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Proceeds of Crime Amendment Regulations 2004 (No. 1)¹

Statutory Rules 2004 No. /²

293

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Proceeds of Crime Act 2002*.

Dated 31 AUG 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
Minister for Justice and Customs

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1 Name of Regulations

These Regulations are the *Proceeds of Crime Amendment Regulations 2004 (No. 1)*.

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of *Proceeds of Crime Regulations 2002*

- (1) Schedule 1 amends the *Proceeds of Crime Regulations 2002*.
- (2) Schedule 2 amends those Regulations as amended by Schedule 1.

Schedule 1 **Amendments (renumbering)**

(regulation 3)

[1] **Regulations renumbering**

Each regulation in these Regulations mentioned in column 1 of the following table is renumbered and relocated by omitting the existing regulation number and inserting instead the new regulation number specified for that regulation in column 2 of the table, and relocating the regulation to its correct numerical position.

Existing regulation number	New regulation number
4	12
5	13
6	4
7	5
8	6
9	7
10	9

[2] **Schedule 1, heading** *substitute*

Schedule 1 **Forms**

(regulation 13)

Schedule 2**Amendments following
amendments made by
Schedule 1**

(regulation 3)

[1] Before regulation 1*insert***Part 1 Preliminary****[2] Paragraph 4 (d)***substitute*

- (d) *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (da) *Crimes (Confiscation) Act 1989* of Queensland, as in force immediately before its repeal by the *Criminal Proceeds Confiscation Act 2002* of Queensland;

[3] Paragraphs 4 (h) and (i)*substitute*

- (h) *Criminal Property Forfeiture Act 2002* of the Northern Territory;
- (i) *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory, as in force immediately before its repeal by the *Criminal Property Forfeiture (Consequential Amendments) Act 2002* of the Northern Territory;
- (j) *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;
- (k) *Proceeds of Crime Act 1991* of the Australian Capital Territory, as in force immediately before its repeal by the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory.

[4] After regulation 7*insert***8 Meaning of *narcotic substance***

For paragraph (b) of the definition of *narcotic substance* in section 338 of the Act, the following substances are specified:

- (a) a substance that is a *narcotic drug* within the meaning given by section 3 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*;
- (b) a substance that is a *psychotropic substance* within the meaning given by section 3 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*;
- (c) a substance specified in column 2 of an item in Part 1 of Schedule 1AA to the *Customs Regulations 1926*.

Note In addition to the substances specified in regulation 8, a substance that is a narcotic substance within the meaning of the *Customs Act 1901* is a narcotic substance for the purposes of the *Proceeds of Crime Act 2002* — see paragraph (a) of the definition of *narcotic substance* in section 338 of the Act and regulation 3 and the Schedule to the *Customs (Narcotic Substances) Regulations*.

[5] After regulation 9*insert***Part 2 The confiscation scheme****Division 2.1 Pecuniary penalty orders****10 Penalty amounts exceeding court's jurisdiction — certificate**

- (1) For subsection 144 (1) of the Act, the particulars that must be contained in a certificate are:
 - (a) the name of the court that made the pecuniary penalty order;
 - (b) the date of the order;

- (c) the amount of money that is to be paid under the order;
- (d) the name of the person who must pay the amount.

(2) For subsection 144 (2) of the Act, the certificate may be registered in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the pecuniary penalty order, by filing it in that court.

Division 2.2 **Literary proceeds orders**

11 Literary proceeds amounts exceeding the court's jurisdiction — certificate

- (1) For subsection 171 (1) of the Act, the particulars that must be contained in a certificate are:
 - (a) the name of the court that made the literary proceeds order;
 - (b) the date of the order;
 - (c) the amount of money that is to be paid under the order;
 - (d) the name of the person who must pay the amount.
- (2) For subsection 171 (2) of the Act, the certificate may be registered in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the literary proceeds order, by filing it in that court.

[6] Regulation 12

substitute

Part 3 **Information gathering**

12 Approved examiners

- (1) For paragraph 183 (4) (a) of the Act, the class of people specified is the class that includes a person:
 - (a) to whom subregulation (2) applies; and
 - (b) whose name is on a register kept by the Minister for the purposes of section 183 of the Act.

(2) This subregulation applies to the following persons:

- (a) a person who is:
 - (i) a presidential member of the Administrative Appeals Tribunal established under the *Administrative Appeals Tribunal Act 1975*; or
 - (ii) a non-presidential member of that Tribunal who is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory, and has been so enrolled for at least 5 years;
- (b) a person who has held the office of judge in the Supreme Court, District Court or County Court of a State or Territory and has stated, in writing, that he or she is willing to be an approved examiner;
- (c) a person who has held the office of magistrate and has stated, in writing, that he or she is willing to be an approved examiner.

[7] After regulation 13

insert

Part 4 Administration

Division 4.1 Powers and duties of the Official Trustee

14 Costs etc payable to Official Trustee

For paragraph 288 (1) (a) of the Act, there is payable to the Official Trustee an amount equal to the amount of costs, charges and expenses incurred in connection with the Official Trustee's exercise of powers and performance of functions or duties under the Act or under Part VI of the Mutual Assistance Act.

