

Proceeds of Crime Amendment Regulation 2012 (No. 1)1

Select Legislative Instrument 2012 No. 156

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Proceeds of Crime Act 2002*.

Dated 28 June 2012

QUENTIN BRYCE

Governor-General

By Her Excellency’s Command

JASON CLARE

Minister for Justice

1 Name of regulation

This regulation is the *Proceeds of Crime Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Proceeds of Crime Regulations 2002*

Schedule 1 amends the *Proceeds of Crime Regulations 2002*.

Schedule 1 Amendments

(section 3)

[] Paragraph 4 (da)

omit

[] After paragraph 4 (e)

insert

(ea) *Criminal Assets Confiscation Act 2005* of South Australia;

[] Paragraph 4 (i)

omit

[] Paragraph 4 (j)

omit

Territory;

insert

Territory.

[] Paragraph 4 (k)

omit

[] After paragraph 5 (a)

insert

(aa) order, under subsection 29 (1) of the *Criminal Assets Recovery Act 1990* of New South Wales, declaring that an interest in property is available to satisfy a proceeds assessment order or unexplained wealth order;

(ab) assets forfeiture order under subsection 31A (3) of the *Criminal Assets Recovery Act 1990* of New South Wales;

[] After paragraph 5 (b)

insert

(ba) order, under subsection 32 (2) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales, declaring that specified property is available to satisfy a drug proceeds order;

[] After paragraph 5 (d)

insert

(da) tainted property substitution declaration under subsection 34C (1) of the *Confiscation Act 1997* of Victoria;

(db) declaration, under subsection 36 (1) of the *Confiscation Act 1997* of Victoria, that property has been forfeited under section 35 of that Act;

(dc) tainted property substitution declaration under section 36F (1) of the *Confiscation Act 1997* of Victoria;

[] Paragraph 5 (e)

omit

subsection 23 (1) of the *Crimes (Confiscation) Act 1989*

insert

subsection 58 (1) or 151 (1) of the *Criminal Proceeds Confiscation Act 2002*

[] After paragraph 5 (e)

insert

(ea) tainted property substitution declaration under subsection 153D (1) of the *Criminal Proceeds Confiscation Act 2002* of Queensland;

[] Paragraph 5 (f)

omit

Australia;

insert

Australia (that is continued in force under item 11 of Schedule 1 of the *Criminal Assets Confiscation Act 2005* of South Australia);

[] After paragraph 5 (f)

insert

(fa) forfeiture order under subsection 47 (1) of the *Criminal Assets Confiscation Act 2005* of South Australia;

(fb) instrument substitution declaration under section 48 of the *Criminal Assets Confiscation Act 2005* of South Australia;

(fc) declaration that particular property has been forfeited under section 77 of the *Criminal Assets Confiscation Act 2005* of South Australia;

[] After paragraph 5 (i)

insert

(ia) confiscable property declaration under subsection 28 (1) of the *Criminal Property Confiscation Act 2000* of Western Australia;

[] Paragraphs 5 (k) and (l)

substitute

(k) forfeiture order under subsection 54 (1), 59 (2) or 67 (2) of the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;

(l) crime-used property substitution declaration under subsection 81 (2) of the *Criminal Property Forfeiture Act* of the Northern Territory;

(m) declaration that property specified in an application that is not owned by the respondent is available for forfeiture under subsection 92 (1) of the *Criminal Property Forfeiture Act* of the Northern Territory;

(n) declaration that property has been forfeited under subsection 94 (4) of the *Criminal Property Forfeiture Act* of the Northern Territory;

(o) order that property is forfeit to the Territory under subsection 96 (1) or section 97, 99, 100 or 101 of the *Criminal Property Forfeiture Act* of the Northern Territory.

[] After paragraph 6 (a)

insert

(aa) unexplained wealth order under subsection 28A (2) of the *Criminal Assets Recovery Act 1990* of New South Wales;

(ab) proceeds assessment order or unexplained wealth order under subsection  31B (4) of the *Criminal Assets Recovery Act 1990* of New South Wales;

[] Paragraph 6 (e)

substitute

(e) proceeds assessment order under subsection 78 (1) of the *Criminal Proceeds Confiscation Act 2002* of Queensland;

(ea) pecuniary penalty order under subsection 184 (1) of the *Criminal Proceeds Confiscation Act 2002* of Queensland;

(eb) special forfeiture order under subsection 202 (1) of the *Criminal Proceeds Confiscation Act 2002* of Queensland;

[] Paragraph 6 (f)

omit

Australia;

insert

Australia (that is continued in force under item 11 of Schedule 1 of the *Criminal Assets Confiscation Act 2005* of South Australia);

[] After paragraph 6 (f)

insert

(fa) pecuniary penalty order under subsection 95 (1) of the *Criminal Assets Confiscation Act 2005* of South Australia;

(fb) literary proceeds order under subsection  111 (1) of the *Criminal Assets Confiscation Act 2005* of South Australia;

[] After paragraph 6 (h)

insert

(ha) criminal benefits declaration under subsection 17 (1) of the *Criminal Property Confiscation Act 2000* of Western Australia;

[] Paragraphs 6 (l) and (m)

substitute

(l) penalty order under subsection 84 (1) or 85 (1) of the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;

