



AFP
AUSTRALIAN FEDERAL POLICE

ACT POLICING

CONFISCATION OF CRIMINAL ASSETS ANNUAL REPORT 2017–18



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9 October 2018

Minister for Police and Emergency Services
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Minister

I am pleased to submit ACT Policing's Confiscation of Criminal Assets Annual Report for the financial year 1 July 2017 to 30 June 2018.

The report has been prepared in accordance with section 258 of the *Confiscation of Criminal Assets Act 2003* (ACT) (the Act).

I hereby certify that the attached annual report is an honest and accurate account and that all examination orders undertaken in the ACT for the period 1 July 2017 to 30 June 2018 have been included. It complies with section 258 of the Act.

In line with section 258(4) of the Act, I understand that a copy of this report will be laid before the ACT Legislative Assembly within six sitting days from the day you receive this report.

Yours sincerely,

Mark Walters

Performing the duties of Chief Police Officer for the ACT

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1 The legislation



The legislation

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In March 2003 the ACT Legislative Assembly passed the *Confiscation of Criminal Assets Act 2003* (ACT) (the Act).

The objectives of the Act include:

- a. to encourage law-abiding behaviour by the community;
- b. to give effect to the principle of public policy that a person should not be enriched because of the commission of an offence, whether or not anyone has been convicted of the offence;
- c. to deprive a person of all material advantage derived from the commission of an offence, whatever the form into which property or benefits derived from the offence may have been changed;
- d. to deprive a person of property used, or intended by an offender to be used, in relation to the commission of an offence, whatever the form into which it may have been changed, and to prevent the person from using the property to commit other offences;
- e. to enable the effective tracing and seizure by law enforcement authorities of property used, or intended by an offender to be used, in relation to the commission of an offence and all material advantage derived from the offence;
- f. to provide for the enforcement in the ACT of orders, notices or decisions (however described) made under corresponding laws.

Examination orders

In accordance with section 167 of the Act, an authorised investigator may apply to a relevant court for an order (an “examination order”) authorising the investigator to issue an examination notice in relation to an investigation. An application for an examination order may be made only if the authorised investigator has reasonable grounds for suspecting that the person subject to the order and notice can give the investigator information or documents, including property-tracking documents, in relation to the investigation.

On application by an authorised investigator, a relevant court must make an examination order if satisfied that:

- a. the investigator is authorised under section 165 of the Act; and
- b. there are reasonable grounds for the investigator’s suspicions.

An examination order granted by a relevant court must state:

- a. that it is an examination order under the Act;
- b. the person (or people) to whom the order applies;
- c. the investigation to which the order relates;
- d. whether the order applies to documents;
- e. if the order applies to documents — the kinds of documents that a person to whom the order applies may be required to produce under an examination notice; and
- f. whether the relevant court making the order has declared that the order is a non-disclosable examination order.

On application by the authorised investigator, a relevant court may declare that the order is a non-disclosable examination order under section 170 of the Act.

In deciding whether to make a non-disclosable examination order declaration, the relevant court must have regard to whether the declaration would promote the purposes of the Act or is desirable to protect the integrity of an investigation or prosecution of an offence.

Pursuant to Division 12.6 of the Act, the disclosure of the existence or operation of a non-disclosable order is an offence.

Examination notices

In accordance with section 172 of the Act, an authorised investigator may give a notice (an “examination notice”) to a person subject to an examination order. An examination notice requires a person to give the investigator any information or documents the person has in relation to the investigation stated in the notice.

Pursuant to Division 12.5.5 and Division 12.6 of the Act, it is an offence to contravene an examination notice, or to give false or misleading information in purported compliance with an examination notice.

An examination notice must be signed by the authorised investigator giving it, and state:

- a. that it is an examination notice under the Act;
- b. the person to whom the notice applies;
- c. the investigation about which the person is to be examined;
- d. the time when and the place where the person is required to attend for examination; and
- e. whether the notice is a non-disclosable examination notice.

Division 12.5.4 prescribes conditions on the conduct of examinations pursuant to an examination notice, including the entitlement to have a lawyer present during the examination.

