

Joint Standing Committee on the Corruption and Crime Commission

Proceeds of crime and unexplained wealth: A role for the Corruption and Crime Commission?

**Report No. 1
June 2013**

Parliament of Western Australia

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**Proceeds of crime and
unexplained wealth:
A role for the Corruption and
Crime Commission?**

Report No. 1

Presented by

Hon Nick Goiran, MLC and Mr Paul Papalia, CSC, MLA

Laid on the Table of the Legislative Assembly and the Legislative Council
on 20 June 2013

Chairman's Foreword

Report number 28 of the Joint Standing Committee in the 38th Parliament (JSCCCC 38th) was laid on the Table of the Legislative Council on 28 June 2012 and the Legislative Assembly on 7 August 2012. Titled *Proceeds of Crime and Unexplained Wealth: A Role for the Corruption and Crime Commission?*, it contained 12 Findings and two Recommendations. That report can be viewed at: [parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/B04561CA92A7237D48257A2B0009F651/\\$file/67535093.pdf](http://parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/B04561CA92A7237D48257A2B0009F651/$file/67535093.pdf).

The previous Government did not respond to the Committee's recommendations and the new Committee has resolved to bring them to the new Government's attention by tabling them in the 39th Parliament.

The Committee has taken this action because money laundering – the process of concealing the source of criminal proceeds – is increasingly regarded as the Achilles heel of organised crime. It is an accepted tenet that the fight against organised crime is significantly augmented by efforts to target the money laundering aspect of criminal activity.

In Western Australia, the *Criminal Property Confiscation Act 2000* provides avenues by which WA Police, in conjunction with the Office of the Director of Public Prosecutions, may confiscate criminally-acquired property and financial profits, irrespective of whether criminal activity can be established. Yet while this Act was regarded as groundbreaking, the provisions that pertain to the investigation and confiscation of unexplained wealth have been generally under-utilised – and rarely used since early 2010.

The main impetus for the inquiry by the JSCCCC 38th was a meeting it had with the then-Commissioner of the New South Wales Crime Commission (NSWCC), Mr Philip Bradley. Mr Bradley explained the work of the NSWCC and the way it approached the task of fighting organised crime by investigating unexplained wealth.

Subsequently, JSCCCC 38th resolved to inquire into how criminal wealth is investigated in Western Australia and to ascertain whether this specialist area might augment the operations of the CCC. It appeared to that Committee that the investigation of criminal wealth may be an avenue by which the CCC could aid WA Police in the fight against organised crime without compromising its ability to oversight the operations of WA Police.

The JSCCCC 38th conducted investigative travel to the USA and to Canada where it was briefed by representatives of the Federal Bureau of Investigation, the Proceeds of

Crime Branch of the Royal Canadian Mounted Police and the Financial Transactions Reports and Analysis Centre of Canada.


The JSCCCC 38th also convened a series of closed hearings attended by the Deputy and Assistant Commissioners of the WA Police, the Director of Public Prosecutions and the Director of Confiscations from his Office. It convened a round-table discussion with the CCC Commissioner and Parliamentary Inspector (along with senior CCC staff and the Assistant to the Parliamentary Inspector) to discuss whether there may be a role for the CCC in investigating unexplained wealth and the recovery of the proceeds of crime.

With respect to recovering the proceeds of crime – which is to say the confiscation of assets of persons convicted for certain criminal offenses – it was clear to the JSCCCC 38th that there is absolutely no basis for expanding the jurisdiction of the CCC. The present discharge of this function is handled well by the WA Police and the Office of the DPP. Unfortunately, the same cannot be said for the investigation and confiscation of unexplained wealth.

While the recovery of proceeds of crime is tied to a criminal conviction, the investigation and confiscation of unexplained wealth is a non-conviction based civil proceeding. The DPP has implemented a moratorium on the further processing of any applications made by the WA Police for unexplained wealth declarations and this tool is now underutilised in the fight against organised crime in Western Australia.

Though the *Criminal Property Confiscation Act 2000* reverses the onus of proof onto the person who is alleged to possess unexplained wealth, the reality is that the successful confiscation of unexplained wealth requires more than asking a criminal target to explain their financial situation. The fact that the WA Police have preferred in the past to have the Office of the DPP conduct what are resource-intensive financial investigations – work for which the Office of the DPP is not properly or adequately resourced – indicates, in part, that investigations of this nature are a low priority for the WA Police.

