

## EXPLANATORY STATEMENT

### SELECT LEGISLATIVE INSTRUMENT NO. 76, 2015

Subject *Australian Crime Commission Act 2002*  
*Crimes Act 1914*  
*Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*  
*Law Enforcement Integrity Commissioner Act 2006*  
*Financial Transaction Reports Act 1988*  
*Proceeds of Crime Act 2002*

#### *Crimes Legislation (Consequential Amendments) Regulation 2015*

The purpose of the Regulation is to make amendments to a range of Commonwealth instruments that support Australian criminal justice arrangements, to ensure these remain accurate, comprehensive and up to date. The proposed Regulation would amend:

- the *Australian Crime Commission Regulations 2002* (the ACC Regulations), the *Crimes Regulations 1990* (the Crimes Regulations), and the *Law Enforcement Integrity Commissioner Regulations 2006* (the LEIC Regulations) to reflect the new name of the Queensland Crime and Misconduct Commission (now the Queensland Crime and Corruption Commission)
- the *Proceeds of Crime Regulations 2002* to update references to State and Territory proceeds of crime laws and update the list of offences that are considered ‘serious offences’ for the purposes of the *Proceeds of Crime Act 2002*, and
- the *Financial Transaction Reports Regulations 1990* to repeal Regulation 11B, which has been rendered redundant as a result of the passage of the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2014*.

Further information on each of the amendments is outlined below.

The first series of proposed amendments would update Commonwealth regulations to reflect the new name of the Crime and Misconduct Commission in Queensland – now the Crime and Corruption Commission. Changing the Commission’s name in Commonwealth regulations is not intended to substantively change regulations associated with the Commission or its functions.

These amendments are consequential to the entry into force of the *Crime and Misconduct Commission Amendment Act 2014* (Qld) (the Queensland Act) on 1 July 2014. The Queensland Act replaced the ‘Misconduct’ function of the Crime and Misconduct Commission with ‘Corruption’, and made several other associated terminology changes.

The Queensland Department of Justice and Attorney-General was consulted in the drafting of these proposed amendments.

### ACC Regulations

Section 62 of the *Australian Crime Commission Act 2002* (ACC Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the ACC Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the ACC Act.

The purpose of the ACC Act is to establish the Australian Crime Commission and its governing regime, being a national entity that manages criminal information and intelligence and performs intelligence operations where authorised.

The ACC Regulations contain one reference to the *Crime and Misconduct Act 2001*. The regulation replaces this with a reference to the *Crime and Corruption Act 2001*.

The ACC Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

### Crimes Regulations

Section 91 of the *Crimes Act 1914* (Crimes Act) provides the Governor-General may make regulations prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

The purpose of the Crimes Act is to provide for offences against the Commonwealth.

The Crimes Regulations contain three references to the *Crime and Misconduct Act 2001*. The regulation replaces this with a reference to the *Crime and Corruption Act 2001*.

Further authority is required in relation to one of the proposed amendments to the Crimes Regulations (subregulation 11(4)), as this amendment is to a provision originally made under the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* (CLA Act).

Section 19 of Part 3 of Schedule 4 of the CLA Act provides the Governor-General may make regulations prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

The purpose of the CLA Act is to enhance Commonwealth legislation to facilitate a comprehensive national response to combat organised crime.

The Crimes Act and CLA Act do not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

### LEIC Regulations

Section 224 of the *Law Enforcement Integrity Commissioner Act 2006*

(LEIC Act) provides the Governor-General may make regulations prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

The purpose of the LEIC Act is to establish an Integrity Commissioner to head up the Australian Commission for Law Enforcement Integrity, an independent body with powers to prevent, detect and investigate corruption within Australian Government law enforcement agencies.

The LEIC Regulations contain a reference to both the Crime and Misconduct Commission and the *Crime and Misconduct Act 2001*. The Regulation replaces these references with the relevant updated names.

