

South Australia

**CRIMINAL ASSETS CONFISCATION ACT 1996**

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An Act to provide for the confiscation of criminal assets; to repeal the Crimes (Confiscation of Profits) Act 1986; to make related amendments to the Criminal Law Consolidation Act 1935 and the Lottery and Gaming Act 1936; and for other purposes.

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*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 8 June 2000.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

**CRIMINAL ASSETS CONFISCATION ACT 1996**

being

Criminal Assets Confiscation Act 1996 No. 95 of 1996  
[Assented to 19 December 1996]<sup>1</sup>

as amended by

Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]<sup>2</sup>

**Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000 No. 20 of 2000 [Assented to 8 June 2000]**

<sup>1</sup> Came into operation 7 July 1997: *Gaz.* 12 June 1997, p. 2962.

<sup>2</sup> Schedule (item 15) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.

**NOTE:**

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

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**Criminal Assets Confiscation Act 1996**

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**The Parliament of South Australia enacts as follows:**

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Criminal Assets Confiscation Act 1996*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

"**Administrator**" means a person nominated by the Attorney-General to administer property forfeited or subject to restraining orders under this Act;

"**to convict**" a person of an offence includes—

- (a) to make a formal finding that the person is guilty of the offence without recording a conviction;
- (b) to take the offence into account, at the person's request, in fixing the penalty for another offence;

"**corresponding law**" means a law of the Commonwealth, another State or a Territory declared by proclamation to be a law corresponding to this Act (*see section 6*);

"**court**" means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) if the proceedings involve property with a value of \$300 000 or less—the Magistrates Court;

"**duplicate warrant**"—*see section 31*;

"**drug**" means a substance that is a drug of dependence or a prohibited substance as defined in the *Controlled Substances Act 1984*;

"**equitable sharing program**" means an arrangement under which—

- (a) the State shares with the Commonwealth or a reciprocating State the proceeds of local forfeiture orders where officers of a law enforcement agency of the Commonwealth or the reciprocating State have made a significant contribution to the recovery of the proceeds; or
- (b) the Commonwealth or a reciprocating State shares with the State the proceeds of interstate forfeiture orders where officers of a law enforcement agency of the State have made a significant contribution to the recovery of the proceeds;

**"financial institution"** means—

(a) an ADI; or

\* \* \* \* \*

(d) a friendly society; or

(e) an institution of a kind declared by regulation to be a financial institution;

**"forfeiture offence"** means a local forfeiture offence or an interstate forfeiture offence;

**"forfeiture order"** means—

(a) an order for forfeiture of specified property or a specified sum of money under section 8 or 9; or

(b) an order for the forfeiture of property, or a pecuniary penalty order, under the law of the Commonwealth or a reciprocating State;

**"gift"** includes a transaction (other than a transaction entered into in the ordinary course of trade or commerce) under which a person acquires property for less than a commercially adequate consideration;

**"interstate forfeiture offence"** means an offence that could, on conviction of the offender, give rise to an order for the forfeiture of property, or a pecuniary penalty order, under the law of the Commonwealth or a reciprocating State;

**"interstate forfeiture order"** means an order for the forfeiture of property, or a pecuniary penalty order, under the law of the Commonwealth or a reciprocating State;

**"local forfeiture offence"** means—

(a) an indictable offence under the law of the State; or

(b) a serious drug offence against the law of the State; or

(c) an offence against—

(i) section 68(3)<sup>1</sup> of the *Criminal Law Consolidation Act 1935*; or

(ii) section 34<sup>2</sup> or 44<sup>3</sup> of the *Fisheries Act 1982*; or

(iii) a provision of the *Lottery and Gaming Act 1936*; or

(iv) section 47<sup>4</sup>, 48<sup>5</sup>, 48A<sup>6</sup>, 51<sup>7</sup> or 60<sup>8</sup> of the *National Parks and Wildlife Act 1972*; or

(v) section 117<sup>9</sup> of the *Racing Act 1976*; or

(vi) section 28(1)(a)<sup>10</sup>, 33(2)<sup>11</sup>, 37<sup>12</sup>, 38<sup>13</sup> or 41<sup>14</sup> of the *Summary Offences Act 1953*; or

(vii) a provision of the *Corporations Law*;

