

1991—No. 14

**CONFISCATION OF PROCEEDS OF CRIME ACT 1989—  
REGULATION**

(Confiscation of Proceeds of Crime Regulation 1991)

NEW SOUTH WALES



*[Published in Gazette No. 11 of 11 January 1991]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Confiscation of Proceeds of Crime Act 1989, has been pleased to make the Regulation set forth hereunder.

JOHN DOWD  
Attorney General.

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**Citation**

1. This Regulation may be cited as the Confiscation of Proceeds of Crime Regulation 1991.

**Commencement**

2. This Regulation commences on 11 January 1991.

**Definitions**

3. In this Regulation:

"**Form**" means a Form set out in Schedule 1;

"**the Act**" means the Confiscation of Proceeds of Crime Act 1989;

"**the Northern Territory Act**" means the Crimes (Forfeiture of Proceeds) Act 1988 of the Northern Territory;

"**the Queensland Act**" means the Crimes (Confiscation of Profits) Act 1989 of Queensland;

"**the South Australian Act**" means the Crimes (Confiscation of Profits) Act 1986 of South Australia;

**"the Victorian Act"** means the Crimes (Confiscation of Profits) Act 1986 of Victoria;

**"the West Australian Act"** means the Crimes (Confiscation of Profits) Act 1988 of Western Australia.

#### **Giving of notices**

4. (1) A notice required to be given in proceedings under the Act is to be served personally or in such other manner as the court may direct.

(2) Personal service of a notice is to be effected in accordance with the Supreme Court Rules 1970.

#### **Notice of application for recovery of interest in forfeited property**

5. For the purposes of section 28 (4) of the Act, a notice is to be in or to the effect of Form 1 and is to be served on:

- (a) the Director of Public Prosecutions; and
- (b) the Public Trustee if the property is controlled by the Public Trustee pursuant to an order under section 43 (2) (d) of the Act; and
- (c) the Commissioner of Police if the application is made to a Local Court and
- (d) such other person (if any) as the court may direct.

#### **Notice of application for return of or access to property**

6. For the purposes of section 41 (6) of the Act, a notice is to be in or to the effect of Form 2 and is to be served on:

- (a) the Commissioner of Police; and
- (b) the Director of Public Prosecutions; and
- (c) such other person (if any) as the court may direct.

#### **Fees payable to Public Trustee in relation to property taken under restraining order**

7. For the purposes of section 53 of the Act, the fees which the Public Trustee is entitled to receive are those set out in Schedule 2.

#### **Filing fees not payable**

8. A filing fee is not to be charged for applications or other process under the Act.

**Forms generally**

9. The forms prescribed by this Regulation are to be adapted so as to comply with such requirements as to format and formal matters as are provided for by the rules of court or regulations applicable to the respective courts in connection with which the forms are used.

**Corresponding laws**

10. The following laws are declared to be corresponding laws for the purposes of the Act:

- (a) the Northern Territory Act;
- (b) the Queensland Act;
- (c) the South Australian Act;
- (d) the Victorian Act;
- (e) the West Australian Act.

**Interstate forfeiture orders**

11. An order in force under:

- (a) section 5 of the Northern Territory Act; or
- (b) section 8 of the Queensland Act; or
- (c) section 5 of the South Australian Act; or
- (d) section 7 of the Victorian Act; or
- (e) section 10 of the West Australian Act,

is declared to be an order within the definition of "interstate forfeiture order" in section 4 of the Act.

**Interstate pecuniary penalty orders**

12. An order in force under:

- (a) section 10 of the Northern Territory Act; or
- (b) section 13 of the Queensland Act; or
- (c) section 12 of the Victorian Act; or
- (d) section 15 of the West Australian Act,

is declared to be an order within the definition of "interstate pecuniary penalty order" in section 4 of the Act.