The LEIC Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

#### *Financial Transaction Reports Regulations 1990*

Section 43 of the *Financial Transaction Reports Act 1988* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Regulation 11B sets out the prescribed particulars required under sub-section 18(8) of the FTA Act. Sub-section 18(8) of the FTA Act relates to accounts held with a cash dealer that have been blocked for 12 months. At this time the cash dealer has 14 days to provide the Australian Transaction Reports and Analysis Centre CEO the balance of the account and other prescribed particulars.

This Regulation repeals Regulation 11B of the *Financial Transaction Reports Regulations 1990*. This repeal is a necessary consequential amendment as a result of the proposed repeal of sections 18 and 19 of the Act through the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2014* (Cth). The repeal of section 18 renders Regulation 11B redundant.

The FTA Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

#### *Proceeds of Crime Regulations 2002*

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

This Regulation amends the *Proceeds of Crime Regulations 2002* (Cth) (the POC Regulations) to:

- update references in the POC Regulations to State and Territory proceeds of crime legislation to account for legislative changes in the States and Territories, and to

- update the list of offences that are considered ‘serious offences’, to include new offences and reflect changes to the *Criminal Code Act 1995* (Cth) (the Criminal Code) and the *Copyright Act 1968* (Cth) (the Copyright Act).

#### *References to State and Territory proceeds of crime legislation*

Section 338 of the POC Act provides that regulations may prescribe a State or Territory law as a law that corresponds with the Act, and also provides for the recognition of ‘interstate forfeiture orders’ ‘interstate pecuniary penalty orders’ and ‘interstate restraining orders made under these corresponding laws.

Regulation 5 of the *Proceeds of Crime Regulations 2002* (the POC Regulations) lists State and Territory orders made under a corresponding law that are ‘interstate forfeiture orders’. Regulation 6 lists orders that are ‘interstate pecuniary penalty orders and regulation 7 lists orders that are ‘interstate restraining orders’.

The POC Act provides that:

- where interstate forfeiture or restraining orders apply to property in a non-governing territory, they may be registered in that territory’s Supreme Court and enforced as if they had been made under the Act, and
- where a court makes orders in a proceeds of crime proceeding under the Act, it must take into account the effect of any interstate proceeds of crime orders that have already been made.

This Regulation amends regulation 5, 6 and 7 to remove references to redundant Victorian proceeds of crime orders. This Regulation also updates these regulations to recognise Queensland and Tasmanian forfeiture, pecuniary penalty and restraining orders that have been introduced since these regulations were last updated in 2011.

The Australian Federal Police, the Tasmanian Department of Justice, Victorian Department of Justice, and the Queensland Department of Justice and Attorney-General were consulted in the drafting of this Regulation.

#### *Serious offences*

Under the POC Act, proceeds of crime authorities (the Australian Federal Police and the Commonwealth Director of Public Prosecutions) are able, among other things, to seek court orders to deprive persons of the proceeds of, instruments of and benefits derived from indictable and serious offences against the laws of the Commonwealth. A range of enforcement orders can be made by a court where a criminal has been convicted of a serious, or indictable offence or where there are reasonable grounds to suspect a person has committed a serious or indictable offence.

Section 338 of the POC Act defines ‘serious offence’ and paragraph (h) of this defined term establishes that indictable offences specified in the POC Regulations are serious offences. Section 4G of the *Crimes Act 1914* defines an indictable offence as an offence against a law of the Commonwealth punishable by imprisonment for a period exceeding 12 months.

Regulation 9 of the POC Regulations currently specifies that an indictable offence against a listed provision of the *Criminal Code Act 1995* (the Criminal Code) or the *Australian Crime Commission Act 2002* is a ‘serious offence’ for the purposes of

the POC Act. This Regulation updates the list of provisions in regulation 9 to reflect the introduction of new offences into the Criminal Code relating to slavery-like practices, trafficking in persons and child sexual abuse material. This Regulation prescribes these new offences as ‘serious offences’ for the purposes of the POC Act.

This Regulation also prescribes a range of offences under the Copyright Act for the purposes of the definition of ‘serious offence’ in the POC Act. These offences were introduced as part of a major reform of the Copyright Act undertaken in 2006 to address the growing problem of copyright piracy.