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**"local forfeiture order"** means an order for forfeiture of specified property or a specified sum of money under this Act or under some other law of the State providing for forfeiture of assets on conviction for an offence;

**"money laundering offence"** means an offence against section 211A of the *Criminal Law Consolidation Act 1935*;

**"party"** to the commission of an offence, means a person who—

- (a) commits or participates in the commission of the offence; or
- (b) is an accessory before or after the fact to the commission of the offence;

**"police officer"** means any member of the police force;

**"premises"** means a building, structure or place (whether built on or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle;

**"proceeds"** of an offence means—

- (a) property derived directly or indirectly from the commission of the offence; or
- (b) property into which property of a kind mentioned in paragraph (a) is converted; or
- (c) property resulting from a series of transactions—
  - (i) in which property is converted from one form to another; and
  - (ii) of which the first transaction is one involving property of a kind mentioned in paragraph (a);

**"property"** means real or personal property (tangible or intangible) including—

- (a) a chose in action; and
- (b) an interest in property;

**"property liable to forfeiture"**—*see section 5*;

**"reciprocating State"** means a State or Territory in which a corresponding law is in force;

**"restraining order"**—*see Part 3*;

**"serious drug offence"** means an offence involving trade in a drug or the production, manufacture or preparation of a drug for trade;

**"tainted property"**—*see section 4*;

**"transaction"** includes receiving or making of a gift;

**"telephone"** includes any telecommunication device;

**"warrant"** means a warrant under Part 5.

- <sup>1</sup>. Section 68(3) of the *Criminal Law Consolidation Act 1935* makes it an offence to—

  - have an arrangement with a child who provides commercial sexual services under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; or
  - exploit a child by obtaining money knowing it to be the proceeds of commercial sexual services provided by the child.
- <sup>2</sup>. Section 34(1) *Fisheries Act 1982* makes it an offence to engage in fishing activities for which a licence is required under the Act without the required licence. Section 34(2) regulates the use of boats in fishing activities for which a licence is required under the Act.
- <sup>3</sup>. Section 44(1) of the *Fisheries Act 1982* makes it an offence to sell or purchase fish taken, without a licence, in waters to which the Act applies. Section 44(2) makes it an offence to sell, purchase, or have possession or control of fish taken in contravention of the Act, fish of a class declared to be protected, or fish of a prescribed class.
- <sup>4</sup>. Section 47 of the *National Parks and Wildlife Act 1972* makes the taking of native plants, or certain species of native plants, an offence in circumstances set out in the section.
- <sup>5</sup>. Section 48 of the *National Parks and Wildlife Act 1972* makes it an offence to sell or give away a native plant of a prescribed species.
- <sup>6</sup>. Section 48A of the *National Parks and Wildlife Act 1972* makes it an offence to have possession or control of a native plant that has been illegally taken or acquired.
- <sup>7</sup>. Section 51 of the *National Parks and Wildlife Act 1972* makes it an offence to take a protected animal or the eggs of a protected animal.
- <sup>8</sup>. Section 60 of the *National Parks and Wildlife Act 1972* makes it an offence to have possession or control of an animal, the carcass of an animal, or an egg, that has been illegally taken or acquired.
- <sup>9</sup>. Section 117 of the *Racing Act 1976* makes it an offence for a person to act as a bookmaker without being licensed as such under that Act.
- <sup>10</sup>. Section 28(1)(a) of the *Summary Offences Act 1953* makes it an offence to keep or manage a brothel, or assist in keeping or managing a brothel.
- <sup>11</sup>. Section 33(2) of the *Summary Offences Act 1953* makes it an offence to produce, sell, exhibit etc. indecent or offensive material.
- <sup>12</sup>. Section 37 of the *Summary Offences Act 1953* makes it an offence to obtain, by false pretences, any chattel, money, valuable security, credit, benefit or advantage from a charitable institution or organisation.
- <sup>13</sup>. Section 38 of the *Summary Offences Act 1953* makes it an offence to obtain any chattel, money, valuable security, credit, benefit or advantage by fraud other than false pretences.
- <sup>14</sup>. Section 41 of the *Summary Offences Act 1953* makes it an offence to possess personal property reasonably suspected of having been stolen or obtained by other unlawful means.

