

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL PROPERTY FORFEITURE REGULATIONS

As in force at 1 July 2010

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2010

CRIMINAL PROPERTY FORFEITURE REGULATIONS

Regulations under the *Criminal Property Forfeiture Act*

1 Citation

These Regulations may be cited as the *Criminal Property Forfeiture Regulations*.

2 Corresponding laws

A law specified in Schedule 1 is prescribed as a law that corresponds to the Act.

3 Interstate forfeiture orders and interstate restraining orders

An order specified in:

- (a) Part A of Schedule 2 is prescribed as an interstate forfeiture order; and
- (b) Part B of Schedule 2 is prescribed as an interstate restraining order.

4 Forms

- (1) A notice to a financial institution under section 14 of the Act is to be in accordance with Form 1 in Schedule 3.
- (2) An application under section 34 of the Act for a search warrant is to be in accordance with Form 2 in Schedule 3.
- (3) A search warrant under section 34 of the Act is to be in accordance with Form 3 in Schedule 3.
- (4) An application for an interim restraining order under section 40 of the Act is to be in accordance with Form 4 in Schedule 3.
- (5) An interim restraining order under section 40 of the Act is to be in accordance with Form 5 in Schedule 3.
- (6) A notice under section 47(1) of the Act about the making of a restraining order is to be in accordance with Form 6 in Schedule 3.

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- (7) A notice under section 50(4)(a) of the Act of the setting aside of a restraining order is to be in accordance with Form 7 in Schedule 3.
 - (8) A notice under section 51 of the Act of the extension of a restraining order is to be in accordance with Form 8 in Schedule 3.

5 Forms in relation to land

An instrument lodged with the Registrar-General under section 53(1)(a), 53(2)(a) or 102(1) of the Act is to be lodged in the appropriate form specified by the Registrar-General's directions under the *Land Title Act*.

Schedule 1 Corresponding laws

regulation 2

Commonwealth of Australia	<i>Proceeds of Crime Act 1987</i> <i>Proceeds of Crime Act 2002</i>
New South Wales	<i>Confiscation of Proceeds of Crimes Act 1989</i> <i>Criminal Assets Recovery Act 1990</i>
Queensland	<i>Criminal Proceeds Confiscation Act 2002</i> <i>Crimes (Confiscation of Profits) Act 1989</i>
South Australia	<i>Criminal Assets Confiscation Act 1996</i>
Tasmania	<i>Crime (Confiscation of Profits) Act 1993</i>
Victoria	<i>Confiscation Act 1997</i> <i>Crimes (Confiscation of Profits) Act 1986</i>
Western Australia	<i>Crimes (Confiscation of Profits) Act 1988</i> <i>Criminal Property Confiscation Act 2000</i>
Australian Capital Territory	<i>Proceeds of Crime Act 1991</i>

Schedule 2

regulation 3

Part A Interstate forfeiture orders

New South Wales

A forfeiture order under section 18(1), and a drugs proceeds order under section 29(1), of the *Confiscation of Proceeds of Crimes Act 1989*.

An assets forfeiture order under section 22 or 23 of the *Criminal Assets Recovery Act 1990*.

Queensland

A forfeiture order under section 151, and a special forfeiture order under section 202, of the *Criminal Proceeds Confiscation Act 2002*.

South Australia

A forfeiture order under section 8 or 9 of the *Criminal Assets Confiscation Act 1996*.

Tasmania

A forfeiture order under section 16(1) of the *Crime (Confiscation of Profits) Act 1993*.

Victoria

A forfeiture order under section 33, 35, 36, 38 or 39 of the *Confiscation Act 1997*.

A forfeiture order under section 7(1) of the *Crimes (Confiscation of Profits) Act 1986*.

Western Australia

A forfeiture order under section 10 of the *Crimes (Confiscation of Profits) Act 1988*.

An unexplained wealth declaration under section 12, a criminal benefits declaration under section 16, a crime-used property substitution declaration under section 22 and a confiscable property declaration under section 28 or 30 of the *Criminal Property Confiscation Act 2000*.

Australian Capital Territory

A confiscation order under section 17, and a forfeiture order under section 19(1), of the *Proceeds of Crime Act 1991*.

Part B Interstate Restraining Orders

New South Wales

A restraining order under section 43 of the *Confiscation of Proceeds of Crimes Act 1989*.

A restraining order under section 10, 12 or 14 of the *Criminal Assets Recovery Act 1990*.

Queensland

A restraining order under section 122, and other orders made in relation to a restraining order under section 129 or 130, of the *Criminal Proceeds Confiscation Act 2002*.

South Australia

A restraining order under section 15 of the *Criminal Assets Confiscation Act 1996*.

Tasmania

A restraining order under section 26(2) of the *Crime (Confiscation of Profits) Act 1993*.

Victoria

A restraining order under section 14, 15, 16, or 18 of the *Confiscation Act 1997*.

A restraining order under section 16 of the *Crimes (Confiscation of Profits) Act 1986*.

Western Australia

A restraining order under section 20 of the *Crimes (Confiscation of Profits) Act 1988*.

