

Explanatory Statement

Select Legislative Instrument 2006 No. 257

Issued by the Authority of the Minister for Justice and Customs

Proceeds of Crime Act 2002

Proceeds of Crime Amendment Regulations 2006 (No. 4)

Section 328 of the *Proceeds of Crime Act 2002* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Act is to prevent criminals from benefiting from their crimes, by depriving them of the proceeds and benefits gained from criminal conduct and to prevent the reinvestment of these proceeds and benefits in further criminal activities. The Act creates a civil forfeiture regime enabling confiscation of unlawfully acquired property, without first requiring a conviction. This regime operates together with a conviction based confiscation regime also under the Act.

The Act provides that ‘enforcement agencies’ and ‘authorised officers’ may receive information obtained using the information gathering powers provided within the Act. These information gathering powers include the ability to seek production orders, monitoring orders and obtain and execute search warrants. Section 338 of the Act specifies a number of enforcement agencies and authorised officers, and provides that the regulations may prescribe additional agencies or officers. In particular, paragraph (b) of the definition of ‘enforcement agency’ provides for the regulations to specify a law enforcement, revenue or regulatory agency for the purposes of the Act.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation on the Regulations was undertaken under section 17 of the *Legislative Instruments Act 2003*. The Australian Taxation Office (ATO), the Commonwealth Director of Public Prosecutions (CDPP) and the Australian Federal Police (AFP) were consulted on this policy initiative. Officers from ATO were asked to provide detailed explanation of the sections under the *Proceeds of Crime Act 2002* under which the regulations would apply. The CDPP and AFP were asked to give in-principle approval to the proposed regulation and both agencies were also provided with a draft regulation to consider. This consultation is appropriate as the instrument is of a minor or machinery nature only and does not substantially alter existing arrangements.

These regulations will help to make the operation of the Act more efficient in identifying and investigating tax related proceeds of crime matters.

The Office of Regulation Review has advised that a Regulation Impact Statement is not required.

The Regulations commence on 5 October 2006.

Details of the *Proceeds of Crime Amendment Regulations 2006 (No. 4)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Proceeds of Crime Amendment Regulations 2006 (No. 4)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Proceeds of Crime Regulations 2002*

This regulation provides that the *Proceeds of Crime Regulations 2002* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – After regulation 3

Item 1 inserts a new regulation after Regulation 3.

New regulation 3A extends the meaning of *authorised officer* to include a person engaged under the *Public Service Act 1999* who is performing duties in the Australian Taxation Office and who is authorised by the Commissioner of Taxation for the purposes of paragraph (e) of the definition of ‘authorised officer’.

Subregulation (2) provides that the regulation does not apply to the use of the term ‘authorised officer’ in (a) Part 3-5 of the Act (except section 225); or (b) the definition of *executing officer* in section 338 of the Act. This has the effect of expressly indicating that it is not intended that the ATO deal in any way with the execution of search warrants.

Subregulation (3) notes that to avoid doubt, subregulation (1) applies to the use of the term ‘authorised officer’ in the definition of *person assisting* in section 338 of the Act. This has the effect of expressly indicating that it is not intended that the ATO deal in any way with the execution of search warrants.

Item [2] – After regulation 4

Item [2] inserts new regulation 4A Meaning of *enforcement agency*

Subregulation (1) provides that subject to subregulation (2), for paragraph (b) of the definition of *enforcement agency* in section 338 of the Act, the Australian Taxation Office is specified as a revenue agency for the purposes of the Act.

Subregulation (2) notes that subregulation (1) does not apply to the use of the term 'enforcement agency' in section 254 of the Act. This has the effect of expressly indicating that it is not intended that the ATO deal in any way with the execution of search warrants or in dealing with things seized under a search warrant.