### **Tainted property**

**4.** (1) Property is **tainted property** if the property—

- (a) is acquired for the purpose of committing a forfeiture offence; or
- (b) is used in, or in connection with, the commission of a forfeiture offence; or
- (c) is the proceeds of a forfeiture offence.



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(2) If a person acquires title to tainted property in good faith and for valuable consideration, the property ceases to be tainted property.

(3) All property of a party to the commission of a serious drug offence is presumed to be tainted.

(4) However—

(a) property is excluded from the ambit of the presumption if it is established, on the balance of probabilities, that it was acquired by the party more than 6 years before the commission of the offence on which the proceedings under this Act are based; and

(b) the presumption may be rebutted, insofar as it relates to a particular item of property, by establishing, on the balance of probabilities, that the property is not tainted.

**Property liable to forfeiture**

5. Property is to be regarded as liable to forfeiture—

(a) if the property is tainted property; or

(b) if—

(i) a forfeiture offence has been committed or there are reasonable grounds to suspect the commission of a forfeiture offence; and

(ii) there are reasonable grounds to suppose that the property may be required to satisfy a present or future forfeiture order.

**Corresponding laws**

6. The Governor may, by proclamation—

(a) declare a law of the Commonwealth, another State or a Territory to be a law corresponding to this Act; or

(b) vary or revoke a declaration previously made under this section.

**Territorial application of Act**

7. (1) This Act applies to property within or outside the State.

(2) This Act applies to property outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

**PART 2  
FORFEITURE**

**Forfeiture of tainted property**

**8.** A court may, on application by the Director of Public Prosecutions, order the forfeiture of tainted property.

**Forfeiture of criminal benefits**

**9.** (1) If a person benefits from the commission of a forfeiture offence, a court may, on application by the Director of Public Prosecutions, order the forfeiture of property to the value of the benefit.

(2) However, if a person who is not a party to the offence acquires a benefit in good faith and for valuable consideration, a forfeiture order cannot be made on the basis of the benefit.

(3) A party to the commission of a forfeiture offence who—

- (a) obtains a benefit for the publication or prospective publication of material about the circumstances of the offence; or
- (b) obtains a benefit, attributable in whole or part to notoriety achieved through commission of the offence, for the publication or prospective publication of the opinions, exploits or life history of the party or another party to the commission of the offence; or
- (c) obtains a benefit by commercial exploitation in any other way of notoriety achieved through commission of the offence,

is taken to have benefited from the commission of the offence and is liable to forfeit property to the value of the benefit.

(4) A forfeiture order may be made under this section—

- (a) for forfeiture of specified property owned by, held on behalf of, or in the effective control of, the person who has benefited from the commission of the forfeiture offence; or
- (b) for forfeiture of a specified sum of money (unrelated to any particular property).

*Example—*

If the court is satisfied that a person has benefited from the commission of a forfeiture offence to the extent of \$1 000, the court could order the forfeiture of a specified asset under paragraph (a), or could make an order requiring the defendant to pay \$1 000, by way of forfeiture, under paragraph (b) without specifying any property or fund out of which the order is to be satisfied.

(5) In deciding whether the property of one person is in the effective control of another, legal, equitable, corporate, personal and other relationships may be taken into account.

**Extent of court's discretion**

**10.** (1) A court must make an appropriate forfeiture order under this Part if the court is satisfied that forfeiture is necessary to prevent the defendant from retaining the profits of criminal activity.

(2) The court's power to order forfeiture of property beyond what is required under subsection (1) is discretionary.

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(3) In deciding whether to impose a discretionary forfeiture and, if so, the extent of the forfeiture, the court may take into account any penalty imposed on the defendant for the forfeiture offence and, conversely, the court may take a discretionary forfeiture into account in fixing penalty for the relevant forfeiture offence.

**Procedural provisions**

**11.** (1) An application for a forfeiture order is a civil proceeding.

(2) The application may be made—

(a) in the same way as a civil action for the recovery of a debt; or

(b) on the conviction of the person against whom the order is sought of a forfeiture offence—orally, without formal pleadings, in the court by which the person was convicted.

(3) A person who has an interest in property for which a forfeiture order is sought—

(a) is entitled to notice of the application; and

(b) may appear and be heard on the application.

