



New South Wales

Criminal Assets Recovery Regulation 2023

under the

Criminal Assets Recovery Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Criminal Assets Recovery Act 1990*.

YASMIN CATLEY, MP
Minister for Police and Counter-terrorism

Explanatory note

The object of this regulation is to repeal and remake, without substantial changes, the *Criminal Assets Recovery Regulation 2017*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation—

- (a) prescribes Acts of other jurisdictions as *corresponding laws* for the *Criminal Assets Recovery Act 1990* (*the Act*), and
- (b) declares certain orders and instruments in force under the corresponding laws as *interstate assets forfeiture orders*, *interstate proceeds assessment or unexplained wealth orders* and *interstate restraining orders* for the Act, and
- (c) 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
- (d) prescribes the maximum allowable costs for legal services provided in connection with an application for a restraining order or confiscation order or the defending of a criminal charge, and
- (e) 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
- (f) sets fees the NSW Trustee and Guardian is authorised to deduct in respect of the exercise of functions in relation to property under the Act, and
- (g) makes provision for the way in which notice of certain applications to, and orders of, the Supreme Court are to be given as required by the Act.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) 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 2023

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Criminal Assets Recovery Act 1990

1 Name of regulation

This regulation is the *Criminal Assets Recovery Regulation 2023*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Note— This regulation repeals and replaces the *Criminal Assets Recovery Regulation 2017*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this regulation—

originating document means a sealed copy of—

- (a) the originating process by which proceedings on an application are commenced in the Supreme Court, or
- (b) 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 2002* 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.

4 Corresponding laws—the Act, s 4

For the Act, section 4(1), definition of ***corresponding law***, the following 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.

5 Interstate assets forfeiture orders—the Act, s 4

For the Act, section 4(1), definition of *interstate assets forfeiture order*, the following orders and instruments are declared—

- (a) an order made under the Australian Capital Territory Act, Part 5,
- (b) the following made under the Northern Territory Act—
 - (i) a declaration made under that Act, section 94,
 - (ii) an order made under that Act, section 96, 97, 99, 100 or 101,
- (c) an order made under the Queensland Act, section 58 or 93ZZB,
- (d) an order made under the South Australian Act, section 47,
- (e) an order made under the Tasmanian Act, section 16 or 152,
- (f) a declaration made under the Victorian Act, section 36GB or 40ZB,
- (g) a declaration made under the Western Australian Act, section 22, 28 or 30.

6 Interstate proceeds assessments or unexplained wealth orders—the Act, s 4

For the Act, section 4(1), definition of *interstate proceeds assessment or unexplained wealth order*, the following orders and instruments are declared—

- (a) an order made under the Australian Capital Territory Act, Part 7 or 7A,
- (b) an order made under the Northern Territory Act, section 72, 80 or 86 resulting from a declaration under that Act, section 71, 75, 76 or 81,
- (c) an order made under the Queensland Act, section 78 or 89G,
- (d) an order made under the South Australian Act, section 95,
- (e) the following made under the Tasmanian Act—
 - (i) an order made under that Act, section 21,
 - (ii) a declaration made under that Act, section 142,
- (f) a declaration made under the Western Australian Act, section 12, 16, 17 or 22.

7 Interstate restraining orders—the Act, s 4

For the Act, section 4(1), definition of *interstate restraining order*, the following orders and instruments are declared—

- (a) an order made under the Australian Capital Territory Act, section 30, 31 or 32A,
- (b) an order made under the Northern Territory Act, section 43 or 44,
- (c) an order made under the Queensland Act, section 31, 37, 93M or 93T,
- (d) an order made under the South Australian Act, section 24,
- (e) an order made under the Tasmanian Act, section 26 or 118,
- (f) an order made under the Victorian Act, section 18, 31F or 40I,
- (g) the following made under the Western Australian Act—
 - (i) a freezing notice issued under that Act, section 34,
 - (ii) a freezing order made under that Act, section 43.

8 Payment of legal expenses in stages—the Act, s 10B

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

9 Maximum allowable costs for legal services—the Act, s 16B

For the Act, section 16B(2) and (3), the maximum allowable costs are the rates for legal representation set by the Attorney General, as adjusted from time to time and published on the website of the Department of Communities and Justice.

