



Australian Capital Territory

Proceeds of Crime Regulations

Subordinate Law No. 50 of 1993¹

The Australian Capital Territory Executive makes the following Regulations under the *Proceeds of Crime Act 1991*.

Dated 20 December 1993.

TERRY CONNOLLY
Minister

BILL WOOD
Minister

Citation

1. These Regulations may be cited as the Proceeds of Crime Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears—
“the Act” means the *Proceeds of Crime Act 1991*.

Declaration of State laws—definition of “corresponding law”

3. For the purposes of the definition of “corresponding law” in subsection 4 (1) of the Act, each of the following laws is declared to be a law that corresponds to the Act:

- (a) Drug Trafficking (Civil Proceedings) Act 1990 of New South Wales;
- (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* 1988 of Western Australia;
- (f) *Crimes (Confiscation of Profits) Act* 1986 of South Australia;
- (g) *Crime (Confiscation of Profits) Act* 1993 of Tasmania;
- (h) *Crimes (Forfeiture of Proceeds) Act* 1988 of the Northern Territory.

Distributable funds

4. For the purposes of paragraph (a) of the definition of “distributable funds” in subsection 4 (1) of the Act, the following moneys paid into the Trust Fund are distributable funds:

- (a) money referred to in paragraph (a) of the definition of “proceeds of confiscated assets” in subsection 4 (1) of the Act;
- (b) money referred to in paragraphs (b) to (j) (inclusive) of the definition of “proceeds of confiscated assets” in subsection 4 (1) of the Act that is not an amount in respect of which notice has been given to the Public Trustee under subregulation 11 (2) or (3);
- (c) money referred to in paragraph 34 (1) (c) of the Act.

What is a government business enterprise?

5. For the purposes of the definition of “government business enterprise” in subsection 4 (1) of the Act, Totalcare Industries Limited is prescribed.

Declaration of orders—definition of “interstate forfeiture order”

6. For the purposes of the definition of “interstate forfeiture order” in subsection 4 (1) of the Act, each of the following kinds of orders is declared to be within the definition:

- (a) assets forfeiture orders under section 22 of the Drug Trafficking (Civil Proceedings) Act 1990 of New South Wales;
- (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) forfeiture orders under subsection 10 (1) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
- (f) orders that property be forfeited to the Crown made under subsection 5 (1) of the *Crimes (Confiscation of Profits) Act 1986* of South Australia;
- (g) forfeiture orders under subsection 16 (1) of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (h) 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”

7. For the purposes of the definition of “interstate pecuniary penalty order” in subsection 4 (1) of the Act, each of the following kinds of orders is declared to be within the definition:

- (a) proceeds assessment orders under section 27 of the Drug Trafficking (Civil Proceedings) Act 1990 of New South Wales;
- (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 21 (1) of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (g) 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”

8. For the purposes of the definition of “interstate restraining order” in subsection 4 (1) of the Act, each of the following kinds of orders is declared to be within the definition:

- (a) restraining orders under section 10 of the Drug Trafficking (Civil Proceedings) Act 1990 of New South Wales;
- (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 (3) 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) restraining orders under subsection 20 (7) of the *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
- (f) sequestration orders under subsection 6 (1) of the *Crimes (Confiscation of Profits) Act 1986* of South Australia;
- (g) restraining orders under subsection 26 (2) of the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
- (h) 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”

9. For the purposes of the definition of “narcotic substance” in subsection 4 (1) of the Act, each substance, or each substance of a kind, specified in an item in Schedule 1 is declared to be a substance to which the definition applies.

Suspended funds

10. For the purposes of paragraph (a) of the definition of “suspended funds” in subsection 4 (1) of the Act, the following amounts paid into the Trust Fund are suspended funds:

- (a) an amount equal to any amount payable in accordance with an order under subsection 21 (6) or 29 (6) of the Act of which the Public Trustee has been given notice;
- (b) if the DPP, pursuant to subregulation 12 (2), gives the Public Trustee a copy of a notice relating to an application for an order under subsection 21 (6) or 29 (6) of the Act and that application has not been finally determined—an amount equal to any amount that the Public Trustee considers is likely to become payable in accordance with an order under subsection 21 (6) or 29 (6) of the Act;
- (c) an amount that is referred to in paragraph 34 (1) (b) of the Act;
- (d) an amount in respect of which notice has been given to the Public Trustee under subregulation 11 (2) or (3).