A freezing notice under section 34, or a freezing order under section 43, of the *Criminal Property Confiscation Act 2000*.

Australian Capital Territory

A restraining order under section 45 or 46, and an order under section 51 varying an order made under section 45, of the *Proceeds of Crime Act 1991*.

Schedule 3

FORM 1

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(1)

REQUIREMENT FOR INFORMATION FROM FINANCIAL INSTITUTION

To: *[name of financial institution]*
(*the financial institution*),

of: *[address of the financial institution]*

TAKE NOTICE that under section 14 of the *Criminal Property Forfeiture Act*, you are required to do the following:

- *1. State whether or not *[name of person]* holds an account with the financial institution and, if the answer is "yes", in relation to each account that is held, identify the account by stating:
 - (a) the full title and number of the account; and
 - (b) the type of account.
- *2. State whether or not the following account is held with the financial institution:
Account description .
- *3. Identify the following account(s) held with the financial institution, including by stating the type of account:
Account description .
- *4. Identify the holder(s) of the following account(s) held with the financial institution:
Account description .
- *5. State whether or not any other kind of transaction between the financial institution and *[name of person]* has existed, is intended to exist and/or does exist and if so, in relation to each transaction:
 - (a) identify the transaction; and

(b) state whether the transaction has taken place, is taking place or is to take place.

*6. State whether *[name of person]*
has applied to the financial institution to open an account, borrow money or enter into any other type of transaction or arrangement with the institution.

7. State the balance of any relevant account and indicate whether the account is current or closed.

NOTE: YOU MUST COMPLY WITH THIS REQUIREMENT.

Maximum penalty: 5 000 penalty units.

The terms **account**, **financial institution** and **transaction** are defined in section 5 of the Act.

Dated 20 .

Signed *for Director of Public Prosecutions / *by member of Police Force

* *[delete if not applicable]*

FORM 2

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(2)

APPLICATION UNDER SECTION 34 FOR SEARCH WARRANT

I, _____, a member of the Police Force of the Northern Territory:

(a) make *oath / *affirmation and state that I suspect that *property liable to forfeiture under the Act / *property tracking documents is or are in or on, or will be in or on within the next 72 hours, the following premises:

(b) state that the grounds for my suspicion are as follows:

_____ ; and

(c) under section 34 of the *Criminal Property Forfeiture Act*, apply for a search warrant in relation to the premises.

Applicant

*Sworn / *Affirmed before me on _____ [date] at _____ [place]

*If application was made by *telephone / *other electronic means [specify], Justice to complete details and sign his/her copy.

Application received on the _____ day of _____ 20____, at _____ o'clock by _____, a Justice of the Peace for the Northern Territory of Australia.

Signed
Justice of the Peace

* [delete if not applicable]

FORM 3

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(3)

SEARCH WARRANT UNDER SECTION 34

I, _____, a Justice of the Peace, having received an application under section 34 of the *Criminal Property Forfeiture Act* by a member of the Police Force of the Northern Territory and being satisfied that there are reasonable grounds for suspecting that *property liable to forfeiture under the Act / *property tracking documents is or are on the premises described below, or will be in or on the premises within the next 72 hours, issue this search warrant authorising a member of the Police Force, using any necessary force and with any assistance the member thinks necessary, at any time of night or day on or within 30 days after the date of this warrant, to do any or all of the following:

- (a) enter the premises;
- (b) search the premises;
- (c) search any baggage, package or other thing found in or on the premises;
- (b) detain any person in or on the premises and search the person in accordance with section 35 of the Act.

Description of premises:

Justice of the Peace

Date and time:

Note: The *Criminal Property Forfeiture Act* defines **premises** as including a vessel, aircraft, vehicle, structure, building and any land or place whether built on or not.

* [delete if not applicable]

FORM 4

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(4)

**APPLICATION UNDER SECTION 40 FOR
INTERIM RESTRAINING ORDER**

I, _____, a *member of the Police Force of the Northern Territory / *person authorised by the Director of Public Prosecutions:

(a) under section 40 of the *Criminal Property Forfeiture Act*, apply for an interim restraining order in relation to:

*the property of _____ *[person]*;

*the following property:

(b) state that an application is to be made as soon as reasonably practicable to the *Local Court / *Supreme Court under section 43 or 44 of the Act for the restraint of the property; and

(c) state that the circumstances that justify this application for an interim restraining order in relation to the property are as follows:

Applicant:

Date:

If application was made by *telephone / *other electronic means *[specify]*, Magistrate to complete details and sign his/her copy.

Application received on the _____ day of _____ 20____, at _____ o'clock by _____, a Magistrate of the Northern Territory of Australia.

Signed

* *[delete if not applicable]*

FORM 5

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(5)

INTERIM RESTRAINING ORDER UNDER SECTION 40

I, _____, a Magistrate of the Northern Territory of Australia, having heard an application under section 40 of the *Criminal Property Forfeiture Act* by a member of the *Police Force of the Northern Territory / *person authorised by the Director of Public Prosecutions and being satisfied of the matters set out in section 40(1)(c) and (d) of the Act, order that, unless this order is sooner varied or revoked, for a period of _____ [not exceeding 72 hours], expiring at _____ AM/PM on _____ [date], *the property of _____ [person] is restrained; or

* the following property is restrained:

And I further order that:

[Here describe any other restraints or orders imposed, for example: "The property may continue to be used for residential purposes by the respondent/certain named persons"]

Signed by Magistrate:

Date and time:

While this order is in force, no person may deal with the property except in accordance with the Act.

