



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Criminal Property Forfeiture Amendment Bill 2019

Tuesday 29 October 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Mr Tony Sievers MLA, Chair, Member for Brennan
Mr Jeff Collins MLA, Member for Fong Lim
Mr Lawrence Costa MLA, Member for Arafura
Mr Gary Higgins MLA, Member for Daly (via teleconference)
Mrs Kate Worden MLA, Member for Sanderson

Witnesses:

Department of the Attorney-General and Justice
Caroline Heske, Senior Policy Lawyer, Legal Policy
Henrik Hartmann, Policy Lawyer, Legal Policy

The committee convened at 1.08 pm.

CRIMINAL PROPERTY FORFEITURE AMENDMENT BILL 2019

Department of the Attorney-General and Justice

Mr CHAIR: Welcome Caroline and welcome Henrik. On behalf of the committee I welcome everyone to this public briefing in to the Criminal Property Forfeiture Amendment Bill 2019. I will introduce our committee. We have Mr Jeff Collins, Member for Fong Lim; Ms Kate Worden, Member for Sanderson, myself, Mr Gary Higgins, the Member for Daly is on the phone and we have Mr Lawrence Costa, Member for Arafura and our vice chair on the end.

We welcome you to the table to give evidence to the committee today, Caroline Heske, Senior Policy Lawyer, Department of the Attorney-General and Justice and Henrik Hartmann, Policy Lawyer, Department of the Attorney-General and Justice. Thank you both for coming before the committee. We appreciate that you are taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee does apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website also.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the *Hansard* record, could you please state your name and the capacity in which you are appearing today. Then, Caroline, we welcome an opening statement from you or Henry.

Ms HESKE: Thank you. I am Caroline Heske, Senior Policy Lawyer with the Department of the Attorney-General and Justice.

Mr HARTMANN: Henrik Hartmann, Policy Lawyer with the Department of the Attorney-General and Justice.

Mr CHAIR: We welcome an opening statement about the Bill and the primary purpose and any key features of the Bill.

Mr HARTMANN: Since 2002, the Territory has had legislation in the form of the *Criminal Property Forfeiture Act*. All other jurisdictions have broadly similar legislation, including the Commonwealth. That legislation provides police with the ability to intercept property that has been acquired or used in criminal activity, or confiscate assets that may have been acquired from the proceeds of crime.

The Territory does this by applying to the courts to have the property of an offender declared as being the proceeds of crime and, if successful, it can be forfeited to the Territory.

Recently, the Commonwealth has amended its legislation in this area so it can apply to seize a Territory offender's assets and have them forfeited to the Commonwealth instead. Because the Commonwealth legislation applies automatically in the Territory, the Territory stands to lose out if this were the case.

This seems to have been done by the Commonwealth to coordinate criminal property forfeitures across all of the different jurisdictions and to encourage cooperative approaches where these kinds of actions take place. To support that, the Commonwealth has proposed a scheme and developed an intergovernmental agreement which would allow participating states and territories to share in a pool of confiscated assets where they have been assisting in those proceeds. That assistance could be, for example, providing intelligence, police resources or legal actions in their home jurisdictions.

The scheme is also intended to provide additional intelligence sharing provisions for law enforcement in the different jurisdictions.

Although the Commonwealth legislation automatically applies in the territories, in order to gain the benefits of the sharing arrangement and access to this pool of proceeds that might be obtained, the Territory has to sign on the IGA. We signed on in December 2018, as it was in the Territory's best interests to do so, as it

allows the Territory to share in this pool of proceeds when the Territory has assisted in a successful forfeiture action by providing its own assistance or resources.

As we have signed on, the NT is now required to amend the *Criminal Property Forfeiture Act* to include the sharing arrangements as set out in the scheme.

Primarily, the Bill sets out the framework for how notification between the different jurisdictions will occur, how and when the Territory and other contributing jurisdictions will decide how to divide up those forfeited proceeds and reporting requirements under the scheme.

The day-to-day operation of these aspects will be handled by police and the Commissioner of Police is responsible for nominating a representative from the Territory to sit on the scheme committee. AGD has worked closely with the police and DCM to provide assistance during the drafting of the IGA, as well as consulted with police and DCM during development of the Bill.

Mrs WORDEN: IGA—inter-government ...

Mr HARTMANN: Inter-government agreement, yes.

Mr COLLINS: Not the supermarket.

Mrs WORDEN: Yes, making sure.

Mr HARTMANN: The scheme operates broadly as follows. When the Territory applies to a court to forfeit a certain type of property, they will be required to notify the committee through the scheme committee representatives. That notification advises the other jurisdictions so that they can determine whether they also have a case against the same person or property, and it helps the participating jurisdictions to establish which one would be best placed to pursue the matter. It avoids overlaps, conflicts and duplication of effort. Plus it puts the other jurisdictions on notice so that they can figure out whether they have a claim to the assets that might be forfeited.

Once that case is finalised and the assets are forfeited or paid to the Territory, then representatives from all the jurisdictions that have contributed will get together and discuss how the pool of proceeds will be divided up amongst the participants. Once that decision is made, then the pool of proceeds should be divided accordingly.

Where the Territory is required to pay because we hold the confiscated assets, we will not lose out, as the *Criminal Property Forfeiture Act* still allows us to use certain funds to pay for certain expenses before that division is carried out. For example, legal costs or the costs of maintaining a seized asset or property and those kinds of things.

Then there are also reporting requirements under the new provisions to record when police use the intelligence sharing mechanism under the scheme and to document how and when confiscated assets are being shared.

