

Proceeds of Crime Amendment Regulations 2000 (No. 1) 2000 No. 276

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 276

Issued By the Authority of the Minister for Justice and Customs

Proceeds of Crime Act 1987

Proceeds of Crime Amendment Regulations 2000 (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.

Regulation 14 of the Proceeds of Crime Regulations 1987 (the Regulations) concerns the annual fee payable to the Official Trustee for the management of the Confiscated Assets Reserve.

The Confiscated Assets Reserve is established under section 34A of the *Proceeds of Crime Act 1987* (the Act). Section 34B of the Act provides for payments to be made into the Confiscated Assets Reserve in amounts equal to the proceeds of confiscated assets and other payments connected with criminal matters, such as money paid to the Commonwealth under pecuniary penalty orders. Section 34C of the Act lists the purposes for which the Confiscated Assets Reserve is to be used.

One of those purposes is to pay the prescribed annual management fee to the Official Trustee in accordance with the Regulations: see subparagraph 34C(1)(a)(iv).

The purpose of the Regulations is to increase the annual management fee to the Official Trustee to take account of the goods and services tax (GST).

The prescribed annual management fee for the purposes of subparagraph 34C(1)(a)(iv) of the Act is currently \$10,000, as per subregulation 14(1) of the Regulations. Under subregulation 14(2) of the Regulations, the prescribed annual management fee is payable on 27 December each year. The fee is paid in arrears.

The Insolvency Trustee Service Australia (ITSA) advised that regulation 14 of the Regulations should be amended to take into account the impact of the GST which came into operation on 1 July 2000.

ITSA is required to have regard to the Australian Consumer and Competition Commission's (ACCC) Pricing Guidelines and the Commonwealth Agency Pricing Guidelines in determining the GST adjustment to prices of services it provides. In essence, the ACCC Guidelines requires that price changes as a result of the GST should take into account the 10% GST but also reductions in costs arising from the removal of wholesale sales tax and other embedded savings expected to flow from reduced transport costs, etc. In addition, these guidelines restrict price increases to a maximum of 10% including legitimate compliance costs incurred by the agency.

The Commonwealth Agency Pricing Guidelines require agencies to adhere to the ACCC guidelines and sets specific requirements for proposed price increases of 8.5% or more.

Having regard to those matters, ITSA advised that the amount of the prescribed annual management fee should be increased by 8.4%.

For the purpose of calculating the fee payable on 27 December 2000, the new Regulations provide that 8.4% increase applies only to the period between 1 July 2000 and 27 December 2000. The 8.4% increase applies in full for each year thereafter.

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 replaces the heading to regulation 14 to accurately reflect that the annual fee is for the purpose of managing the Confiscated Assets Reserve established under section 34A of the Act.

Item 2 replaces of the current regulation 14 with three new subregulations.

Subregulation 14(1) provides that the annual fee payable on 27 December 2000 is \$10 413. This has been calculated to take into account the imposition of the GST from 1 July 2000. That is, the GST is applicable during the 180 day period from 1 July 2000 to 27 December 2000.

Subregulation 14(1A) provides that the annual fee payable on 27 December 2001, and for each subsequent year, is \$10 840. In that case, the GST is applicable during whole twelve month periods.

Subregulation 14(1C) provides that the annual fee is the price of a taxable supply within the meaning of A *New Tax System (Goods and Services) Act 1999* ('the GST Act'). The proposed amendment is necessary to make the language of regulation accord with terminology under the GST Act. Under the GST Act, it is necessary to determine the price of a taxable supply before determining the GST of that taxable supply.

The regulations commenced on gazettal.