

1995—No. 381

**DRUG TRAFFICKING (CIVIL PROCEEDINGS) ACT 1990—  
REGULATION**

(Drug Trafficking (Civil Proceedings) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Drug Trafficking (Civil Proceedings) Act 1990, has been pleased to make the Regulation set forth hereunder.

PAUL WHELAN MP  
Minister for Police.

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**Citation**

1. This Regulation may be cited as the Drug Trafficking (Civil Proceedings) Regulation 1995.

**Commencement**

2. This Regulation commences on 1 September 1995.

**Definitions**

3. In this Regulation:

“**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 Drug Trafficking (Civil Proceedings) Act 1990.

**Note.** “Commission” means the New South Wales Crime Commission constituted by the New South Wales Crime Commission Act 1985.

**Giving of notice**

**4. (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.

**Notes.** 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 an assets forfeiture order in certain circumstances.

**Form of service**

**5. (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 Part 9 of the Supreme Court Rules 1970 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 Public Trustee), 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 9 of the Supreme Court Rules 1970 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 Public Trustee:

- (a) by leaving the originating document or the minute of the order at the Head Office in Sydney of the Commission or Public Trustee (as the case requires), with a person who is apparently a member of the staff of the Commission or of the Public Trustee;
- (b) by leaving the originating document or the minute of the order addressed to the Commission or the Public Trustee (as the case may be) in the exchange box of the Commission or Public Trustee in the Sydney Document Exchange, or any other document exchange, of the Australian Document Exchange Pty. Ltd;
- (c) in any other manner authorised by the Supreme Court.

#### **Giving of notice to Public Trustee of certain exclusion orders**

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

**Notes.** 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 an assets forfeiture order in certain circumstances.

#### **Fees payable to Public Trustee**

7. (1) For the purposes of section 19 of the Act, the fees which the Public Trustee is entitled to deduct from the proceeds of disposition of an interest in property of which the Public Trustee has taken control in accordance with a restraining order or which has vested in the Public Trustee 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 Public Trustee;
- (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 Public Trustee 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 Public Trustee from waiving or reducing a fee that the Public Trustee is entitled to deduct under this clause.

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

#### **Notes in text**

8. Notes in the text of this Regulation are explanatory notes only and do not form part of this Regulation.

#### **Repeal and saving**

9. (1) The Drug Trafficking (Civil Proceedings) Regulation 1990 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Drug Trafficking (Civil Proceedings) Regulation 1990, had effect under that Regulation continues to have effect under this Regulation.

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### **NOTES**

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**EXPLANATORY NOTE**

The replacement Regulation supplements the provisions of the Drug Trafficking (Civil Proceedings) Act 1990. The Regulation provides for the manner in which notice of certain applications to, and orders of, the Supreme Court is to be given as required by the Act. The Regulation also requires notice to be given to the Public Trustee (in addition to the New South Wales Crime Commission) of applications for orders seeking exclusion of property from forfeiture.

Provision is also made for setting the fees that the Public Trustee is authorised to deduct from a disposition of property subject to an order under the Act in respect of the exercise of the functions of the Public Trustee in relation to the property.

This Regulation is made under the Drug Trafficking (Civil Proceedings) Act 1990, including section 67 (the general regulation making power) and sections 19, 25 and 26.

This Regulation relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

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