This is a Bill that is technical in scope and it will not change the Territory's existing criminal property forfeiture regime or its ability to seize criminal property, but it does support the Territory's obligations under the IGA, provides police with additional intelligence sharing resources and the Territory will also gain by being able to share in the pool of assets that may be confiscated in the Territory or in other jurisdictions where the Territory has provided assistance.

I would like to thank the drafters from the Office of Parliamentary Counsel for their assistance on this particularly technical Bill.

Mr CHAIR: I have one question and then I will open up to the panel. Looking at the Bill, the definition of contributing jurisdiction under proposed section 130(a), it does not seem to appear to include the Northern Territory. However, it would appear that it is meant to include the NT as proposed in sections 130(g)4(d), 130(p) and 130(q) or refer to other contributing jurisdictions.

Ms HESKE: Sorry, we are just getting a copy of the Bill.

Mr HARTMANN: Let us bring that up as it is delightfully intricate.

Mr CHAIR: Do you want me to go through that again?

Ms HESKE: We may have to take the question on notice. We believe we may be in the definition of a participating State under the Commonwealth legislation.

Mr CHAIR: Yes. In addition, I had not finished proposed section 130(j)(1) refers to sharing the proceeds between contributing jurisdictions

Mr HARTMANN: I will double check that for the committee.

Mrs WORDEN: We can give that to you in writing.

Mr CHAIR: Yes, we can send it to you in writing and take it on notice. It is a lengthy one.

I will open it up to the panel. Any questions?

Mrs WORDEN: I want to put this in to practical application here—do you know what the current quantum of assets is worth to the Northern Territory, say, per annum?

Ms HESKE: I do not but I might just add in terms of the practical implications, there are some qualifications on this so it only kicks in when it is over 100 000 in terms of the amount of assets seized. There are apparently not a lot of cases we do that have that kind of money involved here.

The other thing is with respect to when it kicks in it kicks in when there is a cross border application. We tend to—police have told us anecdotally—do most of our cross border operations with South Australia and South Australia is not actually in the scheme, so this would probably most often apply when there is some kind of cross jurisdictional operation with the Commonwealth. For matters over 100 000 it is probably not going to kick in that often, but if it does and we were not part of the scheme, the Commonwealth could just take all those assets instead of us getting a share.

Mrs WORDEN: I guess somewhat we need to future proof, do we not? You never know someone in South Australia might jump on tomorrow.

Mr HARTMANN: They can.

Mrs WORDEN: Hypothetically let us say that a king pin from Mexico set up here and a drug cartel was found in the Northern Territory, there was a massive cross border investigation and houses, boats and cars and all those sorts of things were sold, they would essentially go in to the pool and the Northern Territory would get a division of that. If we are not part of it the Commonwealth will come and take the lot.

Mr HARTMANN: Potentially.

Mrs WORDEN: Potentially. Practically the sort of examples I have seen is the sale of homes, vehicles, boats and those sorts of things. That would quickly in the Northern Territory add up to well of 100K, but I think you are right I cannot imagine that we have had—I am trying to remember how many cases like that that I have even seen, the forfeiture of crime I actually have seen a couple in my time in the Northern Territory and they probably would have gone over the 100K threshold. But I guess it is about the potential, would you agree?

Mr HARTMANN: Yes.

Ms HESKE: Yes.

Mr COLLINS: In assets that are here in this jurisdiction but are the proceeds of an international crime, talking about drug cartels but it can be all sorts of other things as well, how is that dealt with? The Commonwealth would generally proceed with those sorts of proceedings, would there be anything in there for the Territory?

Mr HARTMANN: If the Territory were providing assistance to that action. So if local Territory police resources were used, or if the local DPP applied for the restraining orders on that property, that would count as assistance to the final action and we would then get a seat at the table, in effect.

Ms HESKE: If there is cooperation from a foreign jurisdiction there is also the capacity to enter in to agreements with the foreign jurisdiction about them also taking part of the money from the pool as well.

Mr COLLINS: I say it with a smile because one of the more interesting cases I had at the Bar in New South Wales was a criminal forfeiture proceedings. They were trying to seize and sell a property that was not owned by the perpetrator who was in China. He'd clearly signed a forced statement and the Chinese Government authorities were not pursuing assets at all. It was simply the Commonwealth. Thought that was rather dodgy, but it was interesting at the time.

Mrs WORDEN: Also it is how we have to think these things though. You know there are obviously potential—I think the good thing is the \$100 000 kick in, because I think if we think about it sometimes is found in a drug seizure, and very rarely it is over the \$100 000.

Mr HARTMANN: It would need to be worth their while to actually get to that point.

Mrs WORDEN: Yes so it actually would still sit in the Northern Territory. It is important because the cost of these things is not insurmountable. Yeah, good.

Mr CHAIR: Mr Higgins is on the phone. Gary do you have any questions?

Mr DALY: No, I am yelling and not pressing the button.

Mr CHAIR: He leaves me hanging and he waits for that button.

Mr HARTMANN: If it would assist I do have a flowchart from the IGA, which sets out the intended process.

Mr CHAIR: Could you table that for us please?

Mr HARTMANN: So that sets out the flow of occurrences and then on the back there is a bit of a scenario set out to kind of illustrate how that would work.

Ms HESKE: Was that produced by the Commonwealth, that document?

Mr CHAIR: We will get you a copy Gary, we will send you a copy of this flowchart.

Ms HESKE: That document was produced by the Commonwealth when they were developing the IGA.

Mr CHAIR: On behalf of the committee, Caroline and Henrik, thank you for your time today and we do appreciate you coming in. Thank you.

The committee suspended
