



# **Objecting to confiscation**

## **Part 1 - Information kit**



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## Introduction

This information kit explains what to do if you get a freezing notice or freezing order and how you can object to the confiscation of property referred to in a freezing notice or order. It is a general guide only. If you receive a freezing notice or order, even if you are an innocent party and have not been charged with a criminal offence, you should get legal advice about your particular situation as soon as possible.

Please note, there are two parts to this kit. This is **Part 1** which is the **Information Kit**. It includes information about how to object to a freezing notice or order and describes the forms you will need to complete and file with the court. **Part 2** includes the **Forms** in Word format so that you can copy and type into them. It is important that you use both parts of the kit together.

## How to find legislation

This kit refers to some WA legislation. You may access this legislation from this website: [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au). If you are looking for an Act, click on the **In force** link under the heading Acts. Then select the alpha letter of the name of the Act, for example **C** for *Criminal Property Confiscation Act 2000* (WA), and scroll to find this Act. You can choose to open the Act in different formats, but PDF format is recommended. If you are looking for subsidiary legislation, for example the *Rules of the Supreme Court 1971* (WA), click on the **In force** link under the heading **Subsidiary legislation**, and then follow the same process as described for accessing an Act.

## Definitions and terms used

Term	Definition
<b>Statutory declaration</b>	A written statement of facts made by a person who swears, affirms or declares it to be true in the presence of an authorised witness (usually a JP, lawyer or notary public).
<b>Affidavit</b>	A written statement of facts made by a person who is a party or witness in court and who swears or affirms the statement to be true, in the presence of an authorised witness (usually a JP, lawyer or court registrar).
<b>JP</b>	Justice of the Peace - a person authorised to carry out a range of official administrative duties in the community.
<b>CCC</b>	Corruption and Crime Commission in Western Australia.
<b>DPP</b>	Office of the Director of Public Prosecutions in Western Australia.
<b>Frozen property</b>	Property that is subject to a freezing notice or freezing order.
<b>Crime-used property</b>	Property used in, or in conjunction with, the commission of a confiscation offence, or other property of equal value.
<b>Crime-derived property</b>	Property derived directly or indirectly from the commission of a confiscation offence.
<b>Criminal benefits</b>	Certain property, services, advantages and benefits obtained by a person who has been involved in the commission of a confiscation offence.

Term	Definition
<b>Unexplained wealth</b>	Property that is the same value as the amount of wealth a person has that is over the amount of their lawfully obtained wealth.
<b>Interested party</b>	A person who has an interest in frozen property that would enable them to succeed in objecting to the confiscation of the property.

## Overview – when property may be confiscated

The *Criminal Property Confiscation Act 2000* (WA) ('the Act') gives the police, the Director of Public Prosecutions (DPP) and the Corruption and Crime Commission (CCC) power to take action that may result in the confiscation of certain property, namely:

- unexplained wealth<sup>1</sup>
- criminal benefits<sup>2</sup>
- crime-used property<sup>3</sup>
- crime-derived property,<sup>4</sup> or
- property of a person declared to be a drug trafficker.<sup>5</sup>

The power to confiscate property that is from criminal benefits, crime-used property and crime-derived property arises when a person commits a confiscation offence. The power arises whether the confiscation offence was committed in WA or elsewhere, and whether or not anyone has been charged with, or convicted of, the confiscation offence.<sup>6</sup>

The power also exists for property to be seized by a police officer, or a freezing notice to be issued over property, if there are reasonable grounds for suspecting it is crime-used, crime-derived, or is owned or effectively controlled by a person who may be declared a drug trafficker.<sup>7</sup>

When a person is declared to be a drug trafficker, the following property is confiscated, even if it was lawfully obtained:

- all the property that the person owns or effectively controls at the time the declaration is made, and
- all the property that the person gave away at any time before the declaration was made.<sup>8</sup>

Individuals who have unexplained wealth can be ordered by the courts to show how they accumulated their wealth. The DPP (or the CCC) only has to show that the person has wealth within the meaning of the Act and then it becomes necessary for the individual to show that the wealth was lawfully acquired.<sup>9</sup> Any unexplained wealth may be confiscated and forfeited to the State.<sup>10</sup>

<sup>1</sup> *Criminal Property Confiscation Act 2000* s 4(a) ('CPCA')

<sup>2</sup> *Ibid* s 4(b)