**Commission of forfeiture offence**

**12.** A forfeiture order cannot be made unless the person who committed the forfeiture offence on which the application for the forfeiture order is based—

(a) has been convicted of the offence; or

(b) is dead, cannot be found, or is for some other reason, not amenable to justice.

**Evidence and standard of proof**

**13.** (1) A question of fact on an application for a forfeiture order is to be decided on the balance of probabilities.

(2) However, if the commission of the forfeiture offence on which the application is based has not been established by conviction of the offender, the commission of the offence must be established beyond reasonable doubt.

(3) A court may accept a particular allegation as sufficiently proved if—

(a) the allegation is contained in a written statement signed by the Director of Public Prosecutions or the defendant; and

(b) the prosecution or the defence (as the case requires) has been given an opportunity to dispute the allegation in accordance with the regulations; and

(c) the allegation has not been disputed in accordance with the regulations.

**Ancillary provisions about forfeiture**

**14.** (1) If a person is liable to forfeit an interest in property but there are other interests in the same property that are not (apart from this subsection) liable to forfeiture, the court may, if it thinks fit, order that the property be forfeited in its entirety but that a person whose interest in the property was not liable to forfeiture apart from this subsection be paid a specified amount out of the proceeds of realisation of the property equal to the value of the person's interest in the property.

(2) If the value of a specific item of property exceeds or may exceed the amount for which a forfeiture order should, in the opinion of the court, be imposed, the court may order the forfeiture of that item of property and direct that, if the net proceeds of realisation exceed that amount, the balance be returned to the person against whom the forfeiture order is imposed.

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**PART 3  
RESTRAINING ORDERS****Restraining orders**

**15.** (1) If a court is satisfied, on application by the Director of Public Prosecutions, that there are reasonable grounds to suspect that property may be liable to forfeiture, the court may make a restraining order prohibiting, subject to the exceptions (if any) stated in the order, any dealing with the property.<sup>1</sup>

(2) An application for a restraining order may be made *ex parte* but, if the court makes a restraining order on an *ex parte* application, the court must allow the owner of the property a reasonable opportunity to be heard on the question whether the order should continue in force and, if after hearing the owner, the court is not satisfied there is good reason for the order to continue in force, the order must be revoked.

(3) A restraining order may be varied or revoked at any time.

(4) A restraining order lapses if—

- (a) an interval of inactivity follows the making of the order; or
- (b) proceedings for the forfeiture offence in relation to which the restraining order was made result in an acquittal; or
- (c) an application for a forfeiture order is decided.

(5) However, the following special provisions apply where the forfeiture offence or the suspected forfeiture offence in relation to which the restraining order is made is a serious drug offence:

- (a) the Director of Public Prosecutions must take reasonable care to ensure that the offender (or alleged offender) and all persons who may have an interest in the property are given notice of the order and of the implications of this subsection;
- (b) the order cannot (subject to the following exceptions) be revoked or varied so that it ceases to apply to property within its ambit;
- (c) the order does not lapse because of an interval of inactivity following the conviction of the offender for a serious drug offence;
- (d) if the offender is convicted of the serious drug offence, then 6 months after all rights of appeal are exhausted or expire or 6 months after the order is made (whichever is the later) the order is automatically converted into a forfeiture order for the forfeiture of all the property to which it then applies.

*Exceptions—*

1. The court may authorise the application of property towards the payment of legal costs in accordance with this Act.<sup>2</sup>
2. The court may revoke or vary the order so that it ceases to apply to property if the owner of the property satisfies the court, on an application made before the conversion of the order into a forfeiture order, that the owner acquired the property lawfully or at least 6 years before the commission of the relevant forfeiture offence and the property is not tainted.

3. The court may revoke or vary the order to protect the interests of a person who satisfies the court, on an application made before the conversion of the order into a forfeiture order, that the person has acquired an interest in the property to which the order relates in good faith and for valuable consideration.
4. The court may order the payment of compensation out of the Criminal Injuries Compensation Fund (not exceeding the value of the forfeited property) in favour of a person who satisfies the court, on an application made after the conversion of the order into a forfeiture order, that the person had acquired an interest in the forfeited property in good faith and for valuable consideration but did not receive notice of the order before the forfeiture took effect or not in time to apply for protection of the relevant interest before the forfeiture took effect.