The Australian Federal Police, the Tasmanian Department of Justice, Victorian Department of Justice, and the Queensland Department of Justice and Attorney-General were consulted in the drafting of this Regulation.

The POC Act does not specify any conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

Further information about each proposed amendment is at the [Attachment](#).

#### *Other considerations*

This Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth).

This Regulation commenced on the day after it was registered on the Federal Register of Legislative Instruments.

Authority: Section 62 of the *Australian Crime Commission Act 2002*

Section 91 of the *Crimes Act 1914*

Section 19 of Part 3 of Schedule 4 of the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*

Section 224 of the *Law Enforcement Integrity Commissioner Act 2006*

Section 43 of the *Financial Transaction Reports Act 1988*

Section 328 of the *Proceeds of Crime Act 2002*

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### ***Crimes Legislation (Consequential Amendments) Regulation 2015***

This Regulation 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* (Cth).

#### **Overview of the Regulation – Queensland Crime and Misconduct Commission**

This Regulation will amend the *Australian Crime Commission Regulations 2002* (the ACC Regulations), the *Crimes Regulations 1990* (the Crimes Regulations) and the *Law Enforcement Integrity Commissioner Regulations 2006* (the LEIC Regulations) to update certain terminology relating to the Queensland Crime and Misconduct Commission following the passage of Queensland legislation that changed the ‘Misconduct’ function to ‘Corruption’.

#### *Human rights implications*

The legal effect of Schedule 1 of the Regulation is confined to technical amendments that update certain names and terms to achieve consistency with state legislation. As such, these parts of the Regulation are not seen as engaging, or otherwise affecting, the rights or freedoms relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

#### **Overview of the Regulation – Financial Transaction Reports**

This Regulation makes necessary consequential amendment to the *Financial Transaction Reports Regulations 1990* to ensure no references remain that have become obsolete as a consequence of giving effect to the repeal of sections 18 and 19 of the *Financial Transaction Reports Act 1988*.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

#### **Overview of the Regulation – Proceeds of Crime**

The purpose of the *Proceeds of Crime Act 2002* (the POC Act) is to prevent criminals from being able to enjoy the profits of their crimes, by depriving them of the proceeds and benefits gained from criminal conduct, and to prevent re-investment of those proceeds and benefits in further criminal activities.

This Regulation amends the *Proceeds of Crime Regulations 2002* (Cth) (the POC Regulations) to:

- update references to State and Territory proceeds of crime legislation to account for recent legislative changes in the States and Territories, and to
- update the list of offences that are considered ‘serious offences’, to include new offences and reflect changes to the *Criminal Code Act 1995* (Cth) (the Criminal Code) and the *Copyright Act 1968* (Cth) (the Copyright Act).

#### *References to State and Territory proceeds of crime legislation*

The States and Territories also have established proceeds of crime schemes under laws that correspond with the POC Act.

Section 338 of the POC Act provides for the recognition of ‘interstate forfeiture orders’ ‘interstate pecuniary penalty orders’ and ‘interstate restraining orders’ made under these corresponding laws to ensure that:

- where interstate forfeiture or restraining orders apply to property in a non-governing Territory, they may be registered in that Territory’s Supreme Court and enforced as if they had been made under the Act, and
- where a court makes orders in a proceeds of crime proceeding under the Act, it must take into account the effect of any interstate proceeds of crime orders that have already been made.

This Regulation makes minor technical amendments to the POC Regulations to remove references to redundant Victorian proceeds of crime orders and recognise Queensland and Tasmanian forfeiture, pecuniary penalty and restraining orders that have been introduced since the Regulations were last updated in 2011. The purpose of these amendments is to ensure that references to State and Territory legislation in the POC Regulations are accurate and up to date.

#### **Human rights implications**

These amendments do not engage the applicable human rights recognised or declared in international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

#### *Serious offences*

Under the POC Act, proceeds of crime authorities (the Australian Federal Police and the Commonwealth Director of Public Prosecutions) are able, among other things, to seek court orders to deprive persons of the proceeds of, instruments of and benefits derived from, indictable and serious offences against the laws of the Commonwealth. A range of enforcement orders can be made by a court where a criminal has been convicted of a serious offence, or an indictable offence or where there are reasonable grounds to suspect a person has committed a serious or indictable offence.

