

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs, Minister for Immigration and Border Protection

*Proceeds of Crime Act 1987*

*Proceeds of Crime Repeal Regulations 2018*

The *Proceeds of Crime Act 1987* (the Act) establishes a scheme to trace, investigate, restrain and confiscate proceeds of crime and furnishes a framework through which the benefits of those funds can be returned to the community, among other things.

Section 104 of 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, for carrying out or giving effect to the Act.

The *Proceeds of Crime Regulations 1987* (the Principal Regulations) are due to sunset on 1 April 2018 and prescribe a number of matters related to the operation of the Act. These matters relate to orders that may be sought under the Act, including pecuniary penalty orders (PPOs), and rules concerning the administration of the Confiscated Assets Special Account (CASA), which the Official Trustee in Bankruptcy (the Official Trustee) is responsible for managing. Further, the Principal Regulations specify the rate of remuneration of the Official Trustee and define core principles in the Act.

The Act and the Principal Regulations were superseded in 2002 by the *Proceeds of Crime Act 2002* and the *Proceeds of Crime Regulations 2002*, however, there remains one historical PPO still subject to the Act and the Principal Regulations.

The *Proceeds of Crime Repeal Regulations 2018* (the Repeal Regulations) repeal the majority of the Principal Regulations. However, due to the one historical PPO still subject to the Act and the Principal Regulations, certain elements of the Principal Regulations have been retained for the purpose of facilitating this historical matter. Therefore, despite the repeal of the Principal Regulations by the proposed Regulations, regulations 3A, 7A, 8, 9, 14, and 15 of the Principal Regulations and any other provisions necessary for the effective operation of these regulations continue to apply as if the repeal had not happened.

These regulations have been identified by the Australian Financial Security Authority (AFSA) as relevant to facilitating the ongoing historical matter under the Act. The debt accrued under this PPO was an amount of \$42,203.32 that was applied on 5 March 1990. It will be discharged in approximately three and a half to four years.

The elements that have been retained in the Repeal Regulations relate specifically to the Official Trustee being able to deal with the debt funds in an appropriate manner; and to be paid the prescribed annual management fee from managing the CASA after the repeal of the Principal Regulations.

The Repeal Regulations were informed by consultation with AFSA, the Department of Finance and the Commonwealth Director of Public Prosecutions who were supportive of the proposed changes.

The Act specified no conditions that needed to be satisfied before the power to make the Repeal Regulations could be exercised.

The Repeal Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Repeal Regulations commenced the day after they were registered on the Federal Register of Legislation.

Authority: Section 104 of the  
*Proceeds of Crime Act 1987*

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### Proceeds of Crime Repeal Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

The *Proceeds of Crime Repeal Regulations 2018* (POC Repeal Regulations) operate to:

- repeal the *Proceeds of Crime Regulations 1987* (the Principal Regulations), which are due to sunset on 1 April 2018; and
- prescribe that regulations 3A, 7A, 8, 9, 14 and 15 function as if the repeal had not occurred.

The *Proceeds of Crime Act 1987* (the Act) establishes a scheme to trace, investigate, restrain and confiscate proceeds of crime and furnishes a framework through which the benefits of those funds can be returned to the community, among other things. Under the Act, the Commonwealth Director of Public Prosecutions is able to seek court orders to deprive persons of the proceeds or instruments of, and any benefit derived from, offences against the laws of the Commonwealth and the Territories. Section 104 of 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, for carrying out or giving effect to the Act.

The Principal Regulations prescribe a number of matters related to the operation of the Act. These matters relate to orders that may be sought under the Act, including pecuniary penalty orders (PPOs) and rules concerning the administration of the Confiscated Assets Special Account (CASA), which the Official Trustee is responsible for managing.

The exceptions to the repeal under the POC Repeal Regulations ensure that the regulations relating to the administration of the CASA and the remuneration of the Official Trustee remain operative after the repeal. The continued operation of these regulations is necessary to facilitate one ongoing historical matter under the Act and preserve the Official Trustee's remuneration and expenses accrued in relation to this matter. This matter involves a debt accrued under a PPO that will be discharged in approximately three and a half to four years.

The decision to repeal the Principal Regulations rather than remake them reflects the fact that the *Proceeds of Crime Act 2002* has superseded the Act.

#### Human rights implications

The POC Repeal Regulations do not create any new powers, functions or rights. Instead, the Regulations repeal the Principal Regulations but allow certain regulations to continue to operate in relation to the CASA and the remuneration of the Official Trustee with responsibility for managing this account.

The operative provisions of the POC Repeal Regulations ensure that the Official Trustee can continue to receive payments for a PPO that was made before the POC Repeal Regulations came into force. These Regulations are administrative in nature and do not create any substantive powers to restrain or forfeit a person's property.

Therefore, this legislative instrument does not engage with any applicable rights or freedoms.

### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.