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Statutory Rules 1989 No. 1

236

Proceeds of Crime Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting
with the advice of the Federal Executive Council, hereby make the following
Regulations under the *Proceeds of Crime Act 1987*.

Dated 29 August 1989.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Lionel Bowen

Attorney-General

Commencement

1. These Regulations shall be taken to have commenced on the date of
commencement of section 65 of the *Law and Justice Legislation Amendment
Act 1988*.

Principal Regulations

2. In these Regulations, "Principal Regulations" means the Proceeds of
Crime Regulations.

Declaration of State laws—definition of "corresponding law"

3. Regulation 3 of the Principal Regulations is amended by omitting
paragraphs (b) and (c) and substituting the following paragraphs:

- "(b) Confiscation of Proceeds of Crime Act 1989 of New South Wales;
- (c) *Crimes (Confiscation of Profits) Act 1986* of Victoria;
- (d) *Crimes (Confiscation of Profits) Act 1989* of Queensland;
- (e) *Crimes (Confiscation of Profits) Act, 1986* of South Australia;

- (f) *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
- (g) *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory.”.

Declaration of orders—definition of “interstate forfeiture order”

4. Regulation 4 of the Principal Regulations is amended by omitting paragraphs (b) and (c) and substituting the following paragraphs:

- “(b) forfeiture orders under subsection 18 (1) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) forfeiture orders under subsection 7 (1) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria;
- (d) forfeiture orders under subsection 8 (1) of the *Crimes (Confiscation of Profits) Act 1989* of Queensland;
- (e) orders that property be forfeited to the Crown made under subsection 5 (1) of the *Crimes (Confiscation of Profits) Act, 1986* of South Australia;
- (f) forfeiture orders under subsection 10 (1) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
- (g) forfeiture orders under subsection 5 (1) of the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory.”.

Declaration of orders—definition of “interstate pecuniary penalty order”

5. Regulation 5 of the Principal Regulations is amended by omitting paragraph (b) and substituting the following paragraphs:

- “(b) pecuniary penalty orders under subsection 24 (1) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales and drug proceeds orders under subsection 29 (1) of that Act;
- (c) pecuniary penalty orders under subsection 12 (1) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria;
- (d) pecuniary penalty orders under subsection 13 (1) of the *Crimes (Confiscation of Profits) Act 1989* of Queensland;
- (e) pecuniary penalty orders under subsection 15 (1) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
- (f) pecuniary penalty orders under subsection 10 (1) of the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory.”.

Declaration of orders—definition of “interstate restraining order”

6. Regulation 6 of the Principal Regulations is amended by omitting paragraphs (b) and (c) and substituting the following paragraphs:

- “(b) restraining orders under subsection 43 (2) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) restraining orders under subsection 16 (7) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria;
- (d) restraining orders under subsection 17 (8) of the *Crimes (Confiscation of Profits) Act 1989* of Queensland;

- (e) sequestration orders under subsection 6 (1) of the *Crimes (Confiscation of Profits) Act*, 1986 of South Australia;
- (f) restraining orders under subsection 20 (7) of the *Crimes (Confiscation of Profits) Act* 1988 of Western Australia;
- (g) restraining orders under subsection 14 (2) of the *Crimes (Forfeiture of Proceeds) Act* 1988 of the Northern Territory.”.

Declaration of substances—definition of “narcotic substance”

7. Regulation 7 of the Principal Regulations is amended by omitting “the Schedule” and substituting “Schedule 1”.

8. After regulation 7 of the Principal Regulations the following regulations are inserted:

Remuneration of Official Trustee

“8. (1) There is payable to the Official Trustee in respect of the performance or exercise by the Official Trustee of functions, duties or powers under the Act, if the person performing or exercising such functions, duties or powers in the name of, or on behalf of, the Official Trustee:

- (a) is a Level 1 officer in the Senior Executive Service of the Australian Public Service or is an officer of a higher classification in the Australian Public Service—remuneration of \$150.00 per hour or part of an hour; or
- (b) is an Administrative Service Officer, Class 7 in the Australian Public Service or is an officer of a higher classification in the Australian Public Service, not being a classification referred to in paragraph (a)—remuneration of \$100.00 per hour or part of an hour; or
- (c) is an Administrative Service Officer, Class 6 in the Australian Public Service or is an officer of a lower classification in the Australian Public Service—remuneration of \$75.00 per hour or part of an hour;

during which any of those functions, duties or powers are being performed or exercised.

“(2) For the purposes of subregulation (1), a person who, for the time being, is performing the duties of a particular office in the Australian Public Service shall be taken to be the holder of that office.

Costs etc. payable to Official Trustee

“9. There is payable to the Official Trustee an amount equal to the amount of costs, charges and expenses incurred in connection with the performance or exercise by the Official Trustee of functions, duties or powers under the Act.