The POC Act allows a proceeds of crime authority to obtain a greater range of orders where the offence involved is classed as a ‘serious offence’ rather than an ‘indictable offence’ for the purposes of the POC Act.

Section 338 of the POC Act defines ‘serious offence’ and paragraph (h) of this defined term establishes that indictable offences specified in the POC Regulations are serious offences.

Under the Regulation, offences against recently introduced provisions of the Criminal Code relating to slavery-like practices, trafficking in persons and child sexual abuse material will be prescribed as ‘serious offences’. The inclusion of these offences as ‘serious offences’ in the POC Regulations provides proceeds of crime authorities with more tools to target the profit incentives behind this exploitative conduct.

The Regulation also ensures that a broad range of remedies under the POC Act can be used to enforce Australia’s copyright enforcement scheme. The Regulation prescribes a range of offences under the Copyright Act for the purposes of the definition of ‘serious offence’ in the POC Act. The inclusion of these offences in the definition of ‘serious offence’ will strengthen Australia’s copyright enforcement regime and will also assist in minimising lost revenue to the Government through the detection of other economic related crime such as tax evasion and money laundering.

The additional provisions of the Criminal Code and Copyright Act that are specified as ‘serious offences’ under the proposed regulation 9 are indictable offences and serious criminal consequences are attached to their commission. Further information about the new list of offences inserted for the purposes of the definition of ‘serious offence’ in the POC Act is at the [Attachment](#).

## **Human rights implications**

### *Right to a fair hearing*

The guarantees in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) include the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law, minimum guarantees in a criminal hearing and the right to legal representation.

Proceedings under the POC Act do not engage the rights in Article 14 that provide minimal guarantees in criminal hearings. These proceedings are civil, not criminal, and do not involve the determination of a person’s guilt or innocence with respect to a criminal offence.

To the extent that the Article 14 guarantees are engaged because proceedings under the POC Act involve the determination of a person’s rights and obligations in law, the impact of this regulation on these rights is limited. This Regulation will mean that a proceeds of crime authority will be able to obtain a greater range of orders with respect to offences in the Criminal Code and the Copyright Act. However this regulation does not vary the requirements that a proceeds of crime authority is required to meet in order to obtain a proceeds of crime order, where a person has been convicted, or is reasonably suspected of committing a ‘serious offence’, and does not diminish the fair hearing rights of a person against whom the order is sought. The POC Act also includes safeguards ensuring that a person can obtain compensation for a portion of forfeited property that is determined not to



be the proceeds of a crime, and ensures that dependents of the person whose property was forfeited are protected against hardship arising from confiscation (sections 94A and 72). This regulation does not reduce these safeguards.

#### *Advancement of rights*

Article 8 of the ICCPR recognises the right to freedom from slavery and servitude, freedom from forced labour, and rights preventing bondage and human trafficking (Article 8). This Regulation declares that offences against provisions of the Criminal Code relating to slavery-like practices such as servitude and forced labour are ‘serious offences’ for the purposes of the POC Act. This makes a broader range of remedies under the POC Act available to proceeds of crime authorities than would otherwise be the case.

#### **Conclusion**

This Regulation is compatible with human rights because, to the extent that it may limit human rights through its application as part of the broader existing scheme, those limitations are reasonable, necessary and proportionate.

**Clause 1 – Name**

This clause provides that, when enacted, the Regulation may be cited as the *Crimes Legislation (Consequential Amendments) Regulation 2015*.

**Clause 2 – Commencement**

This clause provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Clause 3 – Authority**

This is a formal clause that outlines that the Regulation is made under the *Australian Crime Commission Act 2002* (the ACC Act), the *Crimes Act 1914* (the Crimes Act), the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* (the CLA Act), the *Financial Transaction Reports Act 1988* (the FTR Act), the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) and the *Proceeds of Crime Act 2002* (the POC Act).