Confiscation proceedings

Part 14 of the Act allows for the commencement of confiscation proceedings in a relevant court, including proceedings in relation to the application for, and grant of, the following orders:

- a. a restraining order
- b. an additional order under section 39 of the Act in relation to a restraining order or restrained property
- c. a conviction forfeiture order
- d. an order under section 59 of the Act (automatic forfeiture)
- e. an order under 60 of the Act (automatic forfeiture)
- f. a civil forfeiture order
- g. an exclusion order
- h. a penalty order
- i. an order under section 105 of the Act (order to stop sale, modification or destruction of restrained property)
- j. an order under section 113 of the act (discharge of a registered property interest in forfeited property)
- k. an order under Division 9.4 of the Act (sale of jointly owned forfeited property)
- l. a return or compensation order
- m. a monitoring order
- n. a transaction suspension order
- o. a production order
- p. an examination order
- q. a buyback order
- r. an order under section 239(2)(c) or section 240(2) of the Act (transfer of proceedings to another court)
- s. an additional order under section 250 of the Act (confiscation proceedings — additional orders).

In accordance with Part 4 of the Act, a relevant court may grant an order (a “restraining order”) restraining a person from dealing with property. A restraining order may be made to preserve property so that the property will be available for forfeiture under order or operation of the Act, or to satisfy a penalty order.

Part 5 of the Act sets out the mechanisms available to forfeit property to the Territory under the Act, including the circumstances in which a relevant court may grant an order, forfeiting property to the Territory.

Reporting requirements

In accordance with section 258 of the Act, as soon as practicable after the end of each financial year, the Chief Police Officer must give the Minister a report about the operation of Division 12.5 of the Act during the financial year.

The report must include:

- a. the number of applications for examination orders made during the year
- b. the number of people given examination notices during the year
- c. the number of investigations to which the notices related
- d. the number of examinations conducted during the year.

In accordance with section 258(3), the report must also include the following information for the financial year (whether or not the examination notice to which it relates was given during the year):

- a. the number and kind of confiscation proceedings begun during the year in relation to matters for which an examination notice has been given to a person
- b. the estimated value of property either restrained or confiscated during the year in relation to matters for which an examination notice had been given to a person
- c. the number of charges laid relating to examination notice offences during the year
- d. the number of arrests made during the year in relation to matters for which an examination notice had been given to a person
- e. the number and kind of complaints made during the year to the Australian Federal Police of the Commonwealth Ombudsman in relation to examination notices
- f. the number of complaints of the kind mentioned in paragraph (e) resolved during the year and their outcome
- g. the number and kind of legal proceedings begun during the year in relation to examination notices (other than charges mentioned in paragraph (c) or proceedings begun by the DPP or a police officer)
- h. the number of legal proceedings of the kind mentioned in paragraph (g) finalised during the year and their outcome.

In accordance with section 258(4) of the Act, the Minister must present a copy of the report to the Legislative Assembly within six sitting days after the Minister receives it.





2 Examination orders, 2017-18



Examination orders, 2017-18

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Summary

Overview of examination orders and examination notices, 2017–18:

Number of applications for examination orders	1
Number of people given examination notices	1
Number of investigations to which the notices related	1
Number of examinations conducted	1
Number of complaints made to the Australian Federal Police or Commonwealth Ombudsman in relation to examination notices	0
Number of complaints in relation to examination notices resolved	0
Number of legal proceedings (excluding criminal charges) begun in relation to examination notices	0
Number of legal proceedings (excluding criminal charges) in relation to examination notices finalised	0
Number of confiscation proceedings begun during the year in relation to matters for which an examination has been given to a person	1
Estimated value of property restrained during the year in relation to matters for which an examination notice had been given to a person	\$1.22m
Number of charges laid relating to examination notice offences during the year	0
Number of arrests made during the year in relation to matters for which an examination notice has been given to a person	0

Examination orders and examination notices, 2017-18

Standard Examination Order Number: ACTEN 01-17/18

Date of examination order	8 December 2017
Application authorised or refused	Authorised
Authorising Officer	Magistrate Campbell
Number of examination notices given	1
Number of examinations conducted	1
Number and kind of confiscation proceedings begun	One restraining order granted pursuant to section 31 of the Act. Two residential properties were restrained under the order.
Estimated value of property restrained or confiscated	The total estimated value of the two properties restrained is \$1,220,000.00. After outstanding mortgages have been deducted, the total estimated equity in the two properties restrained is \$447,718.00.
Charges laid	Nil
Involvement of other jurisdictions	Nil
Arrests made	Nil
Outcome	The matter is currently before the court and has not been finalised.

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