15 Remuneration of Official Trustee

- (1) For paragraph 288 (1) (b) of the Act, the amount payable to the Official Trustee for remuneration is as follows:
 - (a) for services performed by a person who is an SES employee, or an acting SES employee, in the Australian Public Service — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (a) of the *Bankruptcy Regulations 1996*;
 - (b) for services performed by a person who is an Insolvency and Trustee Officer Grade 2, or occupies an equivalent or higher position in the Australian Public Service (other than a person to whom paragraph (a) applies) — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (b) of the *Bankruptcy Regulations 1996*;
 - (c) for services performed by a person who is an Insolvency and Trustee Officer Grade 1, or occupies an equivalent or lower position in the Australian Public Service — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (d) of the *Bankruptcy Regulations 1996*.
- (2) In addition to the amount of remuneration mentioned in subregulation (1), there is payable to the Official Trustee, because of the goods and services tax attaching to the services performed, an amount equal to 8.4% of the amount worked out under that subregulation.

Note The result is the price of the taxable supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*. The component added by this subregulation is equivalent to the amount of goods and services tax that will be payable on the Official Trustee's fees.

Division 4.2 Confiscated Assets Account

16 Identity of amounts credited to Confiscated Assets Account

- (1) For subsection 296 (2) of the Act, the following amounts credited to the Confiscated Assets Account are to be identified as distributable funds:
 - (a) amounts mentioned in paragraph 296 (1) (b) of the Act, other than amounts to be paid under an interstate forfeiture order or interstate pecuniary penalty order;
 - (b) amounts mentioned in any of paragraphs 296 (1) (e) and (f) and 296 (3) (a) to (h) and (k) to (p).
- (2) For subsection 296 (2) of the Act, the following amounts credited to the Confiscated Assets Account are to be identified as suspended funds:
 - (a) amounts mentioned in paragraph 296 (1) (b) of the Act that are to be paid under an interstate forfeiture order or interstate pecuniary penalty order;
 - (b) amounts mentioned in any of paragraphs 296 (1) (c), (d) and (g) and 296 (3) (i) and (j).

17 Annual management fee for Confiscated Assets Account

- (1) For paragraph 297 (1) (f) of the Act, an annual management fee of \$11 160 is payable for the 2003 calendar year.
- (2) The fee specified in subregulation (1):
 - (a) is in addition to the fee prescribed by subregulation 14 (1A) of the *Proceeds of Crime Regulations 1987*; and
 - (b) is payable by 30 December 2004.
- (3) For paragraph 297 (1) (f) of the Act, the annual management fee of \$22 000 is specified for the 2004 calendar year and for each later calendar year.
- (4) The fee specified in subregulation (3) is payable within 28 days after 27 December in the year to which the fee relates.

(5) A fee mentioned in this regulation is the price of the taxable supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*.

18 Notice by AFP of possible claims under the equitable sharing program

(1) In this regulation:

condemned goods has the meaning given by subsection 208DA (1) of the *Customs Act 1901*.

narcotic goods has the meaning given by subsection 4 (1) of the *Customs Act 1901*.

narcotic-related goods has the meaning given by subsection 4 (1) of the *Customs Act 1901*.

property means money or proceeds, as the case requires, mentioned in paragraph 296 (3) (l) or (m) of the Act.

(2) As soon as practicable after narcotic-related goods (other than narcotic goods) are condemned or are taken to be condemned, an AFP member must give notice in writing to the Official Trustee if the member considers that the condemned goods are property in respect of which a claim may be made under the equitable sharing program.

(3) The notice must include:

- (a) the name of the claimant State or self-governing Territory; and
- (b) the percentage of the value of the property that is likely to be payable in respect of the claim; and
- (c) other brief particulars of the claim.

19 Notice by DPP of possible claims under the equitable sharing program

(1) In this regulation:

property means money, proceeds or an amount, as the case requires, mentioned in paragraph 296 (3) (a), (c), (e), (f), (g), (n), (o) or (p) of the Act.

(2) As soon as practicable after:

- (a) a restraining order, or a forfeiture order, in relation to property is made under the Act; or
- (b) property is forfeited to the Commonwealth under section 92 of the Act;

the DPP must give notice in writing to the Official Trustee if the DPP considers that the property is property in respect of which a claim may be made under the equitable sharing program.

(3) If the DPP:

- (a) applies to a court:
 - (i) for a pecuniary penalty order under Part 2-4 of the Act; or
 - (ii) for an order under section 243B of the *Customs Act 1901*; and
- (b) considers that a claim may be made under the equitable sharing program in respect of any amount that is, or may be, paid into the Confiscated Assets Account as a result of the order;

the DPP must, as soon as practicable after making the application, give notice in writing to the Official Trustee accordingly.

(4) A notice under subregulation (2) or (3) must include:

- (a) the name of the claimant State or self-governing Territory; and
- (b) the percentage of the property likely to be payable in respect of the claim; and
- (c) other brief particulars of the claim.

Notes

1. These Regulations amend Statutory Rules 2002 No. 259, as amended by 2003 No. 100.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004. *7 September*