<sup>3</sup> *Ibid* s 4(c)

<sup>4</sup> *Ibid* s 4(d)

<sup>5</sup> *Ibid* s 4(e)

<sup>6</sup> *Ibid* s 5(2)

<sup>7</sup> *Ibid* ss 33(1), 34

<sup>8</sup> *Ibid* s 8

<sup>9</sup> *Ibid* ss 11, 12(2)

<sup>10</sup> *Ibid* s 14

## Freezing notice

### Meaning of freezing notice

A freezing notice is designed to stop any dealings with certain property and give a warning that the State intends to apply to confiscate that property. The property covered by a freezing notice is called frozen property. It is an imprisonable offence to deal with frozen property in any way.<sup>11</sup>

The police or the DPP may ask a JP to issue a freezing notice against a person in relation to property that is owned or effectively controlled by that person.<sup>12</sup> The person against whom a freezing notice is issued may object to the confiscation of the property and ask a court to decide whether the property should be confiscated. If no objection is made, the property may be confiscated automatically.<sup>13</sup> It is possible to apply to have confiscated property released. See under the heading **Applying for release of confiscated property** on page 13.

### Grounds for issuing a freezing notice

The grounds for a freezing notice must be set out by the JP who issues the notice.<sup>14</sup> A JP may issue a freezing notice for any property where:

- they have reasonable grounds for suspecting that the property is crime-used<sup>15</sup> or crime-derived<sup>16</sup>; or
- the person who will be issued with the notice:
  - has been charged with an offence (or is likely to be charged with an offence within 21 days after the freezing notice is issued), and
  - could be declared a drug trafficker if convicted of the offence.<sup>17</sup>

### Property that may be covered by a freezing notice

If a freezing notice is issued on the grounds that property is suspected to be crime-used or crime-derived, the notice may cover any such property.

If a freezing notice is issued on the grounds that a person could be declared a drug trafficker,<sup>18</sup> the freezing notice may cover all or any property that is owned, controlled or has been given away by that person.

A freezing notice may also cover property that is acquired after the notice is made. Similarly, any income or other property obtained from the property while the freezing notice is in force is taken to be part of the property.<sup>19</sup>

### Personal service required

A freezing notice must be served personally on the person to whom it is issued.<sup>20</sup>

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<sup>11</sup> Ibid s 50.

<sup>12</sup> Ibid s 34.

<sup>13</sup> Ibid s7(1).

<sup>14</sup> Ibid s 34(6)(b).

<sup>15</sup> Ibid ss 4(c), 34(2).

<sup>16</sup> Ibid ss 4(d), 34(2).

<sup>17</sup> CPCA s 34(3)

<sup>18</sup> Ibid s 34(3).

<sup>19</sup> Ibid ss 34(5),(7).

<sup>20</sup> Ibid s 36(1).

## What to do if you receive a freezing notice

### Provide a statutory declaration to police

If you are served with a freezing notice, you must provide a statutory declaration **within 7 days** to the officer in charge of the police station specified in the notice.<sup>21</sup>

In the statutory declaration you must:

- state the name and the address of any other person who you are aware is or may be an ‘interested party’, or
- if you are not aware of any other person who may be an ‘interested party’, make a statement to this effect.<sup>22</sup>

If you fail to do this, it is an offence. The penalty is a fine up to \$5000.<sup>23</sup>

‘Interested party’ means a person who has an interest in the frozen property that would enable them to succeed in objecting to the confiscation of the property.

There is a **blank statutory declaration form in Part 2 of this Kit** that you may use. To complete it you need to:

- Put in your name, address and occupation.
- Set out in numbered paragraphs who has an interest in the property and provide their contact details, or say if no one else has an interest in the property.

Sign the declaration before an authorised witness (there is a list of people who can witness a statutory declaration at the end of the form).

### Object to confiscation under freezing notice

If you are served with a freezing notice and you wish to object to the confiscation of the property covered by the notice, you need to file an objection in court **within 28 days after you are served** with the notice, or within any further time allowed by the court.<sup>24</sup>

If you did not receive the notice, your objection to the notice must be filed within 28 days after you become aware, or could reasonably be expected to have become aware, that the property has been frozen<sup>25</sup> or within any further time allowed by the court.<sup>26</sup>

If you do not file an objection in time, the property covered by the notice may be confiscated automatically.<sup>27</sup> It is possible to apply to have confiscated property released. See **Applying for release of confiscated property** on page 13.

