

Proceeds of Crime Amendment Regulations 2001 (No. 1) 2001 No. 50

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 50

Issued By the Authority of the Minister for Justice and Customs

Proceeds of Crime Act 1987

Proceeds of Crime Amendment Regulations 2001 (No. 1)

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 Proceeds of Crime Regulations 1.987 (the Regulations) contain references to corresponding State and Territory forfeiture legislation. The Regulations formerly referred to, amongst other statutes, the *Crimes (Confiscation of Profits) Act 1988* ('C(CP) Act') of Western Australia.

The C(CP) Act was repealed and replaced with the *Criminal Property Confiscation Act 2000* (the WA Act), which commenced on 1 January 2001.

The Regulations also declared certain orders made under the C(CP) Act to be within the definitions of 'interstate forfeiture order' (r.4), 'interstate pecuniary penalty order' (r.5) and 'interstate restraining order' (r.6).

The effect of declaring those orders to be within the definitions of orders under the Regulations is that they can be registered and enforced in a Territory other than the Australian Capital Territory or the Northern Territory.

The effect of an interstate forfeiture order registered in a Territory is that property in the Territory that is the subject of that order may be forfeited. In the case of a registered interstate pecuniary penalty order, it may be enforced as a civil debt against a named person. Finally, the effect of an interstate restraining order that is registered in a Territory is to prevent property in the Territory being disposed of, or otherwise dealt with, except in accordance with that order.

The purpose of the amendments is to replace references to the repealed C(CP) Act with references to the WA Act. In addition, the amendments provide that orders made under the WA Act are substituted for orders made under the C(CP) Act, except orders made under the C(CP) Act that are continued in force. Finally, the amendments make minor consequential amendments to forms in Schedule 2 of the Regulations.

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 substitutes the WA Act for the repealed C(CP) Act as a law that is declared to correspond to the *Proceeds of Crime Act 1987*.

Definition of 'interstate forfeiture order' - regulation 4

Item 2 replaces the heading in regulation 4 with 'Declaration - definition of *interstate forfeiture order*' to more accurately reflect that certain 'declarations' (in addition to 'orders') under the WA Act are declared to be within the definition of interstate forfeiture orders.

Item 3 omits 'each of the following kinds of orders' from regulation 4 and inserts 'the following are' to take account of the inclusion of 'declarations' (in addition to 'orders') within the definition of interstate forfeiture orders.

Item 4 inserts new paragraph (f) to provide that 'crime-used property substitution declarations' under the WA Act are (declared to be within the definition of interstate forfeiture orders. A crime-used property substitution declaration is a declaration that property owned by a respondent is available for confiscation instead of property used by the respondent for criminal purposes.

Item 4 also inserts new paragraph (faa) to provide that 'declarations of confiscation' under the WA Act are declared to be within the definition of interstate forfeiture orders. A declaration of confiscation is a declaration a court must make in relation to property where the WA Act deems that property to be confiscated.

Item 4 also inserts paragraph (fab) as a transitional provision which ensures that forfeiture orders made pursuant to the repealed subsection 10(1) of the C(CP) Act continue to have effect.

Definition of 'interstate pecuniary penalty order' - regulation 5

Item 5 replaces the heading in regulation 5 with 'Declaration - definition of *interstate pecuniary penalty order*' to more accurately reflect that certain 'declarations' (in addition to 'orders') under the WA Act are declared to be within the definition of interstate pecuniary penalty orders.

Item 6 omits 'each of the following kinds of orders' from regulation 5 and inserts 'the following are' to take account of the inclusion of 'declarations' (in addition to 'orders') within the definition of interstate pecuniary penalty orders.

Item 7 inserts new paragraph (e) to provide that 'unexplained wealth declarations' under the WA Act are declared to be within the definition of interstate pecuniary penalty orders. Under the WA Act, the court must make an unexplained wealth declaration in relation to a person if it is more likely than not that the total value of that person's wealth is greater than the value of the person's lawfully acquired wealth.

Item 7 also inserts new paragraph (eaa) to provide that 'criminal benefits declarations' under the WA Act are declared to be within the definition of interstate pecuniary penalty orders. A criminal benefits declaration is a declaration that a person has acquired a criminal benefit as a result of that person's involvement in a confiscation offence.

Item 7 also inserts new paragraph (eab) to provide that 'crime-used property substitution declarations' under the WA Act are declared to be within the definition of interstate pecuniary penalty orders. A crime-used property substitution declaration is a declaration that property

owned by a respondent is available for confiscation instead of property used by the respondent in criminal activity. Where a court makes a crime-used property substitution declaration, the respondent is liable to pay to the State an amount equal to the amount specified in the declaration as the assessed value of the crime-used property.

Item 7 also inserts new paragraph (eac) as a transitional provision which ensures that pecuniary penalty orders made pursuant to the repealed subsection 15(1) of the C(CP) Act continue to have effect.

Definition of 'interstate restraining order' - regulation 6

Item 8 replaces the heading in regulation 6 with 'Declaration - definition of *interstate restraining order*' to more accurately reflect that certain 'declarations' (in addition to 'orders') under the WA Act are declared to be within the definition of interstate restraining orders.

Item 9 omits 'each of the following kinds of orders' from regulation 6 and inserts 'the following are' to take account of the inclusion of 'declarations' (in addition to 'orders') within the definition of interstate restraining orders.

Item 10 inserts new paragraph (f) to provide that 'freezing notices' under the WA Act are declared to be within the definition of interstate restraining orders. Under the WA Act, a Justice of the Peace may issue a freezing notice in relation to property if certain circumstances are present. For example, a freezing notice may be issued if there are reasonable grounds for suspecting that the property is crime-used or crime-derived.

Item 10 also inserts new paragraph (faa) to provide that 'freezing orders' under the WA Act are declared to be within the definition of interstate restraining orders. Under the WA Act, a court may make a freezing order in relation to certain property if certain circumstances are present. The freezing order may, amongst other things, direct that certain property is not to be moved.

Item 10 also inserts new paragraph (fab) as a transitional provision which ensures that restraining orders made pursuant to the repealed subsection 20(7) of the C(CP) Act continue to have effect.

Further amendments

Item 11 omits references to '19' and replaces those with references to '20' to ensure that the numerical description of the yearly date that appears on the forms contained in Schedule 4 of the Regulations is accurate.