



# Proceeds of Crime Regulations 2002

**Statutory Rules 2002 No. 259 as amended**

made under the

*Proceeds of Crime Act 2002*

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This compilation was prepared on 7 September 2004  
taking into account amendments up to SR 2004 No. 293

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## **Part 1 Preliminary**

### **1 Name of Regulations** [see Note 1]

These Regulations are the *Proceeds of Crime Regulations 2002*.

### **2 Commencement**

These Regulations commence on 1 January 2003.

*Note* If, on the commencement of the *Proceeds of Crime Act 2002*, regulations for the purposes of certain provisions in that Act are not in force, then regulations made for a corresponding provision of the *Proceeds of Crime Act 1987* are in force for those purposes until new regulations are made — see Item 26 of Schedule 7 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

### **3 Definitions**

In these Regulations:

*Act* means the *Proceeds of Crime Act 2002*.

### **4 Declaration of State and self-governing Territory laws — definition of corresponding law**

For the definition of ***corresponding law*** in section 338 of the Act, each of the following laws is declared to be a law that corresponds to the Act:

- (a) *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) **Confiscation Act 1997** of Victoria;
- (d) *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (da) *Crimes (Confiscation) Act 1989* of Queensland, as in force immediately before its repeal by the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (e) *Criminal Assets Confiscation Act 1996* of South Australia;

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- (f) *Criminal Property Confiscation Act 2000* of Western Australia;
- (g) *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (h) *Criminal Property Forfeiture Act 2002* of the Northern Territory;
- (i) *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory, as in force immediately before its repeal by the *Criminal Property Forfeiture (Consequential Amendments) Act 2002* of the Northern Territory;
- (j) *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;
- (k) *Proceeds of Crime Act 1991* of the Australian Capital Territory, as in force immediately before its repeal by the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory.

**5 Declaration — definition of interstate forfeiture order**

For the definition of *interstate forfeiture order* in section 338 of the Act, each of the following kinds of order is declared to be within that definition:

- (a) assets forfeiture order under section 22 of the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) forfeiture order under subsection 18 (1) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) forfeiture order under Division 1 of Part 3, and civil forfeiture order under Part 4, of the **Confiscation Act 1997** of Victoria;
- (d) forfeiture order under subsection 7 (1) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria that is continued in effect under subsection 157 (6) of the **Confiscation Act 1997** of Victoria;
- (e) forfeiture order under subsection 23 (1) of the *Crimes (Confiscation) Act 1989* of Queensland;
- (f) forfeiture order made under section 8 or 9 of the *Criminal Assets Confiscation Act 1996* of South Australia;

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- (g) crime-used property substitution declaration under section 22 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (h) declaration of confiscation under section 30 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (i) forfeiture order under subsection 10 (1) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia that is continued in effect under subsection 7 (1) of the *Criminal Property Confiscation (Consequential Provisions) Act 2000* of Western Australia;
- (j) forfeiture order under section 16 of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (k) forfeiture order under subsection 5 (1) of the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory;
- (l) forfeiture order under subsection 19 (1) of the *Proceeds of Crime Act 1991* of the Australian Capital Territory.

**6 Declaration — definition of interstate pecuniary penalty order**

For the definition of *interstate pecuniary penalty order* in section 338 of the Act, each of the following kinds of order is declared to be within that definition:

- (a) proceeds assessment order under section 27 of the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) pecuniary penalty order under subsection 24 (1) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales and drug proceeds order under subsection 29 (1) of that Act;
- (c) pecuniary penalty order under Part 8 of the **Confiscation Act 1997** of Victoria;
- (d) pecuniary penalty order under subsection 12 (1) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria that is continued in effect under subsection 157 (6) of the **Confiscation Act 1997** of Victoria;
- (e) pecuniary penalty order under subsection 34 (1) of the *Crimes (Confiscation) Act 1989* of Queensland;

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- (f) pecuniary penalty order under paragraph 9 (4) (b) of the *Criminal Assets Confiscation Act 1996* of South Australia;
- (g) unexplained wealth declaration under section 12 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (h) criminal benefits declaration under section 16 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (i) crime-used property substitution declaration under section 22 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (j) pecuniary penalty order under subsection 15 (1) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia that is continued in effect under subsection 7 (1) of the *Criminal Property Confiscation (Consequential Provisions) Act 2000* of Western Australia;
- (k) pecuniary penalty order under section 21 of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (l) pecuniary penalty order under subsection 10 (1) of the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory;
- (m) pecuniary penalty order under subsection 25 (1) of the *Proceeds of Crime Act 1991* of the Australian Capital Territory.