You need to file the objection in the court specified in the notice. This will usually be the Supreme Court as it has the power to deal with any property confiscation proceedings. The Magistrates Court and District Court have power to deal with criminal property proceedings but not in relation to land and not in relation to amounts that are over their jurisdictional limits.<sup>28</sup>

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<sup>21</sup> Ibid s 37.

<sup>22</sup> Ibid s 37

<sup>23</sup> Ibid s 37

<sup>24</sup> Ibid s 79(2)

<sup>25</sup> Ibid s 79(3)(a)

<sup>26</sup> Ibid s 79(3)(b)

<sup>27</sup> Ibid s 7(1)

<sup>28</sup> Ibid s 101

When objecting to a freezing notice in the Supreme Court, you must file an Originating Summons (Form 75).<sup>29</sup>

If you want to ask for a reduction of the filing fee, before filing these documents you must file a Application to Reduce Fee (Form 2) and wait for the result, before filing the other documents.

There is information below about how to complete these documents using the blank forms in Part 2 of this Kit. See **Objecting to confiscation - How to complete your documents** on page 7.

You must file the completed documents electronically by eFiling, unless you have an exemption. There is information below about how to file your documents using eFiling, or how to file them in another way if you get an exemption from eFiling. See **Objecting to confiscation - How to file your documents** on page 8.

Once you have filed your documents in court you must serve a copy of the Originating Summons on the DPP. You do not need to serve a copy of the Application to Reduce Fee. There is information below about how to serve these documents. See **Objecting to confiscation – How to serve your documents** on page 11.

When hearing your objection to the confiscation of the frozen property, the court may set aside the freezing notice to the extent permitted by the law.<sup>30</sup> There is detailed information below about what the court can do when it hears your objection to confiscation. See **Objection hearing in court** on page 12.

## Freezing order

### Meaning of freezing order

A freezing order is a court order that prevents certain property being dealt with when the DPP have brought proceedings or will bring proceedings within 21 days<sup>31</sup> for:

- an examination order (where a person is examined about property),
- a monitoring order or a suspension order (relating to a financial institution notifying the DPP, police or CCC about transactions in an account),<sup>32</sup>
- an application for an unexplained wealth declaration (that property has not been lawfully obtained),
- a criminal benefits declaration (that a benefit has been obtained through involvement with crime),
- a production order (where a person must produce a document identifying or locating crime-used, crime-derived, frozen or confiscated property, or information about a person's wealth),
- a crime-used property substitution order (that certain property is available for confiscation in place of crime used property),
- a production order has been made,<sup>33</sup> or
- a person could be declared a drug trafficker.<sup>34</sup>

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<sup>29</sup> *Rules of the Supreme Court 1971 (WA)* ('RSC') Order 81FA rule 5(1)

<sup>30</sup> *CPCA* s 81; may set aside freezing notice or freezing order to the extent permitted by ss 82, 83 or 84.

<sup>31</sup> *Ibid* s 43(5)(a).

<sup>32</sup> *Ibid* s 43(1)(a).

<sup>33</sup> *Ibid* s 43(3).

<sup>34</sup> *Ibid* s 43(5).



The freezing order also puts the person on notice that the State is seeking confiscation of certain property.

The DPP or the CCC may apply to a court for a freezing order for property without notifying the person in question<sup>35</sup> and then it is up to the court to consider whether or not to make the freezing order.<sup>36</sup>

The property covered by a freezing order is called frozen property. It is an imprisonable offence to deal with frozen property in any way.<sup>37</sup>

### Personal service required

The freezing order must be served personally on the person to whom it applies.<sup>38</sup>

## What to do if you receive a freezing order

### Provide a statutory declaration to the DPP

If you are served with a freezing order, you must provide a statutory declaration to the DPP **within 7 days**.<sup>39</sup>

In this statutory declaration you must:

- state the name and, if known, the address of any other person who you are aware is an interested party, or
- if you are not aware of any interested party, state this in the declaration.<sup>40</sup>

If you fail to do this, it is an offence. The penalty is a fine up to \$5000.<sup>41</sup>

‘Interested party’ means a person who has an interest in the frozen property that would enable them to succeed in objecting to the confiscation of the property.