The maximum penalty for dealing with restrained property is:

For a natural person – 1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years.

For a body corporate – 5 000 penalty units or the value of the property (whichever is greater).

Dealing includes selling the property or giving it away, disposing of the property in any other way, moving or using the property, and other matters set out in section 56(1) of the Act.

* [delete if not applicable]

FORM 6

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(6)

NOTICE OF RESTRAINING ORDER

To: [name]

of: [address]

I, _____, a *member of the Police Force of the Northern Territory / *person authorised by the Director of Public Prosecutions, give notice that:

- a restraining order has been made by the *Local Court / *Supreme Court under the *Criminal Property Forfeiture Act* for the restraint of the property specified below;
- a copy of the order is attached;
- the order applies to and including [date];
- while the order is in force, no person may deal with the property except in accordance with the Act;

The maximum penalty for dealing with restrained property is:

For a natural person – 1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years;

For a body corporate – 5 000 penalty units or the value of the property (whichever is greater);

- the property that is restrained under the order is liable to forfeiture under the Act; and
- you can object to the restraint of part or all of the property by filing an objection in the court that made the order within 28 days after the service of this notice.
- **NOTE:** You are required under section 48 of the *Criminal Property Forfeiture Act* to lodge a statutory declaration in the court that made the order within 7 days after being served with this notice. The declaration is to state the name and, if known, the address of any other person of whom you are aware who has, may have or claims to have an interest in any of the property that is restrained under the order. If you are not

aware of any other person who has, may have or claims to have an interest in any of the property, you must make a statutory declaration containing a statement to that effect.

The maximum penalty for failing to make a statutory declaration is 2 000 penalty units or imprisonment for 2 years.

Particulars of property in relation to which the order is made:

Note: Section 49(2) of the *Criminal Property Forfeiture Act* provides that income or other property that is derived from property that is subject to this order is taken to be part of the property and is also restrained under this order.

Dated 20 .

Signed *for Director of Public Prosecutions / *by member of Police Force

* [delete if not applicable]

FORM 7

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(7)

NOTICE OF SETTING ASIDE OF RESTRAINING ORDER

To: [name]

of: [address]

I, _____, a *member of the Police Force of the Northern Territory / *person authorised by the Director of Public Prosecutions, give notice that an order has been made by the *Local Court / *Supreme Court under the *Criminal Property Forfeiture Act* setting aside the restraining order made by the court on [date] for the restraint of property specified in that order.

NOTE: The setting aside of the restraining order means that a person can deal with the property that was restrained under that order **unless the property remains restrained under a different order**. If the property remains restrained under an order that has not been set aside, the property cannot be dealt with except under the Act or as provided for in the court order.

The maximum penalty for dealing with restrained property is:

For a natural person – 1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years.

For a body corporate – 5 000 penalty units or the value of the property (whichever is greater).

Dated _____ 20 .

Signed *for Director of Public Prosecutions / *by member of Police Force

Attached: copy of court order setting aside the restraining order.

* [delete if not applicable]

FORM 8

NORTHERN TERRITORY OF AUSTRALIA

Criminal Property Forfeiture Act

regulation 4(8)

NOTICE OF EXTENSION OF RESTRAINING ORDER

To: [name]

of: [address]

I, _____, a *member of the Police Force of the Northern Territory / *person authorised by the Director of Public Prosecutions, give notice that on _____ [date], the *Local Court / *Supreme Court extended the duration of the restraining order made by the court on _____ [date of original order] under the *Criminal Property Forfeiture Act* for _____ [period of order] for the restraint of the property specified below:

Unless the order is sooner varied or revoked, the order remains in force until _____ AM/PM on _____ [date], and no person may deal with the property except in accordance with the Act.

The maximum penalty for dealing with restrained property is:

For a natural person – 1 000 penalty units or the value of the property (whichever is greater), or imprisonment for 5 years.

For a body corporate – 5 000 penalty units or the value of the property (whichever is greater).

Dated _____ 20 .

Signed *for Director of Public Prosecutions / *by member of Police Force

Attached: copy of court order extending the duration of the restraining order.

* [delete if not applicable]

ENDNOTES

1

KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2

LIST OF LEGISLATION

Criminal Property Forfeiture Regulations (SL No. 45, 2003)

Notified 3 September 2003
Commenced 3 September 2003

Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)

Notified 15 September 2004
Commenced 27 October 2004 (*Gaz G43*, 27 October 2004, p 3)

Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)

Notified 20 May 2010
Commenced 1 July 2010 (*Gaz G24*, 16 June 2010, p 2)

3

LIST OF AMENDMENTS

sch 2 amd Act No. 54, 2004, s 8
sch 3 amd Act No. 12, 2010, s 3