



New South Wales

Confiscation of Proceeds of Crime Regulation 2005

under the

Confiscation of Proceeds of Crime Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Confiscation of Proceeds of Crime Act 1989*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake, without any changes in substance, the provisions of the *Confiscation of Proceeds of Crime Regulation 1996*, which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters:

- (a) the prescription of certain bodies and persons as appropriate officers in relation to certain functions (clause 4),
- (b) the recognition of interstate Acts as corresponding Acts (clause 5),
- (c) the recognition of interstate forfeiture orders (clause 6),
- (d) the recognition of interstate pecuniary penalty orders (clause 7),
- (e) the recognition of interstate restraining orders (clause 8),
- (f) the prescription of certain offences as serious offences (clause 9),
- (g) the giving of certain notices (clauses 10–13 and Schedule 1),
- (h) the prescription of fees (clause 14 and Schedule 2),
- (i) the exemption from filing fees for applications and other process (clause 15).

This Regulation is made under the *Confiscation of Proceeds of Crime Act 1989*, including sections 4, 7, 20, 41, 53 and 95 (the general regulation-making power).

This Regulation comprises or relates to matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or of another State or Territory.

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Confiscation of Proceeds of Crime Regulation 2005

under the

Confiscation of Proceeds of Crime Act 1989

1 Name of Regulation

This Regulation is the *Confiscation of Proceeds of Crime Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Confiscation of Proceeds of Crime Regulation 1996* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

the Act means the *Confiscation of Proceeds of Crime Act 1989*.

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 1996* 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 West Australian Act means the *Criminal Property Confiscation Act 2000* of Western Australia.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

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

4 Appropriate officers: section 4

- (1) For the purposes of paragraph (d) of the definition of *appropriate officer* in section 4 (1) of the Act, the New South Wales Crime Commission is an appropriate officer in relation to the following functions, each of which is prescribed for the purposes of that paragraph:
- (a) applying for a forfeiture order under section 13 (2) of the Act,
 - (b) applying for an order under section 22 (1) of the Act pending forfeiture,
 - (c) applying for a restraining order under section 43 (1) of the Act in respect of property of a person who has been, or is about to be, charged with a drug trafficking offence,
 - (d) applying under section 45 (3) of the Act for an order that is ancillary to a restraining order made by the Supreme Court,
 - (e) applying for particulars of a restraining order to be recorded under section 49 (1) of the Act,
 - (f) applying for an order under section 50 (2) of the Act to set aside a disposition of, or dealing with, property in contravention of a restraining order made in respect of a person who has been, or is about to be, charged with a drug trafficking offence.
- (2) For the purposes of paragraph (d) of the definition of *appropriate officer* in section 4 (1) of the Act, the Commonwealth Director of Public Prosecutions is an appropriate officer in relation to all functions under the Act, all of which are prescribed for the purposes of that paragraph.

5 Corresponding laws: section 4

The following laws are declared to correspond to the Act for the purposes of the definition of *corresponding law* in section 4 (1) of 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 West Australian Act.

6 Interstate forfeiture orders: section 4

An order in force under any of the following provisions:

- (a) section 54, 59 or 67 of the Australian Capital Territory Act,
- (b) section 94, 96, 97, 99, 100 or 101 of the Northern Territory Act,
- (c) section 151 or 202 of the Queensland Act,
- (d) section 8 or 9 of the South Australian Act,
- (e) section 16 of the Tasmanian Act,
- (f) section 33, 38 or 39 of the Victorian Act,

is declared to be an order within the definition of *interstate forfeiture order* in section 4 (1) of the Act.

7 Interstate pecuniary penalty orders: section 4

An order in force under any of the following provisions:

- (a) section 84 or 85 of the Australian Capital Territory Act,
- (b) section 184 of the Queensland Act,
- (c) section 21 of the Tasmanian Act,
- (d) section 59 or 64 of the Victorian Act,

is declared to be an order within the definition of *interstate pecuniary penalty order* in section 4 (1) of the Act.

8 Interstate restraining orders: section 4

An order in force under any of the following provisions:

- (a) section 30 or 31 of the Australian Capital Territory Act,
- (b) section 43 or 44 of the Northern Territory Act,
- (c) section 122 of the Queensland Act,
- (d) section 15 of the South Australian Act,
- (e) section 26 of the Tasmanian Act,
- (f) section 14 of the Victorian Act,

is declared to be an order within the definition of *interstate restraining order* in section 4 (1) of the Act.

9 Serious offences: section 7

The following offences are prescribed for the purposes of paragraph (c) of the definition of *serious offence* in section 7 of the Act:

- (a) an offence under section 6, 7, 9, 17, 18, 27, 28, 30 or 37 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* in respect of which the maximum penalty

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that may be imposed on an individual is 100 penalty units or more,

- (b) an offence under section 91H (3) or 578C of the *Crimes Act 1900*,
- (c) an offence under section 200 of the *Police Act 1990*.