There is a **blank statutory declaration form in Part 2 of this Kit** that you may use. To complete it you need to:

- Put in your name, address and occupation.
- Set out in numbered paragraphs who has an interest in the property and provide their contact details, or say if no one else has an interest in the property.
- Sign the declaration before an authorised witness (there is a list of people who can witness a statutory declaration at the end of the form).

### Object to confiscation under freezing order

If you are served with a freezing order and you wish to object to the confiscation of the property covered by the order, you need to file an objection in the court **within 28 days after the date of service** of the order.<sup>42</sup>

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<sup>35</sup> Ibid s 41(2).

<sup>36</sup> Ibid s 43.

<sup>37</sup> Ibid s 50.

<sup>38</sup> Ibid s 46(1).

<sup>39</sup> Ibid s 47(1)–(2).

<sup>40</sup> Ibid s 47(3).

<sup>41</sup> Ibid s 47(3).

<sup>42</sup> Ibid s 79.



You need to file the objection in the court specified in the order. This will usually be the Supreme Court as it has the power to deal with any property confiscation proceedings.

If no objection is filed within this time, the property covered by the order may be confiscated automatically.<sup>43</sup> It is possible to apply to have confiscated property released. See **Applying for release of confiscated property** on page 13.

When filing an objection to a freezing order in the Supreme Court, you must file a Summons.<sup>44</sup>

If you want to ask for a reduction of the filing fee, before filing these documents you must file a Application to Reduce Fee (Form 2) and wait for the result, before filing the other documents.

There is information below about how to complete these documents using the blank forms in Part 2 of this Kit. See **Objecting to confiscation - How to complete your documents** on page 7.

You must file the completed documents electronically by eFiling, unless you have an exemption. There is information below about how to do eFiling, or how to file in another way if you get an exemption from eFiling. See **Objecting to confiscation - How to file your documents** on page 8.

Once you have filed your documents in court you must serve a copy of the Summons on the DPP. You do not need to serve a copy of the Application to Reduce Fee. For how to serve the DPP, see **Objecting to confiscation – How to serve your documents** on page 11.

## Objecting to confiscation - how to complete your documents

Part 2 of this Kit includes blank versions of the documents and forms you need to complete and file with the court if you want to object to the confiscation of property under a freezing notice or freezing order. The following information will help you complete these documents, which appear in the following order in Part 2 of the Kit, after the blank statutory declaration form.

### Application to Reduce Fee (if needed)

- Put in your name and address.
- Put in information about your assets and income.
- Sign and date the form.

### Originating summons for objecting to a freezing notice

- Put in your full name next to the word Plaintiff.
- Put in the CPCA number of the freezing notice next to the letters CPCA.
- Put in the number of the freezing notice wherever the notice is referred to.
- Put in your name and contact details.

### Summons for objecting to a freezing order

- Put in your full name next to the word Defendant.
- Put in the CPCA number of the freezing order next to the letters CPCA.
- Put in the number of the freezing order wherever the order is referred to.
- Put in your name and contact details.

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<sup>43</sup> Ibid s 7(1).

<sup>44</sup> RSC O 81FA r 5(2).

## Objecting to confiscation - how to file your documents

An objection to confiscation under a freezing notice or freezing order that is filed in the Supreme Court must be filed using electronic filing, also known as eFiling or eLodgment, unless an exemption has been given.<sup>45</sup>

You may apply for an exemption by sending a letter to the Principal Registrar at the Supreme Court, clearly outlining your reasons for requesting an exemption.<sup>46</sup> The address for the Supreme Court is in the **Contacts** section at the end of this Kit. If you get an exemption, go to the heading **Filing by email, post or hand delivery** on page 10 to see how to file your documents.

Otherwise, file your documents using eFiling as follows.

### Filing your documents using eFiling

To file your documents using eFiling, you will need an email address and internet access. It is recommended that you use the Google Chrome browser to access the internet. If you do not have access to a computer or the internet, the Supreme Court Registry in Perth has computers available which you can use for a short time to file your documents using eFiling.<sup>47</sup>

#### Register to use eFiling

Before you can use eFiling, you need to register to be a user of the [eCourts Portal](https://ecourts.justice.wa.gov.au/eCourtsPortal/) (<https://ecourts.justice.wa.gov.au/eCourtsPortal/>). Registration approval may take up to 24 hours and you will receive an email to confirm your registration. If needed, you can ask staff at the Supreme Court Registry in Perth to help you register.<sup>48</sup>

Once registered, you are ready to use eFiling to file your documents.

