

Proceeds of Crime Regulations (Amendment) 1993 No. 199

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 199

Issued by the authority of the Attorney-General

Proceeds of Crime Act 1987

Proceeds of Crime Regulations (Amendment)

Section 104 of the *Proceeds of Crime Act 1987* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

The purpose of the Proceeds of Crime Regulations (Amendment) is to:

(a) prescribe the Australian Capital Territory *Proceeds of Crime Act 1991* (the ACT Act) and the New South Wales *Drug Trafficking (Civil Proceedings) Act 1990* (the NSW Act) as corresponding laws under the Act and to recognise forfeiture orders, pecuniary penalty orders and restraining orders made under these Acts;

(b) update the list of Government Business Enterprises (GBEs) to take account of name changes and to delete the names of organisations which are no longer GBEs; and

(c) to clarify parts of the Regulations and change references which are no longer current.

The amending regulations provide as follows:

Clause 1 of the amending regulations is a procedural clause.

Clause 2 amends regulation 3 to provide that the ACT Act and the NSW Act are declared to be corresponding laws under the Act. Part VI of the Act provides for the enforcement of interstate forfeiture orders, pecuniary penalty orders and restraining orders in the nonself-governing Commonwealth Territories (the Australian Capital Territory and the Northern Territory are defined as Stated under the Act). These orders are defined as those made under corresponding laws and of a kind declared by the regulations to be within the definitions. Corresponding laws are in turn defined as laws declared by the regulations to be laws which correspond with the Act. The declaration of these Acts as corresponding laws allows enforcement in Commonwealth Territories of various orders made under these Acts. The declaration also allows New South Wales and the Australian Capital Territory to seek the enforcement of these orders outside Australia under the *Mutual Assistance in Criminal Matters Act 1987* where mutual assistance arrangements are in place

Clause 3 amends regulation 3B which identifies those GBEs which may receive a payment from the Confiscated Assets Trust Fund under section 34C of the Act. The amendment deletes AUSSAT Pty Limited and the Snowy Mountains Engineering Corporation from the list as they are no longer GBEs (see section 6 of the *AUSSAT Repeal Act 1991* and section 51 of the *Snowy Mountains Engineering Corporation Act 1970*). It also updates the regulations to reflect the correct names of the Australian

Postal Corporation and ANL Limited which were changed by the *Australian Postal Corporation Act 1989* and the *ANL (Conversion into Public Company) Act 1988* respectively.

Clause 4 amends regulation 4 to include forfeiture orders made under the ACT Act and asset forfeiture orders made under the NSW Act in the list of orders which fall within the Act's definition of "interstate forfeiture order". As discussed under clause 2 above this enables these orders to be enforced in the nonself-governing Commonwealth Territories and overseas where Mutual Assistance arrangements are in place.

Clause 5 amends regulation 5 to include pecuniary penalty orders made under the ACT Act and proceeds assessment orders made under the NSW Act in the list of orders which fall within the Act's definition of "interstate pecuniary penalty order". As discussed under clause 2 above, this enables these orders to be enforced in Commonwealth Territories and overseas where Mutual Assistance arrangements are in place.

Clause 6 amends regulation 6 to include restraining orders made under the ACT Act and the NSW Act in the list of orders which fall within the Act's definition of "interstate restraining order". As discussed under clause 2 above, this enables these orders to be enforced in the nonself-governing Commonwealth Territories and overseas where Mutual Assistance arrangements are in place. The amending regulation also updates the numbering in paragraph 6(c).

Clause 7 amends regulation 8 to replace the reference in paragraph 8(1)(b) to "an Administrative Service Officer, Class 7 with a reference to "a Senior Officer, Grade C" to reflect a title change. Further, the amendment to subsection 8(2) ensures consistent terminology throughout the regulations.

Clause 8 amends regulation 11 to replace references to "that Act" in paragraph 11 (1) with "*the Customs Act 1901*". This avoids confusion over which Act the regulation is referring to.

Clause 9 amends regulation 16 to update the reference to the Cash Transactions Reports Agency to AUSTRAC to reflect changes made by the *Cash Transaction Reports Amendment Act 1991*.