Notice of application for court order regarding third party interest

“10. (1) For the purposes of subsection 21 (9) of the Act, the following notices are prescribed, namely:

- (a) in respect of an application under subsection 21 (1) of the Act—a notice in accordance with Form 1 in Schedule 2; and

(b) in respect of an application under subsection 21 (2) of the Act—a notice in accordance with Form 2 in Schedule 2.

“(2) For the purposes of subsection 23A (10) of the Act, the following notice is prescribed, namely, a notice in accordance with Form 3 in Schedule 2.

“(3) For the purposes of subsection 31 (7A) of the Act, the following notice is prescribed, namely, a notice in accordance with Form 4 in Schedule 2.”.

Schedule 1

9. The Schedule to the Principal Regulations is repealed and the following Schedule substituted:

SCHEDULE 1

Regulation 7

SUBSTANCES

Column 1 Item No.	Column 2 Substances
1	Acetyl-alpha-methylfentanyl
2	Acetylmorphines
3	Alfentanil
4	Alkoxyamphetamines and bromo-substituted alkoxyamphetamines except where separately specified in this Schedule
5	Alkoxyphenethylamines and alkyl-substituted alkoxyphenethylamines except where separately specified in this Schedule
6	Alpha-methylfentanyl
7	Alpha-methylthiofentanyl
8	Beta-hydroxyfentanyl
9	Beta-hydroxy-3-methylfentanyl
10	4-Bromo-3,5-dimethoxyamphetamine
11	4-Bromo-2,5-dimethoxyphenethylamine (BDMPEA)
12	3-Bromo-4-methoxyamphetamine
13	4-Bromo-3-methoxyamphetamine
14	Butorphanol
15	Cannabis Oil
16	Cathinone
17	Coca Leaf
18	Concentrate of Poppy Straw (the material arising when poppy straw has entered into a process for concentration of its alkaloids)
19	4-Cyano-2-dimethylamino-4,4-diphenylbutane (Methadone intermediate)
20	4-Cyano-1-methyl-4-phenylpiperidine (Pethidine intermediate A)
21	Dexamphetamine
22	Dextromoramide
23	Dextropropoxyphene
24	Difenoxin
25	2,4-Dimethoxyamphetamine
26	3,4-Dimethoxyamphetamine
27	3,4-Dimethoxy-5-ethoxyamphetamine
28	2,5-Dimethoxy-4-ethoxyamphetamine
29	4,5-Dimethoxy-2-ethoxyamphetamine
30	2,5-Dimethoxy-4-ethyl-alpha-methylphenylethylamine (DOET)

SCHEDULE 1—continued

Column 1 Item No.	Column 2 Substances
31	2,3-Dimethoxy-4,5-methylenedioxyamphetamine
32	2,5-Dimethoxy-3,4-methylenedioxyamphetamine
33	2,5-Dimethoxy-alpha-methylphenylethylamine (DMA)
34	3,4-Dimethoxyphenylethylamine
35	3-(1,2-Dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6, 6,9-trimethyl-6H-dibenzo[b,d]pyran (DMHP)
36	Drotebanol
37	4,5-Ethylenedioxy-3-methoxyamphetamine
38	Eticyclidine (PCE)
39	Fenetylline
40	3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d]pyran (Parahexyl)
41	Isomethadone
42	Levamphetamine
43	Levomethamphetamine
44	Levomethorphan
45	Levomoramide
46	Levophenacymorphan
47	Mecloqualone
48	2-Methoxy-3,4-methylenedioxyamphetamine
49	2-Methoxy-4,5-methylenedioxyamphetamine
50	4-Methoxy-2,3-methylenedioxyamphetamine
51	5-Methoxy-3,4-methylenedioxy-alpha-methylphenylethylamine (MMDA)
52	2-Methoxy-3,4-methylenedioxyphenylethylamine
53	3-Methoxy-4,5-methylenedioxyphenylethylamine
54	4-Methoxy-alpha-methylphenylethylamine (PMA)
55	4-Methoxyphenylethylamine
56	2-Methyl-3-morpholino-1,1-diphenylpropane carboxylic acid (Moramide intermediate)
57	1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)
58	1-Methyl-4-phenylpiperidine-4-carboxylic acid (Pethidine intermediate C)
59	3,4-Methylenedioxy-N,alpha-dimethylphenylethylamine (MDMA)
60	3,4-Methylenedioxy-N-ethylamphetamine (MDE)
61	3-Methylfentanyl
62	3-Methylthiofentanyl
63	Morphine Methobromide
64	Muscimol
65	Nabilone
66	Para-fluorofentanyl
67	Phencyclidine (PCP)
68	1-Phenylethyl-4-phenyl-4-acetoxypiperidine (PEPAP)
69	4-Phenylpiperidine-4-carboxylic acid ethyl ester (Pethidine intermediate B)
70	Propiram
71	Racemoramide
72	Racemorphan
73	Rolicyclidine (PHIP,PCPY)
74	Sufentanil
75	Tenocyclidine (TCP)
76	2,3,4,5-Tetramethoxyamphetamine
77	Thiofentanyl
78	Tilidine
79	2,3,4-Trimethoxyamphetamine