Notice by DPP of possible claims under the equitable sharing program

11. (1) In this regulation—

“property” means money, proceeds or an amount, as each case requires, referred to in paragraph (b), (c), (d), (e), (f), (i) or (j) of the definition of “proceeds of confiscated assets” in subsection 4 (1) of the Act.

(2) As soon as practicable after—

- (a) a forfeiture order is made under subsection 19 (1) of the Act;
- (b) the forfeiture under section 28 of the Act of property within the meaning of that section; or
- (c) a restraining order is made under subsection 45 (2) of the Act;

the DPP shall give notice in writing to the Public Trustee if the DPP considers that the property to which the order relates, or that is forfeited, 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 for a pecuniary penalty order under Division 3 of Part II of the Act; or
- (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 Trust Fund as a result of the order;

the DPP shall, as soon as practicable, give notice in writing to the Public Trustee accordingly.

(4) A notice under subregulation (2) or (3) shall include—

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

DPP to give Public Trustee notice of certain applications and orders

12. (1) If the DPP is given notice of an order, or an application for an order, under subsection 19 (5) of the Act, the DPP shall, as soon as practicable after receiving the notice, advise the Public Trustee in writing of the order or application.

(2) If the DPP is given notice under subsection 21 (9) or 29 (8) of the Act of an application for an order, the DPP shall give the Public Trustee a copy of the notice.

Notice of application for court order regarding third party interest

13. (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; or
- (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 29 (8) of the Act, the following notice is prescribed, namely, a notice in accordance with Form 3 in Schedule 2.

Annual management fee for Trust Fund

14. (1) For the purposes of subparagraph 35 (1) (a) (ii) of the Act, the prescribed annual management fee is \$500.

(2) The annual management fee is payable by 10 January each year.

Determination of balance of distributable funds

15. In making a determination for the purposes of subsection 36 (1) of the Act, the Attorney-General shall have regard to the following matters:

- (a) any amount in respect of which notice has been given to the Public Trustee under subregulation 11 (2) or (3);
- (b) any amount payable to the Commonwealth or a State under subparagraph 35 (1) (a) (i) of the Act;
- (c) any amount of suspended funds in respect of which a payment has not been, but may be, made under subparagraph 35 (1) (a) (i) of the Act;
- (d) any amount that may be required to make a payment referred to in subparagraph 35 (1) (a) (iii) of the Act;
- (e) the amount of suspended funds that the Public Trustee declares under subsection 37 (3) of the Act to be distributable funds.

Remuneration of Public Trustee

16. (1) There is payable to the Public Trustee in respect of the performance or exercise by the Public Trustee of functions, duties or powers under the Act—

- (a) if the person engaged in performing or exercising such functions, duties or powers in the name of, or on behalf of, the Public Trustee is a Band 1 officer in the Senior Executive Service of the Australian Public Service or an officer of a higher classification in the Australian Public Service—remuneration at the rate of \$150.00 per hour for the time during which the officer is so engaged;
- (b) if the person engaged in performing or exercising such functions, duties or powers in the name of, or on behalf of, the Public Trustee is a Senior Officer Grade C in the Australian Public Service or an officer of a higher classification in the Australian Public Service, not being a classification referred to in paragraph (a)—remuneration at the rate of \$100.00 per hour for the time during which the officer is so engaged; or

- (c) if the person engaged in performing or exercising such functions, duties or powers in the name of, or on behalf of, the Public Trustee is an Administrative Service Officer, Class 6 in the Australian Public Service or an officer of a lower classification in the Australian Public Service—remuneration at the rate of \$75.00 per hour for the time during which the officer is so engaged.

