

House of Assembly

As passed all stages and awaiting assent.

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South Australia

Criminal Assets Confiscation Bill 2005

A BILL FOR

An Act to provide for the confiscation of proceeds and instruments of crime; to make related amendments to the *Controlled Substances Act 1984*, the *Criminal Law Consolidation Act 1935*, the *Financial Transaction Reports (State Provisions) Act 1992* and the *Legal Services Commission Act 1977*; to repeal the *Criminal Assets Confiscation Act 1996*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Assets Confiscation Act 2005*.

2—Commencement

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

3—Interpretation

In this Act, unless the contrary intention appears—

abscond—see section 4;

account means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for—

- (a) a fixed term deposit; and
- (b) a safety deposit box or other safe custody facility;

Administrator means the person appointed as the Administrator under section 190;

agent includes, if the agent is a corporation, the officers and agents of the corporation;

Australia, when used in a geographical sense, includes the external Territories;

authorised officer means—

- (a) the DPP; or
- (b) a police officer; or
- (c) a member, officer or employee of an enforcement agency who is authorised in writing by the head of that agency for the purposes of this Act;

benefit includes a service or advantage;

charged—a person is charged with an offence if an information or complaint is laid against the person for the offence whether or not—

- (a) a summons to require the attendance of the person to answer the information or complaint has been issued; or
- (b) a warrant for the arrest of the person has been issued;

compensation order means an order made under section 61;

confiscation order means a forfeiture order, a pecuniary penalty order or a literary proceeds order;

controlled property means property subject to an order under section 39;

convicted—see section 5;

conviction day—see section 5;

corresponding law means a law declared to be a corresponding law under section 12;

court means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) subject to section 14, the Magistrates Court;

data includes data in any form in which it may be stored or processed in a computer (including a computer program or part of a computer program);

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device;

deal with—dealing with a person's property includes—

- (a) if a debt is owed to the person—making a payment to a person in reduction of the amount of the debt; and
- (b) removing the property from the State; and
- (c) receiving or making a gift of the property; and
- (d) if the property is covered by a restraining order—engaging in a transaction that has the direct or indirect effect of reducing the value of the person's interest in the property;

dependant of a person means—

- (a) a spouse of the person; or
- (b) a child of the person who depends on the person for support; or
- (c) a member of the person's household who depends on the person for support;

derived—a person derives proceeds, a benefit or literary proceeds if —

- (a) the person; or
- (b) another person at the request or direction of the first person,

derives the proceeds, benefit or literary proceeds, whether directly or indirectly;

director, in relation to a financial institution or a corporation, means—

- (a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory—a constituent member of the body corporate; and
- (b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and
- (c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act, other than when those directors only do so—
 - (i) in the proper performance of the functions attaching to the person's professional capacity; or
 - (ii) in their business relationship with the person;

document includes—

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and
- (d) any map, plan, drawing, graph or photograph;

DPP means the Director of Public Prosecutions and includes a person acting in the position of Director of Public Prosecutions;

drug means a substance that is a drug of dependence or a prohibited substance within the meaning of the *Controlled Substances Act 1984*;

effective control—see section 6;

encumbrance, in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property;

enforcement agency means—

- (a) the DPP; or
- (b) an agency prescribed by regulation as an enforcement agency for the purposes of this Act or specified provisions of this Act;

examination notice means a notice given under section 133;

examination order means an order under section 131 or 132 that is in force;

exclusion order means an order under section 58 or 59;

executive officer in relation to a financial institution or a corporation, means any person, by whatever name called and whether or not the person is a director of the institution or corporation, who is concerned, or takes part, in the management of the institution or corporation;

extension order means an order under section 75;

financial institution means—

- (a) an ADI; or
- (b) a friendly society; or
- (c) an institution of a kind declared by regulation to be a financial institution;

foreign forfeiture order has the same meaning as in the Mutual Assistance Act;

foreign pecuniary penalty order has the same meaning as in the Mutual Assistance Act;

