



# **CRIMES (CONFISCATION OF PROFITS) ACT, 1986**

**No. 17 of 1986**

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# ELIZABETHAE II REGINAE

A.D. 1986

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No. 17 of 1986

**An Act to provide for the confiscation of profits of crime; to make related amendments to the Controlled Substances Act, 1984; and for other purposes.**

*[Assented to 20 March 1986]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Crimes (Confiscation of Profits) Act, 1986".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation.

3. (1) In this Act, unless the contrary intention appears—

"appropriate court" means—

(a) the Supreme Court;

(b) in relation to an application for the forfeiture or sequestration of property not exceeding \$100 000 in value—a District Criminal Court;

or

(c) in relation to an application for the forfeiture or sequestration of property not exceeding \$10 000 in value—a court of summary jurisdiction constituted of a magistrate:

"corresponding law" means a law of another State, or a Territory, of the Commonwealth declared by proclamation to be a law corresponding to this Act:

"premises" means a building, structure or place (whether built on or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle:

"prescribed offence" means—

(a) an indictable offence;

or

(b) an offence against—

(i) section 34 (1) or (2) or 44 (1) or (2) of the Fisheries Act, 1982;

(ii) section 63 (1) (a) of the Lottery and Gaming Act, 1936;

(iii) section 51 (1) or (1a), 55 (1), 56 (2) or 60 of the National Parks and Wildlife Act, 1972;

(iv) section 117 (1) of the Racing Act, 1976;

or

(v) section 28 (1) (a), 37 or 38 of the Summary Offences Act, 1953:

“proceeds” of an offence means property derived directly or indirectly from the commission of the offence:

“property” includes all forms of real or personal property, whether tangible or intangible:

“search warrant” means a warrant under this Act authorizing a search of a person or premises:

“telephone” includes any telecommunication device.

(2) For the purposes of this Act, a person shall be deemed to have been charged with an offence as soon as an information or complaint is laid against that person alleging the commission of the offence irrespective of whether that person then has notice of the allegation.

(3) For the purposes of this Act, a person shall be deemed to have been convicted of an offence if—

(a) that person is adjudged guilty of the offence by a court but is discharged without conviction;

or

(b) a court, at the request of that person, takes the offence into account in determining the penalty for some other offence or offences.

(4) A reference in this Act to the origin of property that is liable to forfeiture is a reference to the circumstances by virtue of which the property is liable to forfeiture.

(5) The Governor may, by proclamation, declare a law of another State, or of a Territory, of the Commonwealth to be a law corresponding to this Act and may, by subsequent proclamation, vary or revoke any such declaration.

4. (1) Property is liable to forfeiture under this Act if—

(a) the property is acquired for the purpose of committing a prescribed offence or is used in connection with the commission of a prescribed offence;

(b) the property is the proceeds of a prescribed offence;

or

Liability of  
property to  
forfeiture.

- (c) the property is property acquired with the proceeds of a prescribed offence or into which the proceeds of a prescribed offence have, in some other manner, been converted.

(2) Where—

- (a) there has been an accretion to a person's property in consequence of the commission of a prescribed offence (either by that person or some other person);

but

- (b) identification of specific property as being liable to forfeiture under subsection (1) is not possible (either because the property has been dissipated or for any other reason),

the whole of the person's property is liable to forfeiture under this Act but, on an application for forfeiture, only so much of the property as is necessary to realize a sum equal to the value of the accretion shall be forfeited.

Forfeiture orders.

5. (1) Subject to subsection (2), where the appropriate court is satisfied, on the application of the Attorney-General—

- (a) that property is liable to forfeiture in consequence of the commission of a prescribed offence;

and

- (b) that the offender—

(i) has been convicted of the offence;

or

(ii) is dead, cannot be found, or is for any other reason not amenable to justice,

the court may order that the property be forfeited to the Crown.

(2) An order for forfeiture shall not be made in respect of property of a person who is innocent of any complicity in the commission of the offence unless—

- (a) that person acquired or received the property without giving valuable consideration for it;

or

- (b) that person acquired or received the property knowing of its origin or in circumstances such as to arouse a reasonable suspicion as to its origin.

