

CRIMINAL LAW JOURNAL

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ARTICLES

“A MAN’S HOME IS HIS CASTLE” – OR IS IT? HOW TO TAKE HOUSES FROM PEOPLE WITHOUT CONVICTING THEM OF ANYTHING: THE CRIMINAL PROPERTY CONFISCATION ACT 2000 (WA)

Ben Clarke

This article highlights the steady erosion of fundamental principles of justice under statutory-based civil confiscation regimes in Australia. It commences with a brief overview of the legal framework for the forfeiture of criminal assets under both conviction and non-conviction-based statutory confiscation schemes. Particular reference is made to the current confiscation legislation in Western Australia – the *Criminal Property Confiscation Act 2000* (WA) (CPCA). The confiscation triggers found in the CPCA are discussed, with particular attention being paid to the unexplained wealth provisions. Criticisms of the legislation are offered, and potential grounds for constitutional challenge are explored. Aspects of the CPCA requiring further research and analysis are identified, and suggested amendments to the Act are outlined. This article is by no means a comprehensive critique of what is a complex and as yet largely untested statutory confiscation regime.263

COMMAND RESPONSIBILITY: INTERNATIONAL AND AUSTRALIAN PERSPECTIVES

Hyder Gulam

This article is about command responsibility and explains the current test for the criminal liability of commanders in the *Rome Statute* of the International Criminal Court. With a view of the historical development of command responsibility, comment is made as to the extent that the current test is an appropriate standard. This article also describes the Australian perspective on command responsibility, and how this concept has been enacted into Australian domestic law.287

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