**Interstate restraining orders**

**13.** An order in force under:

- (a) section 14 of the Northern Territory Act; or
- (b) section 17 or 19 of the Queensland Act; or
- (c) section 6 of the South Australian Act; or
- (d) section 16 of the Victorian Act; or
- (e) section 20 of the West Australian Act,

is declared to be an order within the definition of "interstate restraining order" in section 4 of the Act.

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**SCHEDULE 1—FORMS**

(C1.5)

**FORM 1**

**NOTICE OF APPLICATION FOR RECOVERY OF INTEREST  
IN FORFEITED PROPERTY**

(Section 20 (4) of the Confiscation of Proceeds of Crime Act  
1989)

TO: (name) .....

(address) .....

.....

(name and address of applicant)

claims an interest in the property specified in the Schedule below which was forfeited to the State by Order of the (name of Court) on (date of Order) following the conviction of .....

(name of convicted person)

for .....  
(description of offence(s))

The applicant claims not to have been in any way involved in the commission of the offence(s) and has applied to the Court for an Order:

- (a) declaring the nature, extent and value of the applicant's interest in the property; and
- (b) (here specify any other Order(s) sought under section 28 of the Act).



**SCHEDULE**

(Description of property)

Filed: .....  
(Name of applicant or applicant's solicitor)

**SCHEDULE 2**

(C1. 7)

**FEES PAYABLE TO PUBLIC TRUSTEE**

The following fees are payable to the Public Trustee in respect of property of which the Public Trustee has taken control:

- (a) In the case of all property of which the Public Trustee has taken control:
  - (i) for each calendar year during which the Public Trustee has control of the property (whether or not the property is controlled for the whole of the year)—an amount equal to 0.2% of the value of the property (as fixed by the Public Trustee) or \$200, whichever is the greater amount; and
  - (ii) an amount equal to the actual costs incurred and disbursements made in relation to the property by the Public Trustee while in control of the property, including the costs of legal representation, the costs of obtaining legal advice and any other legal costs, agents' fees, valuation fees and costs incurred in relation to the operation of any business associated with the property.
- (b) In the case of property from which income is derived, in addition to the fees set out in paragraph (a):
  - (i) an amount equal to 5.25% of the gross income (not including income referred to in subparagraph (ii)) derived from the property; or
  - (ii) if income is received as rent and a cost has been incurred in respect of that income by the Public Trustee for agency charges—an amount equal to 2.5% of the income.
- (c) In the case of property which the Public Trustee is directed by a court to sell or dispose of, in addition to the fees set out in paragraphs (a) and (b), an amount equal to 2.5% of the gross amount realised by the sale or disposition of the property.

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**SCHEDULE 1—FORMS****SCHEDULE 2—FEES PAYABLE TO PUBLIC TRUSTEE**

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**EXPLANATORY NOTE**

The Classification of Proceeds of Crime Act 1989:

- (a) enables the court convicting a person of an offence prescribed by that Act as a serious offence to order forfeiture of property used in connection with, or derived from, the commission of the offence; and
- (b) enables the court convicting a person of such an offence to order payments or an additional penalty assessed on the basis of the benefits derived from the commission of the offence; and
- (c) enables the Supreme Court to restrain dealings with the property of a person who has been, or is about to be, charged with such an offence; and
- (d) provides for the control and disposal of property by the Public Trustee in order to satisfy orders made under the Act.

The Act also provides for the registration and enforcement in New South Wales of similar orders made under laws enacted in other States and the Territories that are declared to be laws corresponding to the New South Wales Act.

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The object of this Regulation is to make the necessary machinery provisions required for the operation of the New South Wales Act and the necessary provisions for the complementary legislative scheme, namely:

- (a) to declare Acts of the other States and the Northern Territory to be corresponding laws; and
  - (b) to prescribe the form, and the manner of service, of notices under the New South Wales Act; and
  - (c) to prescribe the kinds of orders made under the corresponding laws that are orders registrable and enforceable in New South Wales; and
  - (d) to prescribe the fees payable to the Public Trustee.
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