(6) In this section—

**"interval of inactivity"** means one month or a longer period, not exceeding 2 months, determined, on application by the Director of Public Prosecutions, by the court during the whole of which there are no relevant proceedings before a court;

**"relevant proceedings"** means—

- (a) proceedings in which a person is charged with the relevant forfeiture offence or appellate proceedings arising out of such proceedings; or
- (b) proceedings for a forfeiture order.

<sup>1</sup> See Part 4 Division 2 for powers that may be conferred by restraining order.

<sup>2</sup> See section 20(2).

#### **Contravention of restraining order**

**16.** (1) A person is guilty of an offence if the person, knowing of the existence of a restraining order, deals with or permits a dealing with property subject to the order—

- (a) contrary to the terms of the order; or
- (b) for the purpose of evading or frustrating the order.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A dealing with property contrary to subsection (1) is void against anyone except a person who acquires an interest in the property in good faith and without notice of the terms of the order.

(3) This section does not limit the jurisdiction of the court to deal with a contravention of a restraining order as a contempt of court.

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**PART 4  
ADMINISTRATION OF PROPERTY**

**DIVISION 1—FORFEITED PROPERTY**

**Effect of forfeiture order**

**17.** (1) If a court orders the forfeiture of specified property, title to the property vests in the Administrator.

(2) The order vests the property in the Administrator without any further conveyance or approval.

(3) A court may, on application by the Administrator—

- (a) order registration of the Administrator as owner of forfeited property; or
- (b) order the cancellation of existing certificates or documents of title and the issue of new certificates or documents of title in the name of the Administrator; or
- (c) make other orders to facilitate dealings in forfeited property by the Administrator.

**Sale, etc., of forfeited property**

**18.** The Administrator may and, if the court by which the forfeiture order is made so directs, must sell forfeited property or convert it into money.

**Criminal Injuries Compensation Fund**

**19.** (1) Subject to any direction of the court by which the forfeiture is imposed—

- (a) money forfeited under this Act or obtained by realisation of other property forfeited under this Act; or
- (b) money deriving from the enforcement in the State of an order under a corresponding law registered in the State,

must be applied towards the costs of administering this Act (including salary and other costs associated with the employment of the Administrator) and the balance must be paid into the Criminal Injuries Compensation Fund.

(2) Any money—

- (a) paid to the State under the equitable sharing program; or
- (b) received by the Commonwealth from a foreign country within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* under a treaty or arrangement providing for mutual assistance in criminal matters and paid by the Commonwealth to the State,

must be paid into the Criminal Injuries Compensation Fund.

(3) The purposes for which money may be applied from the Criminal Injuries Compensation Fund include—

- (a) the financial support, to an extent determined by the Attorney-General, of programs directed at the treatment and rehabilitation of drug-dependent persons (but the extent of that support cannot exceed the income of the Fund derived from forfeitures related to serious drug offences); and

- (b) payments to the Commonwealth or to another State or a Territory of the Commonwealth, under the equitable sharing program.

### **DIVISION 2—PROPERTY SUBJECT TO RESTRAINING ORDER**

#### **Powers conferred by restraining order**

**20.** (1) A restraining order may—

- (a) confer on the Administrator powers relating to the getting in, management or control of property subject to the order;
- (b) make any other provision for management or control of the property;
- (c) provide for payment of specified expenditure or expenditure of a specified kind (other than the Administrator's remuneration) out of the property subject to the order;
- (d) allow the owner of the property subject to the order to use the property in a manner and to an extent specified by the court as a security for raising money;
- (e) make any other provision about the property subject to the order that may be necessary or desirable in the circumstances.

(2) Property subject to a restraining order may only be applied towards legal costs on the following conditions—

- (a) the court must be satisfied that—
  - (i) it is unlikely a person other than the person who wants the property applied toward legal costs could (assuming the property were not forfeited) establish a lawful claim to the property; and
  - (ii) the person who wants the property applied towards legal costs has no other source of funds (within or outside the State) that could reasonably be applied towards legal costs; and
- (b) the court may only authorise application of property towards the payment of legal costs on a reasonable basis approved by the court.