#### File your Application to Reduce Fees first (if you have one)

If you are filing an Application to Reduce Fees, you must file it first and wait for a response from the Court Registry before you file your Summons or Originating Summons to object to the confiscation. This is so you know what court fee you must pay when you file your objection.

Filing an Application to Reduce Fees is not the same as filing your objection. The 28 days you have to file your objection keeps running while you are asking for the court fee to be reduced. There is no set time the Court Registry takes to consider an application to reduce the fee, so it is important to apply as soon as possible so that you do not run out of time to also file your objection.

If the 28 days you have to file your objection is close to running out, but you would like to try to apply to reduce the fee, you can file an Application to Reduce Fees and also provide a letter to the Court Registrar asking for your application to be considered urgently. **If you do not get a response soon enough, you should still file your objection before the 28 days runs out.**

If you are filing an Application to Reduce Fees, you need to prepare it in electronic form ready for uploading using the eFiling system. This means you need to scan together as one document your completed Application to Reduce Fees, a photo of the front of your concession card (if applicable), a photo of the back of your concession card (if applicable) and your Summons or Originating

<sup>45</sup> RSC O 67A r 3; *Supreme Court Consolidated Practice Directions* chapter 9.10, para 2.2.

<sup>46</sup> Electronic Filing User Guide – Self-Represented Litigants (available on Supreme Court of WA's Electronic Filing webpage), page 4.

<sup>47</sup> Ibid page 3.

<sup>48</sup> Ibid page 3.

Summons. You need to have this single scanned document available on your computer ready for uploading.

Then you need to log in to eCourts Portal. On the [eCourts portal landing page](#), go to the heading 'Lodgment', click on 'eLodgment' and enter your log in details.

Then go to 'Lodge a document' and make a number of selections as follows:

1. Under 'Jurisdiction', select 'Supreme Court'
2. Under 'Division', select 'Civil'
3. Under 'Please select the type of document to be lodged', select 'Application to Reduce Fee' and click 'Next'.
4. On the next page under 'Contact Information for this Lodgment', put in your contact details then click 'Next'.
5. Fill in the applicant's details – you are the applicant, so fill in these details, then click 'Next'.
6. The following page asks you if you have entered the correct applicant. If everything is correct, click 'Next'. A summary screen showing the party entered will appear – again, click 'Next'.
7. When the 'Add Respondent' screen appears, click into the 'This is an ex-parte application' box. The respondent fields will disappear. Click 'Next'. A summary screen will appear – again, click 'Next'.
8. The system will then allow you to upload your single scanned document that includes your Application to Reduce Fee, photos of both sides of your concession card (if applicable), and your Originating Summons or Summons.
9. Once you have uploaded this document, you will be given an opportunity to check if all details are correct. If so, click 'Lodge'.
10. You will then need to wait until you receive email notification from the Supreme Court that your fee reduction has been granted or refused.
11. If granted, log in to eCourts Portal and on the Home page, view Incoming Documents. Open and download the document and save it to your computer or print it. It will contain the Fee Reduction file number (**FEE number**). You will use this number when filing your Originating Summons or Summons, to reduce the fee you have to pay.

#### File your objection (Originating Summons or Summons)

12. Ensure your Originating Summons (if objecting to a freezing notice) or Summons (if objecting to a freezing order) are in electronic format on your computer, ready for uploading.
13. While logged in to eCourts Portal, go to 'Lodge a Document'. Follow the same process as before, but under 'Please select the type of document to be lodged', now select 'Originating Summons' (if objecting to a freezing notice) or 'Summons' (if objecting to a freezing order).

14. Underneath, where it says 'If an application to reduce the fee on this document has been granted enter the matter number and year', you will need to enter your FEE number if you have one. Click 'Next'.
15. How you proceed now depends on whether you have selected 'Originating Summons' or 'Summons'. If you have selected 'Originating Summons', continue to **step 16**. If you have selected 'Summons', skip to **step 25**.

