bill is to amend the *Criminal Property Forfeiture Act 2002* to implement provisions related to the Territory's participation in the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, and legislates the equitable sharing of proceeds that are obtained as a result of contributing actions under the Commonwealth's *Proceeds of Crime Act 2002*.

The Committee received one submission to its inquiry from the Northern Territory Legal Aid Commission. While the Commission was of the view that the Bill should not be enacted, the Committee notes that the rationale for this view is based on the Commission's opposition to existing provisions in the *Criminal Property Forfeiture Act 2002*, rather than the proposed amendments as set out in the Bill.

However, as detailed in this report, the Committee sought clarification from the Department of the Attorney-General and Justice regarding the definition of, and subsequent references to, 'contributing jurisdictions'. While the Committee has recommended that the Assembly pass the Bill, to ensure that it is drafted in a sufficiently clear and precise manner, it has also recommended that proposed sections 130G(4)(d), 130P(3) and the heading of 130Q be amended by removing the word 'other' in relation to references to 'contributing jurisdictions'.

On behalf of the Committee, I would like to thank the Northern Territory Legal Aid Commission for their submission. I would also like to thank departmental representatives for briefing the Committee on this Bill and their subsequent advice. Finally, I thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
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	Sessional:	Legislation Scrutiny
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	Sessional:	Legislation Scrutiny
	Mr Tony Sievers MLA Member for Brennan	
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings and the Department of the Attorney-General and Justice for its advice.

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints a Legislation Scrutiny Committee.
- (3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

- (4) The functions of the scrutiny committee shall be to inquire and report on:
 - (a) any matter referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

- (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Criminal Property Forfeiture Amendment Bill 2019 with the proposed amendments set out in recommendation 2.

Recommendation 2

The Committee recommends that proposed sections 130G(4)(d), 130P(3) and the heading of 130Q be amended by removing the word 'other'.

1 Introduction

Introduction of the Bill

- 1.1 The Criminal Property Forfeiture Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 16 October 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 11 February 2020.¹
- 1.2 On Wednesday 27 November 2019 the Assembly dissolved the Economic Policy and Social Policy Scrutiny Committees and established the Legislation Scrutiny Committee and referred outstanding Bill inquiries to the new Committee.²

Conduct of the Inquiry

- 1.3 On 18 October 2019 the Committee called for submissions by 13 November 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.4 As noted in Appendix 1, the Committee received one submissions to its inquiry from the Northern Territory Legal Aid Commission. The Committee held a public briefing with the Department of the Attorney-General and Justice on 29 October 2019.

Outcome of Committee's Consideration

- 1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendation 2.

¹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p.4, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>.

² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard - Day 2 – 27 November 2019*, p. 94, <https://www.territorystories.nt.gov.au/jspui/handle/10070/755087>

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Criminal Property Forfeiture Amendment Bill 2019 with the proposed amendments set out in recommendation 2.

Report Structure

- 1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

- 2.1 In presenting the Bill, the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, advised the Assembly that:

On 7 December 2018, the Northern Territory Government signed the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth. This agreement bound participating states and territories to introduce Bills into their parliaments that, if passed, will give effect to the provisions of the agreement. In the Territory the relevant legislation that must be amended is the *Criminal Property Forfeiture Act 2002*.³

- 2.2 The Attorney-General further advised that:

While state jurisdictions have the option to decide whether to participate in the Scheme, for Constitutional reasons, the Northern Territory and Australian Capital Territory are automatically bound into it via Commonwealth legislation, which can require monies seized by the territory to be paid to the Commonwealth.

Signing the intergovernmental agreement, or the IGA as it is commonly referred to, allows the Territory to claim an equitable share of this money from a pool, and provides access to certain useful information-sharing arrangements.⁴

Purpose of the Bill

- 2.3 As noted in the Explanatory Statement, the Bill amends the *Criminal Property Forfeiture Act 2002* to:

implement provisions related to the Northern Territory Government's participation in the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, and legislates the equitable sharing of proceeds that are obtained as a result of contributing to actions under unexplained wealth legislation.⁵

- 2.4 Given that the Intergovernmental Agreement on the National Cooperative Scheme sets out the framework for participating jurisdictions to cooperate in the investigation and interception of proceeds of crime and provide cross-jurisdictional responses to serious and organised crime, the Bill is primarily concerned with:

establishing the framework for the equitable sharing of proceeds which have been successfully forfeited as a result of forfeiture actions to which the Territory has materially contributed. The contribution is by providing relevant intelligence; conducting investigative action; conducting or supporting legal proceedings; holding and managing restrained assets; or otherwise contributing to the securing of a conviction that contributes to a confiscation action.⁶

³ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p. 3, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>

⁴ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p. 3, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>

⁵ Explanatory Statement, *Criminal Property Forfeiture Amendment Bill 2019 (Serial 108)*, p.1, <https://parliament.nt.gov.au/committees/EPSC/108-2019>

⁶ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p. 4, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754880>

3 Examination of the Bill

Introduction

- 3.1 While the submission from the Northern Territory Legal Aid Commission expressed the view that the Bill should not be enacted⁷, the Committee notes that the rationale for this view is based on the Commission's opposition to existing provisions in the *Criminal Property Forfeiture Act 2002*, rather than the proposed amendments as set out in the Bill.⁸
- 3.2 However, as discussed below, the Committee sought clarification from the Department of the Attorney-General and Justice (the Department) regarding the definition of, and subsequent references to, 'contributing jurisdiction'.

Definition of 'contributing jurisdiction'

- 3.3 Proposed section 130A provides that a 'contributing jurisdiction' means any of the following that make a contribution for the purposes of the National Cooperative Scheme on Unexplained Wealth (NCS):
- (a) the Commonwealth;
 - (b) a participating State;
 - (c) a cooperating State;
 - (d) the Australian Capital Territory.
- 3.4 The Committee sought clarification from the Department as to why the Northern Territory is not included in this definition and was subsequently advised that:
- The definition of **contributing jurisdiction** in the Criminal Property Forfeiture Amendment Bill 2019 does not include the Territory, because the Territory is the **forfeiting jurisdiction** ... As the *Criminal Property Forfeiture Act 2002* operates in our jurisdiction when the Territory pursues a forfeiture action, for the purposes of the National Scheme, the Territory will always be for **forfeiting jurisdiction** (the one which is pursuing the assets in the Territory), and other jurisdictions will be the **contributing jurisdictions** (if they provide assistance to the action). The Territory, along with all other signatories to the National Scheme, are defined as **participating jurisdictions** for the purposes of the National Scheme.
- In other **participating jurisdictions** (for example, in the ACT), the Territory is defined as a **contributing jurisdiction**, as the Territory would be contributing to any potential forfeiture action in that jurisdiction (for example, section 135A of the *Confiscation of Criminal Assets Act 2003* (ACT)).⁹
- 3.5 In light of the Department's advice, the Committee also sought clarification as to why proposed sections 130G(4)(d), 130P(3) and the heading of 130Q refer to 'other' contributing jurisdictions rather than 'a contributing jurisdiction', 'contributing

⁷ Northern Territory Legal Aid Commission, Submission 1, p.1

⁸ Northern Territory Legal Aid Commission, Submission 1, pp.1-3

⁹ Department of the Attorney-General and Justice, *Answer to Question on Notice*, 7 November 2019, p.1, <https://parliament.nt.gov.au/committees/EPSC/108-2019>

jurisdictions', or as provided for in the ACT's legislation 'each contributing jurisdiction'.¹⁰

- 3.6 As drafted, the Committee is concerned that use of the word 'other' in the context of these sections is unnecessary and confusing as it gives the impression that it also refers to the Northern Territory as a contributing jurisdiction, whereas for the purposes of the proposed legislation the Northern Territory is the 'forfeiting jurisdiction'. Following discussion with the Department, it was agreed that the word 'other' in relation to references to contributing jurisdictions could be deleted without adversely impacting on the operation of the Bill.¹¹

Committee's Comments

- 3.7 The Committee is satisfied with the Department's advice. As agreed to by the Department, to ensure that the Bill is drafted in a sufficiently clear and precise manner, the Committee has recommended that references to 'other' contributing jurisdictions be removed from proposed sections 130G(4)(d), 130P(3) and the heading of 130Q.

Recommendation 2

The Committee recommends that proposed sections 130G(4)(d), 130P(3) and the heading of 130Q be amended by removing the word 'other'.

¹⁰ *Confiscation of Criminal Assets Act 2003* (ACT), see for example section 135G

¹¹ Henrik Hartman, (Policy Lawyer: Department of the Attorney-General and Justice), Email, *Criminal Property Forfeiture Bill Query*, (unpublished), 25 November 2019

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Northern Territory Legal Aid Commission

Public Briefing – 29 October 2019

Department of the Attorney-General and Justice

- Caroline Heske: Senior Policy Lawyer, Legal Policy
- Henrik Hartmann, Policy Lawyer, Legal Policy

Note

Copies of submissions, hearing transcripts and tabled papers are available at:
<https://parliament.nt.gov.au/committees/EPSC/108-2019>

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Confiscation of Criminal Assets Act 2003 (ACT)

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