10 Giving notice to NSW Trustee and Guardian of certain exclusion orders—the Act, ss 25, 26 and 31C

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

11 Fees payable to NSW Trustee and Guardian—the Act, s 32D

- (1) For the Act, section 32D(2), the following fees are prescribed—
 - (a) an amount equal to 2.5% of the value of the interest in the property as determined in accordance with subsection (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) for 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 subsection (1)(a) is—
 - (a) the value determined by the NSW Trustee and Guardian, or
 - (b) if the interest is disposed of by sale, the gross amount realised on the sale.
- (3) The costs and disbursements referred to in subsection (1)(b) include the following—
 - (a) legal representation costs,
 - (b) costs of obtaining legal advice,
 - (c) other legal costs,
 - (d) agents' fees,
 - (e) valuation fees,
 - (f) costs and expenses incurred in relation to the operation of a business associated with the interest in the property.
- (4) This section does not prevent the NSW Trustee and Guardian from waiving or reducing a fee the NSW Trustee and Guardian is entitled to deduct under this section.

12 Giving notice—the Act, s 65

- (1) For the Act, section 65(1), if notice is authorised or required to be given under the Act, notice is given when—
 - (a) for notice of an application for an order of the Supreme Court—when the originating document is served on the person in accordance with this regulation, section 13, or
 - (b) for notice of an order of the Supreme Court—when a minute of the order is served on the person in accordance with this regulation, section 13.
- (2) For the Act, section 65(1), notice to the Commission of the grounds on which an order is sought under the Act, section 25(6) or 26(6) must be given at the same time

and in the same way as notice of the application for the order is given to the Commission.

Note— See also the *Law Enforcement Conduct Commission Act 2016*, section 31, 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.

13 Form of service—the Act, s 65

- (1) For the Act, section 65(1), the following must be served personally in accordance with the *Uniform Civil Procedure Rules 2005*, Part 10, Division 3—
 - (a) an originating document,
 - (b) a minute of an order,
 - (c) a notice to the Commission.
- (2) The following forms of service by the Commission are authorised for service on a relevant person, subject to orders of the Supreme Court, if the Commission is satisfied reasonable efforts to effect personal service have been or would be unsuccessful—
 - (a) in accordance with the *Uniform Civil Procedure Rules 2005*, Part 10 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—
 - (i) a Sydney daily newspaper, and
 - (ii) if the last known residential address of the person to be served is more than 50km from the General Post Office, Sydney, in a local newspaper circulating in the district concerned,
 - (c) in another way authorised by the Supreme Court.
- (3) A notice published under subsection (2)(b) must set out—
 - (a) the terms of the order sought by the application or the terms of the order made by the Supreme Court, and
 - (b) the date on which the application or order was made.
- (4) The following forms of service are authorised for service on the Commission, subject to orders of the Supreme Court—
 - (a) by leaving the originating document or the minute of the order at the Head Office in Sydney of the Commission with a person who is apparently a staff member,
 - (b) by sending the originating document or the minute of the order, addressed to the Commission, by registered post to the Head Office in Sydney of the Commission,
 - (c) in another way authorised by the Supreme Court.
- (5) The following forms of service are authorised for service on the NSW Trustee and Guardian, subject to orders of the Supreme Court—
 - (a) by leaving the originating document or the minute of the order at the Head Office in Sydney of the NSW Trustee and Guardian with a person who is apparently a staff member,
 - (b) by sending the originating document or the minute of the order, addressed to the NSW Trustee and Guardian, by registered post to the Head Office in Sydney of the NSW Trustee and Guardian,
 - (c) in another way authorised by the Supreme Court.
- (6) In this section—

relevant person means a person other than the following—

- (a) the Director of Public Prosecutions,
- (b) the Commissioner of Police,
- (c) the NSW Trustee and Guardian.

Note— See also the *Law Enforcement Conduct Commission Act 2016*, section 31, 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.

14 Repeal and savings

- (1) The *Criminal Assets Recovery Regulation 2017* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Criminal Assets Recovery Regulation 2017*, had effect under that regulation continues to have effect under this regulation.