**Originating Summons (for objecting to a freezing notice)**

16. On the following page, enter your contact details. Click 'Next'.
17. You now have to fill in the plaintiff's details – you are the plaintiff, so enter your own details, then click 'Next'.
18. The next page asks you to confirm that you have entered the correct plaintiff. If everything is correct, click 'Next'.
19. On the next screen, you will need to fill in the details for the defendant – this is 'The State of Western Australia'. Then click 'Next'.
20. Navigate through the remaining screens and complete all fields as necessary. At the end, the 'Batch Details' screen will appear.
21. Click the 'Preview' link to the right of the document. This causes the document to be downloaded. It will appear at the bottom of your browser.
22. Click on the download. A WinZip window will appear, with the document listed.
23. Double click on the document in the WinZip window. The document will open in PDF. Check the content of the PDF document is correct, then close the PDF and WinZip window.
24. Once you have checked the document, click on 'Lodge' to file it.

**Summons (objecting to a freezing order)**

25. On the following page, enter the relevant reference information – this is the index type, number and year of the matter. Under index type, select 'CPCA'. Next to the letters CPCA, put in the CPCA number of the freezing order. Then click 'Next'.
26. On the 'Party Information' screen which now appears, make sure that there is a tick against your name. Click 'Next'.
27. Navigate through each of the following screens in turn and complete all fields as necessary. At the end, the 'Batch Details' screen will appear.
28. Click the 'Preview' link to the right of the document. This causes the document to be downloaded. It will appear at the bottom of your browser.
29. Click on the download. A WinZip window will appear, with the document listed.
30. Double click on the document in the WinZip window. The document will open in PDF. Check the content of the PDF document is correct, then close the PDF and WinZip window.
31. Once you have checked the document, click on 'Lodge' to file it.

For further information about eFiling, see the [Electronic Filing User Guide – Self-Represented Litigants](#) available on the Supreme Court of WA [Electronic Filing webpage](#).

### Filing by email, post or hand delivery

If you have been granted an exemption from using electronic eFiling, you can file all relevant documents by post, email or delivery in person to the court specified in the freezing notice or freezing order. This is usually the Supreme Court.

### Filing Application to Reduce Fees by email, post or hand delivery

If you are filing an Application to Reduce Fees, you must file it first and wait for a response from the Court Registry before you file your Summons or Originating Summons to object to the confiscation. This is so you know what court fee you must pay when you file your objection.

Filing an Application to Reduce Fees is not the same as filing your objection. The 28 days you have to file your objection keeps running while you are asking for the court fee to be reduced. There is no set time the Court Registry takes to consider an application to reduce the fee, so it is important to apply as soon as possible so that you do not run out of time to also file your objection.

If the 28 days you have to file your objection is close to running out, but you would like to try to apply to reduce the fee, you can file an Application to Reduce Fees and also provide a letter to the Registrar asking for your application to be considered urgently. **If you do not get a response soon enough, you should still file your objection before the 28 days runs out.**

If you are filing an Application to Reduce Fees, you can do this by delivery in person, post or by email using the addresses below. You only need to provide one copy of the application to the Court Registry.

If your application is granted, you will be given a Fee Reduction file number (FEE number). You will use this number when filing your Originating Summons or Summons, to reduce the fee you have to pay.

### Filing Summons or Originating Summons by email, post or hand delivery

You can file your Summons or Originating Summons by delivery in person or by post using the address below. You will need to provide 3 copies of the document to the court. These will be stamped and returned with a note of the first court hearing date in court. One of the stamped documents needs to be served on the DPP as described below. Keep the other copy for yourself.

Alternatively, you can file your Summons or Originating Summons by email using the address below. You will need to attach the document in doc. or doc.x format so it can be accessed by the Court Registry. A stamped copy will be sent back to you with the date of the first hearing date in court. You serve a copy of this stamped version of the document on the DPP as described below.

### Addresses to use for filing by email, post or hand delivery

When filing your documents in the Supreme Court Registry, use these addresses:

- Deliver or post to - Level 11, David Malcolm Justice Centre, 28 Barrack Street, Perth, 6000.
- Email to - [SCCentralOffice@justice.wa.gov.au](mailto:SCCentralOffice@justice.wa.gov.au).

## Objecting to confiscation – how to serve your documents

Once you have filed your Originating Summons or Summons the court will stamp and note a date on these documents that is the first court hearing date to deal with your objection. You must then serve a copy of these stamped and dated documents on the Director of Public Prosecutions (DPP) so they know you have objected to the confiscation and they know when and where the court hearing will be.

