

South Australia

# Criminal Assets Confiscation Regulations 2021

under the *Criminal Assets Confiscation Act 2005*

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## Contents

1	Short title
2	Commencement
3	Interpretation
4	Prescribed enforcement agencies
5	Declaration of institutions as financial institutions
6	Protected property
7	Declaration of recognised Australian forfeiture orders
8	Declaration of recognised Australian pecuniary penalty orders
9	Declaration of recognised Australian restraining orders
10	Declaration of foreign offences
11	Certificate of Magistrates Court
12	Prescribed form of notice of freezing order
13	Prescribed form of extension of freezing order
14	Prescribed form of cessation of freezing order
15	Prescribed form of examination notice
16	Prescribed form of duplicate warrant
17	Prescribed form of notice
18	Prescribed manner of giving notices etc
19	Prescribed forms may contain additional information
20	Prescribed rate

Schedule 1—Revocation of *Criminal Assets Confiscation Regulations 2006*

Legislative history

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### 1—Short title

These regulations may be cited as the *Criminal Assets Confiscation Regulations 2021*.

### 2—Commencement

These regulations come into operation on the day on which they are made.

### 3—Interpretation

In these regulations—

*Act* means the *Criminal Assets Confiscation Act 2005*;

*South Australia Police* means South Australia Police under the *Police Act 1998*.

#### 4—Prescribed enforcement agencies

For the purposes of the definition of *enforcement agency* in section 3(1) of the Act, South Australia Police is prescribed for the purposes of the Act.

#### 5—Declaration of institutions as financial institutions

For the purposes of the definition of *financial institution* in section 3(1) of the Act, an institution that carries on a business involving—

- (a) the acceptance of money on deposit or by way of investment; or
- (b) the acceptance of money for the purpose of securing it in a safety deposit box or other safe custody facility,

is declared to be a financial institution.

#### 6—Protected property

- (1) For the purposes of the definition of *protected property* in section 3(1) of the Act, the following is declared to be protected property:

- (a) moveable contents of premises;
- (b) personal effects;
- (c) animals and plants.

- (2) In this regulation—

*motor vehicle* has the same meaning as in the *Road Traffic Act 1961*;

*moveable contents* of premises means contents of premises (not being a fixture), other than the following:

- (a) artwork;
- (b) furniture that is 100 years old or older;
- (c) hydroponic equipment within the meaning of the *Hydroponics Industry Control Act 2009*;
- (d) jewellery (not including wedding rings);
- (e) cash (including foreign currency);
- (f) gold, silver, platinum and copper;
- (g) motor vehicles (not including wheelchairs);
- (h) boats;
- (i) trailers;
- (j) caravans;
- (k) firearms;
- (l) stock-in-trade or items used for business purposes;
- (m) packaged liquor that has not been opened;

*packaged liquor* has the same meaning as in the *Liquor Licensing Act 1997*;

*personal effect* means an item normally worn or carried on the person but does not include jewellery (other than wedding rings);

*premises* includes any structure, building, vessel or place (whether built on or not), and any part of any such structure, building, vessel or place.

## **7—Declaration of recognised Australian forfeiture orders**

For the purposes of the definition of *recognised Australian forfeiture order* in section 3(1) of the Act, the following orders are declared to be within that definition:

- (a) an assets forfeiture order under the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) a forfeiture order under the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) a forfeiture order or civil forfeiture order under the *Confiscation Act 1997* of Victoria;
- (d) a forfeiture order or special forfeiture order under the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (e) an old forfeiture order or old special forfeiture order within the meaning of the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (f) an order under the *Criminal Property Confiscation Act 2000* of Western Australia of a nature similar to a forfeiture order under the Act;
- (g) a forfeiture order under the *Crimes (Confiscation of Profits) Act 1993* of Tasmania;
- (h) a forfeiture order under the *Criminal Property Forfeiture Act 2002* of the Northern Territory;
- (i) a forfeiture order under the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory (as in force immediately before the repeal of that Act);
- (j) a forfeiture order under the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;
- (k) a forfeiture order under the *Proceeds of Crime Act 1991* of the Australian Capital Territory (as in force immediately before the repeal of that Act);
- (l) a forfeiture order under the *Proceeds of Crime Act 2002* of the Commonwealth;
- (m) a forfeiture order under the *Proceeds of Crime Act 1987* of the Commonwealth.