**7 Declaration — definition of interstate restraining order**

For the definition of *interstate restraining order* in section 338 of the Act, each of the following kinds of order is declared to be within that definition:

- (a) restraining order under section 10 of the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) restraining order under subsection 43 (2) of the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) restraining order under section 18 of the **Confiscation Act 1997** of Victoria;

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- (d) restraining order under subsection 16 (3) of the *Crimes (Confiscation of Profits) Act 1986* of Victoria that is continued in effect under subsection 157 (6) of the **Confiscation Act 1997** of Victoria;
- (e) restraining order under subsection 40 (15) of the *Crimes (Confiscation) Act 1989* of Queensland;
- (f) restraining order under section 15 of the *Criminal Assets Confiscation Act 1996* of South Australia;
- (g) freezing notice under section 34 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (h) freezing order under section 43 of the *Criminal Property Confiscation Act 2000* of Western Australia;
- (i) restraining order made under subsection 20 (7) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia that is continued in effect under subsection 7 (1) of the *Criminal Property Confiscation (Consequential Provisions) Act 2000* of Western Australia;
- (j) restraining order under section 26 of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (k) restraining order under subsection 14 (2) of the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory;
- (l) restraining order under subsection 45 (2) of the *Proceeds of Crime Act 1991* of the Australian Capital Territory.

**8 Meaning of *narcotic substance***

For paragraph (b) of the definition of ***narcotic substance*** in section 338 of the Act, the following substances are specified:

- (a) a substance that is a ***narcotic drug*** within the meaning given by section 3 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*;
- (b) a substance that is a ***psychotropic substance*** within the meaning given by section 3 of the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*;
- (c) a substance specified in column 2 of an item in Part 1 of Schedule 1AA to the *Customs Regulations 1926*.

*Note* In addition to the substances specified in regulation 8, a substance that is a narcotic substance within the meaning of the *Customs Act 1901* is a

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narcotic substance for the purposes of the *Proceeds of Crime Act 2002* — see paragraph (a) of the definition of ***narcotic substance*** in section 338 of the Act and regulation 3 and the Schedule to the Customs (Narcotic Substances) Regulations.

**9 Specification — definition of *serious offence***

For paragraph (h) of the definition of ***serious offence*** in section 338 of the Act, the following indictable offences are specified:

- (a) an offence against any of the following provisions of the *Criminal Code*:
  - (i) section 73.1 (offence of people smuggling);
  - (ii) section 73.2 (aggravated offence of people smuggling (exploitation etc));
  - (iii) section 73.3 (aggravated offence of people smuggling (at least 5 people));
  - (iv) section 73.8 (making, providing or possessing a false travel or identity document);
  - (v) section 73.9 (providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats);
  - (vi) section 73.10 (providing or possessing a travel or identity document to be used by a person who is not the rightful user);
  - (vii) section 73.11 (taking possession of or destroying another person's travel or identity document);
  - (viii) section 270.3 (slavery offences);
  - (ix) section 270.6 (sexual servitude offences);
  - (x) section 270.7 (deceptive recruiting for sexual services);
- (b) an offence against any of the following provisions of the *Crimes Act 1914*:
  - (i) section 50BA (sexual intercourse with child under 16);
  - (ii) section 50BB (inducing child under 16 to engage in sexual intercourse);
  - (iii) section 50BC (sexual conduct involving child under 16);

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- (iv) section 50BD (inducing child under 16 to be involved in sexual conduct);
- (v) section 50DA (benefiting from offence against Part IIIA of the *Crimes Act 1914*);
- (vi) section 50DB (encouraging offence against Part IIIA of the *Crimes Act 1914*).

## **Part 2                      The confiscation scheme**

### **Division 2.1              Pecuniary penalty orders**

#### **10              Penalty amounts exceeding court's jurisdiction — certificate**

- (1) For subsection 144 (1) of the Act, the particulars that must be contained in a certificate are:
  - (a) the name of the court that made the pecuniary penalty order;
  - (b) the date of the order;
  - (c) the amount of money that is to be paid under the order;
  - (d) the name of the person who must pay the amount.
- (2) For subsection 144 (2) of the Act, the certificate may be registered in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the pecuniary penalty order, by filing it in that court.

### **Division 2.2              Literary proceeds orders**

#### **11              Literary proceeds amounts exceeding the court's jurisdiction — certificate**

- (1) For subsection 171 (1) of the Act, the particulars that must be contained in a certificate are:
  - (a) the name of the court that made the literary proceeds order;
  - (b) the date of the order;
  - (c) the amount of money that is to be paid under the order;
  - (d) the name of the person who must pay the amount.
- (2) For subsection 171 (2) of the Act, the certificate may be registered in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the literary proceeds order, by filing it in that court.

