

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

**LEGAL ASSISTANCE (RESTRAINED PROPERTY) AMENDMENT
ACT 2001**

No. 10 of 2001

[Assented to 12 April 2001]

An Act to amend the Criminal Assets Confiscation Act 1996; the Criminal Law (Sentencing) Act 1988; the Legal Services Commission Act 1977 and the Criminal Law Consolidation Act 1935.

SUMMARY OF PROVISIONS

1. **Short title**
2. **Commencement**
3. **Amendment of Criminal Assets Confiscation Act 1996**
4. **Amendment of Criminal Law (Sentencing) Act 1988**
5. **Amendment of Legal Services Commission Act 1977**
 - 18B. **Special provisions in relation to property subject to a restraining order**
6. **Amendment of Criminal Law Consolidation Act 1935**

The Parliament of South Australia enacts as follows:**Short title**

1. This Act may be cited as the *Legal Assistance (Restrained Property) Amendment Act 2001*.

Commencement

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

Amendment of Criminal Assets Confiscation Act 1996

3. The *Criminal Assets Confiscation Act 1996* is amended—

- (a) by inserting in section 3 the following definition:

"legal assistance costs" means legal costs payable by an assisted person under the conditions on which legal assistance is provided under the *Legal Services Commission Act 1977*;

- (b) by striking out from section 3 the definition of "proceeds" and substituting the following definition:

"proceeds" of an offence means property derived directly or indirectly from the commission of the offence;¹

- (c) by inserting the following subsection after section 4(1):

(1A) If tainted property is converted (by sale, exchange or in some other way) into other property, the other property is also tainted.;

- (d) by striking out from exception 2 to section 15(5) "lawfully or at least" and substituting "more than";

- (e) by striking out subsections (2) and (3) of section 20 and substituting the following subsections:

(2) However, property subject to a restraining order may only be applied towards payment of legal costs if—

- (a) the legal costs are legal assistance costs; and

- (b) the court authorises application of the property for that purpose under subsection (3).

¹ Note that the proceeds of a forfeiture offence are tainted property (See section 4(1)(c)). If the proceeds are converted into other property, the other property is also tainted (See section 4(1A)).

(3) If the court is satisfied, on application by the Legal Services Commission, that it is unlikely that anyone other than a particular assisted person could, assuming that property subject to a restraining order were not forfeited, establish a lawful claim to the property (or a particular part of, or interest in, the property)—

- (a) the court must authorise the use of property (or the relevant part of, or interest in, the property) to defray legal assistance costs; and
- (b) may make any other order that may be necessary or appropriate in the circumstances (such as an order for partition of the property or an order for its sale or conversion into money).

(4) The Legal Services Commission may only make an application under subsection (3) for an order authorising the application of property to defray legal assistance costs if satisfied that the assisted person has no other source of funds (within or outside the State) to which the Commission could reasonably have recourse for the legal assistance costs.

(5) Before the court authorises the application of property subject to a restraining order towards legal assistance costs or other private expenditure, the court must allow the Attorney-General an opportunity to appear and be heard on the matter.

Amendment of Criminal Law (Sentencing) Act 1988

4. The *Criminal Law (Sentencing) Act 1988* is amended by inserting after section 10(1)(k) the following paragraph:

- (ka) if a forfeiture of property (other than a forfeiture that merely neutralises a benefit that has been obtained through the commission of the offence) is, or is to be imposed, as a result of the commission of the offence—the nature and extent of the forfeiture;.

Amendment of Legal Services Commission Act 1977

5. The *Legal Services Commission Act 1977* is amended—

- (a) by inserting the following definition in section 5:

"restraining order" means a restraining order under the *Criminal Assets Confiscation Act 1996*;

- (b) by inserting after section 18A the following section:

Special provisions in relation to property subject to a restraining order

18B. (1) In deciding whether a person is eligible for legal assistance, the value of property subject to a restraining order is to be disregarded.

(2) In fixing contributions to be made by an assisted person towards the cost of legal assistance while the property remains subject to a restraining order, the property subject to the order is to be disregarded but this subsection does not prevent the Commission from applying for an order that provision be made out of such property (in addition to the contributions to be made by the assisted person) to defray the costs of legal assistance.

(3) An assisted person's liability to pay legal costs may be secured by a charge on property subject to a restraining order.

(4) If such a liability is secured on property subject to a restraining order and the property is later forfeited—

- (a) the property is automatically released from the charge; but
- (b) the Administrator (of forfeited property under the *Criminal Assets Confiscation Act 1996*) must pay to the Commission out of the forfeited property or the proceeds of its sale or conversion into money the lesser of—
 - (i) the amount secured by the charge at the time of the forfeiture;
 - (ii) the net proceeds of the forfeiture.

Amendment of Criminal Law Consolidation Act 1935

6. The *Criminal Law Consolidation Act 1935* is amended—

- (a) by striking out section 287;
- (b) by striking out section 360;
- (c) by striking out subsection (2) of section 363.