

Proceeds of Crime Amendment Regulations 2003 (No. 2) 2003 No. 100

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 100

Issued by the authority of the Minister for Justice and Customs

Proceeds of Crime Act 2002

Proceeds of Crime Amendment Regulations 2003 (No. 2)

Section 328 of the *Proceeds of Crime Act 2002* (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.

Division 1 of Part 2-1 of the Act enables a court to make a restraining order where there are reasonable grounds to suspect that a person has committed a 'serious offence'. Under subsection 18(2) of the Act a restraining order may cover all of the property of the person suspected of the serious offence, or specified parts of that person's property.

Subsection 47(1) requires a court, on the application of the Director of Public Prosecutions, to make a 'civil forfeiture order' against property which has been restrained under the Act for at least six months. The court must be satisfied that the person engaged in conduct which constituted a serious offence and that, for each such suspected offence that is not a terrorism offence, the offence was committed within the 6 years preceding the application for the restraining order or since the restraining order application was made.

Section 92 of the Act provides for the forfeiture of restrained property without a forfeiture order ('automatic forfeiture') where a suspect has been convicted of a serious offence. Automatic forfeiture occurs at the end of the period of six months from the date of conviction. However, that time limit may be extended under section 93 of the Act.

'Serious offence' is defined in section 338 of the Act to include a limited number of offences, which are generally serial in nature and where the proceeds of one offence are often used to commit the next. Paragraph (h) of the definition of 'serious offence' in section 338 of the Act specifies that an indictable offence specified in the regulations is to be considered as a 'serious offence'.

Under section 338 of the Act an 'indictable offence' means an offence against the law of the Commonwealth, or a non-governing Territory (as defined in the Act), that may be dealt with as an indictable offence (even if it may also be dealt with as a summary offence in some circumstances). An indictable offence is defined by section 4G of the *Crimes Act 1914* as an offence against a law of the Commonwealth punishable by imprisonment for a period exceeding 12 months.

The Proceeds of Crime Regulations 2002 (the Principal Regulations), provide for various forms and declarations of corresponding laws for specific purposes under the Act. The Principal Regulations do not presently specify offences to be considered as 'serious offences'.

The purpose of the proposed regulations is to specify indictable offences to be considered as 'serious offences' for the purposes of the Act. The effect of the proposed regulations would be to add the offences listed below to the class of serious offences whereby a restraining order may be granted by a court to cover all of the property of the person suspected of the serious offence, or specified parts of that person's property.

The proposed regulations would provide that the following offences under Division 73 of the *Criminal Code* are serious offences:

- People smuggling (section 73.1);
- Aggravated offence of people smuggling, exploitation etc (section 73.2);
- Aggravated offence of people smuggling, at least 5 people (section 73.3);
- Making, providing or possessing a false travel or identity document (section 73.8);
- Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats (section 73.9);
- Providing or possessing a travel or identity document to be used by a person who is not the rightful user (section 73.10); and
- Taking possession of or destroying another person's travel or identity document (section 73.11).

The proposed regulations would also provide that the following offences under Division 270 of the *Criminal Code* are serious offences:

- Slavery offences (section 270.3);
- Sexual servitude offences (section 270.6); and
- Deceptive recruiting for sexual services (section 270.7).

The proposed regulations would also provide that the following offences under Part IIIA of the *Crimes Act 1914* are serious offences:

- Sexual intercourse with child under 16 (section 50BA);
- Inducing child under 16 to engage in sexual intercourse (section 50BB);
- Sexual conduct involving child under 16 (section 50BC);
- Inducing child under 16 to be involved in sexual conduct (section 50BD);
- Benefiting from offence against Part IIIA (section 50DA); and
- Encouraging offence against Part IIIA (section 50DB).