foreign restraining order has the same meaning as in the Mutual Assistance Act;

forfeiture order means an order under section 47 that is in force;

freezing order means an order under section 17 that is in force;

instrument—see section 7;

instrument substitution declaration means a declaration under section 48;

interest, in relation to property or a thing, means—

- (a) a legal or equitable estate or interest in the property or thing; or
- (b) a right, power or privilege in connection with the property or thing,

whether present or future and whether vested or contingent;

legal assistance costs means the costs of providing legal assistance to an assisted person under the *Legal Services Commission Act 1977* (see section 5(2) of that Act);

literary proceeds—see section 110;

literary proceeds amount—see section 113;

literary proceeds order means an order under section 111 that is in force;

monitoring order means an order under section 165 that is in force;

Mutual Assistance Act means the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth as in force from time to time;

officer, in relation to a financial institution or a corporation, means a director, secretary, executive officer or employee;

pecuniary penalty order means an order under section 95 that is in force;

penalty amount—see section 99;

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—see section 7;

production order means an order under section 150 that is in force;

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

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

property-tracking document—see section 149;

putative spouse means a person who is cohabiting with a person as the husband or wife *de facto* of the person and—

- (a) who has so cohabited continuously over the last preceding period of 5 years, or for periods aggregating 5 years over the last preceding period of 6 years; or
- (b) who has had sexual relations with the person resulting in the birth of a child;

quashed—see section 8;

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

recognised Australian forfeiture order means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

recognised Australian pecuniary penalty order means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

recognised Australian restraining order means an order that is made under a corresponding law and is of a kind declared by the regulations to be within this definition;

registrable property means property the title to which is passed by registration on a register kept pursuant to a provision of a law of the State or any other law;

registration authority means an authority responsible for administering a law providing for registration of title to, or charges over, property of a particular kind;

related offence—an offence is related to another offence if the physical elements of the 2 offences are substantially the same acts or omissions;

responsible custodian, in relation to property or other material seized under this Act, means—

- (a) if the property or other material is seized by the DPP—the DPP; or
- (b) in any other case—the head of the enforcement agency of the authorised officer who seized the property or other material;

restraining order means an order under section 24 that is in force;

search warrant means a warrant issued under section 172 that is in force;

serious drug offence means—

- (a) an offence against section 32 of the *Controlled Substances Act 1984* (other than an offence of a kind described in subsection (6) of that section); or
- (b) a conspiracy to commit, or an attempt to commit, such an offence; or
- (c) an offence of acting as an accessory to the commission of such an offence;

serious offence means—

- (a) an indictable offence; or
- (b) a serious drug offence; or
- (c) an offence against—
 - (i) section 68(3) of the *Criminal Law Consolidation Act 1935*; or
 - (ii) section 34 or 44 of the *Fisheries Act 1982*; or
 - (iii) section 99 of the *Liquor Licensing Act 1997*; or
 - (iv) a provision of the *Lottery and Gaming Act 1936*; or
 - (v) section 47, 48, 48A, 51 or 60 of the *National Parks and Wildlife Act 1972*; or
 - (vi) section 28(1)(a) or 41 of the *Summary Offences Act 1953*;

spouse includes a putative spouse;

sufficient consideration, in relation to an acquisition or disposal of property, means consideration that is sufficient and that reflects the value of the property, having regard solely to commercial considerations;

suspect, in relation to a restraining order or a confiscation order, means a person who—

- (a) has been convicted of; or

- (b) has been charged with, or is proposed to be charged with; or
- (c) if the order is a restraining order—is suspected of having committed; or
- (d) if the order is a confiscation order—committed,

the offence or offences to which the order relates;

tainted property means—

- (a) proceeds of a serious offence; or
- (b) an instrument of a serious offence or property subject to an instrument substitution declaration;

unlawful activity means an unlawful act or omission—

- (a) that constitutes a serious offence; or
- (b) that would, if committed in this State, constitute a serious offence;

vehicle includes an aircraft or vessel;

Victims of Crime Fund means the fund of that name continued in existence under the *Victims of Crime Act 2001*.

