



New South Wales

Criminal Assets Recovery Regulation 2017

under the

Criminal Assets Recovery Act 1990

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Assets Recovery Act 1990*.

TROY GRANT, MP
Minister for Police

Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Criminal Assets Recovery Regulation 2012*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) makes provision for the manner in which notice of certain applications to, and orders of, the Supreme Court is to be given as required by the *Criminal Assets Recovery Act 1990* (**the Act**), and
- (b) requires notice to be given to the NSW Trustee and Guardian (in addition to the New South Wales Crime Commission) of applications for orders seeking exclusion of property from forfeiture, and
- (c) sets fees that the NSW Trustee and Guardian is authorised to deduct in respect of the exercise of functions in relation to property under the Act, and
- (d) prescribes the threshold amount of legal expenses relating to proceedings for restraining orders above which the NSW Trustee and Guardian may be directed to pay for further expenses, and
- (e) prescribes various Acts of other jurisdictions as **corresponding laws** for the purposes of the Act, and
- (f) declares various orders and declarations in force under provisions of the corresponding laws as **interstate assets forfeiture orders, interstate proceeds assessment or unexplained wealth orders** and **interstate restraining orders** for the purposes of the Act.

This Regulation is made under the *Criminal Assets Recovery Act 1990*, including sections 4 (1), 10B (3A) (a), 19, 25 (5), 26 (5), 31C (3) and 67 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Criminal Assets Recovery Regulation 2017

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1 Name of Regulation

This Regulation is the *Criminal Assets Recovery Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. The Regulation replaces the *Criminal Assets Recovery Regulation 2012*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:

Commission means the New South Wales Crime Commission.

Note. See also section 31 of the *Law Enforcement Conduct Commission Act 2016*, which provides that the *Criminal Assets Recovery Act 1990* applies to the Law Enforcement Conduct Commission in the same way as it applies to the New South Wales Crime Commission.

originating document means a sealed copy of either the originating process by which proceedings on an application are commenced in the Supreme Court or the notice of motion by which an application is made to the Supreme Court.

the Act means the *Criminal Assets Recovery Act 1990*.

the Australian Capital Territory Act means the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory.

the Northern Territory Act means the *Criminal Property Forfeiture Act* of the Northern Territory.

the Queensland Act means the *Criminal Proceeds Confiscation Act 2002* of Queensland.

the South Australian Act means the *Criminal Assets Confiscation Act 2005* of South Australia.

the Tasmanian Act means the *Crime (Confiscation of Profits) Act 1993* of Tasmania.

the Victorian Act means the *Confiscation Act 1997* of Victoria.

the Western Australian Act means the *Criminal Property Confiscation Act 2000* of Western Australia.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 Giving of notice

- (1) If notice of an application for an order of the Supreme Court is authorised or required to be given to a person under the Act, the notice is given when the originating document is served on the person in accordance with clause 5.

- (2) If notice of an order of the Supreme Court is authorised or required to be given to a person under the Act, the notice is given when a minute of the order is served on the person in accordance with clause 5.
- (3) Notice to the Commission of the grounds on which an order is sought under section 25 or 26 of the Act is to be given at the same time and in the same manner as notice of the application for the order is given to the Commission.

Note. Section 25 of the Act empowers the Supreme Court to make orders excluding certain property from the operation of assets forfeiture orders and restraining orders in certain circumstances.

Section 26 of the Act empowers the Supreme Court to exclude the value of innocent interests from the operation of assets forfeiture orders in certain circumstances.

5 Form of service

- (1) For the purposes of clause 4 (but subject to this clause), an originating document, a minute of an order or a notice to the Commission must be served personally in accordance with the provisions of Division 3 of Part 10 of the *Uniform Civil Procedure Rules 2005* relating to personal service of a document.
- (2) The following forms of service by the Commission are authorised (subject to any order of the Supreme Court) in the case of service on a person (other than the Director of Public Prosecutions, the Commissioner of Police or the NSW Trustee and Guardian), but only if the Commission is satisfied that reasonable efforts to effect personal service have been or would be unsuccessful:
 - (a) in accordance with any provisions of Part 10 of the *Uniform Civil Procedure Rules 2005* relating to service of a document if personal service is not required,
 - (b) by publication of a notice relating to the application or order in a Sydney daily newspaper (and, if the last known residential address of the person to be served is more than 50 kilometres from the General Post Office, Sydney, in a local newspaper circulating in the district concerned), being a notice that sets out:
 - (i) the terms of any order sought by the application or the terms of the order made by the Supreme Court, and
 - (ii) the date on which the application or order was made,
 - (c) in any other manner authorised by the Supreme Court.
- (3) The following forms of service only are authorised (subject to any order of the Supreme Court) in the case of service on the Commission or the NSW Trustee and Guardian:
 - (a) by leaving the originating document or the minute of the order at the Head Office in Sydney of the Commission or NSW Trustee and Guardian (as the case requires), with a person who is apparently a member of the staff of the Commission or of the NSW Trustee and Guardian,
 - (b) by leaving the originating document or the minute of the order addressed to the Commission or the NSW Trustee and Guardian (as the case may be) in the exchange box of the Commission or NSW Trustee and Guardian in any document exchange facility used by the Commission or NSW Trustee and Guardian,
 - (c) in any other manner authorised by the Supreme Court.

