


# RECOVERING THE PROCEEDS OF CRIME

FACT SHEET  CRIME AND MISCONDUCT COMMISSION 2005



An important aspect of the CMC's combating major crime function is civil confiscation (recovering the proceeds of crime).

## How proceeds of crime are confiscated

Two confiscation schemes for recovering the proceeds of crime operate in Queensland:

- ▶ **Conviction-based confiscation.** This is administered by the Director of Public Prosecutions, and occurs when a direct link can be established between a crime, of which someone has been convicted, and a particular asset.
- ▶ **Confiscation without conviction or civil confiscation.** This is administered by the CMC under the *Criminal Proceeds Confiscation Act 2002*, and allows property to be restrained on the basis of reasonable suspicion of serious crime-related activity. This property may ultimately be forfeited if its 'owner' cannot prove that it was lawfully acquired.

## Why is civil confiscation necessary?

Before the passing of the Act, the only way ill-gotten gains could be restored to the community was through conviction-based confiscation. Because of the difficulties in establishing a link between a convicted criminal and a particular asset, conviction-based confiscation was relatively ineffective.

Under civil confiscation, people with apparent wealth beyond their means who are shown on the balance of probabilities to have been engaged in criminality can be required to explain their wealth. If such people cannot show that their assets had a lawful source, the

assets are liable to be forfeited. There is no need for a prior conviction. However, the rights of innocent third parties with interests in such property are protected. Civil confiscation matters are heard in the Supreme Court.

## What are the benefits?

Civil confiscation:

- ▶ returns assets that were improperly removed from the community
- ▶ financially incapacitates those who acquire the proceeds of crime
- ▶ can act as a strong deterrent to crime.

It removes the financial gain and increases the financial loss associated with illegal activity, whether or not a person is convicted of an offence.

## What role does the CMC play?

The CMC is responsible for the day-to-day conduct of the civil confiscation scheme, for three reasons:

- ▶ It separates proceeds-of-crime recovery from the criminal investigation, so that suggestions of trade-offs between criminal charges and asset forfeiture do not arise.
- ▶ It separates the asset-confiscation function from the Director of Public Prosecution's criminal-prosecution function, thus avoiding any potential for plea bargaining to seek lesser sentences or charges in exchange for forfeiture of assets.
- ▶ It imposes extra layers of accountability, to ensure that powers are used and investigations conducted appropriately.

The CMC initiates civil confiscation action, either from its own investigations or from investigations conducted by the Queensland Police Service and other law enforcement agencies. The associated court proceedings are conducted on behalf of the CMC by the Office of the Director of Public Prosecutions.

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