4—Meaning of abscond

- (1) For the purposes of this Act, a person is taken to ***abscond*** in connection with an offence if—
 - (a) an information or complaint is laid alleging the person committed the offence; and
 - (b) a warrant for the person’s arrest is issued in relation to that information or complaint; and
 - (c) at the end of the period of 6 months commencing on the day on which the warrant is issued either—
 - (i) the person—
 - (A) cannot be found; or
 - (B) is, for any other reason, not amenable to justice and, if the person is in a jurisdiction outside Australia, extradition proceedings are not on foot in that jurisdiction; or
 - (ii) —
 - (A) the person is, because he or she is in a jurisdiction outside Australia, not amenable to justice; and
 - (B) extradition proceedings are on foot in that jurisdiction, and subsequently those proceedings terminate without an order for the person’s extradition being made.
- (2) For the purposes of subsection (1), extradition proceedings are not taken to be on foot in a jurisdiction unless the person is in custody, or is on bail, in that jurisdiction.

5—Meaning of convicted of an offence

- (1) For the purposes of this Act, a person is taken to be *convicted* of an offence if—
- (a) the person is convicted, whether summarily or on indictment, of the offence (and in such a case the *conviction day* for the purposes of this Act is the day on which the person was convicted, whether or not the court passed sentence on that day); or
 - (b) the person is charged with, and found guilty of, the offence but is discharged without conviction (and in such a case the *conviction day* for the purposes of this Act is the day on which the person was discharged without conviction); or
 - (c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence (and in such a case the *conviction day* for the purposes of this Act is the day on which the court took the offence into account in passing the sentence); or
 - (d) the person absconds in connection with the offence (and in such a case the *conviction day* for the purposes of this Act is the day on which the person is taken to have absconded); or
 - (e) a court has, under Part 8A Division 2 of the *Criminal Law Consolidation Act 1935*, recorded findings that—
 - (i) the person is mentally incompetent to commit the offence; and
 - (ii) the objective elements of the offence are established,(and in such a case the *conviction day* for the purposes of this Act is the day on which the court recorded those findings or, if those findings were recorded on different days, the later of the days); or
 - (f) a court has, under Part 8A Division 3 of the *Criminal Law Consolidation Act 1935*, recorded findings that—
 - (i) the person is mentally unfit to stand trial on a charge of the offence; and
 - (ii) the objective elements of the offence are established,(and in such a case the *conviction day* for the purposes of this Act is the day on which the court recorded those findings or, if those findings were recorded on different days, the later of the days).
- (2) If subsection (1)(d), (1)(e) or (1)(f) applies to a person, the person is taken—
- (a) to have committed the offence; and
 - (b) to have been convicted of the offence before an appropriate court.

6—Meaning of effective control

- (1) For the purposes of this Act, the following principles apply when determining whether property is subject to the *effective control* of a person:
- (a) property may be subject to the effective control of a person whether or not the person has an interest in the property;

- (b) property that is held on trust for the ultimate benefit of a person is taken to be under the effective control of the person;
 - (c) if a person is one of 2 or more beneficiaries under a discretionary trust, the following undivided proportion of the trust property is taken to be under the effective control of the person:
$$\frac{1}{\textit{number of beneficiaries}}$$
 - (d) if property is initially owned by a person and, within 6 years (whether before or after) of an application for a restraining order or a confiscation order being made, is disposed of to another person without sufficient consideration, then the property is taken still to be under the effective control of the first person;
 - (e) property may be subject to the effective control of a person even if one or more other persons have joint control of the property.
- (2) In determining whether or not property is subject to the effective control of a person, regard may be had to—
- (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
 - (b) a trust that has a relationship to the property; and
 - (c) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