6 Giving of notice to NSW Trustee and Guardian of certain exclusion orders

For the purposes of sections 25 (5), 26 (5) and 31C (3) of the Act, the NSW Trustee and Guardian is prescribed as another person to whom notice of an application must be given.

Note. Section 25 of the Act empowers the Supreme Court to make orders excluding certain property from the operation of assets forfeiture orders and restraining orders in certain circumstances.

Section 26 of the Act empowers the Supreme Court to exclude the value of innocent interests from the operation of assets forfeiture orders in certain circumstances.

Section 31C of the Act empowers the Supreme Court to exclude a specified portion of the value of an interest in property forfeited or paid, because an interest in the property was not disclosed in certain circumstances, if it is probable that the specified portion of the value is not attributable to an illegal activity and the person was unaware of the interest.

7 Fees payable to NSW Trustee and Guardian

- (1) For the purposes of section 19 of the Act, the fees that the NSW Trustee and Guardian is entitled to deduct from the proceeds of disposition of an interest in property of which the NSW Trustee and Guardian has taken control in accordance with a restraining order or that has vested in the NSW Trustee and Guardian on an assets forfeiture order are as follows:
 - (a) an amount equal to 2.5% of the value of the interest in the property as determined in accordance with subclause (2),
 - (b) an amount equal to the actual costs incurred and disbursements made in relation to the interest in the property by the NSW Trustee and Guardian,
 - (c) in the case of an interest in property from which income is derived, in addition to the fees set out in paragraphs (a) and (b), an amount equal to 5.25% of the gross income derived from the interest in the property.
- (2) The value of the interest in the property referred to in subclause (1) (a) is the value determined by the NSW Trustee and Guardian or, if the interest is disposed of by sale, the gross amount realised on the sale.
- (3) Costs and disbursements referred to in subclause (1) (b) include the costs of legal representation, the costs of obtaining legal advice or any other legal costs, agents' fees, valuation fees and the costs and expenses incurred in relation to the operation of any business associated with the interest in the property concerned.
- (4) This clause does not prevent the NSW Trustee and Guardian from waiving or reducing a fee that the NSW Trustee and Guardian is entitled to deduct under this clause.

Note. Section 19 of the Act entitles the NSW Trustee and Guardian to deduct prescribed fees from the proceeds of disposition of property that is subject to a restraining order or an assets forfeiture order.

8 Payment of legal expenses in stages

For the purposes of section 10B (3A) (a) of the Act, the prescribed amount is \$150,000.

9 Corresponding laws

For the purposes of the definition of *corresponding law* in section 4 (1) of the Act, the following laws are prescribed as laws that correspond to the Act:

- (a) the Australian Capital Territory Act,
- (b) the Northern Territory Act,
- (c) the Queensland Act,
- (d) the South Australian Act,

- (e) the Tasmanian Act,
- (f) the Victorian Act,
- (g) the Western Australian Act.

10 Interstate assets forfeiture orders

For the purposes of the definition of *interstate assets forfeiture order* in section 4 (1) of the Act, the following orders and instruments are declared to be within that definition:

- (a) an order in force under Part 5 of the Australian Capital Territory Act,
- (b) a declaration in force under section 94, or an order in force under section 96, 97, 99, 100 or 101, of the Northern Territory Act,
- (c) an order in force under section 58 or 93ZZB of the Queensland Act,
- (d) an order in force under section 47 of the South Australian Act,
- (e) an order in force under section 16 of the Tasmanian Act,
- (f) a declaration in force under section 36GB or 40ZB of the Victorian Act,
- (g) a declaration in force under section 22, 28 or 30 of the Western Australian Act.

11 Interstate proceeds assessment or unexplained wealth orders

For the purposes of the definition of *interstate proceeds assessment or unexplained wealth order* in section 4 (1) of the Act, the following orders and instrument are declared to be within that definition:

- (a) an order in force under Part 7 of the Australian Capital Territory Act,
- (b) an order in force under section 72, 80 or 86 of the Northern Territory Act resulting from a declaration under section 71, 75, 76 or 81 of that Act,
- (c) an order in force under section 78 or 89G of the Queensland Act,
- (d) an order in force under section 95 of the South Australian Act,
- (e) an order in force under section 21 of the Tasmanian Act,
- (f) a declaration in force under section 12, 16, 17 or 22 of the Western Australian Act in respect of which a person is liable under that Act to pay an amount specified in that declaration.

12 Interstate restraining orders

For the purposes of the definition of *interstate restraining order* in section 4 (1) of the Act, the following orders and instrument are declared to be within that definition:

- (a) an order in force under section 30 or 31 of the Australian Capital Territory Act,
- (b) an order in force under section 43 or 44 of the Northern Territory Act,
- (c) an order in force under section 31, 37, 93M or 93T of the Queensland Act,
- (d) an order in force under section 24 of the South Australian Act,
- (e) an order in force under section 26 of the Tasmanian Act,
- (f) an order in force under section 18 or 40I of the Victorian Act,
- (g) a freezing notice in force under section 34 of the Western Australian Act or a freezing order in force under section 43 of that Act.

13 Saving

Any act, matter or thing that, immediately before the repeal of the *Criminal Assets Recovery Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.