

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL PROPERTY FORFEITURE (CONSEQUENTIAL
AMENDMENTS) ACT 2002

Act No. 35 of 2002

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 35 of 2002

AN ACT

to amend various Acts consequential on the enactment of the
Criminal Property Forfeiture Act 2002 and for related purposes

[Assented to 16 July 2002]

[Second reading 16 May 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Criminal Property Forfeiture (Consequential Amendments) Act 2002*.

2. Commencement

This Act comes into operation on the day on which, but immediately after, the *Criminal Property Forfeiture Act 2002* commences.

3. Amendment of *Director of Public Prosecutions Act*

Section 17 of the *Director of Public Prosecutions Act* is repealed and the following substituted:

"17. Enforcement of forfeiture order etc.

"Where the Director has conducted proceedings under the *Criminal Property Forfeiture Act* and as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeit to the Territory under a

court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order."

4. Amendments of *Misuse of Drugs Act*

(1) Section 22 of the *Misuse of Drugs Act* is amended –

- (a) by omitting "Where a person" and substituting "(1) Where a person"; and
- (b) by adding at the end the following:

"(2) Despite subsection (1), a person who is charged with an offence referred to in section 36A(6) and who could, if found guilty of the offence, be declared under section 36A to be a drug trafficker is not to be tried summarily for the offence."

(2) The *Misuse of Drugs Act* is amended by inserting after section 36 the following:

"36A. Declared drug trafficker

"(1) The Director of Public Prosecutions may apply to the Supreme Court for a declaration that a person is a drug trafficker.

"(2) An application under subsection (1) may be made at the time of a hearing for an offence or at any other time.

"(3) On hearing an application by the Director of Public Prosecutions under subsection (1), the court must declare a person to be a drug trafficker if –

- (a) the person has been found guilty by the court of an offence referred to in subsection (6) that was committed after the commencement of this section; and
- (b) subject to subsection (5), in the 10 years prior to the day on which the offence was committed (or the first day on which the offence was committed, as the case requires), the person has been found guilty –
 - (i) on 2 or more occasions of an offence corresponding to an offence referred to in subsection (6); or
 - (ii) on one occasion of 2 (or more) separate charges relating to separate offences of which 2 or more correspond to an offence or offences referred to in subsection (6).

"(4) An offence referred to in subsection (3)(b) –

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- (a) may have been committed either before or after the commencement of this section; and
- (b) may have been tried either summarily or on indictment.

"(5) If, during the period of 10 years referred to in subsection (3), the person served a term (or more than one term) of imprisonment for an offence corresponding to an offence referred to in subsection (6), the 10 year period is extended by the total length of time the person served in imprisonment.

"(6) The following are offences relevant for the purposes of subsection (3):

- (a) an offence under section 5;
- (b) an offence under section 7 that is punishable under section 7(2)(a) or (b);
- (c) an offence under section 8;
- (d) an offence under section 9 that is punishable under section 9(2)(a), (b), (d) or (e);
- (e) conspiring with another person to commit an offence mentioned in paragraphs (a) to (d) inclusive;
- (f) an offence against a law of a State or another Territory corresponding to an offence mentioned in paragraphs (a) to (e) inclusive;
- (g) an offence against section 233B of the *Customs Act 1901* of the Commonwealth."

5. Amendments of *Sentencing Act*

Section 5 of the *Sentencing Act* is amended by adding at the end the following:

- "(4) In sentencing an offender, a court –
 - (a) may have regard to any co-operation by the offender in resolving any action taken against the offender under the *Criminal Property Forfeiture Act* in relation to the offence or offences for which the offender is being sentenced;
 - (b) may have regard to a forfeiture order under the *Criminal Property Forfeiture Act* to the extent that the order relates to property that is crime-used property (within the meaning of that Act) in relation to

the offence or offences for which the offender is being sentenced;
and

- (c) must not make any allowance for any other property that has been or may be forfeited to the Territory by operation of the *Criminal Property Forfeiture Act* or in any proceedings under that Act in which the offender is, was or may be a respondent."

6. Repeal and savings

(1) The Acts specified in the Schedule are repealed.

(2) Despite subsection (1), the *Crimes (Forfeiture of Proceeds) Act* and the *Crimes (Forfeiture of Proceeds) Regulations* continue in force in relation to any proceedings commenced under that Act before its repeal until the proceedings are finally determined.

SCHEDULE

Section 6(1)

REPEALED ACTS

<i>Crimes (Forfeiture of Proceeds) Act 1988</i>	No. 65, 1988
<i>Crimes (Forfeiture of Proceeds) Amendment Act 1990</i>	No. 16, 1990
<i>Crimes (Forfeiture of Proceeds) Amendment Act 1992</i>	No. 20, 1992
