



New South Wales

Confiscation of Proceeds of Crime Amendment Regulation 2007

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*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to amend the *Confiscation of Proceeds of Crime Regulation 2005*, as a consequence of the commencement of the *Confiscation of Proceeds of Crime Amendment Act 2005*, as follows:

- (a) to declare certain orders and declarations under South Australian and Western Australian legislation relating to confiscation of proceeds of crime to be interstate forfeiture orders, interstate pecuniary penalty orders and interstate restraining orders, so as to enable them to be enforced in New South Wales,
- (b) to specify the form of application for a freezing notice, the form of such a notice and the form for giving notice of the issue of a freezing notice and the form of record of the issue of a freezing notice,
- (c) to specify the date from which interest is payable in relation to the value of property that is required to be returned to a person when a freezing notice ceases to be in force,
- (d) to make other minor and consequential amendments.

This Regulation is made under the *Confiscation of Proceeds of Crime Act 1989*, including sections 4 (1), 7, 42B (3), 42D (2), 42F (2), 42H (2), 42S (1), 53 and 95 (the general regulation-making power).

2007 No 562

Clause 1 Confiscation of Proceeds of Crime Amendment Regulation 2007

Confiscation of Proceeds of Crime Amendment Regulation 2007

under the

Confiscation of Proceeds of Crime Act 1989

1 Name of Regulation

This Regulation is the *Confiscation of Proceeds of Crime Amendment Regulation 2007*.

2 Commencement

This Regulation commences on 1 January 2008.

3 Amendment of Confiscation of Proceeds of Crime Regulation 2005

The *Confiscation of Proceeds of Crime Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Omit “*Criminal Assets Confiscation Act 1996*” from the definition of *the South Australian Act* in clause 3 (1).

Insert instead “*Criminal Assets Confiscation Act 2005*”.

[2] Clause 6 Interstate forfeiture orders: section 4

Omit “order” where firstly and secondly occurring.

Insert instead “order or declaration”.

[3] Clause 6 (d)

Omit the paragraph. Insert instead:

(d) section 47 or 77 of the South Australian Act,

[4] Clause 6 (2) and (3)

Insert at the end of clause 6:

(2) A declaration in force under section 22 or 28 of the Western Australian Act that is enforceable by confiscation under that Act is declared to be a declaration within the meaning of the definition of *interstate forfeiture order* in section 4 (1) of the Act.

(3) A declaration under section 30 of the Western Australian Act is declared to be a declaration within the meaning of the definition of *interstate forfeiture order* in section 4 (1) of the Act.

[5] Clause 7 Interstate pecuniary penalty orders: section 4

Insert after clause 7 (d):

(e) section 95 of the South Australian Act,

[6] Clause 7 (2)

Insert at the end of the clause:

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

2007 No 562

Confiscation of Proceeds of Crime Amendment Regulation 2007

Schedule 1 Amendments

[7] Clause 8 Interstate restraining orders: section 4

Omit clause 8 (d). Insert instead:

- (d) section 24 of the South Australian Act,

[8] Clause 8 (2)

Insert at the end of clause 8:

- (2) A freezing notice in force under section 34, or a freezing order in force under section 43, of the Western Australian Act is declared to be a declaration within the meaning of the definition of *interstate restraining order* in section 4 (1) of the Act.

[9] Clause 9 Serious offences: section 7

Omit “91H (3) or” from clause 9 (b).

[10] Clause 9 (c)

Omit the paragraph.

[11] Clauses 11A–11D

Insert after clause 11:

11A Freezing notices

- (1) For the purposes of section 42B (3) of the Act, an application for a freezing notice (other than a telephone freezing notice) is to be in or to the effect of Form 3.
- (2) For the purposes of section 42D (2) of the Act, a freezing notice is to be in or to the effect of Form 4.
- (3) For the purposes of section 42F (2) of the Act, notice of the issue of a freezing notice is to be given in writing in or to the effect of Form 5.
- (4) For the purposes of section 42F (2) of the Act, notice of the issuing of a freezing notice may be given in any of the following ways:
 - (a) personally,
 - (b) by facsimile,
 - (c) by leaving the notice with a person over the age of 16 years at the last known place of residence or business of the person to whom notice is being given.

11B Records relating to the issue and execution of freezing notices

- (1) The record made under section 42H (1) of the Act of the relevant particulars of the grounds relied on to justify the issue of a freezing notice is to be in writing in or to the effect of Form 6.
- (2) The record is to be kept by the appropriate Local Court registrar for not less than 6 years after the freezing notice is issued and is to be available for inspection by any person who receives notice of the notice during ordinary business hours.
- (3) An authorised justice must cause a record to be made of an unsuccessful application for a freezing notice and any such record is to be kept by the appropriate Local Court registrar for not less than 6 years after the refusal.