Section 62 of the ACC Act, Section 91 of the Crimes Act, Section 19 of Part 3 of Schedule 4 of the CLA Act, Section 43 of the FTR Act, Section 224 of the LEIC Act and Section 328 of the POC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

**Clause 4 – Schedule**

This is a formal clause that identifies that the Regulation amends the *Australian Crime Commission Regulations 2002* (Cth) (the ACC Regulations), the *Crimes Regulations 1990* (Cth) (the Crimes Regulations), the *Financial Transaction Reports Regulations 1990* (the FTR Regulations), the *Law Enforcement Integrity Commissioner Regulations 2006* (Cth) (the LEIC Regulations), and the *Proceeds of Crime Regulations 2002* (Cth) (the POC Regulations), which are the instruments specified in Schedule 1.

**Schedule 1 – Amendments**

This schedule contains amendments to the ACC Regulations, the Crimes Regulations, the FTR Regulations, the LEIC Regulations and the POC Regulations.

**Item 1 Part 3 Schedule 3 (table items 301 and 302, column headed “Law”)**

Item 1 amends the ACC Regulations to update a reference to the ‘*Crime and Misconduct Act 2001*’ (the Queensland Act) to be the ‘*Crime and Corruption Act 2001*’. The reference appears in items 301 and 302 of a table that lists Queensland laws conferring certain duties, functions and powers. This consequential amendment updates table items 301 and 302 in Part 3 Schedule 3 of the ACC Regulations to reflect the new name of the Queensland Act.

**Item 2 regulation 4A (table item 3, column headed “Law”)**

Item 2 amends the Crimes Regulations to update a reference to the Queensland Act in Regulation 4A. The reference appears in item 3 of a table outlining corresponding State controlled operations laws. This consequential amendment updates table item 3 in regulation 4A to reflect the new name of the Queensland Act.

**Item 3 regulation 4BAB (table item 3, column headed “Law”)**

Item 3 amends the Crimes Regulations to update a reference to the Queensland Act in Regulation 4BAB. The reference appears in item 3 of a table outlining corresponding State assumed identity laws. This consequential amendment updates item 3 in regulation 4BAB to reflect the new name of the Queensland Act.

**Item 4 subregulation 11(4) (cell at table item 12, column headed “Law”)**

Item 4 amends the Crimes Regulations to update a reference to the Queensland Act in subregulation 11(4). The reference appears in item 12 of a table outlining transitional matters relating to the application of the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*, and specifically, the relevant State controlled operations laws across Australia. This consequential amendment updates table item 12 in subregulation 11(4) to reflect the new name of the Queensland Act. It retains the old name of the Queensland Act in brackets for clarity, given the subregulation relates to transitional (and partly historical) matters.

**Item 5 regulation 11B**

Item 5 specifies that Regulation 11B of the *Financial Transaction Reports Regulations 1990* is to be repealed.

**Item 6 Paragraph 5(c)**

Item 6 repeals existing paragraph 5(c) of the LEIC Regulations, which lists the State and Territory agencies considered to be an ‘integrity agency’ for the purposes of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) and refers to both the Queensland Act and the Queensland Crime and Misconduct Commission. Item 5 replaces both with the correct terms, replacing the references to ‘Misconduct’ with ‘Corruption’.

**Item 7 Paragraph 5(d)**

Item 7 repeals existing paragraph 5(d) of the POC Regulations.

Paragraph 5(d) declares a forfeiture order made under subsection 7 (1) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a ‘interstate forfeiture order’ for the purposes of the POC Act. Subsection 7(1) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a redundant provision.

**Item 8 After paragraph 5(e)**

Item 8 inserts new paragraph 5(eaa).

New paragraph 5(eaa) declares that a serious drug offender confiscation order made under section 93ZZB of the *Criminal Proceeds Confiscation Act 2002* (Qld) is an interstate forfeiture order for the purposes of section 338 of the POC Act.

#### **Item 9 After paragraph 5(j)**

Item 9 inserts a new paragraph 5(ja).

