



2003

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

**CONFISCATION OF CRIMINAL ASSETS REGULATIONS 2003
EXPLANATORY STATEMENT
SL2003-25**

**Circulated by the authority of
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Outline

The *Confiscation of Criminal Assets Regulations 2003* are made under the *Confiscation of Criminal Assets Act 2003* (the Act). The Act provides for a scheme of restraint and forfeiture of property, income, or any form of assets derived from, or used in, the commission of an offence.

The regulations identify and specify corresponding law in other jurisdictions to enable the restraint and forfeiture of property between, and across, jurisdictions. The Commonwealth's *Proceeds of Crime Act 2002* is not listed, as the Commonwealth Act already has jurisdiction throughout Australia and operates concurrently with state and territory legislation. The Commonwealth has declared the ACT's Act to be corresponding law to enable the Commonwealth jurisdiction to recognise orders made in the ACT.

The regulations prescribe narcotic substances that are to be included in the assessment of the value of benefits derived from criminal activity, as authorised by s 90 of the Act.

The regulations require police to notify the Director of Public Prosecutions when proposing to restrain property under the Act.

A rate to work out the annual management fee paid to the Public Trustee for its role in managing restrained and forfeited assets under the Act is set out in the regulations.

Regulations

Part 1

Regulations 1, 2 and 3

These are formal clauses which, respectively:

- state the name of the regulations;
- provide for the commencement of the regulation, namely upon the commencement of the *Confiscation of Criminal Assets Act 2003*; and
- stipulate that notes in the regulations are for explanatory purposes and are not regulations in themselves.

Part 2

Regulation 4

Regulation 4 completes the definition of *corresponding law* in the dictionary of the *Confiscation of Criminal Assets Act 2003*, by listing corresponding laws in states and the Northern Territory.

Regulation 5

Regulation 5(1) lists all of the provisions of corresponding laws which equate to a restraining order under the ACT's *Confiscation of Criminal Assets Act 2003*.

Regulation 5(2) includes orders of corresponding jurisdictions that have been made under consent or varied by the jurisdictions' courts. The order can be varied in terms of the order's directions, or in terms of the property covered by the order.

Regulation 5 completes the definition of *interstate restraining order* in the dictionary of the *Confiscation of Criminal Assets Act 2003*.

Regulation 6

Regulation 6(1) lists all of the provisions of corresponding laws which equate to an automatic forfeiture decision under the ACT's *Confiscation of Criminal Assets Act 2003*.

Regulation 6(2) includes orders of corresponding jurisdictions that have been varied by the jurisdictions' courts. The order can be varied in terms of the order's directions, or in terms of the property covered by the order.

Regulation 6 completes the definition of *interstate automatic forfeiture decision* in the dictionary of the *Confiscation of Criminal Assets Act 2003*.

Regulation 7

Regulation 7(1) lists all of the provisions of corresponding laws which equate to a civil forfeiture order under the ACT's *Confiscation of Criminal Assets Act 2003*.

Regulation 7(2) includes orders of corresponding jurisdictions that have been made under consent or varied by the jurisdictions' courts. The order can be varied in terms of the order's directions, or in terms of the property covered by the order.

Regulation 7 completes the definition of *interstate civil forfeiture order* in the dictionary of the *Confiscation of Criminal Assets Act 2003*.

Regulation 8

Regulation 8(1) lists all of the provisions of corresponding laws which equate to a conviction forfeiture order under the ACT's *Confiscation of Criminal Assets Act 2003*.

Regulation 8(2) includes orders of corresponding jurisdictions that have been made under consent or varied by the jurisdictions' courts. The order can be varied in terms of the order's directions, or in terms of the property covered by the order.

Regulation 8 completes the definition of *interstate conviction forfeiture order* in the dictionary of the *Confiscation of Criminal Assets Act 2003*.

Regulation 9

Regulation 9(1) lists all of the provisions of corresponding laws which equate to a penalty order under the ACT's *Confiscation of Criminal Assets Act 2003*.

Regulation 9(2) includes orders of corresponding jurisdictions that have been made under consent or varied by the jurisdictions' courts. The order can be varied in terms of the order's directions.

Regulation 9 completes the definition of *interstate penalty order* in the dictionary of the *Confiscation of Criminal Assets Act 2003*.

Part 3

Regulation 10

Regulation 10 requires a police officer to notify the Director of Public Prosecutions if the police officer proposes that property should be restrained. The regulation sets out what should be in the notice to the DPP.

Regulation 11

Division 7.3 of the Act enables the Court to assess the value of benefits derived by an offender, including the value of illegal drugs, for the purposes of making a penalty order. Section 90 of the Act defines *narcotic substance* by reference to the *Customs Act 1901* (Cwlth). The Customs Act has a schedule of narcotic substances which is out of date. Regulation 13 provides for a schedule of drugs not yet listed under the Customs Act, which can be used to assess the value of illegal drugs. The schedule augments the existing definition of *narcotic substance* and does not replace the Customs Act schedule.

Regulation 12

Regulation 12 sets out the method of calculating the Public Trustee's annual management fee, as authorised by section 132(1)(d) of the Act.

Schedule 1

Schedule 1 is the list of narcotic substances referred to in regulation 11.