11C Certified records not available for inspection

- (1) A Local Court registrar may at any time issue a certificate to the effect that the registrar is satisfied that:
 - (a) a document or part of a document referred to in clause 11B contains matter:
 - (i) that could disclose a person's identity, and
 - (ii) that, if disclosed, is likely to jeopardise that or any other person's safety, or
 - (b) a document or part of a document referred to in clause 11B contains matter that, if disclosed, may seriously compromise the investigation of any matter.
- (2) The document or part of the document to which the certificate relates is not to be made available for inspection under clause 11B.
- (3) The certificate is to be kept with the document to which it relates.
- (4) A Local Court registrar (whether or not the one that issued the certificate) may revoke the certificate if satisfied (after consideration of submissions from any interested party) that disclosure of the matter to which it relates is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.

11D Interest payable on value of property

For the purposes of section 42S (1) of the Act:

- (a) the date from which interest is payable is the date on which the property was sold or otherwise disposed of, and

2007 No 562

Confiscation of Proceeds of Crime Amendment Regulation 2007

Schedule 1 Amendments

- (b) the amount of interest payable is interest at the standard rate payable from time to time on money invested in the Public Trustee's common fund.

[12] Clause 14 Fees payable to Public Trustee or Commissioner of Police in relation to property taken under restraining order or freezing notice

Insert "or Commissioner of Police" after "Public Trustee".

[13] Schedule 1 Forms

Insert after Form 2:

Form 3 Application for freezing notice

(Clause 11A (1))

(Confiscation of Proceeds of Crime Act 1989)

(Section 42B (3))

On [date] I [name/rank/position], of [place of work] apply for a freezing notice in respect of the following specified property [description of property]:

I swear/solemnly, sincerely and truly declare and affirm that:

- 1 I am an authorised officer under the *Confiscation of Proceeds of Crime Act 1989* because I am a [list rank] of the NSW Police Force OR authorised in writing by the Minister for Police to act as an authorised officer.
- 2* I have reasonable grounds for believing that [name of defendant] has been charged with the following serious offence/s [list offence/s]:
- 3* I have reasonable grounds for believing that [name of defendant] is about to be charged with the following serious offence/s [list offence/s]:
- 4* I have reasonable grounds for believing that [name of defendant] has been convicted of the following serious offence/s [list offence/s]:
- 5* I have reasonable grounds for believing that [name of defendant] has not been convicted of, but has committed, the following serious offence/s [list offence/s]:
- 6* I have reasonable grounds for believing that the specified property is tainted property in relation to the serious offence/s [list specified property]:
- 7* I have reasonable grounds for believing that [name of defendant] has derived benefits because of having committed the serious offence.
- 8* I have reasonable grounds for believing that the specified property is the defendant's proceeds of drug trafficking.
- 9* I have reasonable grounds for believing that the specified property is subject to the effective control of [name of defendant] and he/she has

derived a benefit, directly or indirectly, from the commission of the following serious offence/s [*list offence/s*]:

Sworn/declared and affirmed before me on [*date*] at [*place*] in the State of New South Wales.

[*Signature*]

Justice of the Peace

[**Delete if inapplicable*]

Note. In the case of an application by telephone (but not by facsimile), this form of application should be completed by the authorised justice for record purposes as if it were made in person by the applicant but not on oath.

Form 4 Freezing notice

(Clause 11A (2))

(Confiscation of Proceeds of Crime Act 1989)

(Section 42D (2))

An application to confirm this notice is to be made to the appropriate court by an authorised officer no later than 14 days after today.

On [*date*], I [*name of authorised justice*], direct that the following specified property [*description of property*]:

- 1 not be disposed of, or otherwise dealt with by the defendant or any other person, except in the following manner and circumstances [*list manner and circumstances*]; and
- 2 be held in the custody of the following person pending the determination of an application for confirmation of the freezing notice [*Commissioner of Police*] or [*list person*]:

[*Signature*]

Authorised justice

[*Print name*]

[*Date*]

[*Time, if telephone application*]

Form 5 Notice of issue of freezing notice

(Clause 11A (3))

(Confiscation of Proceeds of Crime Act 1989)

(Section 42F (2))

To [*name and address of defendant/owner of property affected by the notice/other person subject to the notice*]:

I hereby notify you of the issue of the attached freezing notice.

2007 No 562

Confiscation of Proceeds of Crime Amendment Regulation 2007

Schedule 1 Amendments

[Signature]
[Name/rank/position]
[Place of work]
[Date]

Form 6 Authorised justice's record of issue of freezing notice

(Clause 11B (1))

(Confiscation of Proceeds of Crime Act 1989)

(Section 42H (1))

On [date] at [time] I, the undersigned authorised justice, received this application for a freezing notice.

- 1 The application was made in person.
OR
The application was made by facsimile transmission/telephone and I was/was not satisfied that the freezing notice was required urgently and it was/was not practicable for the application to be made in person.
- 2 On considering the application I found/did not find* that there were reasonable grounds for issuing the freezing notice.
* If freezing notice is issued—continue
- 3 The relevant particulars of the grounds on which I relied to justify the issue of the freezing notice are as follows [list particulars]:
- 4 The freezing notice was issued at [time] on [date].

[Signature]
[Print name]
Authorised justice
[Date]

Return this Form, together with a copy of the freezing notice, to the Local Court named in the notice.

- [14] Schedule 2 Fees payable to Public Trustee or Commissioner of Police**
Insert “or Commissioner of Police” after “Public Trustee” wherever occurring.

BY AUTHORITY