(3) Subject to subsection (4), any question of fact to be decided by a court on an application for forfeiture shall be decided on the balance of probabilities.

(4) Where, on an application for forfeiture, a person is alleged to have committed an offence of which the person has not been convicted, the allegation must be proved beyond reasonable doubt.

(5) A person who has an interest in property alleged to be liable to forfeiture—

- (a) is entitled to such notice of the application as may be determined by the court to which the application is made;

and

(b) is entitled to appear and be heard on the application.

6. (1) Where the appropriate court is satisfied, on the application of the Attorney-General, that there are reasonable grounds to suspect that— Sequestration orders.

(a) certain property is liable to forfeiture under this Act in consequence of the commission of a prescribed offence;

or

(b) certain property is liable to forfeiture under a corresponding law in consequence of the commission of an offence against a law of another State, or a Territory, of the Commonwealth,

the court may make a sequestration order prohibiting, subject to the exceptions (if any) stated in the order, any dealing with the property.

(2) A sequestration order may be made on the basis of an *ex parte* application but, in that event, the court shall allow the owner of the property a reasonable opportunity to be heard on the question of whether the order should continue in force and, if after hearing the owner, the court is not satisfied that there is good reason to continue the order in force, the order shall be revoked.

(3) A sequestration order may—

(a) provide for the management or control of property subject to the order;

and

(b) deal with any other matter that is necessary for, or incidental or ancillary to, the effective operation of the order.

(4) Where a person deals with property that is subject to a sequestration order contrary to the terms of the order—

(a) the dealing is void;

and

(b) the person is guilty of an offence.

Penalty: \$5 000 or imprisonment for 2 years.

(5) A sequestration order may be varied or revoked at any time.

(6) Subject to subsection (7), a sequestration order lapses—

(a) if at the expiration of the prescribed period from the date of the order, a charge of the offence in respect of which the order was made has not been laid under the law of this State or the law of another State, or a Territory, of the Commonwealth;

(b) if the charge of the offence in respect of which the order was made is withdrawn and a new charge of the commission of another offence (being either a prescribed offence or an offence against the law of another State, or a Territory, of the Commonwealth in consequence of which property is liable to forfeiture under a corresponding law), arising out of the same circumstances as the first charge, has not been laid within 7 days of the first charge being withdrawn;

(c) if the person charged with the offence in respect of which the order was made is acquitted;

(d) if the person charged with the offence in respect of which the order was made is convicted of the offence but proceedings for forfeiture of the property are not commenced within the prescribed period after the date of the conviction;

or

(e) proceedings for forfeiture of the property subject to the sequestration order are determined.

(7) A sequestration order does not lapse under subsection (6) (a) if within the prescribed period proceedings for forfeiture of the property to which the order relates are commenced under this Act or a corresponding law.

(8) In this section—

“prescribed period” means the period of one month or such longer period, not exceeding 2 months, as may be determined, on application by the Attorney-General, by the court by which the sequestration order was made.

Issue of search warrants.

7. (1) Where on the application of a member of the police force a magistrate is satisfied that there are reasonable grounds to believe that a search of a particular person or of particular premises would reveal property that is liable to forfeiture under this Act or a corresponding law, the magistrate may issue a search warrant in respect of that person or those premises.

(2) An application for the issue of a search warrant may be made either personally or by telephone.

(3) The grounds of an application for a search warrant must be verified by affidavit.

(4) An application for the issue of a search warrant shall not be made by telephone unless in the opinion of the applicant a search warrant is urgently required and there is insufficient time to make the application personally.

(5) Where an application for the issue of a search warrant is made by telephone, the following provisions apply:

(a) the applicant shall inform the magistrate of the applicant's name and rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a member of the police force;

(b) the applicant shall inform the magistrate of the grounds on which the issue of the search warrant is sought;

(c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant, the magistrate shall inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;

(d) if the applicant gives such an undertaking, the magistrate may then make out and sign a search warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant;

- (e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate;
- (f) the magistrate shall inform the applicant of the terms of the warrant;
- (g) the applicant shall, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

(6) A magistrate by whom a search warrant is issued shall file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Adelaide Magistrates Court.

