

CONFISCATION OF CRIMINAL ASSETS — CRITERIA

4385. Hon Giz Watson to the Parliamentary Secretary representing the Attorney General

- (1) Where the assets of a particular offender can be confiscated pursuant to Western Australia's criminal assets confiscation legislation, what is the process for determining whether or not to proceed with confiscation, including but not limited to —
  - (a) who decides whether or not confiscation should take place;
  - (b) what criteria apply to the decision-making process; and
  - (c) what, if any matters are specified as being irrelevant to the decision-making process?
- (2) What is the form of this process (for example, written guidelines)?
- (3) How often is this process reviewed, and by whom?

Hon MICHAEL MISCHIN replied:

- (1) (a) The Office of the Director of Public Prosecutions ('ODPP') is not an investigatory agency and therefore only commences or continues confiscation action under the Criminal Property Confiscation Act 2000 ('the Act') in respect of cases referred to it by investigatory agencies such as Western Australian Police ('WAPol') and the Corruption and Crime Commission.  
  
In relation to property which is liable to confiscation because it was used in the commission of a confiscation offence or because it was derived from the commission of a confiscation offence, action under the Act is commenced by the WAPol applying for the issuing of a freezing notice under the Act. That decision is made by the WAPol.  
  
In relation to property which may be liable to be confiscated because an offender may be convicted of a serious drug offence and declared a drug trafficker, action under the Act is commenced by the WAPol applying for the issuing of a freezing notice under the Act. That decision is made by the WAPol.  
  
In relation to property which may be liable to be confiscated on other grounds (e.g. unexplained wealth, criminal benefits and/or crime-used property substitution grounds) the ODPP considers cases referred to it by investigatory agencies. The ODPP then makes a decision as to whether or not to commence confiscation action under the Act. If the decision is to proceed with confiscation action, ordinarily the first step is for the ODPP to seek a freezing order over the relevant property from a Court.  
  
Upon the confiscation action being commenced, s.40 of the Act requires the WAPol and the ODPP to cancel the freezing notice issued on crime-used or crime-derived basis if there are not reasonable grounds to suspect that the frozen property is crime-used or crime-derived.
  - (b) Decisions to institute and/or continue with confiscation action, whether taken by WAPol or the ODPP, are made in accordance with the Policy and Guidelines for the Confiscation Of Property pursuant to the Criminal Property Confiscation Act 2000 which is Appendix 5 to the Statement of Prosecution Policy and Guidelines 2005 issued pursuant to s.24(1) of the Director of Public Prosecutions Act 1991('the Policy and Guidelines').
  - (c) In relation to confiscation of crime-used property, the Policy and Guidelines provide that the following factors are irrelevant to the decision making process:
    - (j) *Any sentence imposed in respect of the confiscation offence is not relevant to a determination as to whether confiscation proceedings should be instituted in respect of property used in connection with that offence.*
    - (k) *Representations regarding the effect of confiscation proceedings in respect of crime-used property on the family or relations of the offender, where known are irrelevant, other than in so far as they are an innocent party in relation to the property*  
In relation to other confiscation cases, there are no matters specified as being irrelevant to the decision-making process.
- (2) See answer to (1)(b) above.
- (3) The Policy and Guidelines and decision making process are constantly reviewed by the ODPP in the course of the conduct of confiscation cases.

