

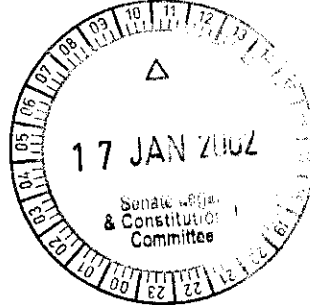


WESTERN AUSTRALIA POLICE SERVICE

**ASSISTANT COMMISSIONER
(STRATEGIC & CORPORATE DEVELOPMENT)**

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**Secretary
Legal & Constitutional
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Parliament House
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YOUR REF:
OUR REF: OCI 20020034 AIS4386 LS01-494
ENQUIRIES: Detective Sergeant Brad Gorman Ph: (08) 9223 3499

Attention – Ms Pauline MOORE

Dear Pauline,

As requested, we have attended to the issues raised in your letter of 6 December 2001.

In considering the same we advise as follows:

Western Australia seeks adoption of the *Criminal Property Confiscation Act 2000 (WA)* (proclaimed January 2000) as the minimum benchmark for non-conviction based civil forfeiture.

Assistant Commissioner Tim Atherton wrote to the National Crime Authority Consultative Group in December 2000. His submission contained the views of this agency with respect to a national approach on confiscation of proceeds of crime. As a result of the submissions, to the NCA Consultative Group, I believe the Criminal Assets Recovery Bill 2001 was introduced on 2 April 2001.

This agency considers the automatic forfeiture provisions of the non-conviction based legislation (*ie: Criminal Property Confiscation Act 2000*) could be structured to meet international treaty obligations. The *Criminal Property Confiscation Bill 2000* was drafted with full consideration of the UN Vienna Convention, European Money Laundering Convention and the Financial Action Taskforce - *The 40 Recommendations*.

Of particular interest is the position of Austria, Germany, Greece and Luxembourg not requiring a criminal conviction as a prerequisite to the confiscation of proceeds of crime.

As mentioned earlier, we have noted the introduction of the *Criminal Assets Recovery Bill 2001 (Cwth)* on 2 April 2001. This bill is a civil forfeiture scheme for

the proceeds of criminal activity, similar in concept to the NSW model. It appears this model is in direct contrast with the *Proceeds of Crime Bill 2001 (Cwth)*.

The *Proceeds of Crime Bill 2001* was introduced on 20 September 2001. This model provides for a civil forfeiture scheme to operate in parallel with the existing conviction-based regime. This differs from the approach in other jurisdictions and is untested as far as I understand.

It may be appropriate to seek comment from the Director of Public Prosecutions for Western Australia. His office has ownership of, and responsibility for, the *Criminal Property Confiscation Act 2000*.

Also, please find enclosed a copy of the *Criminal Property Confiscation Act 2000*. This legislation has empowered the Asset Investigation Office of this agency to be the most effective forfeiture unit in Australia.

At the Adelaide *Criminal Asset Confiscation Conference – April 1999*, this agency proposed that all jurisdictions adopt non-conviction based civil forfeiture legislation and the Commonwealth consider making it incumbent on non-complying states to adopt complimentary laws. We are pleased to see the matter has progressed to a stage where this is imminent, although we are concerned as to which scheme will be enacted.

Should there be any further queries the contact officer is Detective Sergeant Brad Gorman, telephone number (08) 9223 3499. A PowerPoint presentation is available on the WA CPCA *Criminal Property Confiscation Act 2000* legislation, should you be interested.

Yours sincerely



K J O'CALLAGHAN
ASSISTANT COMMISSIONER
STRATEGIC & CORPORATE DEVELOPMENT

11 January 2002