(3) Before the court allows property subject to a restraining order to be applied towards legal costs or other private expenditure, the court must allow the Attorney-General an opportunity to appear and be heard on the matter.

### **DIVISION 3—ANCILLARY PROVISIONS**

#### **Auxiliary orders**

**21.** (1) If property is subject to a forfeiture order or a restraining order, the court may, on application by the Administrator—

- (a) order a person who has possession or control of property subject to the order to deliver up possession of the property to the Administrator; or
- (b) order a person who has possession or control of certificates or other documents of title, or books of account or other records, related to the property to deliver them up to the Administrator at a time and place specified in the order; or



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- (c) make any other order reasonably necessary for the administration or enforcement of this Act.

(2) A person who fails to comply with an order under subsection (1) is (in addition to any liability the person may incur for contempt of court) guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

**Accounts at financial institutions**

**22.** A financial institution must—

- (a) on service of a copy of a warrant or duplicate warrant authorising seizure of money held in an account by the financial institution; or
- (b) on service of a copy of a forfeiture order or restraining order over money held in an account,

forthwith transfer the credit balance of the account to an account in the name of the Administrator.

Maximum penalty: \$10 000.

**Power to apply for directions**

**23.** (1) The Administrator may apply to the court for directions about the administration of property forfeited or subject to a restraining order under this Act.

(2) On an application under subsection (1), the court may give directions and guidance it considers necessary or appropriate in the circumstances.

**Return of property etc when restraining order lapses or is revoked**

**24.** If a restraining order lapses or is revoked, and no forfeiture order for the relevant property is made, the Administrator must return property and documents in the Administrator's possession to which the former order relates.

**Application of property to pecuniary penalties or forfeitures**

**25.** If a person whose property is subject to a restraining order incurs a pecuniary penalty or forfeiture, the Administrator may apply property subject to the order to satisfy the penalty or forfeiture.

*Example—*

If a bail is estreated for breach of a condition, the Administrator could apply property subject to a restraining order towards satisfaction of the liability created on estreatment of bail.

**Delegation by Administrator**

**26.** (1) The Administrator may delegate any of the Administrator's powers or functions under this Act.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and

- (c) does not derogate from the power of the delegator to act in any matter; and
- (d) is revocable at will by the delegator.

**DIVISION 4—IMMUNITY FROM LIABILITY**

**Immunity from liability**

**27.** (1) Neither the Administrator nor the Crown is liable for loss or damage to property while it is in the possession or control of the Administrator under this Act.

(2) However, if property required to be returned to its owner under this Act is lost or damaged while in the Administrator's possession or control in consequence of the Administrator's negligence, the Crown is liable in negligence to the owner for the loss or damage (but the Crown is not liable for economic loss or damage).

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**PART 5  
POWERS OF INVESTIGATION AND SEIZURE**

**DIVISION 1—POWER TO SEIZE PROPERTY THAT MAY BE  
LIABLE TO FORFEITURE**

**Seizure of property**

**28.** (1) A police officer may seize property if—

- (a) the seizure of the property is authorised by warrant; or
- (b) the officer suspects on reasonable grounds the property is liable to forfeiture and the person in possession of the property consents to its seizure; or
- (c) the property is found in the course of a search conducted under another law and the officer suspects on reasonable grounds that the property is liable to forfeiture.

*Example—*

If a police officer searches a person on arrest and finds property the officer suspects to be liable to forfeiture, the police officer may seize the property under this section.

(2) Property seized by a police officer under this section is under the control of the Administrator and must (subject to this Act) be dealt with as the Administrator directs.

**Return of property**

**29.** (1) Property seized under this Part must be returned to the person entitled to possession if—

- (a) it later appears that there are no longer reasonable grounds to believe that the property is liable to forfeiture under this Act; or
- (b) relevant proceedings are not commenced within 25 days after the property is seized; or
- (c) a court, on application of a person entitled to possession of the property, orders its return.

**Relevant proceedings** are proceedings for a restraining order related to the property, or proceedings for forfeiture of the property.

(2) However—

- (a) the person entitled to the possession of property may authorise the retention of the property beyond the time when its return would, apart from the authorisation, be required under this section; or
- (b) a court may, on application by the Administrator, authorise the retention of property beyond the time when its return would, apart from the authorisation, be required under this section.

