

Western Australia

**Criminal Law Amendment (Criminal Property)
Act 2004**

As at 07 Oct 2004

No. 26 of 2004

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Criminal Law Amendment (Criminal Property) Act 2004

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Criminal Law Amendment (Criminal Property) Act 2004

No. 26 of 2004

An Act to amend —

- *The Criminal Code*; and
- *the Sentencing Act 1995*.

[Assented to 7 October 2004]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Law Amendment (Criminal Property) Act 2004*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation on a day fixed by proclamation.

Part 2 — Amendments to *The Criminal Code*

3. The Act amended

The amendments in this Part are to *The Criminal Code**.

[* *Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 95.]

4. Section 563A amended

- (1) Section 563A(1) is amended by deleting “a major offence” and inserting instead —

“ an offence ”.

- (2) After section 563A(1) the following subsection is inserted —

“

- (1a) For the purpose of deciding whether money or other property is proceeds of an offence, the money or other property does not cease to be proceeds of an offence only as a result of —

- (a) being credited to an account; or
- (b) being given away, or exchanged for other property that is not proceeds of an offence.

”.

- (3) Section 563A(3) is amended as follows:

- (a) by deleting the definition of “major offence” and inserting instead —

“

“offence” means an offence against a law of Western Australia, the Commonwealth, another State or a Territory;

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- ”,
- (b) in the definition of “proceeds” by deleting “or a major offence”;
 - (c) in the definition of “proceeds” by deleting “or major offence, as the case requires”.

5. Section 563B inserted

After section 563A the following section is inserted in
Chapter LIX —

“

563B. Dealing with property used in connection with an offence

- (1) A person who deals with any money or other property that is being used, or is intended to be used, in connection with an offence is guilty of a crime and is liable to imprisonment for 20 years.
- (2) A person may be convicted of a crime under subsection (1) regardless of whether —
 - (a) the person does anything to facilitate or procure the commission of the offence;
 - (b) the person does or omits to do anything that constitutes all or part of the offence;
 - (c) anyone who does or omits to do, or who intended or intends to do or omit, anything that constitutes all or part of the offence is identified;
 - (d) anyone is charged with or convicted of the offence; or
 - (e) the offence is subsequently committed.
- (3) It is a defence in proceedings for a crime under subsection (1) —
 - (a) to prove that the defendant —

- (i) did not know;
 - (ii) did not believe or suspect; and
 - (iii) did not have reasonable grounds to believe or suspect,
that the money or other property was being used or was intended to be used in connection with the offence; or
 - (b) to prove that the defendant engaged in the act or omission alleged to constitute the crime in order to assist the enforcement of a law of Western Australia, the Commonwealth, another State or a Territory.
- (4) A prosecution under this section must not be commenced without the consent of the Director of Public Prosecutions.
- (5) In this section —
- “deals with”**, in relation to money or other property, means —
- (a) receives or has possession or control of the money or other property;
 - (b) conceals or attempts to conceal the money or other property;
 - (c) passes the money or other property to another person; or
 - (d) disposes of the money or other property in any other way;
- “offence”** means an offence against a law of Western Australia, the Commonwealth, another State or a Territory;

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“used in connection with an offence” means used in
or in connection with —

- (a) the commission of an offence; or
- (b) facilitating or procuring an offence.

”.

Part 3 — Amendments to *Sentencing Act 1995*

6. The Act amended

The amendments in this Part are to the *Sentencing Act 1995**.

[* *Reprint 3 as at 10 October 2003.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 349.]*

7. Section 8 amended

- (1) Section 8(3) is repealed and the following subsections are inserted instead —

“

- (3) The fact that criminal property confiscation has occurred or may occur is not a mitigating factor.
- (3a) However, except in the case of derived property, facilitation by the offender of criminal property confiscation is a mitigating factor.

”.

- (2) After section 8(5) the following subsection is inserted —

“

- (6) In this section —

“criminal property confiscation” means —

- (a) confiscation of derived property or any other property under section 6, 7 or 8 of the *Criminal Property Confiscation Act 2000*; or
- (b) confiscation or forfeiture to the Crown of derived property under any other written law;

“derived property” means property derived or realised, directly or indirectly, by the offender, or that is subject to the effective control of the

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offender, as a result of the commission of the
offence.

”.

8. Section 16 amended

Section 16(1)(f) is amended by deleting “forfeiture to Crown”
and inserting instead —

“

confiscation or forfeiture to the Crown
(otherwise than under the *Criminal Property
Confiscation Act 2000*)

”.

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