# HIGH COURT OF AUSTRALIA

FRENCH CJ,
GUMMOW, HEYDON, CRENNAN AND BELL JJ

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GARY ERNEST WHITE APPELLANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS
FOR WESTERN AUSTRALIA RESPONDENT

*White v Director of Public Prosecutions (WA)* [2011] HCA 20
*8 June 2011*
P44/2010

**ORDER**

*Appeal dismissed with costs.*

On appeal from the Supreme Court of Western Australia

**Representation**

S A Shirrefs SC with H J E van den Heuvel for the appellant (instructed by Holborn Lenhoff Massey)

B Fiannaca SC with I S Jones for the respondent (instructed by Director of Public Prosecutions for Western Australia)

## CATCHWORDS

### White v Director of Public Prosecutions (WA)

Criminal law – Procedure – Confiscation of proceeds of crime and related matters – Forfeiture and confiscation of property – Section 22 of *Criminal Property Confiscation Act* 2000 (WA) ("Act") relevantly required court to make crime-used property substitution declaration where crime-used property not available for confiscation because offender did not own, and did not have effective control of, property and more likely than not that offender made criminal use of crime-used property – Section 147 of Act provided offender makes criminal use of property if, alone or with anyone else, offender used or intended to use property in way that brings property within definition of crime-used property – Section 146(1)(c) provided property "crime-used" if any act or omission done, omitted to be done or facilitated in or on property in connection with commission of confiscation offence – Where DPP applied for crime-used property substitution declaration against appellant – Where not disputed that premises leased by appellant "crime-used" within s 146(1)(c) of Act – Whether definition of "criminal use" in s 147 of Act encompassed conduct within definition of "crime-used" in s 146(1)(c) of Act.

Words and phrases – "crime-used property", "criminal use", "property".

*Criminal Property Confiscation Act* 2000 (WA), ss 21, 22, 146, 147.

FRENCH CJ, CRENNAN AND BELL JJ.

Introduction

1 The *Criminal Property Confiscation Act* 2000 (WA) ("the Act") provides for the confiscation of property used in criminal offences. Where property so used neither belongs to nor is effectively controlled by the offender, s 22 of the Act enables a declaration to be made, on the application of the Director of Public Prosecutions ("the DPP"), that property owned by the offender is available for confiscation instead of the crime-used property. Such an order is called a crime-used property substitution declaration[1]. A judge of the Supreme Court of Western Australia dismissed an application for such a declaration against the appellant, who had been convicted in 2003 of a wilful murder committed in 2001[2]. An appeal to the Court of Appeal of the Supreme Court of Western Australia by the DPP was allowed[3]. On 25 March 2010, the Court of Appeal made the declaration sought by the DPP.

2 The wilful murder, of which the appellant was convicted, was committed immediately outside the boundary fence of fenced and gated premises at 10 Jade Street, Maddington, Western Australia. At the time of the offence the appellant was leasing those premises. The appellant had shot at the deceased five times inside the premises, the gates to which had been locked at the appellant's direction. At least two of the shots wounded the deceased. The deceased climbed over one of the locked gates to escape the appellant, but was fatally shot while on the ground outside the gate. The sentencing judge described the killing as "a cold-blooded execution". The appellant was sentenced to strict-security life imprisonment with a non-parole period of 22 years.

3 A "crime-used property substitution declaration" can be made if "the crime-used property is not available for confiscation"[4] and if "it is more likely than not that the [appellant] made criminal use of the crime-used property"[5]. It was accepted in the litigation that the rented premises were not available for confiscation. Thus, the questions raised by this appeal are whether the premises,

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**1** Act, s 3 and Glossary.

**2** *Director of Public Prosecutions (WA) v White* (2009) 194 A Crim R 192.

**3** *Director of Public Prosecutions (WA) v White* (2010) 199 A Crim R 448.

**4** Act, s 22(1)(a).

**5** Act, s 22(1)(b).

leased by the appellant, were "crime-used property" within the meaning of s 146 of the Act and whether he made "criminal use" of those premises within the meaning of s 147 of the Act. Those are necessary conditions for the making of a declaration under s 22. On their proper construction and application to the facts of this case, both conditions were fulfilled. The appeal against the decision of the Court of Appeal should be dismissed.

Factual background

4 On the appeal to this Court, the parties were on common ground as to relevant facts before the jury. Those facts, which were set out in the written submissions filed on behalf of the appellant, may be summarised as follows:

- The premises at Jade Street, Maddington, were in an industrial area. The appellant rented them and operated a trucking business from them.

- The premises were surrounded by a cyclone fence. Entry was gained through two gates, each six-feet high, surmounted by three strands of barbed wire and with a chain and two padlocks.

- On 19 August 2001, the deceased attended the property with a Mrs Miller for the purpose of obtaining amphetamines. Both had consumed alcohol and amphetamines earlier. When they arrived, there were three young women already at the premises, two unidentified men, and a man known as Rainbow.

- On that day, the appellant instructed Sidney Reid to go to the premises, lock the gates and not let anyone come in or out. He did not give Reid a reason for this instruction.

- Reid complied with the appellant's instructions. He drove to the property, parked his car there, and asked Rainbow, who had a key, to lock the gates. Rainbow did so. He and Rainbow then went up to the house.

- The appellant denied that he had telephoned Reid asking him to close the gates. He accepted that the deceased and Mrs Miller may have turned up at the property unannounced.

- The appellant and one Richard Samuels drove to the property and arrived there shortly after the gates had been locked. They unlocked the gates, drove the car onto the property, locked the gates behind them and walked to the house.

- The appellant told Mrs Miller and the other women to leave the premises. They left in a car. Rainbow unlocked the gates to let the women out. He then relocked them.

- The appellant confronted the deceased about the repayment of money. The deceased did not reply. The appellant said he would make an example of him. As the deceased walked from the house towards the back of the property, he was followed by the appellant, who produced a gun and shot him in the left shoulder.

- The deceased ran from the appellant who fired a further three shots at the deceased, before the deceased reached the locked gates.

- The deceased climbed the locked gates to leave the premises. As he reached the top of the gates, the appellant shot him in the buttocks.

- The deceased came down on the other side of the gates and collapsed on the ground. The appellant then unlocked the gates, walked out of the premises and shot the deceased in the head, killing him. He then moved the deceased's body onto the premises before transporting and disposing of it.

Statutory framework

5 The Act provides "for the confiscation in certain circumstances of property acquired as a result of criminal activity and property used for criminal activity"[6]. A key term in the Act is "property", defined in the Glossary to the Act as:

> "(a) real or personal property of any description, wherever situated, whether tangible or intangible; or
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> (b) a legal or equitable interest in any property referred to in paragraph (a)".

The definition is more limited than the usage of the term "property" in parts of the Act where it plainly refers to the land or things which are the subject of property interests. Its usage is considered later in these reasons.

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**6** Act, long title.

6 The Act provides in s 21 that the DPP may apply to a court for a "crime-used property substitution declaration against a person"[7]. The form of such a declaration and the conditions under which it must be made are set out in s 22. If the conditions are satisfied, a declaration must be made by the court "that property owned by the respondent is available for confiscation instead of crime-used property"[8]. The conditions are that[9]:

> "(a) the crime-used property is not available for confiscation as mentioned in subsection (2); and
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> (b) it is more likely than not that the respondent made criminal use of the crime-used property".

7 The crime-used property is not available for confiscation if the respondent does not own and have effective control of it[10]. There is a presumption that property is crime-used where the respondent has been convicted of a relevant confiscation offence[11]. The presumption appears to be activated by the fact of the allegation, in proceedings under s 21, that the property was "crime-used" in relation to the confiscation offence. Otherwise, the applicant for the declaration bears the onus of establishing that the respondent made criminal use of the property[12]. The term "relevant confiscation offence" is defined in the Glossary to the Act to mean:

> "the confiscation offence or suspected confiscation offence that is relevant to bringing the property within the scope of this Act".

8 The court is required, when making a declaration under s 22, to assess the value of the crime-used property in accordance with s 23 and to specify that value in the declaration[13].

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**7** Act, s 21(1).

**8** Act, s 22(1).

**9** Act, s 22(1)(a) and (b).

**10** Act, s 22(2)(a).

**11** Act, s 22(3).

**12** Act, s 22(5).

**13** Act, s 22(6).

9 The terms "crime-used" and "criminal use" are defined in ss 146 and 147 of the Act. Section 146 relevantly provides:

> "(1) For the purposes of this Act, property is crime-used if —
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> (a) the property is or was used, or intended for use, directly or indirectly, in or in connection with the commission of a confiscation offence, or in or in connection with facilitating the commission of a confiscation offence;
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> (b) the property is or was used for storing property that was acquired unlawfully in the course of the commission of a confiscation offence; or
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> (c) any act or omission was done, omitted to be done or facilitated in or on the property in connection with the commission of a confiscation offence.
>
> …
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> (3) Without limiting subsection (1) or (2), any property in or on which an offence under Chapter XXII or XXXI of *The Criminal Code* is committed is crime-used property."[14]

As will be apparent, crime-used property is not limited to any land or thing in which the offender has or has ever had any interest, or which is or has ever been controlled by the offender. Section 147 provides:

> "For the purposes of this Act, a person makes criminal use of property if the person, alone or with anyone else (who need not be identified) uses or intends to use the property in a way that brings the property within the definition of crime-used property."

10 Before turning to the constructional issues raised on the appeal, it is necessary to consider the way in which the word "property" is used in ss 22, 146 and 147. The ordinary meaning of the word "property" is "[t]hat which one owns; a thing or things belonging to a person or persons …" and "[a] house or piece of land owned"[15]. In law, "property" generally refers not to a thing but to

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**14** Chapter XXII deals with offences against morality. Chapter XXXI deals with sexual offences.

**15** *Shorter Oxford English Dictionary*, 6th ed (2007) at 2370.

"a legal relationship with a thing"[16]. In *Telstra Corporation Limited v The Commonwealth*[17], this Court observed that in many cases it may be helpful to speak of property as "a bundle of rights"[18]. At other times it may be more helpful to speak of property as "a legally endorsed concentration of power over things and resources"[19]. The Court said that[20]:

> "Seldom will it be useful to use the word 'property' as referring only to the subject matter of that legally endorsed concentration of power."

Nevertheless, as Latham CJ pointed out, in *Minister of State for the Army v Dalziel*[21] the term "property" is ambiguous[22]:

> "As applied to land it may mean the land itself in relation to which rights of ownership exist, or it may refer to the rights of ownership which exist in relation to the land."

11 An example of an interpretation of a contract according to the ordinary meaning of "property" may be seen in the judgment of Barwick CJ in *Travinto Nominees Pty Ltd v Vlattas*[23]. There the words "error or misdescription of the property", appearing in standard terms of a contract for the sale of land, were construed as referring to misdescription of the land the subject matter of the sale.

12 The term "property" used in a statute may take its ordinary meaning, its legal meaning, or both meanings. The interpretation of the term depends upon

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**16** *Yanner v Eaton* (1999) 201 CLR 351 at 365-366 [17] per Gleeson CJ, Gaudron, Kirby and Hayne JJ; [1999] HCA 53.

**17** (2008) 234 CLR 210; [2008] HCA 7.

**18** (2008) 234 CLR 210 at 230-231 [44].

**19** (2008) 234 CLR 210 at 230-231 [44].

**20** (2008) 234 CLR 210 at 230-231 [44].

**21** (1944) 68 CLR 261 at 276; [1944] HCA 4.

**22** See also, *McCaughey v Commissioner of Stamp Duties* (1946) 46 SR (NSW) 192 at 201 per Jordan CJ.

**23** (1973) 129 CLR 1 at 15, 26 per McTiernan J, 29 per Menzies J and 37 per Stephen J agreeing with McTiernan J; [1973] HCA 14.

the context and purpose of the provision in which it is found. Section 146(1)(b) of the Act refers to "property … used for storing property". That usage may be taken to include the exercise of rights over the land or a thing (eg, a container) to store property. It may also extend to the use of things which are the subject of property rights. That extension is intended as appears from s 146(1)(c) which speaks of things done "in or on the property". It follows that the term "property" used in s 146, and therefore having a similar usage in ss 22 and 147, covers the use of property rights of the kind defined in the Glossary and the use of things which are the subject of property rights.

The primary judge's decision

13 The primary judge held that the premises were crime-used property[24]. In so holding, her Honour relied upon s 146(1)(c) and not upon s 146(1)(a).

14 Her Honour doubted that it could be said that the premises were used in, or in connection with, the commission of the offence of wilful murder in the sense contemplated by s 146(1)(a). It was straining ordinary speech to say that, because the fence and gates were used in connection with the offence, the premises were also used in that connection[25].

15 The premises, however, were held to be crime-used property within the meaning of s 146(1)(c). This was because the deceased was shot by the appellant while he was on the premises and the acts of the appellant were "in connection with" the ultimate fatal shot which was discharged with an intent to kill. Even putting the earlier shots to one side, the appellant's penultimate shot, fired while he was standing on the premises, had a clear connection to the fatal shot which he fired with an intention to kill[26].

16 Her Honour went on to hold, however, that this conclusion would not support a finding that the appellant had made criminal use of the premises within the meaning of s 147. Her Honour held, in effect, that while conduct by the appellant rendering property "crime-used" within the meaning of ss 146(1)(a) and (b) would constitute criminal use of the property for the purposes of s 147, the same was not true of conduct by the appellant only caught by s 146(1)(c)[27].

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**24** (2009) 194 A Crim R 192 at 212 [101].

**25** (2009) 194 A Crim R 192 at 211 [97].

**26** (2009) 194 A Crim R 192 at 212 [99], [100].

**27** (2009) 194 A Crim R 192 at 212-213 [103]-[109].

The decision of the Court of Appeal

17 The Court of Appeal held, contrary to the finding of the primary judge, that the property was crime-used within the meaning of s 146(1)(a). In so doing, the Court held that it was not necessary, for the application of s 146(1)(a), that the act or acts constituting the relevant use had to be done with the intention or purpose of committing the specific unlawful act constituting the confiscation offence. The use of the premises for the purposes of s 146(1)(a) could be "indirectly in connection with the facilitation of a confiscation offence."[28]

18 The Court of Appeal also held, contrary to the primary judge's conclusion, that the primary defined term in ss 22, 146 and 147 is "crime-used" and that it incorporates the word "used" to encompass all the activities listed in ss 146(1) and (3). This indicates that all those activities are intended to be uses for the purposes of s 147[29]. The Court of Appeal allowed the appeal and set aside the orders made by the primary judge.

The appellant's argument

19 The steps in the appellant's argument in this Court may be summarised as follows:

1. A crime-used property substitution declaration, under s 21 of the Act, cannot be made against a person unless that person made criminal use of the crime-used property within the meaning of s 147 of the Act.

2. Contrary to the conclusion of the Court of Appeal, the premises at Maddington were not crime-used within the meaning of s 146(1)(a). The Court of Appeal's finding to the contrary was based on factual conclusions not open on the evidence.

3. It was not disputed that the premises were crime-used property within the meaning of s 146(1)(c).

4. The conduct covered by s 146(1)(c) did not establish criminal use of the property by the appellant within the meaning of s 147.

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**28** (2010) 199 A Crim R 448 at 457 [39].

**29** (2010) 199 A Crim R 448 at 459 [48].

20 As appears from the above, the appellant's appeal must fail unless he can show that the conduct referred to in s 146(1)(c) does not constitute "criminal use" of property for the purposes of s 147. If the conduct referred to in s 146(1)(c) does constitute "criminal use" then, having regard to the undisputed application of that paragraph to the facts of this case, the necessary conditions for the making of a crime-used property substitution declaration under s 21 were satisfied. It is desirable therefore, to turn first to that question of construction.

The construction of "criminal use" under s 147

21 As was submitted by the appellant, s 146(1)(c) has a broad application. It covers cases in which acts or omissions were done or facilitated in or on the property in connection with the commission of a confiscation offence. On the face of it, the mere doing of an act in or on a property in connection with the commission of a confiscation offence, does not necessarily fit comfortably within the concept of use applied to property. The relevant ordinary meaning of the verb "use" is to "[m]ake use of (a thing), esp. for a particular end or purpose; utilize, turn to account"[30]. According to that ordinary meaning, "use" would be a subset of the class of conduct described in s 146(1)(c). However, the relationship which the words "in connection with" forge between "act or omission done on the property" and "the commission of a confiscation offence" suggests that even though it may involve an extension of the verb "use", the conduct described in s 146(1)(c) can be brought within the meaning "makes criminal use of property" in s 147, without doing violence to the language of the latter section. In this case, purpose and context favour that interpretation.

22 The appellant submitted that the word "use" in s 147 refers only to the categories of conduct in s 146(1)(a) and (b) as conduct bringing the property within the alternative definitions of crime-used property in those two paragraphs. That interpretation, however, gives rise to a disconformity between ss 146 and 147. As appears from the conditions in s 22(1) to which they relate, the two provisions complement each other. The disconformity is removed and complementarity is effected if the term "definition of crime-used property" in s 147 is construed as picking up each of the alternative definitions in s 146(1) and (3).

23 The latter construction is supported by reference to s 82 of the Act, which provides for the setting aside of freezing notices and freezing orders made under the Act. A court may set aside a freezing notice, or order affecting property, if an objector establishes, inter alia, that it is more likely than not that the objector is

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**30** *Shorter Oxford English Dictionary*, 6th ed (2007) at 3484.

an owner[31] and an innocent party[32], and that the property is not effectively controlled by a person who made criminal use of the property[33]. The construction of s 147 for which the appellant contended, would, as the DPP submitted, be inconsistent with the apparent intentions of ss 82(4) and 87. On the construction of s 147 advanced by the appellant, a person who did not own the property, but effectively controlled it, and whose acts rendered the property crime-used within the meaning of s 146(1)(c), would be entitled to have a freezing order set aside, or to have the crime-used property returned after confiscation. A person in the same position, whose act rendered the property crime-used under s 146(1)(a) or (b), would not be so entitled.

24 The appellant's construction of s 147 not being accepted, this appeal cannot succeed. It is unnecessary to consider the other contentions advanced by the appellant in relation to the construction of s 146(1)(a) and its application to the facts of the case.

Conclusion

25 For the preceding reasons the appeal should be dismissed with costs.

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**31** Act, s 82(4)(a).

**32** Act, s 82(4)(c).

**33** Act, s 82(4)(b).

26 GUMMOW J. In *Re Director of Public Prosecutions; Ex parte Lawler*[34], Dawson J observed:

> "Confiscation of property connected with the commission of crimes was long part of the common law and had its origin in the doctrines of attainder and deodand[35]. Property could be forfeited even if its owner was not involved in the crime[36]. Forfeiture at common law was abolished in England in 1870 and thereafter in this country[37], but statutory powers of forfeiture have remained in certain areas and, indeed, have been introduced in some new areas[38]."

The *Criminal Property Confiscation Act* 2000 (WA) ("the Act"), with which this appeal is concerned, is one of those new areas.

27 Unlike the federal legislation in issue in *Lawler*, the provisions of the Act are not directed to the confiscation of what may be the assets of innocent persons, but rather to those of persons such as the appellant, who was convicted of wilful murder. To that end, the Act looks to property with one or more defined characteristics, including "crime-used property" and "crime-derived property".

28 Further, as the joint reasons explain, the term "property" is used in the Act in several senses which reflect the ambulatory terms of its definition in the Glossary of the Act. The complexities to which this state of affairs may give rise are illustrated by the facts in this case. The appellant rented the fenced and gated premises at 10 Jade Street, Maddington. The land later was valued, as at 19 August 2001, the date of the murder, at $265,000, inclusive of GST. As a

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**34** (1994) 179 CLR 270 at 289; [1994] HCA 10. See also *Theophanous v The Commonwealth* (2006) 225 CLR 101 at 125 [58]; [2006] HCA 18; and, as to deodands, the passage from Windeyer, *Lectures on Legal History*, (1938) at 19-20, set out by Callinan J in *Airservices Australia v Canadian Airlines International Ltd* (1999) 202 CLR 133 at 316 [550]; [1999] HCA 62.

**35** Freiberg, "Criminal Confiscation, Profit and Liberty", (1992) 25 *Australian and New Zealand Journal of Criminology* 44; *Calero-Toledo v Pearson Yacht Leasing Co* 416 US 663 at 680-682 (1974).

**36** *Mitchell v Torup* (1766) Park 227 at 232-234 [145 ER 764 at 766]; Rolle, *Un Abridgment des plusieurs Cases et Resolutions del Common Ley*, (1668) at 530.

**37** See, eg, *Forfeitures for Treason and Felony Abolition Act* 1878 (Vic).

**38** See, eg, *Crimes (Confiscation of Profits) Act* 1986 (Vic).

tenant he had the right to exclusive possession against all others including his landlord[39], and this right he exercised.

29 The tenancy gave the appellant an estate or interest in the land[40], and the tenancy itself was "property" in the sense of the definition in the Glossary. However, for the land, or, more accurately, the title as registered proprietor under the *Transfer of Land Act* 1893 (WA), to be confiscated as "crime-used property", it would have been necessary that the appellant "owned" it (s 22(2)(a)). The exclusive possession given by his tenancy would not be sufficient for that purpose.

30 A "crime-used property substitution declaration" could be made against the appellant if two criteria were met. The first was that "the crime-used property", here the parcel of land, the title to which was not owned by the appellant, was not available for confiscation (s 22(1)(a)). The litigation has been conducted on the footing that the criterion of non-availability was met. The dispute concerns the second criterion. This was that "it [was] more likely than not that [the appellant] made criminal use of the crime-used property" (s 22(1)(b)). The term "criminal use" is defined in s 147 and "crime-used" in s 146.

31 If there was such use, as the Court of Appeal concluded there had been, then the court was to assess and specify the value of the crime-used property at the time of the murder (s 22(6), s 23(1)). The value of the land (ie $265,000) was to be its full value even if the appellant did not outlay any amount for the purpose of obtaining or making the criminal use of the property (s 23(2)).

32 At the time of the hearing before the primary judge of the declaration application the appellant had a bank account balance in his favour of approximately $135,000. The bank account was the subject of a "freezing order" which had been obtained ex parte under s 41 of the Act. The declaration made by the Court of Appeal, which the appellant challenges, was:

> "(a) that property owned by GARY ERNEST WHITE is available for confiscation instead of crime-used property; and
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> (b) specifying, pursuant to s 22(6)(b) of the Act, the assessed value of the crime-used property is $265,000."

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**39** *Chelsea Investments Pty Ltd v Federal Commissioner of Taxation* (1966) 115 CLR 1 at 6-7; [1966] HCA 15.

**40** *Chelsea Investments Pty Ltd v Federal Commissioner of Taxation* (1966) 115 CLR 1 at 6.

Section 24 rendered the appellant liable to pay to the State an amount equal to $265,000, and s 26 provided that the frozen property might be applied towards satisfying that debt.

33 The appellant, "in connection with" the commission of the murder, had done acts on the crime-used property within the meaning of par (c) of s 146(1). This was a use of the property in a way that, within the meaning of s 147, brought the property within par (c) of s 146(1) and, in turn, within the definition of "criminal use" in s 147. I agree with the reasons given by French CJ, Crennan and Bell JJ for those conclusions.

34 The result is that the appellant made criminal use of the property and the criterion in s 22(1)(b) of the Act was satisfied. This enlivened the power to grant the declaration made by the Court of Appeal.

35 The appeal should be dismissed with costs.

36 HEYDON J. Section 22 of the *Criminal Property Confiscation Act* 2000 (WA) provides for the making of a "crime-used property substitution declaration". That declaration allows for the confiscation of property. One condition for its making is that the perpetrator of a crime does not own, or does not have effective control of, crime-used property. The appellant did not challenge the satisfaction of that condition in this case. The satisfaction of that condition meant that the Court was obliged to make the order in relation to other property owned by the appellant even though it was not used in the crime, provided that the appellant made "criminal use of the crime-used property".

37 The only contention of the appellant which calls for consideration is that it was wrong of the Court of Appeal to have made a crime-used property substitution declaration on the ground that the appellant had not made "criminal use" of the premises from which he had committed the murder he had been convicted of.

38 Did the appellant make "criminal use" of "crime-used property"? Section 147 provides that the appellant would have made "criminal use of property" if he had used it in a way that brought it within the definition of "crime-used property". The definition of "crime-used property" is in s 146. The trial judge found that the appellant's conduct only fell within s 146(1)(c), not within either par (a) or par (b) of s 146(1); and that the definition of "crime-used property" was only located in those two latter paragraphs. With respect, the Court of Appeal was correct to reject that construction of s 146(1). Before pars (a)-(c) of s 146(1) appear the words: "For the purposes of this Act, property is crime-used if". Paragraph (b) is followed by the word "or". There is no reason to treat pars (a) and (b) as being the only relevant parts of the sub-section governed by those opening words, and not par (c). The appellant submitted that s 147 does not encompass s 146(1)(c), as the circumstance that property falls within s 146(1)(c) "does not involve such property being 'used'." He also submitted that s 146(1)(c) "is referable to acts or omissions which occur on or in the property in connection with the commission of an offence and it is this deliberate act which brings the property within the defined term of 'crime-used' not the use or intended use of the property". But the fact that an act is done, omitted to be done or facilitated in or on property in connection with the commission of a confiscation offence within the meaning of s 146(1)(c) does not prevent the property being described as having been "used". On that ground the appellant's submission that s 147 applies only to activities within s 146(1)(a)-(b) and not to those within s 146(1)(c) must be rejected.

39 The appeal must be dismissed.