New paragraph 5(ja) declares that a wealth forfeiture order under section 152 of the *Crime (Confiscation of Profits) Act 1993* (Tas) is an interstate forfeiture order for the purpose of section 338 of the POC Act.

#### **Item 10 Paragraph 6(d)**

Item 10 repeals existing paragraph 6(d) of the POC Regulations.

Paragraph 6(d) declares a pecuniary penalty order made under subsection 12(1) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a ‘interstate pecuniary penalty order’ for the purposes of the POC Act. Subsection 12(1) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a redundant provision.

#### **Item 11 After paragraph 6(e)**

Item 11 inserts a new paragraph 6(eaa).

New paragraph 6(eaa) declares that an unexplained wealth order under section 89G of the *Criminal Proceeds Confiscation Act 2002* (Qld) is a ‘interstate pecuniary penalty order’ for the purposes of section 338 of the POC Act.

#### **Item 12 Paragraph 7(d)**

Item 12 repeals existing paragraph 7(d) of the POC Regulations.

Paragraph 7(d) declares that a restraining order made under subsection 16(3) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a ‘interstate restraining order’ for the purposes of the POC Act. Subsection 16(3) of the *Crimes (Confiscation of Profits) Act 1986* (Vic) is a redundant provision.

#### **Item 13 Paragraph 7(e)**

Item 13 repeals existing paragraph 7(e) of the POC Regulations and substitutes a new paragraph 7(e).

Paragraph 7(e) currently declares that a restraining order made under subsection 31 (1) or 122 (1), (2) or (3) of the *Criminal Proceeds Confiscation Act 2002* (Qld) is an ‘interstate restraining order for the purposes of the POC Act. References to subsection 31(1) and 122(1), (2) and (3) are redundant following changes made to that Act by the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013*(Qld).

New paragraph 7(e) declares that a restraining order made under sections 31, 93M or 122 of the *Criminal Proceeds Confiscation Act 2002* (Qld) is a ‘interstate restraining order’ for the purposes of section 338 of the POC Act.

#### **Item 14 After paragraph 7(j)**

Item 14 inserts new paragraphs 7(ja) and (jb).

New paragraphs 7(ja) and (jb) declares that an interim wealth restraining order made under section 116 or a wealth restraining order made under section 118 of the *Crime (Confiscation of Profits) Act 1993* (Tas) is a ‘interstate restraining order’ for the purposes of section 338 of the POC Act.

#### **Item 15 After subparagraph 9(a)(viii)**

Item 15 inserts new subparagraph 9(a)(viii).

New subparagraph 9(a)(viii) provides that an offence against section 270.5 (servitude offences) of the *Criminal Code Act 1995*(Cth) (the Criminal Code) is a ‘serious offence’ for the purposes of section 338 of the POC Act.

#### **Item 16 Subparagraphs 9(a)(ix) and(x)**

Item 16 repeals existing subparagraphs 9(a)(ix) and (x) of the POC Regulations and substitutes new subparagraphs 9(a)(ix), (ixa) and (x).

Existing subparagraph 9(a)(ix) and (x) provide that offences against sections 270.6 (sexual servitude offences) and 270.7 (deceptive recruiting for sexual services) of the Criminal Code are ‘serious offences’ for the purpose of section 338 of the POC Act.

References to sections 270.6 and 270.7 of the Criminal Code require updating following amendments introduced by the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth). Item 15 amends the POC Regulations to update incorrect references, and to include references to the slavery-like offences that were introduced into the Criminal Code in 2013. New subparagraph 9(a)(ix) (ixa) and (x) declare that offences against sections 270.5 (servitude), 270.6A (forced labour offences), section 270.7 (deceptive recruiting for labour or services) and section 270.7B (forced marriage offences) are ‘serious offences’ for the purposes of section 338 of the POC Act.

References to Division 272 (Child sex offences outside Australia) require updating following amendments introduced by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*. Item 15 also amends the POC Regulation to include references to the aggravated child abuse offences that were introduced into the Criminal Code in 2010. New subparagraph 9(a)(ix) (ixa) and (x) declare these new aggravated offence are ‘serious offences’ for the purposes of section 338 of the POC Act.

