

South Australia

Criminal Assets Confiscation (Miscellaneous) Amendment Act 2018

An Act to amend the *Criminal Assets Confiscation Act 2005*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Assets Confiscation (Miscellaneous) Amendment Act 2018*.

2—Commencement

This Act will come into operation—

- (a) on the day on which it is assented to by the Governor; or
- (b) on 10 August 2018 immediately after the *Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Act 2016* comes into operation,

whichever occurs later.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Assets Confiscation Act 2005*

4—Amendment of section 56A—Prescribed drug offenders

Section 56A(3)—after "section 59A" insert:

, section 59B

5—Insertion of section 59B

After section 59A insert:

59B—Exclusion orders based on financial interests of Crown etc

- (1) If a person becomes a prescribed drug offender, a court may make an order excluding property from forfeiture under Subdivision 1A (an *exclusion order*) if—
 - (a) the DPP applies to the court for the exclusion order; and
 - (b) the court is satisfied that—
 - (i) it would be contrary to the financial interests of the Crown for the property to be forfeited to the Crown; or
 - (ii) it is otherwise not in the public interest for the property to be forfeited to the Crown.
- (2) An exclusion order under subsection (1)—
 - (a) may identify the property concerned by—
 - (i) specifying the nature and extent of the property that is to be excluded; or
 - (ii) specifying that all property to which the deemed forfeiture order would apply is to be excluded; or
 - (iii) specifying that all property to which the deemed forfeiture order would apply, other than specified property, is to be excluded; and
 - (b) must direct that the property be excluded from the operation of the deemed forfeiture order under Subdivision 1A; and
 - (c) may include any other directions that are necessary or convenient for giving effect to the order.
- (3) A court may make an exclusion order under subsection (1) on the basis of the DPP's application and in the absence of, and without hearing from, any parties to the application.
- (4) If a court makes an exclusion order in relation to property under subsection (1), the property will (subject to any order of the court to the contrary) be taken to have never been forfeited under Subdivision 1A.

6—Amendment of section 209—Credits to Victims of Crime Fund

Section 209(1)—delete "(including any costs involved in dealing with, or disposing of property in accordance with this Act and salary and other costs associated with the employment of the Administrator)"

7—Amendment of section 219—Consent orders

Section 219—after subsection (2) insert:

- (3) Despite any other provision of this Act, if a court is satisfied that an agreement has been reached between a person and the DPP and either—
 - (a) the agreement provides for the person to make a payment to the Crown instead of property of the person being forfeited under this Act; or
 - (b) the agreement provides for the person to make a payment to the Crown instead of the DPP applying for a confiscation order against the person,

the court may make any orders necessary to give effect to the agreement.

- (4) An order may be made under subsection (3) requiring a person to make a payment to the Crown despite any other provision of this Act and irrespective of whether the payment represents the whole of the value of the person's interest in the property.
- (5) If an order is made in relation to property under subsection (3), the property is taken to not be liable to forfeiture under this Act (and any forfeiture of the property under this Act that occurred before the order is, on the making of the order, taken to be of no effect, subject to an order of the court to the contrary).

8—Amendment of section 227—Costs and exemplary or punitive damages

Section 227—after subsection (1) insert:

- (1a) However, the court may not award exemplary or punitive damages to the person.

9—Amendment of section 230—Regulations

Section 230—after its present contents (now to be designated as subsection (1)) insert:

- (2) Regulations under this Act may—
 - (a) be of general application or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the DPP.