

Confiscation of Criminal Assets Amendment Regulation 2022 (No 1)

Subordinate law SL2022-5

made under the

Confiscation of Criminal Assets Act 2003

EXPLANATORY STATEMENT

The *Confiscation of Criminal Assets Amendment Regulation 2022 (No 1)* amends the *Confiscation of Criminal Assets Regulation 2003* (the Regulation) which supports the *Confiscation of Criminal Assets Act 2003* (the Act). The Act provides the ACT with a legal framework for a confiscation of criminal assets scheme. The confiscation of criminal assets scheme includes restraining orders, conviction forfeiture orders, automatic forfeiture orders, civil forfeiture orders and penalty orders. Unexplained wealth orders were also introduced into the scheme by the *Confiscation of Criminal Assets (Unexplained Wealth) Amendment Act 2020*.

Part 11 of the Act provides that interstate orders made under prescribed corresponding laws can be registered in the ACT. Once an order is registered, it is taken to be a relevant order under the Act and can be enforced in the ACT. The amendments to the Regulation introduce new section 9A which prescribes corresponding law orders for the purpose of interstate unexplained wealth orders. The amendments also update, where appropriate, the corresponding law orders that are prescribed for other types of confiscation of criminal assets orders. The amendments do not engage human rights.

Clause notes

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Confiscation of Criminal Assets Amendment Regulation 2022 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences the day after its notification day.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Confiscation of Criminal Assets Regulation 2003*.

Clause 4 Section 4 (f)

This clause substitutes existing section 4 (f) to replace the reference to repealed South Australian legislation with a reference to the *Criminal Assets Confiscation Act 2005* (SA) and the *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA).

Clause 5 Section 5 (1) (b)

This clause amends section 5 (1) (b) to replace a reference to section 10 of the *Criminal Assets Recovery Act 1990* (NSW) with a reference to section 10A of that Act.

Clause 6 Section 5 (1) (c)

This clause amends section 5 (1) (c), which refers to section 18 of the *Confiscation Act 1997* (Vic), to also include a reference to section 40I of that Act.

Clause 7 Section 5 (1) (f)

This clause substitutes existing section 5 (1) (f) to replace a reference to a repealed South Australian provision with a reference to section 24 of the *Criminal Assets Confiscation Act 2005* (SA) and section 20 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA).

Clause 8 Section 6 (1) (c)

This clause substitutes existing section 6 (1) (c) to replace the references to sections 7 and 8 of the *Criminal Property Confiscation Act 2000* (WA) with a reference to section 30 if the property was confiscated under section 8 (1) of that Act. The clause also inserts subsection (ca) to include a reference to section 77 of the *Criminal Assets Confiscation Act 2005* (SA). Section 6 did not previously prescribe a corresponding provision in South Australian legislation.

Clause 9 Section 7 (1) (a)

This clause amends section 7 (1) (a), which refers to section 22 of the *Criminal Assets Recovery Act 1990* (NSW) to also include a reference to section 31A of that Act.

Clause 10 Section 7 (1) (d)

This clause substitutes existing section 7 (1) (d) to update references to relevant provisions in the *Criminal Property Confiscation Act 2000* (WA). Section 7 (1) (d) now refers to section 28 of that Act if the order is made otherwise than in relation to a

relevant confiscation offence for which the person has been convicted and section 30 of that Act if the property was confiscated under section 6, 7 or 8 (2) of that Act.

Clause 11 Section 7 (3)

This clause inserts a definition of *relevant confiscation offence* for the purpose of section 7. The definition refers to the definition of that term in the glossary of the *Criminal Property Confiscation Act 2000* (WA).

Clause 12 Section 8 (1) (a)

This clause substitutes existing section 8 (1) (a) to replace a reference to section 18 of the *Criminal Assets Recovery Act 1990* (NSW) with a reference to section 18 of the *Confiscation of Proceeds of Crime Act 1989* (NSW).

Clause 13 Section 8 (1) (d)

This clause substitutes existing section 8 (1) (d) to update the references to the relevant provisions in the *Criminal Property Confiscation Act 2000* (WA). Section 8 (1) (d) now refers to section 28 of that Act if the order is made in relation to a relevant confiscation offence for which a person has been convicted.

Clause 14 Section 8 (1) (e)

This clause omits section 8 (1) (e) which refers to a repealed South Australian provision.

Clause 15 New section 8 (3)

This clause inserts a definition of *relevant confiscation offence* for the purpose of section 8. The definition refers to the definition of that term in the glossary of the *Criminal Property Confiscation Act 2000* (WA).

Clause 16 Section 9 (1) (f)

This clause substitutes existing section 9 (1) (f) to replace a reference to a repealed South Australian provision with a reference to section 95 of the *Criminal Assets Confiscation Act 2005* (SA).

Clause 17 New section 9A

This clause inserts new section 9A which prescribes provisions as corresponding law orders for the purpose of the definition of *interstate unexplained wealth order* in the Act. The provisions which are prescribed in subsection (1) are:

- *Criminal Assets Recovery Act 1990* (NSW), section 28A and section 31B;
- *Criminal Proceeds Confiscation Act 2002* (QLD), section 89G;
- *Criminal Property Confiscation Act 2000* (WA), section 12;
- *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA), section 9;

- *Crime (Confiscation of Profits) Act 1993* (Tas), section 142;
- *Criminal Property Forfeiture Act 2002* (NT), section 71.

An order that consents to the making of an order prescribed in subsection (1), varies an order prescribed in subsection (1), or varies the property to which an order prescribed in subsection (1) relates are also prescribed as corresponding law orders.