

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 198

Subject - *Proceeds of Crime Act 2002*

Proceeds of Crime Amendment Regulations 2010 (No. 1)

Section 328 of the *Proceeds of Crime Act 2002* (the POCA) provides that the Governor-General may make regulations prescribing all matters required or permitted by the POCA to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the POCA.

The *Anti-People Smuggling and Other Measures Act 2010* (the Act) was given Royal Assent on 31 May 2010 and commenced on 1 June 2010. The Act strengthens the Commonwealth's anti-people smuggling legislative framework by ensuring that an appropriate range of offences are available to target and deter people smuggling activity and by creating greater harmonisation across Commonwealth legislation. The Act amends the POCA and other legislation to put in place laws to provide greater deterrence of people smuggling activity and to address the serious consequences of such activity. The Act also provides greater capacity for Australian Government agencies to investigate and disrupt people smuggling networks.

The Regulations make minor amendments to the *Proceeds of Crime Regulations 2002* (the Principal Regulations) consequential to the changes made by the Act.

Among other things, the Act amends the *Criminal Code* in the *Criminal Code Act 1995* to introduce a new offence of supporting the offence of people smuggling. Section 73.2 of the *Criminal Code* (which currently contains the offence titled 'aggravated offence of people smuggling (exploitation etc)') has been amended to better structure the elements of the offence. The title of the section has also been changed to 'Aggravated offence of people smuggling (exploitation, or danger of death or serious harm etc.)' to better reflect the elements of the offence it contains.

The POCA establishes a comprehensive scheme to trace, restrain and confiscate the proceeds of serious offences against Commonwealth law, and also enables confiscated funds to be given back to the community to help prevent and reduce the harmful effects of crime.

Section 338 of the POCA defines 'serious offence' and paragraph (h) of this defined term establishes that indictable offences specified in the regulations are considered serious offences. Paragraph 9(a) of the Principal Regulations currently specifies various provisions of the *Criminal Code* relating to people smuggling for the purposes of section 338.

The Regulations amend the Principal Regulations to prescribe the new and amended offences of supporting the offence of people smuggling and people smuggling involving exploitation, or danger of death or serious harm as 'serious offences' for the purposes of the POCA. This is a consequential amendment reflecting the changes the Act makes to the POCA for people smuggling offences in the *Migration Act 1958*.

Details of the Regulations are set out in the Attachment.

The POCA specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 328 of the *Proceeds of Crime Act 2002*

ATTACHMENT

Details of the *Proceeds of Crime Amendment Regulations 2010 (No. 1)*

The *Anti-People Smuggling and Other Measures Act 2010* (the Act) strengthens the Commonwealth's legislative framework criminalising people smuggling.

The Regulations prescribe the new and amended offences of supporting the offence of people smuggling and people smuggling involving exploitation, or danger of death or serious harm as 'serious offences' for the purposes of the *Proceeds of Crime Act 2002* (POCA). This is a consequential amendment reflecting the changes the Act makes to the POCA for people smuggling offences in the *Migration Act 1958*.

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Proceeds of Crime Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Proceeds of Crime Regulations 2002*

This regulation provides that the *Proceeds of Crime Regulations 2002* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – subparagraph 9(a)(ii)

Existing subparagraph 9(a)(ii) of the Principal Regulations prescribes that the offence in section 73.2 of the Criminal Code, the aggravated offence of people smuggling (exploitation etc), is a serious offence for the purposes of section 338 of the POCA.

The Act amends section 73.2 and retitles the section 'Aggravated people smuggling (exploitation, or danger of death or serious harm etc)'.

This item amends subparagraph 9(a)(ii) to prescribe that section 73.2, as amended by the Act, is a serious offence for the purposes of section 338 of the POCA.

Item [2] – after subparagraph 9(a)(iii)

Existing subparagraph 9(a)(iii) of the Principal Regulations prescribes that the aggravated offence of people smuggling (at least 5 people) is a serious offence for the purposes of section 338 of the POCA.

The Act amends the Criminal Code to create section 73.3A titled 'Supporting the offence of people smuggling'. Consistent with the other offences listed in regulation 9, this item adds a new subparagraph after subparagraph 9(a)(iii) to prescribe that the new offence of supporting the offence of people smuggling is a serious offence for the purposes of section 338 of the POCA.