7—Meaning of proceeds and instrument of an offence

- (1) For the purposes of this Act, the following rules apply when determining whether property is proceeds or an instrument of an offence:
- (a) property is *proceeds* of an offence if it is—
 - (i) wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
 - (ii) partly derived or realised, whether directly or indirectly, from the commission of the offence,whether the property is situated within or outside the State;
 - (b) property is an *instrument* of an offence if it is—
 - (i) used in, or in connection with, the commission of an offence; or
 - (ii) intended to be used in, or in connection with, the commission of an offence,whether the property is situated within or outside the State;
 - (c) property becomes proceeds of an offence or an instrument of an offence (as the case requires) if it is—

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- (i) wholly or partly derived or realised from the disposal of, or other dealing with, proceeds of the offence or an instrument of the offence; or
 - (ii) wholly or partly acquired using proceeds of the offence or an instrument of the offence,including as a result of a previous application of this section;
 - (d) property remains proceeds of an offence or an instrument of an offence even if it is—
 - (i) credited to an account; or
 - (ii) disposed of or otherwise dealt with;
 - (e) property can be proceeds of an offence or an instrument of an offence even if no person has been convicted of the offence.
- (2) Subject to this section, property only ceases to be proceeds of an offence or an instrument of an offence if—
- (a) it is acquired by a third party for sufficient consideration without the third party knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was proceeds of an offence or an instrument of an offence (as the case requires); or
 - (b) it vests in a person from the distribution of the estate of a deceased person, having been previously vested in a person from the distribution of the estate of another deceased person while the property was still proceeds of an offence or an instrument of an offence (as the case requires); or
 - (c) it has been distributed in accordance with—
 - (i) an order in proceedings under the *Family Law Act 1975* of the Commonwealth with respect to the property of the parties to a marriage or either of them; or
 - (ii) a financial agreement within the meaning of that Act,and 6 years have elapsed since that distribution; or
 - (d) it has been distributed in accordance with an order in proceedings under the *De Facto Relationships Act 1996* with respect to the division of property of de facto partners and 6 years have elapsed since that distribution; or
 - (e) it is acquired by a person as payment for reasonable legal expenses incurred in connection with an application under this Act or defending a criminal charge; or
 - (f) a forfeiture order in respect of the property is satisfied; or
 - (g) a recognised Australian restraining order or a recognised Australian forfeiture order is satisfied in respect of the property; or
 - (h) it is otherwise sold or disposed of under this Act; or
 - (i) in any other circumstances specified in the regulations.

- (3) If—
- (a) a person once owned property that was proceeds of an offence or an instrument of an offence; and
 - (b) the person ceased to be the owner of the property and (at that time or a later time) the property stopped being proceeds of an offence or an instrument of the offence under subsection (2) (other than under subsection (2)(f)); and
 - (c) the person acquires the property again,
- then the property becomes proceeds of an offence or an instrument of the offence again (as the case requires).
- (4) Subsection (2)(c) does not apply if, despite the distribution referred to in that paragraph, the property is still subject to the effective control of a person who—
- (a) has been convicted of; or
 - (b) has been charged with, or who is proposed to be charged with; or
 - (c) has committed, or is suspected of having committed,
- the offence in question.

8—Meaning of quashing a conviction

For the purposes of this Act, a person’s conviction of an offence is taken to be *quashed* if—

- (a) if the person is taken to have been convicted of the offence because of section 5(1)(a)—the conviction is quashed or set aside; or
- (b) if the person is taken to have been convicted of the offence because of section 5(1)(b)—the finding of guilt is quashed or set aside; or
- (c) if the person is taken to have been convicted of the offence because of section 5(1)(c)—either of the following events occur:
 - (i) the person’s conviction of the other offence referred to in that paragraph is quashed or set aside;
 - (ii) the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside; or
- (d) if the person is taken to have been convicted of the offence because of section 5(1)(d)—after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside; or
- (e) if the person is taken to have been convicted of the offence because of section 5(1)(e) or 5(1)(f)—the finding that the objective elements of the serious offence have been established is set aside or reversed.