(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 Public Trustee

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

SCHEDULE 1

Regulation 9

DECLARED NARCOTIC 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 produced when poppy straw has undergone a process for the 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)
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

SCHEDULE 1—continued

Column 1 Item No.	Column 2 Substances
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

SCHEDULE 1—continued

Column 1 Item No.	Column 2 Substances
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 (PHP,PCPY)
74	Sufentanil
75	Tenocyclidine (TCP)
76	2,3,4,5-Tetramethoxyamphetamine
77	Thiofentanyl
78	Tilidine
79	2,3,4-Trimethoxyamphetamine
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-alpha-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; (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

SCHEDULE 1—continued

Column 1 Item No.	Column 2 Substances
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> of the Commonwealth 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; (b) a structural isomer having the same constituent groups; (c) an alkaloid; (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; (ii) by the addition of hydrogen atoms to one or more unsaturated bonds; (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; (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> of the Commonwealth; or (g) is separately specified in an item in this Schedule.

SCHEDULE 2

FORMS

Form 1

Subregulation 13 (1)

THE AUSTRALIAN CAPITAL TERRITORY

Proceeds of Crime Act 1991

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

TO: The Attorney-General
Legislative Assembly for the Australian Capital Territory
1 Constitution Avenue
CANBERRA ACT 2601.
The Director of Public Prosecutions
AMP Building
Hobart Place
CANBERRA ACT 2601.

(*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 1991* 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 of court*) on 19 in respect of a conviction within the meaning of section 5 of the *Proceeds of Crime Act 1991* of (*name of convicted person*) for (*state offence(s)*) on (*date of conviction*) by (*name 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 Territory to transfer the interest to that person.
- *(c) declaring that there is payable by the Territory 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 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 13 (1)

THE AUSTRALIAN CAPITAL TERRITORY

Proceeds of Crime Act 1991

NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 21 (2) FOR AN
ORDER IN RESPECT OF AN INTEREST IN FORFEITED PROPERTY

TO: The Attorney-General
Legislative Assembly for the Australian Capital Territory
1 Constitution Avenue
CANBERRA ACT 2601.
The Director of Public Prosecutions
AMP Building
Hobart Place
CANBERRA ACT 2601.

(*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 1991* for an order under subsection 21 (6) of that Act in respect of an interest which was forfeited to the Territory under that Act.

The property to which this notice relates was forfeited by order of (*name of court*) on 19 following the conviction within the meaning of section 5 of the *Proceeds of Crime Act 1991* of (*name of convicted person*) for (*state offence(s)*).

This 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 Territory to transfer the interest to the applicant.
- *(c) declaring that there is payable by the Territory 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 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 3

Subregulation 13 (2)

THE AUSTRALIAN CAPITAL TERRITORY

*Proceeds of Crime Act 1991*NOTICE IN RESPECT OF AN APPLICATION UNDER SUBSECTION 29 (1) FOR AN
ORDER IN RESPECT OF AN INTEREST IN FORFEITED PROPERTY PREVIOUSLY
THE SUBJECT OF A RESTRAINING ORDER

TO: The Attorney-General
Legislative Assembly for the Australian Capital Territory
1 Constitution Avenue
CANBERRA ACT 2601.
The Director of Public Prosecutions
AMP Building
Hobart Place
CANBERRA ACT 2601.

(*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 29 (1) of the *Proceeds of Crime Act 1991* for an order under subsection 29 (6) or (7) of that Act in respect of an interest which was forfeited to the Territory under subsection 28 (1) of that Act.

The property to which this notice relates was forfeited under section 28 of the *Proceeds of Crime Act 1991* on 19 following the conviction within the meaning of section 5 of that Act of (*name of convicted person*) before (*name of court*) on 19 for a serious offence within the meaning of section 7 of that Act, namely (*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 (in the case of an order under subsection 29 (7) of the *Proceeds of Crime Act 1991*, as at the time when the order is made) of the applicant's interest; and
- *(b) directing the Territory to transfer the interest to the applicant.
- *(c) declaring that there is payable by the Territory to the applicant an amount equal to the value of the interest as so declared by the court.
- *(d) declaring that section 28 of the *Proceeds of Crime Act 1991* shall cease to operate in relation to the interest if payment is made in accordance with section 31 of that Act.

The application has been set down for *mention/*hearing in the (*name 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

NOTE

1. Notified in the ACT Gazette on 22 December 1993.