10 Notice of application for recovery of interest in forfeited property: section 20

For the purposes of section 20 (4) of the Act, a notice is to be in or to the effect of Form 1 and is to be served on the following persons:

- (a) the Director of Public Prosecutions,
- (b) the Commissioner of Police, in the case of an application made to a Local Court,
- (c) the New South Wales Crime Commission, in the case of property forfeited following an application made by the Commission under section 13 (2) of the Act,
- (d) the Public Trustee, in the case of property controlled by the Public Trustee under an order under section 43 (2) (d) of the Act,
- (e) such other person (if any) as the court may direct.

11 Notice of application for return of or access to property: section 41

For the purposes of section 41 (6) of the Act, a notice is to be in or to the effect of Form 2 and is to be served on the following persons:

- (a) the Director of Public Prosecutions,
- (b) the Commissioner of Police,
- (c) such other person (if any) as the court may direct.

12 Giving of notices

- (1) A notice required to be given in proceedings under the Act is to be served personally or in such other manner as the court may direct.
- (2) Personal service of a notice is to be effected in accordance with the *Supreme Court Rules 1970*.

13 Forms generally

The forms prescribed by this Regulation are to be adapted so as to comply with such requirements as to format and formal matters as are provided for by the rules of court or regulations applicable to the respective courts in connection with which the forms are used.

14 Fees payable to Public Trustee in relation to property taken under restraining order: section 53

For the purposes of section 53 of the Act, the fees that the Public Trustee is entitled to receive are those set out in Schedule 2.

15 Filing fees not payable

A filing fee is not to be charged for applications or other process under the Act.

16 Saving

Any act, matter or thing that, immediately before the repeal of the *Confiscation of Proceeds of Crime Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Forms

Schedule 1 Forms

(Clause 3 (2))

Form 1 Notice of application for recovery of interest in forfeited property

(Clause 10)

(Confiscation of Proceeds of Crime Act 1989)

(Section 20 (4))

To: [name], [address]

[Name and address of applicant] claims an interest in the property specified in the Schedule below which was forfeited to the State by Order of the [name of Court] on [date of Order] following the conviction of [name of convicted person] for [description of offence(s)].

The applicant claims not to have been in any way involved in the commission of the offence(s) and has applied to the Court for an Order under section 20 of the *Confiscation of Proceeds of Crime Act 1989* declaring the nature, extent and value of the applicant's interest in the property.

The application has been fixed for hearing on [date] at [time] at [address of Court].

Schedule

[Description of property]

Filed: [name of applicant or applicant's solicitor]

Form 2 Notice of application for return of or access to property

(Clause 11)

(Confiscation of Proceeds of Crime Act 1989)

(Section 41 (6))

To: [name], [address]

[Name and address of applicant] has applied to the [name of Court] for an Order under section 41 (5) of the *Confiscation of Proceeds of Crime Act 1989*, relating to the property specified in the Schedule below, directing:

- * that the property be returned to the applicant
- * that the applicant be allowed access to the property.
- * Delete whichever is inapplicable.

The property was seized on [date of seizure] pursuant to a warrant issued under Part 3 of that Act.

The application has been fixed for hearing on [date] at [time] at [address of Court].

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Forms

Schedule 1

Schedule

[Description of property]

Filed: *[name of applicant or applicant's solicitor]*

Schedule 2 Fees payable to Public Trustee

(Clause 14)

- 1** Fees of the following amounts are payable to the Public Trustee in respect of all property under the control of the Public Trustee:

 - (a) for each calendar year during which the Public Trustee has control of the property (whether or not the property is controlled for the whole of the year)—an amount equal to 0.22% of the value of the property (as fixed by the Public Trustee) or \$220, whichever is the greater amount,
 - (b) an amount equal to the actual costs incurred and disbursements made in relation to the property by the Public Trustee while in control of the property, including the costs of legal representation, the costs of obtaining legal advice and any other legal costs, agents' fees, valuation fees and costs incurred in relation to the operation of any business associated with the property.

- 2** In addition to the fees set out in clause 1 of this Schedule, fees of the following amounts are payable to the Public Trustee in respect of property from which income is derived:

 - (a) an amount equal to 5.775% of the gross income (not including income referred to in paragraph (b)) derived from the property,
 - (b) if the income is received as rent and a cost has been incurred in respect of the income by the Public Trustee for agency charges— an amount equal to 2.75% of the income.

- 3** In addition to the fees set out in clauses 1 and 2 of this Schedule, a fee is payable to the Public Trustee, in respect of property that the Public Trustee is directed by a court to sell or dispose of, of an amount equal to 2.75% of the gross amount realised by the sale or disposition of the property.

BY AUTHORITY