If you filed your document using eFiling, you must log in to eCourts Portal to access the stamped and dated document. Download a copy of the document and print it ready to serve on the DPP. You may also like to print a copy for yourself.

If you filed your document by post, email or in person, you will have been given a copy of the stamped and dated documents either by email or in hard copy. One copy of the stamped document must be served on the DPP.

To serve the DPP, you must deliver a copy of the stamped and dated document either by email to [dpp@dpp.wa.gov.au](mailto:dpp@dpp.wa.gov.au) or in person or by post to Ground Floor, 55 St George's Terrace, Perth, 6000.

The DPP does not need to be served with a copy of your Application to Reduce Fees.

## Directions hearing in court

The first court hearing to be set will be for the court to make directions about how the case will be conducted. For example, a direction that evidence will be by affidavit, or that a party has to provide certain information to the court. There may be more than one directions hearing before the court hears your objection to the confiscation of property.

If the reason for the freezing notice or freezing order is that a drug trafficker declaration may be made, then the Supreme Court is likely to adjourn the hearing of the objection until the criminal charge is dealt with and it is clear whether a declaration has been made.

A person may apply to the court for control of frozen property.<sup>49</sup> If no application is made for control of the property, then the DPP will control the property,<sup>50</sup> unless the freezing order was applied for by the CCC, in which case the CCC will control the property.<sup>51</sup>

After the directions hearing or hearings, a hearing will be set for the court to consider your objection to the confiscation of property.

## Objection hearing in court

The law about what a court can do when hearing an objection to confiscation uses the term 'objector' to describe the person making the objection. This term is used here.

At the objection hearing, the court may set aside (remove) the freezing notice or freezing order<sup>52</sup> for any one of a number of different reasons. These are, if:

- the court finds that the basis for the State's application for confiscation is not established;

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<sup>49</sup> Ibid s 91.

<sup>50</sup> Ibid s 89(1).

<sup>51</sup> Ibid s 89(1A).

<sup>52</sup> Ibid s 81(1).

- the freezing notice or order was issued on the basis that an application had been or is to be made against the person for an unexplained wealth declaration, criminal benefits declaration or crime-used property substitution declaration, but the court finds that it is more likely than not that the person who is the target of the freezing notice or order:
  - does not own or effectively control the frozen property; and
  - has not at any time given away the frozen property.<sup>53</sup>
- the freezing notice or order was issued on the basis of property being crime-used and the court finds it is more likely than not that the property was not crime-used;<sup>54</sup>
- the freezing notice or order was issued on the basis of property being crime-used and the court finds that it is more likely than not that all of the following apply:
  - the objector is the owner of the property, or is one of 2 or more owners of the property;
  - the property is not effectively controlled by a person who made criminal use of the property;
  - the objector is an innocent party in relation to the property; and
  - each other owner (if there are more than one) is an innocent party in relation to the property.<sup>55</sup> Note - If the objector is an innocent party but is unable to show that all other owners are innocent parties, the objector may still have his or her interest paid out after confiscation.<sup>56</sup>
- the objector is an innocent party<sup>57</sup>, the freezing notice or order was issued on the basis of property being crime-used and the court finds it is more likely than not that all of the following apply:
  - the objector is the spouse, a de facto partner or a dependant of an owner of the property;
  - the objector is an innocent party, or is less than 18 years old;
  - the objector was usually resident on the property at the time the relevant confiscation offence was committed, or is most likely to have been committed;
  - the objector was usually resident on the property at the time the objection was filed;
  - the objector has no other residence at the time of hearing the objection;
  - the objector would suffer undue hardship if the property is confiscated; and
  - it is not practicable to make adequate provision for the objector by some other means.<sup>58</sup>
- the objector is an innocent party<sup>59</sup> and the freezing notice or order was issued on the basis of property being crime-derived and the court finds it is more likely than not that all of the following apply:
  - the objector is the owner of the property, or is one of 2 or more owners of the property;
  - the property is not effectively controlled by a person who wholly or partly derived or realised the property, directly or indirectly, from the commission of a confiscation offence;
  - the objector is an innocent party in relation to the property; and
  - each other owner (if there is more than one) is an innocent party in relation to the property. Note - If the objector is an innocent party but is unable to show that all other

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<sup>53</sup> Ibid s 84.

<sup>54</sup> Ibid s 82(1).

<sup>55</sup> Ibid s 82(4).