SCHEDULE 1—continued

Column 1 Item No.	Column 2 Substances
80	2,3,5-Trimethoxyamphetamine
81	2,3,6-Trimethoxyamphetamine
82	2,4,5-Trimethoxyamphetamine
83	2,4,6-Trimethoxyamphetamine
84	3,4,5-Trimethoxy- α -methylphenylethylamine (TMA)
85	1-(3,4,5-Trimethoxyphenyl)-2-aminobutane
86	2,4,5-Trimethoxyphenylethylamine
87	Substances structurally derived from methoxy-phenylethylamine other than: (a) methoxyphenamine; or (b) a substance separately specified in an item in this Schedule
88	A substance which is, in relation to a substance specified in an item in this Schedule: (a) an active principal of that specified substance; or (b) a preparation or admixture of that specified substance; or (c) a salt of that specified substance or active principal; except where the first-mentioned substance is separately specified in an item in this Schedule
89	A substance (being a drug analogue) which is, in relation to another substance (being a narcotic substance within the meaning of the <i>Customs Act 1901</i> or a substance specified in an item in this Schedule (other than this item), or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a drug or substance): (a) a stereoisomer; or (b) a structural isomer having the same constituent groups; or (c) an alkaloid; or (d) a structural modification notionally obtained in one or more of the following ways: (i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures; or (ii) by the addition of hydrogen atoms to one or more unsaturated bonds; or (iii) by the addition of one or more of the alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups (with up to 6 carbon atoms in any alkyl residue), alkyl, alkenyl or alkynyl groups (with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon) or halogen, hydroxy, nitro or amino groups; or (iv) by the replacement of one or more of the groups specified in subparagraph (iii) with another such group or groups; or (v) by the conversion of a carboxyl or an ester group into an amide group; or (e) otherwise a homologue, an analogue, a chemical derivative or a substance substantially similar in chemical structure; however manufactured or actually obtained, except where the drug analogue: (f) is a narcotic substance within the meaning of the <i>Customs Act 1901</i> ; or (g) is separately specified in an item in this Schedule.

Schedule 2

10. The Principal Regulations are amended by adding at the end the following Schedule:

SCHEDULE 2

FORMS

FORM 1

Subregulation 10 (1)

COMMONWEALTH OF AUSTRALIA

Proceeds of Crime Act 1987

NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 21 (1) FOR AN ORDER IN RESPECT OF AN INTEREST IN PROPERTY

To: The Commonwealth Attorney-General

Robert Garran Offices

National Circuit

Barton ACT 2600

The Commonwealth Director of Public Prosecutions

(address of relevant regional office)

(Full name of applicant) of (address), being a person who claims an interest in the property specified in the Schedule, hereby gives notice that application has been made under subsection 21 (1) of the *Proceeds of Crime Act 1987* for an order under subsection 21 (6) of that Act in respect of an interest which is the subject of an application for a forfeiture order under subsection 19 (1) of that Act.

The application for a forfeiture order was filed in (name and location of court) on 19 in respect of a conviction within the meaning of section 5 of the *Proceeds of Crime Act 1987* of (name of convicted person) for (state offence(s)) on (date of conviction) by (name and location of court).

The abovementioned person who claims an interest has applied to the court for an order with respect to the interest claimed:

(a) declaring the nature, extent and value (as at the time when the order is made) of that person's interest; and

*(b) directing the Commonwealth to transfer the interest to that person.

*(c) declaring that there is payable by the Commonwealth to that person an amount equal to the value of the interest as so declared by the court.

This application has been set down for *mention/*hearing in the (name and location of court) on 19 at *a.m./ *p.m.

SCHEDULE

The property to which this notice relates is as follows:

(specify property)

Dated 19 .

.....
*Applicant giving notice/
*solicitor

*Omit if not applicable.

SCHEDULE 2—continued

FORM 2

Subregulation 10 (1)

COMMONWEALTH OF AUSTRALIA

*Proceeds of Crime Act 1987***NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 21 (2) FOR AN ORDER IN RESPECT OF AN INTEREST IN FORFEITED PROPERTY**

To: The Commonwealth Attorney-General
 Robert Garran Offices
 National Circuit
 Barton ACT 2600
 The Commonwealth Director of Public Prosecutions
 (address of relevant regional office)

(Full name of applicant) of (address), being a person who claims an interest in the property specified in the Schedule, hereby gives notice that application has been made under subsection 21 (2) of the *Proceeds of Crime Act 1987* for an order under subsection 21 (6) of that Act in respect of an interest which was forfeited to the Commonwealth under that Act.

