

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Crimes (Currency) Act 1981

Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019

Subsection 29(7) of the *Currency (Crimes) Act 1981* (the Act) provides that an article that is condemned as forfeited to the Commonwealth under the Act, or under the *Crimes Act 1914*, shall be dealt with or disposed of in accordance with the directions of the Treasurer.

The purpose of the instrument is to specify the manner in which an article that is condemned as forfeited to the Commonwealth is to be dealt with by public authorities.

Under section 29 of the Act, an article that is covered by that section (for example, counterfeit money or an item used to produce counterfeit money) is forfeited to the Commonwealth. Forfeited articles may be seized, without warrant, by members of the Australian Federal Police (AFP), a Police Force of a State or Territory, or the Australian Border Force. Upon a Court convicting a person of an offence against the Act in relation to the article, the Court would also order the article be condemned.

The *Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019* (the 2019 Direction) modernises and replaces the *Disposal of Forfeited Articles Direction 2018*. The 2019 Direction is in broadly similar terms to previously issued directions in relation to articles that are condemned as forfeited.

The 2019 Direction requires condemned forfeited articles to be delivered to the Reserve Bank of Australia (RBA), the Royal Australian Mint (RAM), or the Australian Office of Financial Management (AoFM). If the RBA, RAM or AoFM have a legitimate reason to retain the article, they may retain the article. If the AFP requires the article for a legitimate purpose, it may be given to and retained by the AFP. Otherwise, the article is to be destroyed.

In accordance with section 19 of the *Acts Interpretations Act 1901*, any Minister in the Treasury portfolio may, by legislative instrument, issue directions under the Act. There are no conditions the Treasurer must be satisfied of before making the instrument.

As this instrument is machinery in nature and remakes a previous instrument without significant change, a regulation impact statement is not required.

No public consultation was undertaken as the instrument was machinery in nature. The RBA, RAM and AoFM were consulted in the preparation of the updated direction.

Details of the instrument are set out in Attachment B.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. However, the instrument is not subject to disallowance or sunseting as it is

a direction from a Minister to any person or body (see *Legislation (Exemptions and Other Matters) Regulation 2015*).

The instrument commenced on the day after it was registered on the Federal Register of Legislation and applies to articles condemned on or after that day. The previous directions continue to apply to articles condemned before this instrument commences.

Statement of Compatibility with Human Rights

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

Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019

This Legislative Instrument 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*.

Overview of the Legislative Instrument

The purpose of the instrument is to provide directions as to how an article that is condemned by a Court as forfeited to the Commonwealth is to be dealt with by public authorities.

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.

Details of the Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019

This Attachment sets out further details of the *Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019* (the Direction).

Section 1 – Name

This section specifies the name of the Direction is the *Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019*.

Section 2 – Commencement

This section prescribes that the Direction commences the day after the Direction is registered.

Section 3 – Authority

This section provides that the Direction is made under the *Crimes (Currency) Act 1981*.

Section 4 – Schedules

This section provides that instruments in the Schedule are amended or repealed as set out in the items to the Schedule.

Section 5 – Definitions

This section provides definitions for the purposes of the Direction.

Section 6 – Direction to the constable

This section provides that the constable in possession of a forfeited article must, upon an article being condemned by a Court, deliver the article into the possession of the Reserve Bank of Australia (RBA), the Royal Australian Mint (RAM), or the Australian Office of Financial Management (AoFM) (as appropriate).

Delivering a condemned forfeited article into the possession of one of those agencies would be achieved by delivering the article into the possession of an appropriate or authorised official of one of those agencies.

Section 7 – Direction to the RBA, RAM, or AoFM

This section provides that RBA, RAM, or AoFM (as appropriate), upon taking possession of a condemned forfeited article, may retain the article for a legitimate purpose, deliver the article into the possession of the RBA, RAM, or AoFM (as appropriate) if that agency is better placed to deal with the article, or destroy the article.

The condemned forfeited article may also be delivered to the Australian Federal Police (AFP) if the AFP has a legitimate purpose for possessing and retaining the article.

Where the article was being retained for a legitimate purpose and at a point in time there no longer is a legitimate purpose to retain the article, the possessor must then deliver the article to the RBA, RAM or AoFM if one of those agencies has a legitimate purpose for retaining the article, or otherwise destroy the article.

Section 8 – Application

This section provides that the new Direction applies to articles condemned on or after the Direction commences. The previous Directions continue to apply to articles condemned before this instrument commences.

Schedule 1 – Amendments

Schedule 1 repeals all existing Directions made under the Act.