<sup>56</sup> Ibid s 82(5).

<sup>57</sup> Ibid ss 82–4.

<sup>58</sup> Ibid s 82(3).

<sup>59</sup> Ibid s 82-4.



owners are innocent parties, the objector may still have his or her interest paid out after confiscation.<sup>60</sup>

## Appearing in court

You are required to attend court in person for the hearing of your objection. It is important to:

- Know the time and place of the court hearing and check with the court if you are not sure.
- Be on time and allow extra time to get through court security.
- Dress neatly (no singlets are allowed) and wear shoes.
- Remove your hat and sunglasses before you go into the courtroom.
- Do not take food or drink into the courtroom, water will be made available to you.
- Turn off your mobile phone or other device before you go into the courtroom.
- Bow to the Judge as you enter and leave the courtroom.
- Stand when the Judge enters or leaves the courtroom.
- Stand when you are speaking to the Judge or when being spoken to by the Judge, otherwise remain quietly seated.
- Address the Judge as 'Your Honour'.

## Applying for release of confiscated property

If no objection is made to a freezing notice or freezing order and property covered by the notice or order is confiscated, a person may apply for release of the confiscated property **within 28 days** after they become aware, or can reasonably be expected to have become aware, of the confiscation.<sup>61</sup>

The court may order the release of this confiscated property if it is more likely than not that all of the following apply:

- immediately before the confiscation of the property, the applicant owned the property, or was one of 2 or more owners of the property;
- the property is not effectively controlled by a person who made criminal use of the property, or by a person who wholly or partly derived or realised the property, directly or indirectly, from the commission of a confiscation offence;
- the applicant did not become aware, and cannot reasonably be expected to have become aware, until after the property was confiscated, that the property was liable to confiscation under section 6 or 7;
- the applicant is or was an innocent party in relation to the property; and
- each other owner (if there is more than one) is or was an innocent party in relation to the property.<sup>62</sup> If the objector is an innocent party but is unable to show that all other owners are innocent parties, the objector may still have his or her interest paid out after confiscation.<sup>63</sup>

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<sup>60</sup> Ibid s 83(2).

<sup>61</sup> Ibid s 85.

<sup>62</sup> Ibid s 87.

<sup>63</sup> Ibid s 87(3).

## Contacts

### Supreme Court of WA

Level 11, David Malcolm Justice Centre

28 Barrack Street, Perth, WA, 6000

Registry hours: 9am - 4pm

Phone: (08) 9421 5333 (8am – 5pm)

Email: [SCCentralOffice@justice.wa.gov.au](mailto:SCCentralOffice@justice.wa.gov.au)

### Director of Public Prosecutions WA (DPP)

Ground Floor, 55 St George's Terrace,

Perth, WA, 6000

Phone: (08) 9425 3999

Email: [dpp@dpp.wa.gov.au](mailto:dpp@dpp.wa.gov.au)

### Translating & Interpreting Service

131 450

### National Relay Service

133 677

### Legal Aid WA

Infoline: 1300 650579

Legal Yarn: 1800 319 803 (for Aboriginal and Torres Strait Islander callers)

Website/Infochat: [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

#### Perth Office

32 St Georges Terrace

Perth, WA 6000

1300 650 579

(08) 9261 6222

#### Southwest Office

7<sup>th</sup> Floor, Bunbury Tower,

61 Victoria Street

Bunbury, WA 6230

(08) 9721 2277

#### West Kimberley Office

Upper Level, Woody's Arcade,

15-17 Dampier Terrace,

Broome, WA 6725

(08) 9195 5888

#### Great Southern Office

Unit 3, 43-47 Duke Street,

Albany, WA 6330

(08) 9892 9700

#### Goldfields Office

Suite 3, 120 Egan Street,

Kalgoorlie, WA 6430

(08) 9025 1300

#### Pilbara Office

28 Throssell Road,

South Hedland, WA 6722

(08) 9172 3733

#### East Kimberley Office

98 Konkerberry Drive,

Kununurra, WA 6743

(08) 9166 5800

#### Midwest & Gascoyne Office

Unit 8, The Boardwalk,

273 Foreshore Drive,

Geraldton, WA 6530

(08) 9921 0200

#### Indian Ocean Office

Administration Building,

20 Jalan Pantai, Christmas Island,

Indian Ocean, WA 6798

(08) 9164 7529

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