**DIVISION 2—WARRANTS FOR SEIZURE OF PROPERTY**

**Warrants authorising seizure of property**

**30.** (1) A magistrate may, on application by a police officer, issue a warrant authorising—

- (a) the seizure of—
  - (i) property that may be liable to forfeiture; or
  - (ii) a document or other material relevant to identifying, tracing, locating or quantifying property that may be liable to forfeiture;
- (b) the search of a particular person, or particular premises, and the seizure of property, and documents and materials, of a kind referred to in paragraph (a) found in the course of the search.

(2) A magistrate may only issue a warrant under this section if satisfied that there are, in the circumstances of the case, reasonable grounds for issuing the warrant.

**Applications for warrants**

**31.** (1) An application for the issue of a warrant may be made either personally or by telephone.

(2) The grounds of an application for a warrant must be verified by affidavit.

(3) An application for a warrant cannot be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is not enough time to make the application personally.

(4) If an application for a warrant is made by telephone—

- (a) the applicant must inform the magistrate of the applicant's name and rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer; and
- (b) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and
- (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds to issue a warrant, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
- (d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
- (e) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
- (f) the magistrate must inform the applicant of the terms of the warrant; and

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- (g) the applicant must fill out and sign a warrant form (the **duplicate warrant**) that—
  - (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
  - (ii) complies with any other requirements prescribed by regulation; and
- (h) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c) and a copy of the duplicate warrant.

(5) A magistrate by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.

**Powers conferred by warrant**

**32.** (1) A warrant authorises any police officer, with assistants the officer considers necessary—

- (a) to seize—
  - (i) property referred to in the warrant; and
  - (ii) documents and other material relevant to identifying, tracing, locating or quantifying property referred to in the warrant;
- (b) if the warrant authorises search of a person—to search that person and seize anything that the police officer executing the warrant suspects on reasonable grounds to be—
  - (i) property that is liable to forfeiture under this Act; or
  - (ii) a document or other material relevant to identifying, tracing, locating or quantifying property that is liable to forfeiture under this Act;
- (c) if the warrant authorises search of premises—to enter and search the premises and anything in the premises and seize anything that the police officer executing the warrant suspects on reasonable grounds to be—
  - (i) property that is liable to forfeiture under this Act; or
  - (ii) a document or other material relevant to identifying, tracing, locating or quantifying property that is liable to forfeiture under this Act.

(2) A warrant must not be executed between the hours of 7 o'clock in the evening and 7 o'clock in the following morning unless the magistrate by whom the warrant is issued expressly authorises its execution between those hours.

(3) A police officer, or a person assisting a police officer, may use such force as is reasonably necessary for the execution of a warrant.

(4) A police officer who executes a warrant—

- (a) must prepare a notice in the prescribed form containing—
  - (i) the officer's name and rank; and

- (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
  - (iii) a description of anything seized under the warrant; and
- (b) must, as soon as practicable after execution of the warrant—
- (i) in the case of a warrant authorising search of a person—give the notice to the person;
  - (ii) in any other case—give the notice to the occupier of the premises or leave it in a prominent position on those premises.

(5) A warrant, if not executed at the expiration of one month from the date of its issue, then expires.

### **Hindering execution of warrant**

**33.** A person who, without lawful excuse, hinders a police officer, or a person assisting a police officer, in the execution of a warrant under this Part is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

## **DIVISION 3—ORDERS FOR OBTAINING INFORMATION**

### **Orders for obtaining information**

**34.** (1) The Supreme Court may, if satisfied on application by the Director of Public Prosecutions, the Administrator or a police officer, that it is necessary or desirable to do so for the purposes of the administration or enforcement of this Act or a corresponding law, or for the investigation of a suspected money laundering offence, make an order of one or both of the following kinds:

- (a) an order requiring a person to give oral or affidavit evidence to the Court on questions relevant to identifying, tracing, locating or quantifying property liable to forfeiture;
- (b) an order requiring a person to produce before the Court documents or other materials relevant to identifying, tracing, locating or quantifying property that is liable to forfeiture.

