

Foreign Evidence (Foreign Material - Criminal and Related Civil Proceedings) Amendment Regulations 2004 (No. 1) 2004 No. 63

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 63

Minute No. of 2004 - Minister for Justice and Customs

Subject - *Foreign Evidence Act 1994*

Foreign Evidence (Foreign Material - Criminal and Related Civil Proceedings) Amendment Regulations 2004 (No. 1)

Section 46 of the *Foreign Evidence Act 1994* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed by carrying out or giving effect to the Act.

A) The object of the Act is to regulate specified evidentiary matters involving overseas jurisdictions. Those matters include the examination of witnesses abroad, and the taking and use of evidence.

Subsection 20(2) of the Act provides that foreign material may be used in any court of a State or Territory specified in the regulations, and, specifically, a criminal proceeding for an offence against the law of that State or Territory (paragraph 20(2)(x)), or a civil proceeding of a kind specified in the regulations in respect of that State or Territory (paragraph 20(c)(b)).

Subregulation 4(2) of the Foreign Evidence (Foreign Material - Criminal and Related Civil Proceedings) Regulations (the Principal Regulations) provides that related civil proceedings are specified for each State and Territory in the Schedule to the Principal Regulations.

The *Crimes (Confiscation of Profits) Act 1988 (WA)* (the C(CP)A) is currently prescribed as an Act under which proceedings are specified for the purposes of paragraph 20(2)(b) of the Act. The C(CP)A was superseded on 1 January 2001 by the *Criminal Property Confiscation Act 2000 (WA)* (CPCA).

The Principal Regulations now include a reference to the CPCA. This allows foreign evidence to be used in civil proceedings under the CPCA.

B) The Regulations also update the citation of the Principal Regulations in line with current drafting practice.

The Attorney General for Western Australia, the Honourable Jim McGinty MLA, has indicated that this amendment is critical to pending civil proceedings under the CPCA.

The Act specifies no conditions that needed to be met before the power to make the Regulations could be exercised.

The Regulations commence on the date of their ratification in the *Gazette*.

Authority: Section 46 of the *Foreign Evidence Act 1994*