

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 182**

Issued by the Authority of the Minister for Justice and Customs

*Proceeds of Crime Act 2002*

*Proceeds of Crime Amendment Regulations 2006 (No. 2)*

Section 328 of the *Proceeds of Crime Act 2002* ('the Act') provides that the Governor-General may make regulations not inconsistent with the Act prescribing matters required or permitted by the Act to be prescribed or as may be necessary or convenient to be prescribed for carrying out or giving effect to the Act, including the applicable rate of fees and charges for the Official Trustee.

The purpose of the Act is to prevent criminals from being able to enjoy the fruits of their crimes, by depriving them of the proceeds and benefits gained from criminal conduct, and to prevent re-investment of those proceeds and benefits in further criminal activities. The Act creates a civil forfeiture regime enabling confiscation of unlawfully acquired property, without first requiring a conviction. This regime operates together with a conviction-based confiscation regime also under the Act.

The Official Trustee acts as a special trustee for government agencies, pursuant to court orders, particularly by locating, controlling and selling property under the Act.

Section 288 of the Act provides that regulations can be made relating to costs, charges and expenses incurred in connection with the Official Trustee's exercise of powers and performance of functions or duties under this Act or under Part VI of the *Mutual Assistance in Criminal Matters Act 1987* and in relation to the Official Trustee's remuneration in respect of those activities. The existing regulation 15 of the *Proceeds of Crime Regulations 2002* (the Principal Regulations) provides for the Official Trustee's remuneration by reference to provisions in subregulation 16.07C(3) of the *Bankruptcy Regulations 1996* (the Bankruptcy Regulations).

Subregulation 16.07C(3) of the *Bankruptcy Regulations 1996* (Bankruptcy Regulations) was repealed by item 7 of the *Bankruptcy Amendment Regulations 2006* (No. 2) on 1 July 2006. The Principal Regulations therefore no longer prescribe the remuneration of the Official Trustee.

The purpose of the new Regulations is to prescribe the rate of remuneration of \$50 for each period of 15 minutes or part thereof that is applicable to the Official Trustee.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation on the Regulations was undertaken under section 17 of the *Legislative Instruments Act 2003*. The Office of Regulation Review and the Insolvency and Trustee Services Australia were consulted on this policy initiative.

The Regulations commence on 14 July 2006.

Details of the *Proceeds of Crime Amendment Regulations 2006 (No. 2)*

Regulation 1 – Name of Regulations

Regulation 1 provides for the Regulations to be called the *Proceeds of Crime Amendment Regulations 2006 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides for the *Proceeds of Crime Amendment Regulations 2006 (No. 2)* to commence on 14 July 2006.

Regulation 3 – Amendment to *Proceeds of Crime Regulations 2002*

Regulation 3 provides for the *Proceeds of Crime Regulations 2002* (the existing Regulations) to be amended as set out in Schedule 1.

Schedule 1 Amendment

Schedule 1 amends the existing Regulations as follows:

*Item 1 – Regulation 15*

Item 1 substitutes the new regulation 15 for the existing regulation 15.

Existing regulation 15 provides for the Official Trustee's remuneration by reference to provisions in subregulation 16.07C(3) of the *Bankruptcy Regulations 1996* (the Bankruptcy Regulations).

Subregulation 16.07C(3) of the Bankruptcy Regulations was repealed by the *Bankruptcy Amendment Regulations 2006 (No. 2)*.

New regulation 15 provides for the Official Trustee's GST-inclusive remuneration in respect of the performance or exercise of functions, duties or powers to be \$50 for each 15 minute period or part thereof.