8. (1) A search warrant authorizes any member of the police force, with such assistants as the member thinks necessary—

- (a) in the case of a warrant issued in respect of a person—to search that person;
- (b) in the case of a warrant issued in respect of premises—to enter and search the premises and anything in the premises.

Authority conferred by, and other incidents of, a search warrant.

(2) A search warrant shall not be executed between the hours of 7 o'clock in the evening and 7 o'clock in the following morning unless the magistrate by whom the warrant is issued expressly authorizes its execution between those hours.

(3) A member of the police force, or a person assisting the member, may use such force as is reasonably necessary for the execution of a search warrant.

(4) A member of the police force executing a search warrant may seize property that the member suspects on reasonable grounds to be liable to forfeiture under this Act or a corresponding law.

(5) Property seized in pursuance of a search warrant shall be returned to the owner at the expiration of 14 days from the date of seizure unless—

- (a) an order for forfeiture or sequestration of that property is made under this Act within that period;

or

- (b) the owner consents to retention of the property beyond that period by a member of the police force.

(6) A member of the police force who executes a search warrant—

- (a) shall prepare a notice in the prescribed form containing—

- (i) the member's name and rank;
- (ii) the name of the magistrate who issued the warrant and the date and time of its issue;

and

- (iii) a description of any property seized in pursuance of the warrant;

and

- (b) shall, as soon as practicable after execution of the warrant—

- (i) in the case of a warrant issued in respect of a person—  
give the notice to the person;
- (ii) in the case of a warrant issued in respect of premises—  
give the notice to the occupier of the premises or leave  
it in a prominent position on those premises.

(7) A search warrant, if not executed at the expiration of one month from the date of its issue, shall then expire.

Offence of  
hindering  
execution of  
search warrant.

9. A person who, without lawful excuse, hinders a member of the police force, or a person assisting a member of the police force, in the execution of a search warrant shall be guilty of a summary offence.

Penalty: \$2 000 or imprisonment for 6 months.

Payment into  
Criminal Injuries  
Compensation  
Fund.

10. (1) Subject to subsection (2), any money that is forfeited to the Crown under this Act or any money that is obtained from the sale of property that is forfeited to the Crown under this Act shall be paid into the Criminal Injuries Compensation Fund.

(2) Money derived from the forfeiture of property under this Act in consequence of the commission of an offence against section 32 of the Controlled Substances Act, 1984, shall be applied, as the Attorney-General thinks fit, to assist in the treatment and rehabilitation of persons who are dependent on drugs.

Summary  
offences.

11. The offences constituted by this Act are summary offences.

Regulations.

12. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Amendment of  
Controlled  
Substances Act.

13. The Controlled Substances Act, 1984, is amended as indicated in the schedule.



## SCHEDULE

The Controlled Substances Act, 1984, is amended as follows:

- Section 4                   Strike out the definition of "related person or body".
- Section 43                 Strike out this section and substitute the following section:
- Classification of offences     43. (1) Subject to this section—
- (a) offences against this Act that are punishable by imprisonment are indictable offences and those punishable by imprisonment for a maximum of less than 5 years are minor indictable offences;
- and
- (b) offences against this Act that are not punishable by imprisonment are summary offences.
- (2) The offence of producing, or taking part in the production of, cannabis may be prosecuted either as a summary or an indictable offence but, if prosecuted as a summary offence, the court shall, if it is proved that the defendant produced or took part in the production of cannabis, presume that the cannabis was produced solely for the defendant's own smoking or consumption.
- (3) Where a person produces, or takes part in the production of cannabis for his or her own smoking or consumption, the offence is, for the purposes of the Crimes (Confiscation of Profits) Act, 1986, a summary offence.
- Sections 47 to 49  
(inclusive)                 These sections are repealed.
- Section 52 (2) (i)         Strike out the passage "or may be liable to forfeiture to the Crown".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor