



Queensland

Criminal Proceeds Confiscation Regulation 2013

Explanatory Notes for SL 2013 No. 154

made under the

Criminal Proceeds Confiscation Act 2002

General outline

Short title

Criminal Proceeds Confiscation Regulation 2013.

Authorising law

Criminal Proceeds Confiscation Act 2002

Policy objectives and the reasons for them

The main object of the *Criminal Proceeds Confiscation Act 2002* (the Act) is to remove the financial gain and increase the financial loss associated with illegal activity whether or not a particular person is convicted of an offence because of the activity.

The Act provides for various matters to be prescribed by regulation. The *Criminal Proceeds Confiscation Regulation 2002* (the 2002 Regulation) has set out those matters since the Act commenced.

The 2002 Regulation is due to automatically expire under the *Statutory Instruments Act 1992* on 1 September 2013 and must be remade before this date.

The object of this regulation is to substantially remake the 2002 Regulation in order to provide continued support for the Act in achieving its main object. This regulation therefore remakes the 2002 Regulation in substantially the same form but updates the regulation appropriately to provide for minor amendments that: -

- reflect current legislative drafting practice; and
- reflect amendments to interstate confiscation legislation listed in the relevant schedules to the regulation.

Achievement of policy objectives

This regulation continues the support provided by the 2002 Regulation in supporting the Act's main object. The regulation does this by:-

- providing for serious criminal offences other than those offences defined by section 17(1)(b) of the Act;
- providing for confiscation offences other than those defined by section 99(e) of the Act;
- providing for when a Magistrates Court may make a forfeiture order for real property; and
- providing for recognition of interstate and territory criminal confiscation and forfeiture orders in Queensland.

This regulation updates the 2002 Regulation in the following ways:

- Section 8 of this regulation has been reworded so that it accords with current legislative drafting practices;
- The offence contained in section 229K (8) of the Criminal Code has been omitted from schedule 1 (serious criminal offences) because it carries a maximum penalty of seven years imprisonment. Section 17(1)(a) of the Act provides that a serious criminal offence is any indictable offence which carries a maximum penalty of at least five years imprisonment, therefore the inclusion of this offence in schedule 1 is redundant; and
- In schedules 4, 5 and 6 of this regulation small amendments have been made adding, changing or omitting references to section numbers in interstate legislation to reflect amendments made in the other States and Territories and to ensure that the correct sections of interstate and Territory legislation are identified.

Consistency with policy objectives of authorising law

This regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

This regulation is not inconsistent with policy objectives of other legislation.

Benefits and costs of implementation

The benefits of this regulation are that:-

- it supports the main object of the Act; and
- it assists Queensland to play its role in the process of mutual recognition of confiscation orders made across Australian jurisdictions.

The costs of this regulation are negligible.

Consistency with fundamental legislative principles

This regulation assists in the enforcement of confiscation and forfeiture orders made under the Act and similar orders made in other Australian jurisdictions. This regulation will thereby continue the work of the 2002 Regulation in facilitating the compulsory acquisition of property without compensation. However, this is justified by the policy against unjust enrichment and because it furthers the main objective of the Act to remove the financial gain and increase the financial loss associated with illegal activity.

Consultation

Consultation was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade and the Queensland Police Service. All Government Departments consulted supported this regulation.

The two agencies that administer the conviction and non-conviction based schemes under the Act, namely the Office of the Director of Public Prosecutions and the Crime and Misconduct Commission were also consulted.

Queensland Competition Authority's Office of Best Practice Regulation (OBPR) has been consulted with regard to the obligations imposed under the Regulatory Impact Statement (RIS) System. OBPR has advised that with regards to the obligations imposed by the RIS system, a RIS is not required.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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