

# Proceeds of Crime Amendment Regulations 2003 (No. 1) 2003 No. 55

## EXPLANATORY STATEMENT

### Statutory Rules 2003 No. 55

Issued by the authority of the Minister for Justice and Customs

*Proceeds of Crime Act 1987*

Proceeds of Crime Amendment Regulations 2003 (No. 1)

Section 104 of the *Proceeds of Crime Act 1987* (the Act) provides that the Governor-General may make regulations not inconsistent with the Act.

The Act establishes a conviction based confiscation regime. The Official Trustee in Bankruptcy ("Official Trustee") is responsible under the Act for looking after, and where necessary selling off, restrained and forfeited property.

Section 55 of the Act provides that the Regulations may make provision for the payment of the Official Trustee's remuneration in respect of the Official Trustee's powers, duties and functions under that Act. The pre-existing Regulation 8 of the Proceeds of Crime Regulations 1987 provided for the Official Trustee's remuneration by reference to provisions in Regulation 16.07 of the Bankruptcy Regulations 1996 ("Bankruptcy Regulations").

Regulation 16.07 of the Bankruptcy Regulations was amended by item 22 of the Bankruptcy Amendment Regulations 2002 (which commenced on 6 November 2002). Equivalent provisions are now located in Regulation 16.07C(3) of the Bankruptcy Regulations.

The effect of the amendment to the Bankruptcy Regulations was that Regulation 8 of the Proceeds of Crime Regulations 1987 no longer prescribed the remuneration of the Official Trustee. The Proceeds of Crime Amendment Regulations 2002 (No. 1) remedied this unintended effect on Regulation 8 by replacing the reference in Regulation 8 Proceeds of Crime Amendment Regulations 1987 to Regulation 16.07 of the Bankruptcy Regulations with Regulation 16.07C(3).

Regulation 8 of the Proceeds of Crime Regulations 1987 now provides for the Official Trustee's remuneration in respect of the performance or exercise of functions, duties or powers under the Proceeds Act by reference to the hourly rates provided in Regulation 16.07C(3) of the Bankruptcy Regulations. The provisions in Regulation 16.07C correspond to those in repealed Regulation 16.07.

The Bankruptcy Amendment Regulations 2002 (No. 1) commenced on 6 November 2002. The Proceeds of Crime Amendment Regulations 2002 (No. 1) commenced on 19 December 2002. Consequently there was a period of six weeks in which no remuneration for the Official Trustee was prescribed. The Proceeds of Crime Amendment Regulations 2003 will amend the Proceeds of Crime Amendment Regulations 2002 (No. 1) so that it commences on 6 November 2002 thereby overcoming a technical oversight and ensuring that there is a continuous prescription of the remuneration for the Official Trustee under the *Proceeds of Crime Act 1987*.

The retrospective nature of the Regulations is acceptable because it will not disadvantage any other person. The Regulations therefore satisfy section 48(2) of the *Acts Interpretation Act 1901*, and may be validly made with retrospective effect.

The *Proceeds of Crime Act 2002* commenced on 1 January 2003. The *Proceeds of Crime Act 1987* remains in force until existing prosecutions under it have been finalised. The transitional provisions in Schedule 7 of the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* do not affect the regulation making power under the *Proceeds of Crime Act 1987*.

Authority: section 104 of the *Proceeds of Crime Act 1987*