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## **Part 3                      Information gathering**

### **12                      Approved examiners**

- (1) For paragraph 183 (4) (a) of the Act, the class of people specified is the class that includes a person:
  - (a) to whom subregulation (2) applies; and
  - (b) whose name is on a register kept by the Minister for the purposes of section 183 of the Act.
- (2) This subregulation applies to the following persons:
  - (a) a person who is:
    - (i) a presidential member of the Administrative Appeals Tribunal established under the *Administrative Appeals Tribunal Act 1975*; or
    - (ii) a non-presidential member of that Tribunal who is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory, and has been so enrolled for at least 5 years;
  - (b) a person who has held the office of judge in the Supreme Court, District Court or County Court of a State or Territory and has stated, in writing, that he or she is willing to be an approved examiner;
  - (c) a person who has held the office of magistrate and has stated, in writing, that he or she is willing to be an approved examiner.

### **13                      Approved form — examination notice**

For section 185 of the Act, the examination summons must be in accordance with Form 1 in Schedule 1.

## **Part 4                      Administration**

### **Division 4.1              Powers and duties of the Official Trustee**

#### **14              Costs etc payable to Official Trustee**

For paragraph 288 (1) (a) of the Act, there is payable to the Official Trustee an amount equal to the amount of costs, charges and expenses incurred in connection with the Official Trustee's exercise of powers and performance of functions or duties under the Act or under Part VI of the Mutual Assistance Act.

#### **15              Remuneration of Official Trustee**

- (1) For paragraph 288 (1) (b) of the Act, the amount payable to the Official Trustee for remuneration is as follows:
  - (a) for services performed by a person who is an SES employee, or an acting SES employee, in the Australian Public Service — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (a) of the *Bankruptcy Regulations 1996*;
  - (b) for services performed by a person who is an Insolvency and Trustee Officer Grade 2, or occupies an equivalent or higher position in the Australian Public Service (other than a person to whom paragraph (a) applies) — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (b) of the *Bankruptcy Regulations 1996*;
  - (c) for services performed by a person who is an Insolvency and Trustee Officer Grade 1, or occupies an equivalent or lower position in the Australian Public Service — the amount for each hour or part of an hour prescribed by paragraph 16.07C (3) (d) of the *Bankruptcy Regulations 1996*.
- (2) In addition to the amount of remuneration mentioned in subregulation (1), there is payable to the Official Trustee, because of the goods and services tax attaching to the services

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performed, an amount equal to 8.4% of the amount worked out under that subregulation.

*Note* The result is the price of the taxable supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*. The component added by this subregulation is equivalent to the amount of goods and services tax that will be payable on the Official Trustee's fees.

## **Division 4.2 Confiscated Assets Account**

### **16 Identity of amounts credited to Confiscated Assets Account**

- (1) For subsection 296 (2) of the Act, the following amounts credited to the Confiscated Assets Account are to be identified as distributable funds:
  - (a) amounts mentioned in paragraph 296 (1) (b) of the Act, other than amounts to be paid under an interstate forfeiture order or interstate pecuniary penalty order;
  - (b) amounts mentioned in any of paragraphs 296 (1) (e) and (f) and 296 (3) (a) to (h) and (k) to (p).
- (2) For subsection 296 (2) of the Act, the following amounts credited to the Confiscated Assets Account are to be identified as suspended funds:
  - (a) amounts mentioned in paragraph 296 (1) (b) of the Act that are to be paid under an interstate forfeiture order or interstate pecuniary penalty order;
  - (b) amounts mentioned in any of paragraphs 296 (1) (c), (d) and (g) and 296 (3) (i) and (j).

### **17 Annual management fee for Confiscated Assets Account**

- (1) For paragraph 297 (1) (f) of the Act, an annual management fee of \$11 160 is payable for the 2003 calendar year.
- (2) The fee specified in subregulation (1):
  - (a) is in addition to the fee prescribed by subregulation 14 (1A) of the *Proceeds of Crime Regulations 1987*; and
  - (b) is payable by 30 December 2004.

- (3) For paragraph 297 (1) (f) of the Act, the annual management fee of \$22 000 is specified for the 2004 calendar year and for each later calendar year.
- (4) The fee specified in subregulation (3) is payable within 28 days after 27 December in the year to which the fee relates.
- (5) A fee mentioned in this regulation is the price of the taxable supply within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*.