#### **Items 17, 18, 19, 20, 21 and 22**

Items 17, 18, 19, 20, 21 and 22 insert new subparagraphs 9(a)(xia), (xiiia), (xiva), (xivb), (xive), (xivd), (xive), (xivf), (xivg), (xivh), (xvia), (xxvia) and (xliva)

The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* updated offences relating to trafficking in persons into the Criminal Code and introduced new offences relating to slavery-like practices and trafficking in persons into the Criminal Code. Items 16 to 21 update the POC Regulations to declare offences against the following sections of the Criminal Code as a ‘serious offences’ for the purposes of the POC Act:

- section 271.3 (trafficking in persons – aggravated offence) (new subparagraph 9(a)(xia) of the POC Regulations)
- section 271.6 (domestic trafficking in persons – aggravated offence) (new subparagraph 9(a)(xiiia))
- section 271.7B (offence of organ trafficking – entry into and exit from Australia) (new subparagraph 9(a)(xiva))
- section 271.7C (organ trafficking – aggravated offence) (new subparagraph 9(a)(xivb))
- section 271.7D (offence of domestic organ trafficking) (new subparagraph 9(a)(xivc))
- section 271.7E (domestic organ trafficking – aggravated offence) (new subparagraph 9(a)(xivd))
- section 271.7F (harbouring a victim) (new subparagraph 9(a)(xive))
- section 271.7G (harbouring a victim – aggravated offence) (new subparagraph 9(a)(xivf))
- section 271.8 (offence of debt bondage) (new subparagraph 9(a)(xivg))
- section 271.9 (debt bondage – aggravated offence) (new subparagraph 9(a)(xivh))
- section 272.10 (aggravated offence – child with mental impairment or under care, supervision or authority of defendant) (new subparagraph 9(a)(xviiia))
- section 273.7 (aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people) (new subparagraph 9(a)(xxviiia)), and
- section 474.25B (aggravated offence – child with mental impairment or under care, supervision or authority of defendant) (new subparagraph 9(a)(xlivaa)).

### **Item 23 At the end of regulation 9**

Item 23 inserts new paragraph 9(c).

Under the existing definition of ‘serious offence’ in subparagraph 338(a)(iii) of the POC Act, unless a copyright offence is prescribed in the POC Regulations, an indictable offence under the *Copyright Act 1968* (Cth) (the Copyright Act) will only fall within the definition of ‘serious offence’ where the infringing activity subject to the offence has caused, or is intended to cause, a benefit to the value of at least \$10,000. The application of this monetary threshold may exclude the application of remedies under the POC Act with respect to indictable copyright offences as it can be difficult in cases of copyright piracy to accurately determine the value of infringing goods, such as pirated DVDs. New paragraph 9(c) of the POC Regulations will declare a series of copyright offences as ‘serious offences’ for the purposes of the POC Act. Under new subparagraphs 9(c)(i) to (xiv) indictable offences

against any of the following provisions of the Copyright Act will be prescribed as ‘serious offences’ in the POC Regulations:

- subsection 132AC(1) (commercial-scale infringement prejudicing copyright owner)
- subsection 132AD(1) (making infringing copy commercially)
- subsection 132AE(1) (selling or hiring out infringing copy)
- subsections 132AF(1) and (2) (offering infringing copy for sale or hire)
- subsections 132AG(1) and (2) (exhibiting infringing copy in public commercially)
- subsection 132AH(1) (importing infringing copy commercially)
- subsections 132AI(1) and (2) (distributing infringing copy)
- subsection 132AJ(1) (possessing infringing copy for commerce)
- subsections 132AL(1) and (2) (making or possessing device for making infringing copy)
- subsection 132AN(1) (causing work to be performed publicly)
- subsection 132AO(1) (causing recording or film to be heard or seen in public)
- subsection 132AQ(1) (removing or altering electronic rights management information)
- subsection 132AR(1) (distributing, importing or communicating copies after removal or alteration of electronic rights management information), and
- subsection 132AS(1) (distributing or importing electronic rights management information).