The property to which this notice relates was forfeited by order of (name and location of court) on 19 following the conviction within the meaning of section 5 of the *Proceeds of Crime Act 1987* of (name of convicted person) for (state offence(s)).

The abovementioned applicant has applied to the court for an order with respect to the interest claimed:

- (a) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest; and
- *(b) directing the Commonwealth to transfer the interest to the applicant.
- *(c) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value of the interest as so declared by the court.

The application has been set down for *mention/*hearing in the (name and location of court) on 19 at * a.m./* p.m.

SCHEDULE

The property to which this notice relates is as follows:

(specify property)

Dated 19 .

.....
 *Applicant giving notice/
 *solicitor

*Omit if not applicable.

FORM 3

Subregulation 10 (2)

COMMONWEALTH OF AUSTRALIA

*Proceeds of Crime Act 1987***NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 23A (3) FOR AN ORDER IN RESPECT OF AN INTEREST IN PROPERTY WHICH IS THE SUBJECT OF A FOREIGN FORFEITURE ORDER**

To: The Commonwealth Attorney-General
 Robert Garran Offices
 National Circuit
 Barton ACT 2600
 The Commonwealth Director of Public Prosecutions
 (address of relevant regional office)

SCHEDULE 2—continued

(Full name of applicant) of (address), being a person who claims an interest in the property specified in the Schedule, hereby gives notice that application has been made under subsection 23A (3) of the *Proceeds of Crime Act 1987* for an order under subsection 23A (7) of that Act in respect of an interest which is the subject of a foreign forfeiture order.

The foreign forfeiture order in respect of the property to which this notice relates was registered under the *Mutual Assistance in Criminal Matters Act 1987* by order of (name and location of court) on 19 and made with respect to the conviction of (name of convicted person) for (state offence(s)) on 19 by (name and location of court).

The abovementioned applicant has applied to the court for an order with respect to the interest claimed:

(a) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest; and

*(b) directing the Commonwealth to transfer the interest to the applicant.

*(c) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value of the interest as so declared by the court.

The application has been set down for *mention/*hearing in the (name and location of court) on 19 at * a.m./* p.m.

SCHEDULE

The property to which this notice relates is as follows:

(specify property)

Dated 19 .

.....
*Applicant giving notice/
*solicitor

*Omit if not applicable.

FORM 4

Subregulation 10 (3)

COMMONWEALTH OF AUSTRALIA

Proceeds of Crime Act 1987

NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 31 (1) FOR AN ORDER IN RESPECT OF AN INTEREST IN FORFEITED PROPERTY PREVIOUSLY THE SUBJECT OF A RESTRAINING ORDER

To: The Commonwealth Attorney-General

Robert Garran Offices

National Circuit

Barton ACT 2600

The Commonwealth Director of Public Prosecutions

(address of relevant regional office)

(Full name of applicant) of (address), being a person who claims an interest in the property specified in the Schedule, hereby gives notice that application has been made under subsection 31 (1) of the *Proceeds of Crime Act 1987* for an order under subsection 31 (6) or (7) of that Act in respect of an interest which was forfeited to the Commonwealth under subsection 30 (1) of that Act.

The property to which this notice relates was forfeited under section 30 of the *Proceeds of Crime Act 1987* on 19 following the conviction within the meaning of section 5 of that Act of (name of convicted person) for a serious offence within the meaning of that Act, namely (state offence(s)) by (name and location of court).

The abovementioned applicant has applied to the court for an order with respect to the claimed interest:

(a) declaring the nature, extent and value (in the case of an order under subsection 31 (7) of the *Proceeds of Crime Act 1987* as at the time when the order is made) of the applicant's interest; and

SCHEDULE 2—continued

- *(b) directing the Commonwealth to transfer the interest to the applicant.
 *(c) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value of the interest as so declared by the court.
 *(d) declaring that section 30 of the *Proceeds of Crime Act 1987* shall cease to operate in relation to the interest if payment is made in accordance with section 33 of that Act.
- The application has been set down for *mention/*hearing in the (*name and location of court*) on
 19 at * a.m./* p.m.

SCHEDULE

The property to which this notice relates is as follows:

(*specify property*)

Dated 19 .

.....
 *Applicant giving notice/
 *solicitor

*Omit if not applicable.

NOTES

5 September/

1. Notified in the *Commonwealth of Australia Gazette* on 6 1989.
2. Statutory Rules 1987 No. 224.