## **18 Notice by AFP of possible claims under the equitable sharing program**

- (1) In this regulation:
  - condemned goods*** has the meaning given by subsection 208DA (1) of the *Customs Act 1901*.
  - narcotic goods*** has the meaning given by subsection 4 (1) of the *Customs Act 1901*.
  - narcotic-related goods*** has the meaning given by subsection 4 (1) of the *Customs Act 1901*.
  - property*** means money or proceeds, as the case requires, mentioned in paragraph 296 (3) (l) or (m) of the Act.
- (2) As soon as practicable after narcotic-related goods (other than narcotic goods) are condemned or are taken to be condemned, an AFP member must give notice in writing to the Official Trustee if the member considers that the condemned goods are property in respect of which a claim may be made under the equitable sharing program.
- (3) The notice must include:
  - (a) the name of the claimant State or self-governing Territory; and
  - (b) the percentage of the value of the property that is likely to be payable in respect of the claim; and
  - (c) other brief particulars of the claim.

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**19 Notice by DPP of possible claims under the equitable sharing program**

- (1) In this regulation:

*property* means money, proceeds or an amount, as the case requires, mentioned in paragraph 296 (3) (a), (c), (e), (f), (g), (n), (o) or (p) of the Act.

- (2) As soon as practicable after:

- (a) a restraining order, or a forfeiture order, in relation to property is made under the Act; or
- (b) property is forfeited to the Commonwealth under section 92 of the Act;

the DPP must give notice in writing to the Official Trustee if the DPP considers that the property is property in respect of which a claim may be made under the equitable sharing program.

- (3) If the DPP:

- (a) applies to a court:

- (i) for a pecuniary penalty order under Part 2-4 of the Act; or
- (ii) for an order under section 243B of the *Customs Act 1901*; and

- (b) considers that a claim may be made under the equitable sharing program in respect of any amount that is, or may be, paid into the Confiscated Assets Account as a result of the order;

the DPP must, as soon as practicable after making the application, give notice in writing to the Official Trustee accordingly.

- (4) A notice under subregulation (2) or (3) must include:

- (a) the name of the claimant State or self-governing Territory; and
- (b) the percentage of the property likely to be payable in respect of the claim; and
- (c) other brief particulars of the claim.

## **Schedule 1      Forms**

(regulation 13)

### **Form 1      Examination notice**

*Proceeds of Crime Act 2002*

NOTICE TO ATTEND EXAMINATION

TO *[Insert name and address of person]*

Under section 183 of the *Proceeds of Crime Act 2002* I require you to attend an examination at the time and place mentioned below.

TIME: *[Insert time of examination]*

PLACE: *[Insert place of examination]*

You must produce the following documents at the examination:  
*[Insert list of documents required (if any)]*

*[Insert signature of approved examiner]*

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*[Insert name of approved examiner]*

Approved examiner under section 183 of the *Proceeds of Crime Act 2002*.

*[Insert date]*

**Table of Statutory Rules**

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**Notes to the *Proceeds of Crime Regulations 2002***

**Note 1**

The *Proceeds of Crime Regulations 2002* (in force under the *Proceeds of Crime Act 2002*) as shown in this compilation comprise Statutory Rules 2002 No. 259 amended as indicated in the Tables below.

**Table of Statutory Rules**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i></b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
2002 No. 259	6 Nov 2002	1 Jan 2003	
2003 No. 100	4 June 2003	4 June 2002	—
2004 No. 293	7 Sept 2004	7 Sept 2004	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
Heading to Part 1 .....	ad. 2004 No. 293
R. 4	
Renumbered r. 12 .....	2004 No. 293
R. 5	
Renumbered r. 13 .....	2004 No. 293
R. 6	
Renumbered r. 4 .....	2004 No. 293
R. 4 .....	am. 2004 No. 293
R. 7	
Renumbered r. 5 .....	2004 No. 293
R. 8	
Renumbered r. 6 .....	2004 No. 293
R. 9	
Renumbered r. 7 .....	2004 No. 293
R. 8 .....	ad. 2004 No. 293
R. 10 .....	ad. 2003 No. 100
Renumbered r. 9 .....	2004 No. 293
<b>Part 2</b>	
Part 2 .....	ad. 2004 No. 293
<b>Division 2.1</b>	
R. 10 .....	ad. 2004 No. 293
<b>Division 2.2</b>	
R. 11 .....	ad. 2004 No. 293
<b>Part 3</b>	
Heading to Part 3 .....	ad. 2004 No. 293
R. 12 .....	rs. 2004 No. 293
(formerly r. 4)	
<b>Part 4</b>	
Part 4 .....	ad. 2004 No. 293
<b>Division 4.1</b>	
R. 14 .....	ad. 2004 No. 293
R. 15 .....	ad. 2004 No. 293
<b>Division 4.2</b>	
R. 16 .....	ad. 2004 No. 293
R. 17 .....	ad. 2004 No. 293
R. 18 .....	ad. 2004 No. 293
R. 19 .....	ad. 2004 No. 293

## **Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
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**Schedule 1**

Heading to Schedule 1.....	rs. 2004 No. 293
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