## **8—Declaration of recognised Australian pecuniary penalty orders**

For the purposes of the definition of *recognised Australian pecuniary penalty order* in section 3(1) of the Act, the following orders are declared to be within that definition:

- (a) a proceeds assessment order under the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) a drug proceeds order or pecuniary penalty order under the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;

- (c) a pecuniary penalty order under the *Confiscation Act 1997* of Victoria;
- (d) a pecuniary penalty order under the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (e) an old pecuniary penalty order within the meaning of the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (f) a criminal benefits order under the *Criminal Property Confiscation Act 2000* of Western Australia or other order under that Act of a nature similar to a pecuniary penalty order under the Act;
- (g) a pecuniary penalty order under the *Crimes (Confiscation of Profits) Act 1993* of Tasmania;
- (h) a criminal benefits declaration under the *Criminal Property Forfeiture Act 2002* of the Northern Territory;
- (i) a pecuniary penalty order under the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory (as in force immediately before the repeal of that Act);
- (j) a penalty order under the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;
- (k) a pecuniary penalty order under the *Proceeds of Crime Act 1991* of the Australian Capital Territory (as in force immediately before the repeal of that Act);
- (l) a pecuniary penalty order under the *Proceeds of Crime Act 2002* of the Commonwealth;
- (m) a pecuniary penalty order under the *Proceeds of Crime Act 1987* of the Commonwealth.

## **9—Declaration of recognised Australian restraining orders**

For the purposes of the definition of *recognised Australian restraining order* in section 3(1) of the Act, the following orders are declared to be within that definition:

- (a) a restraining order under the *Criminal Assets Recovery Act 1990* of New South Wales;
- (b) a restraining order under the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
- (c) a restraining order under the *Confiscation Act 1997* of Victoria;
- (d) a civil forfeiture restraining order under the *Confiscation Act 1997* of Victoria;
- (e) a restraining order under the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (f) an old restraining order within the meaning of the *Criminal Proceeds Confiscation Act 2002* of Queensland;
- (g) a freezing order under the *Criminal Property Confiscation Act 2000* of Western Australia;

- (h) a restraining order under the *Crimes (Confiscation of Profits) Act 1993* of Tasmania;
- (i) a restraining order under the *Criminal Property Forfeiture Act 2002* of the Northern Territory;
- (j) a restraining order under the *Crimes (Forfeiture of Proceeds) Act 1988* of the Northern Territory (as in force immediately before the repeal of that Act);
- (k) a restraining order under the *Confiscation of Criminal Assets Act 2003* of the Australian Capital Territory;
- (l) a restraining order under the *Proceeds of Crime Act 1991* of the Australian Capital Territory (as in force immediately before the repeal of that Act);
- (m) a restraining order under the *Proceeds of Crime Act 2002* of the Commonwealth;
- (n) a restraining order under the *Proceeds of Crime Act 1987* of the Commonwealth.

#### **10—Declaration of foreign offences**

- (1) For the purposes of paragraph (d) of the definition of *serious offence* in section 3(1) of the Act, a foreign offence triable by the United States Military Commission is declared to be within that definition.
- (2) In this regulation—

*United States Military Commission* means the United States Military Commission constituted under Title 10 USC Sec 948d of the *Military Commissions Act 2006* of the United States of America.

#### **11—Certificate of Magistrates Court**

- (1) For the purposes of section 14(2)(a) of the Act, the certificate issued by the Principal Registrar of the Magistrates Court must contain the following particulars in relation to the order:
  - (a) the matter number in the Magistrates Court;
  - (b) the date on which the order was made;
  - (c) the name and address of the parties to the proceedings in which the order was made;
  - (d) the amount to be paid pursuant to the order.
- (2) For the purposes of section 14(2)(b) of the Act, a certificate under that section may be registered by lodging the certificate in the District Court.