(2) A person ordered to give evidence or to produce documents or other materials may not refuse to give the evidence, or to produce documents or materials, on the ground that the evidence, or the contents of the documents or materials, would tend to incriminate the person of an offence, but evidence so given or produced cannot be used against that person in proceedings in which that person is charged with an offence (except proceedings in which the person is alleged to have given false evidence).

### **Monitoring orders**

**35.** (1) The Supreme Court may, if satisfied on application by the Director of Public Prosecutions, the Administrator or a police officer, that it is necessary or desirable to do so for the purposes of the administration or enforcement of this Act or a corresponding law, or for the investigation of a suspected money laundering offence, make an order (a "**monitoring order**") requiring a financial institution to report promptly transactions affecting an account held with the institution.

(2) A monitoring order remains in force (subject to revocation by the Court) for a period of not more than three months specified in the order.

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(3) A monitoring order must specify—

- (a) the name in which the account is held; and
- (b) the kind of information the financial institution is required to give; and
- (c) the person to whom the information is to be given; and
- (d) the manner in which the information is to be given.

(4) An officer or agent of a financial institution to which a monitoring order is addressed who discloses the existence of the order except—

- (a) as may be necessary to give effect to the order; or
- (b) as may be required or authorised by the order; or
- (c) for the purpose of obtaining legal advice or representation for the financial institution, or an officer or agent of the financial institution, on a matter related to the order,

is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

**Exercise of jurisdiction**

**36.** The jurisdiction of the Supreme Court under this Division may be exercised by a Judge or Master sitting in chambers.

**PART 6  
MISCELLANEOUS**

**Registration of interstate orders**

**37.** (1) An order under a corresponding law may be registered, on application by the Administrator, in the Supreme Court.

(2) On registration the order has in relation to property in this State to which it is expressed to apply the same effect as it has in relation to property in the State or Territory in which it was made but as if it were made in favour of the Crown in right of this State.

(3) However, the Court may make adaptations or modifications to the order (as it applies in this State) the Court considers necessary or desirable for the effective operation of the order in this State.

**Enforcement of judgments**

**38.** Judgments and orders of a court under this Act are enforceable under the *Enforcement of Judgments Act 1991*.

**Regulations**

**39.** The Governor may make regulations for the purposes of this Act.



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**SCHEDULE 1**

*Repeal and Transitional Provisions*

**Repeal**

1. The *Crimes (Confiscation of Profits) Act 1986* is repealed.

**Transitional provision**

2. (1) An order in force under the former Act immediately before the commencement of this Act continues in force, subject to this Act, as if this Act had been in force when the order was made and the order had been made under this Act.

(2) An order registered under the former Act immediately before the commencement of this Act continues in force, subject to this Act, as if this Act had been in force when the order was registered and the order had been registered under this Act.

- (3) In this section—

"**former Act**" means the *Crimes (Confiscation of Profits) Act 1986*.

**SCHEDULE 2**

*Consequential and Related Amendments*

**Amendment of Criminal Law Consolidation Act 1935**

1. The *Criminal Law Consolidation Act 1935* is amended by inserting after section 211 the following heading and section:

*Money Laundering*

**Money laundering**

**211A.** (1) A person must not engage in money laundering.

Maximum penalty: In the case of a natural person—\$200 000 or imprisonment for 20 years.

In the case of a body corporate—\$600 000.

(2) For the purposes of this section—

- (a) a person engages in **money laundering** if, and only if—
  - (i) the person engages, directly or indirectly, in a transaction involving property that the person knows to be tainted; or
  - (ii) the person receives, possesses, conceals, disposes of or brings into South Australia property the person knows to be tainted; and
- (b) **tainted property** is property derived or realised, directly or indirectly, from unlawful activity (either within or outside the State), but property ceases to be tainted when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality and for value; and
- (c) a **transaction** includes a gift.

**Amendment of Lottery and Gaming Act 1936**

2. The *Lottery and Gaming Act 1936* is amended by repealing sections 71 and 110A.

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**APPENDIX**

**LEGISLATIVE HISTORY**

*(entries in bold type indicate amendments incorporated since the last reprint)*

**Section 3:**

definition of "financial institution" amended and paragraphs (b) and (c) repealed by 33, 1999, Sched. (item 15)  
**definition of "local forfeiture offence" amended by 20, 2000, Sched. cl. 1**