

# Queensland Approach to Proceeds of Crime

*Criminal Proceeds Confiscation Act 2002*



# Criminal Proceeds Confiscation Act 2002

One Act, Two Schemes

- Civil Confiscation
- Conviction Based

# Legislative Structure

5 Agencies involved

- Crime and Misconduct Commission
- Director of Public Prosecutions
- Queensland Police
- Public Trustee
- Legal Aid Queensland

## *Similarities*

- Proceedings are civil, not criminal
- Proceedings conducted in Supreme Court
- Restrained property not available for legal expenses
- Forfeited property not to be taken into account on sentence

# Application

## Civil Confiscation

- Property derived from illegal activity

*Note:*

- “Illegal activity” is more broadly defined than “serious crime” related activity.
- Restrained property need not be linked to the “serious crime related activity”

## Conviction Based

- Property used in or derived from the confiscation offence.

*Note:*

- Limited to tainted property
- Link to the confiscation offence must be established

# Trigger Offences

## Civil Confiscation

- Respondent suspected of engaging in “Serious crime related activity” ie. 5 year offence.
- Suspicion of serious crime related activity in past 6 years.

## Conviction Based

- Respondent suspected of committing a “confiscation Offence” ie. “serious criminal offence, other indictable offence or other prescribed offence”.

# Restraining Orders

## Civil Confiscation

- Can be made ex parte
- Life of 28 days extended by filing application for forfeiture or proceeds assessment order.
- “In Rem” provisions allow property to be restrained and forfeited even though the person who engaged in illegal activity cannot be identified.

## Conviction Based

- Can be made ex parte
- Ex parte orders have life of 7 days otherwise 12 months life.
- No “In Rem” provisions

# Forfeiture Orders

## Civil Confiscation

- **Must** be made once shown on balance of probabilities that respondent engaged in “serious crime related activity”
- Property can only be excluded if respondent shows on balance of probabilities that it was lawfully acquired.
- No automatic forfeiture

## Conviction Based

- **May** be made once person convicted of the “confiscation offence”.
- Court takes into consideration a range of factors including likely hardship, use ordinarily made of property, seriousness of the offence and anything else the courts considers appropriate.
- Automatic forfeiture applies on conviction of a “serious criminal offence”.



# *Unexplained Wealth*

- No express provision at present
- Proceeds assessment provisions create a statutory presumption that wealth derived from an illegal source
- Onus of proof is reversed.

# *Civil Confiscation in Practice*

- CMC Proceeds of Crime Team
  - Financial Investigators
  - No police, no lawyers
- DPP – Solicitor on the record
  - Civil litigators
- Counsel engaged as necessary

# *Civil Confiscation in Practice*

- 80% comes from QPS investigations
- >90% involves drug related crime
- 99% settle by negotiation
- 84% settle within 3 years
- Approx 120 matters
- \$50-\$60m restrained

# *Civil Confiscation in Practice*

- Costs and damages
  - Paid from CMC budget
  - Mitigation strategies

# *Civil Confiscation in Practice*

- “Just in time” approach
- Value adding
  - Intelligence
  - Target development

# *Advantages/Disadvantages*

- Number of agencies involved
- DPP as solicitor on the record
- Specialist financial investigators
- Resource cost
- “Value adding” opportunities

# Challenges

- Resources
- Staff retention
- Incidentalism

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