#### **12—Prescribed form of notice of freezing order**

For the purposes of section 19(2)(b) of the Act, a notice containing the following information is prescribed:

- (a) the date on which and time at which the order was made;
- (b) particulars of the account to which the order applies;
- (c) the terms of the order;

- (d) a statement specifying that the order takes effect on the date and at the time that the notice is given to the financial institution;
- (e) an explanation of the operation of section 21(1) of the Act.

### **13—Prescribed form of extension of freezing order**

For the purposes of section 21(5) of the Act, a notice to which a copy of the original freezing order has been annexed and that contains the following information is prescribed:

- (a) the date on which and time at which the order extending the duration of the original freezing order was made;
- (b) an explanation of the operation of section 21(6) of the Act.

### **14—Prescribed form of cessation of freezing order**

For the purposes of section 21(6) of the Act, a notice containing the following information is prescribed:

- (a) particulars of the order to which the notice relates;
- (b) a statement specifying the date on which and time at which the order ceased to apply.

### **15—Prescribed form of examination notice**

For the purposes of section 134(1)(a) of the Act, a notice containing the following information is prescribed:

- (a) the name of the person to whom the notice is addressed;
- (b) the court that made the examination order relating to the person and the date of that order;
- (c) a statement requiring the named person to attend an examination at a specified time and place;
- (d) a statement indicating that failure to attend the examination at the specified time and place is an offence under the *Criminal Assets Confiscation Act 2005*;
- (e) the name and telephone number of a contact person nominated by the DPP to handle any queries relating to the notice;
- (f) the identity of the person to whose affairs the examination relates;
- (g) if the notice requires the person to produce documents at the examination—a description of the documents.

### **16—Prescribed form of duplicate warrant**

For the purposes of section 173(4)(g) of the Act, the duplicate warrant must comply with the following requirements:

- (a) the duplicate warrant must specify that it is a duplicate warrant;
- (b) the duplicate warrant must specify—
  - (i) the date and time at which the applicant applied for the warrant by telephone, and the time and date at which that telephone call was terminated; and

- (ii) the date and time at which the duplicate warrant and the supporting affidavit were forwarded to the Magistrate who issued the warrant.

### **17—Prescribed form of notice**

For the purposes of section 174(5)(a) of the Act, the prescribed form of notice is any notice in writing containing the information specified in section 174(5)(a)(i) to (v) of the Act.

### **18—Prescribed manner of giving notices etc**

For the purposes of section 216 of the Act, the following additional manners of giving or serving a notice, order or other document are prescribed:

- (a) in the case of a notice, order or other document to be given to or served on a corporation—
  - (i) by leaving it for the corporation at the registered address of the corporation; or
  - (ii) by posting it to the corporation at the registered address of the corporation;
- (b) in any case—
  - (i) by a means indicated by the person as being an available means of service (such as by fax or by delivering it, addressed to the person, to the facilities of a document exchange); or
  - (ii) by any other means in accordance with Chapter 5 Part 2 of the *Uniform Civil Rules 2020* made under the *Supreme Court Act 1935*, the *District Court Act 1991* and the *Magistrates Court Act 1991* and as in force from time to time.

### **19—Prescribed forms may contain additional information**

If a provision of these regulations prescribes the form of any notice, order or other document required or authorised by the Act to be given to or served on a person, the notice, order or other document may contain information in addition to the information required to be included by these regulations.

### **20—Prescribed rate**

- (1) For the purposes of section 228 of the Act, the prescribed rate is a simple interest rate equal to 0.2 per cent less than the average of the cash rates applied by the Reserve Bank of Australia over the relevant period (expressed as an annual rate and applied with respect to the relevant period).
- (2) In this regulation—

***relevant period***, in relation to seized or forfeited money, means the period commencing on the date of the seizure or forfeiture and ending when the money is paid back to the person, or the person compensated in respect of the money, under the Act.

**Schedule 1—Revocation of *Criminal Assets Confiscation Regulations 2006***

The *Criminal Assets Confiscation Regulations 2006* are revoked.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2021	58	<i>Gazette 27.5.2021 p1492</i>	27.5.2021: r 2