The JSCCCC 38th believed that any problems were unlikely to be rectified solely by expanding the jurisdiction of the CCC. Noted deficiencies in the present *Corruption and Crime Commission Act 2003* would need to be addressed if the CCC is to prove more effective than the current model. Any new role undertaken by the CCC will require either an increase in the CCC's resources or else a reduction of existing tasks. That is, a solution based on the CCC undertaking this role will come at a cost to the State of Western Australia, albeit that if the role is performed successfully it will in due course become at least partially self-funding.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' followed by a horizontal line extending to the right.

**HON NICK GOIRAN, MLC
CHAIRMAN**

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Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Minister representing the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Finding 1

Face-to-face interaction with criminal targets significantly heightens the risk of corruption within law enforcement agencies.

Finding 2

The risks associated with the investigation of organised crime are such that officers engaged in this vocation must be subject to regular and stringent security measures.

Finding 3

The CCC's role of combating misconduct and corruption in the public sector is a vital component of the overall fight against organised crime in Western Australia.

Finding 4

Law enforcement strategies that target criminal proceeds are complex and as such require a multi-disciplinary investigative approach, so as to ensure that diverse arrays of specific skills are able to be deployed in the investigative effort.

Finding 5

The viability of organised criminal activity is contingent upon the ability of criminal enterprises to successfully launder ill-gotten profits. As such, financial intelligence must form an integral component of any contemporary organised crime investigation.

Finding 6

Investigating organised criminal activity is an inherently challenging and time-consuming process, and as such demands resolute leadership within law enforcement agencies that are engaged in this endeavour.

Finding 7

The majority of *Criminal Property Confiscation Act 2000* confiscations in Western Australia are obtained through drug trafficker declarations applied for by the Director of Public Prosecutions.

Finding 8

The recovery of 'proceeds of crime' under the provisions of the *Criminal Property Confiscation Act 2000* is a function of government that the WA Police and the Office of the Director of Public Prosecutions are performing extremely well.

Finding 9

At present, examinations in support of unexplained wealth investigations under the provisions of the *Criminal Property Confiscation Act 2000* are regarded as ineffective by the Office of the Director of Public Prosecutions, owing to the need for these examinations to be conducted as part of a court process.

Finding 10

The optimum model for conducting investigations of unexplained wealth in Western Australia under the provisions of the *Criminal Property Confiscation Act 2000* would require the creation of a new ‘confiscations agency’ which would operate independently from both the WA Police and the Office of the Director of Public Prosecutions.

Finding 11

In line with Finding 8, there is absolutely no reason to expand the jurisdiction of the Corruption and Crime Commission – or, indeed, any other government agency – into the area associated with recovering conviction-based ‘proceeds of crime’ under the provisions of the *Criminal Property Confiscation Act 2000*.

Finding 12

If the jurisdiction of the Corruption and Crime Commission is to be increased, so as to allow the CCC to investigate ‘unexplained wealth’ under the provisions of the *Criminal Property Confiscation Act 2000*, the *Corruption and Crime Commission Act 2003* would need to be amended to give the CCC the power to initiate civil proceedings, to freeze property, and to maintain custody over frozen property for the duration of these investigations.

Recommendation 1

The *Criminal Property Confiscation Act 2000* should be amended so as to invest the functions conferred upon the Director of Public Prosecutions in sections 11-14 upon the Commissioner of the Corruption and Crime Commission. This would allow the CCC to conduct – on application by the WA Police Commissioner – investigations of unexplained wealth into targets identified by the WA Police. These functions could then be removed from the ambit of the DPP.

Recommendation 2

The *Corruption and Crime Commission Act 2003* should be amended to give the CCC the power to initiate civil proceedings, and to freeze and maintain custody over property, so as to enable the CCC to investigate unexplained wealth in line with the provisions of sections 11-14 of the *Criminal Property Confiscation Act 2000*.

Appendix One

Committee's functions and powers

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to:

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members: two from the Legislative Assembly and two from the Legislative Council.