(m) unexplained wealth declaration under subsection 71 (1) of the *Criminal Property Forfeiture Act* of the Northern Territory;

(n) criminal benefit declaration under subsection 75 (1) or 76 (1) of the *Criminal Property Forfeiture Act* of the Northern Territory;

(o) crime-used property substitution declaration under subsection 81 (2) of the *Criminal Property Forfeiture Act* of the Northern Territory

[] Paragraph 7 (a)

omit

section 10

insert

subsection 10A (5)

[] After paragraph 7 (a)

(aa) order pending forfeiture under subsection 22 (2) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;

(ab) confirmation of a freezing notice under subsection 42L (1) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;

[] After paragraph 7 (d)

insert

(da) civil forfeiture restraining order under section 36M of the *Confiscation Act 1997* of Victoria;

[] Paragraph 7 (e)

omit

subsection 40 (15) of the *Crimes (Confiscation) Act 1989*

insert

subsection 31 (1) or 122 (1), (2) or (3) of the *Criminal Proceeds Confiscation Act 2002*

[] Paragraph 7 (f)

omit

Australia;

insert

Australia (that is continued in force under item 11 of Schedule 1 of the *Criminal Assets Confiscation Act 2005* of South Australia);

[] After paragraph 7 (f)

insert

(fa) restraining order under subsection 24 (1) of the *Criminal Assets Confiscation Act 2005* of South Australia;

[] Paragraphs 7 (k) and (l)

substitute

(k) restraining order under subsection 30 (2) or 31 (2) of the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;

(l) restraining order under subsection 43 (1) or (2) or 44 (1) of the *Criminal Property Forfeiture Act* of the Northern Territory.

[] After subparagraph 9 (a) (x)

insert

(xi) section 271.2 (offence of trafficking in persons);

(xii) section 271.4 (offence of trafficking in children);

(xiii) section 271.5 (offence of domestic trafficking in persons);

(xiv) section 271.7 (offence of domestic trafficking in children);

(xv) section 272.8 (sexual intercourse with child outside Australia);

(xvi) section 272.9 (sexual activity (other than sexual intercourse) with child outside Australia);

(xvii) section 272.11 (persistent sexual abuse of child outside Australia);

(xviii) section 272.12 (sexual intercourse with young person outside Australia—defendant in position of trust or authority);

(xix) section 272.13 (sexual activity (other than sexual intercourse) with young person outside Australia—defendant in position of trust or authority);

(xx) section 272.14 (procuring child to engage in sexual activity outside Australia);

(xxi) section 272.15 (‘grooming’ child to engage in sexual activity outside Australia);

(xxii) section 272.18 (benefiting from offence against Division 272 of the *Criminal Code*);

(xxiii) section 272.19 (encouraging offence against Division 272 of the *Criminal Code*);

(xxiv) section 272.20 (preparing for or planning offence against Division 272 of the *Criminal Code*);

(xxv) section 273.5 (possessing, controlling, producing, distributing or obtaining child pornography material outside Australia);

(xxvi) section 273.6 (possessing, controlling, producing, distributing or obtaining child abuse material outside Australia);

(xxvii) section 390.3 (associating in support of serious organised criminal activity);

(xxviii) section 390.4 (supporting a criminal organisation);

(xxix) section 390.5 (committing an offence for the benefit of, or at the direction of, a criminal organisation);

(xxx) section 390.6 (directing activities of a criminal organisation);

(xxxi) section 471.16 (using a postal or similar service for child pornography material);

(xxxii) section 471.17 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service);

(xxxiii) section 471.19 (using a postal or similar service for child abuse material);

(xxxiv) section 471.20 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service);

(xxxv) section 471.22 (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);

(xxxvi) section 471.24 (using a postal or similar service to procure persons under 16);

(xxxvii) section 471.25 (using a postal or similar service to ‘groom’ persons under 16);

(xxxviii) section 471.26 (using a postal or similar service to send indecent material to persons under 16);

(xxxix) section 474.19 (using a carriage service for child pornography material);

(xl) section 474.20 (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);

(xli) section 474.22 (using a carriage service for child abuse material);

(xlii) section 474.23 (possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service);

(xliii) section 474.24A (aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people);

(xliv) section 474.25A (using a carriage service for sexual activity with person under 16 years of age);

(xlv) section 474.26 (using a carriage service to procure persons under 16 years of age);

(xlvi) section 474.27 (using a carriage service to ‘groom’ persons under 16 years of age);

(xlvii) section 474.27A (using a carriage service to transmit indecent communication to person under 16 years of age).

[29] Paragraph 9 (b)

substitute

(b) an offence against any of the following provisions of the *Australian Crime Commission Act 2002*:

(i) section 30 (Failure of witnesses to attend and answer questions);

(ii) section 33 (False or misleading evidence);

(iii) section 35 (Obstructing or hindering the ACC or an examiner etc).

[30] Further amendments

| *Provision* | *omit each mention of* | *insert* |
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| Regulations 4, 5, 6 and 7 | **Confiscation Act 1997** | *Confiscation Act 1997* |
| Regulations 9A, 9B and 19 | DPP | responsible authority |

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See www.comlaw.gov.au.