

1993

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PROCEEDS OF CRIME ACT 1991

PROCEEDS OF CRIME REGULATIONS 1993

EXPLANATORY MEMORANDUM

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PROCEEDS OF CRIME REGULATIONS NO. 50 OF 1993

Section 95 of the *Proceeds of Crime Act 1991* (the Proceeds Act) provides that the Executive may make Regulations for the purposes of the Act.

These Regulations prescribe, for the purposes of the Proceeds Act, corresponding State/Territory laws, interstate forfeiture orders, interstate pecuniary penalty orders and interstate restraining orders. The regulations define 'government business enterprise', 'distributable funds' and 'suspended funds'. They also prescribe forms of application in respect of third party interests, and a schedule of narcotic substances.

In relation to the Public Trustee's functions, duties and powers under the Act the regulations provide for the following payments: the annual management fee in relation to the Trust Fund; remuneration for officers of the Public Trustee; and reimbursement for costs, charges and expenses incurred.

Details of the Regulations are as follows:

Regulation 1 - is the short title.

Regulation 2 - provides definitions of words used in the Regulations.

Regulation 3 - declares the State and Territory laws which are 'corresponding laws' for the purposes of the definition of that term in subsection 4(1) of the Proceeds Act. The definition of 'corresponding law' identifies those State and Territory enactments which correspond to the Proceeds Act and which consequently become enforceable in the Australian Capital Territory.

Regulation 4 - The Proceeds Act provides for the establishment of a Confiscated Assets Trust Fund, a fund into which will be paid moneys recovered under the Act. The money in the Trust Fund will be distributed in two stages and with two purposes. First, payments will be made to meet commitments such as payments to States/Territories under the equitable sharing program. The money required for these purposes is described as 'suspended funds' (Regulation 10 refers). Second, the remaining funds are described as 'distributable funds' and this regulation defines them. These funds will be available for distribution, at the discretion of the Minister, to the purposes listed in subsection 36(2) of the Proceeds Act.

Regulation 5 - The Proceeds Act provides that certain payments may be made to 'government business enterprises' out of the Trust Fund. This regulation defines what is to be a 'Government Business Enterprise'

Regulation 6 - The Proceeds Act empowers the Court to order that property shall be forfeited to the Territory. Each of the corresponding laws in State/Territory jurisdictions makes similar provision. Accordingly, the Proceeds Act provides for 'interstate forfeiture orders'. Where an order is made under a provision prescribed in this regulation that interstate forfeiture order will become enforceable in the Territory.

Regulation 7 - The Proceeds Act empowers the Court to make pecuniary penalty orders. The court must assess the value of the benefits derived by a convicted person as a result of having engaged in the criminal activity. A pecuniary penalty, corresponding in amount to this benefit, may then be imposed and that order becomes enforceable. Each of the corresponding laws in State/Territory jurisdictions makes similar provision. Accordingly, the Proceeds Act provides for 'interstate pecuniary penalty orders'. Where an order is made under a provision prescribed in this regulation that interstate pecuniary penalty order becomes enforceable in the Territory. There is no reference to the South Australian Act in this regulation because the South Australian Act, the Crimes (Confiscation of Profits) Act 1986 does not contain a procedure which corresponds with enactments in the other jurisdictions.

Regulation 8 - The Proceeds Act provides for the making of restraining orders which are designed to restrain dealings with property in anticipation of a future pecuniary penalty order or confiscation order. Each of the corresponding laws in State/Territory jurisdictions makes similar provision. Accordingly, the Proceeds Act provides for 'interstate restraining orders'. Where an order is made under a provision prescribed in this regulation that interstate restraining order will become enforceable in the Territory.

Regulation 9 - declares that the substances specified in the Schedule are 'narcotic substances' for the purposes of subparagraph (b) of the definition of narcotic substance in subsection 4(1) of the Proceeds Act.

Regulation 10 - See explanation at Regulation 4.

Regulation 11 - provides that the Director of Public Prosecutions will give notice to the Public Trustee of possible claims under the equitable sharing program so that money may be allocated to 'suspended funds' to meet such claims.

Regulation 12 - provides that the Director of Public Prosecutions will give notice to the Public Trustee of certain applications and orders.

Regulation 13 - Under the Proceeds Act a person with an interest in property the subject of a forfeiture order may make an application for the court to make a declaration relating to that interest. This regulation prescribes three forms, contained in Schedule 2. Form 1 is a notice of an application under subsection 21(1); form 2 is a notice of an application under subsection 21(2);

form 3 is a notice of an application under subsection 29(1) of the Proceeds Act.

Regulation 14 - provides for an annual management fee, in relation to the Trust Fund, to be paid to the Public Trustee.

Regulation 15 - The Proceeds Act provides, at subsection 36(1), that the Attorney General will determine the amount of the balance of the distributable funds that is available for distribution at the time specified. This regulation specifies what the Attorney General shall have regard to.

Regulation 16 - The Public Trustee is a statutory corporation sole, established by the *Public Trustee Act 1985*. This Regulation inserts a scale of charges for the purposes of calculating the remuneration of the Public Trustee under section 59 of the Proceeds Act. Three rates of hourly remuneration are prescribed, differentiated according to the level in the Australian Public Service of the officer performing the function on behalf of the statutory corporation.

In the case of an officer at or above the classification of Band 1 in the Senior Executive Service ('SES') an hourly rate of \$150 will apply. If the officer is a Senior Officer Grade C or above, but is not an SES officer, an hourly rate of \$100 will apply. If the officer is an Administrative Service Officer Class 6 or below an hourly rate of \$75 will apply.

Regulation 17 - Section 59 of the Proceeds Act provides that regulations may make provision for the costs, charges and expenses of the Office of the Public Trustee and for remuneration of the Public Trustee. This regulation gives general effect to that section.

The Regulations will commence on gazettal.

Attorney General