

Proceeds of Crime Amendment Regulations 1998 (No. 1) 1998 No. 335

Explanatory Statement

Statutory Rules 1998 No. 335

Issued BY the Authority of the Minister for Justice and Customs

Proceeds of Crime Act 1987

Proceeds of Crime Amendment Regulations 1998 (No. 1)

Background

The Proceeds of Crime Regulations (the Regulations) contain references to corresponding State and Territory forfeiture legislation. The Regulations currently refer to, amongst other statutes, the *Drug Trafficking (Civil Proceedings) Act 1990 (NSW)* and the *Crimes (Confiscation of Profits) Act 1986 (Vic)*.

Those two Acts have recently been amended by their respective State legislatures. The NSW Act has been amended and its title changed to the *Criminal Assets Recovery Act 1990 (NSW)*. The *Crimes (Confiscation of Profits) Act 1986 (Vic)* has been repealed and replaced by the *Confiscation Act 1997 (Vic)*.

Consequential amendments to the Regulations are therefore made to take account of those amendments to the New South Wales and Victorian statutes. Transitional regulations are made in respect of the former Victorian Act to ensure the continuing validity of orders made under the repealed statute. Transitional regulations are not required in respect of the NSW Act.

The Amendments

Regulation 1 is a formal clause providing for the citation of these amending regulations.

Regulation 2 provides that these regulations commenced upon gazettal.

Regulation 3 is also a formal clause providing for amendment of the Regulations as set out in Schedule 1 to the amending regulations.

Schedule 1 Amendments

Item 1 deletes Regulation 1 and amends the citation of the Regulations to the *Proceeds of Crime Regulations 1987*. That new title of the Regulations reflects a revised approach to the naming of Commonwealth regulations.

Definition of "corresponding law" - regulation 3

Item 2 replaces paragraph 3(aa) of the Regulations with new paragraph 3(a) which prescribes the *Criminal Assets Recovery Act 1990 (NSW)* as a corresponding law for the purposes of subsection 4(1) of the *Proceeds of Crime Act 1987* (the PoC Act).

Item 3 replaces paragraph 3 (c) of the Regulations with new paragraph 3 (c) which prescribes the *Confiscation Act 1997 (Vic)* as a corresponding law for the purposes of subsection 4(1) of the PoC Act.

Definition of "interstate forfeiture order" - regulation 4

Item 4 replaces paragraph 4(aa) of the Regulations with new paragraph 4(a) to include assets forfeiture orders under section 22 of the Criminal Assets Recovery Act 1990 (NSW) as interstate forfeiture orders for the purposes of subsection 4(1) of the PoC Act.

Item 5 replaces paragraph 4(c) of the Regulations with new paragraph 4(c) to include forfeiture orders under Division 1 of Part 3, and civil forfeiture orders under Part 4, of the Confiscation Act 1997 (Vic) as interstate forfeiture orders for the purposes of subsection 4(1) of the PoC Act.

Item 5 also inserts paragraph 4(ca) as a transitional provision which ensures that forfeiture orders made pursuant to the repealed subsection 7(1) of the Crimes (Confiscation of Profits) Act 1986 (Vic) continue to have effect.

Definition of "interstate pecuniary penalty order" - regulation 5

Item 6 replaces paragraph 5(aa) of the Regulations with new paragraph 5(a) which provides that proceeds assessment orders under section 27 of the Criminal Assets Recovery Act 1990 (NSW) are interstate pecuniary penalty orders for the purposes of subsection 4(1) of the PoC Act.

Item 7 replaces paragraph 5(c) of the Regulations with new paragraph 5(c) which provides that pecuniary penalty orders under Part 8 of the Confiscation Act 1997 (Vic) are interstate pecuniary penalty orders for the purposes of subsection 4(1) of the PoC Act.

Item 7 also inserts new paragraph 5(ca) as a transitional provision which ensures that pecuniary penalty orders made pursuant to subsection 12(1) of the Crimes Confiscation of Profits Act 1986 (Vic) continue to have effect.

Definition of "interstate restraining order" - regulation 6

Item 8 replaces paragraph 6(aa) of the Regulations with new paragraph 6(a) which provides that restraining orders under section 10 of the Criminal Assets Recovery Act 1990 (NSW) are interstate restraining orders for the purposes of subsection 4(1) of the PoC Act.

Item 9 replaces paragraph 6(c) of the Regulations with new paragraph 6(c) which provides that restraining orders under section 18 of the Confiscation Act 1997 (Vic) are interstate rest-dining orders for the purposes of subsection 4(1) of the PoC Act.

Items 9 also inserts new paragraph 6(ca) as a transitional provision which ensures that restraining orders made pursuant to subsection 16(3) of the Crimes (Confiscation of Profits) Act 1986 (Vic) continue to have effect for the purposes of subsection 4(1) of the PoC Act.

The Regulations commenced on gazettal.