9—Act binds Crown

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

10—Application of Act

This Act applies to—

- (a) property within or outside the State; and
- (b) a serious offence committed at any time (whether the offence occurred before or after the commencement of this Act and whether or not a person is convicted of the offence); and
- (c) a person's conviction of a serious offence (whether the conviction occurred before or after the commencement of this Act).

11—Interaction with other Acts

This Act is in addition to, and does not limit or derogate from, the provisions of any other Act.

12—Corresponding laws

The Governor may, by proclamation—

- (a) declare a law of the Commonwealth, another State or a Territory to be a corresponding law for the purposes of this Act; or
- (b) vary or revoke a declaration previously made under this section.

13—Delegation

- (1) The DPP or the Administrator may, by instrument in writing, delegate a power or function under this Act—
 - (a) to a particular person; or
 - (b) to the person for the time being occupying a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - (c) is revocable at will.

14—Jurisdiction of Magistrates Court

- (1) Despite any provision of the *Magistrates Court Act 1991*, the Magistrates Court has jurisdiction to hear and determine any application that may be made to a court under this Act unless the application involves property with a value exceeding \$300 000.
- (2) If the Magistrates Court makes an order under this Act requiring a person to pay to any other person, or to the Crown, a monetary amount exceeding the amount specified under the *Magistrates Court Act 1991* as the monetary limit on the Court's civil jurisdiction in relation to actions to recover a debt—
 - (a) the Principal Registrar of the Magistrates Court must issue a certificate containing the particulars specified in the regulations in relation to the order; and

- (b) the certificate may be registered, in accordance with the regulations, in the District Court and, on registration, is enforceable in all respects as a final judgment of the District Court.
- (3) For the avoidance of doubt, no monetary limit applies in relation to the jurisdiction conferred on a magistrate under Part 2.

Part 2—Freezing orders

15—Interpretation

In this Part—

authorised police officer means a police officer, or a police officer of a class, authorised under section 16.

16—Commissioner may authorise police officers for purposes of Part

- (1) The Commissioner of Police may authorise—
 - (a) a police officer; or
 - (b) a specified class of police officers,for the purposes of this Part.
- (2) An authorisation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be subject to conditions specified in the authorisation; and
 - (c) may be varied or revoked at any time by the Commissioner of Police by notice in writing.

17—Authorised police officer may apply for freezing order

- (1) A magistrate may, on application by an authorised police officer, make an order (a *freezing order*) that a specified financial institution must not allow any person to make transfers or withdrawals from a specified account (except in the manner and circumstances, if any, specified in the order) if satisfied that—
 - (a) there are reasonable grounds to suspect that the person in whose name the account is held or a person who has an interest in that account—
 - (i) has committed, or is about to commit, a serious offence; or
 - (ii) was involved in the commission, or is about to be involved in the commission, of such an offence; or
 - (iii) has derived a benefit, or is about to derive a benefit, from the commission of such an offence; and
 - (b) an application for a restraining order is likely to be made in respect of property in which —
 - (i) the person in whose name the account is held has an interest; or
 - (ii) the person who has an interest in the account has an interest; and
 - (c) it is otherwise appropriate to make the order.

- (2) In determining whether it is appropriate to make a freezing order, the magistrate must have regard to—
 - (a) the amount of money in the account to be frozen; and
 - (b) whether the account is held in the name of more than one person; and
 - (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order.
- (3) Subject to section 18, the applicant for a freezing order must submit evidence in support of the application in the form of an affidavit.

18—Urgent applications

- (1) An application for a freezing order may be made by telephone if, in the opinion of the applicant, the order is urgently required and there is not enough time to make the application personally.
- (2) If an application for a freezing order is made by telephone—
 - (a) the applicant must inform the magistrate—
 - (i) of the applicant's name and rank; and
 - (ii) that he or she is an authorised police officer for the purposes of this Part,

and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is so authorised; and
 - (b) the applicant must inform the magistrate of the purpose for which the order is required, the grounds on which it is sought and any other information that the magistrate is required to have regard to in consider an application for a freezing order; and
 - (c) if it appears to the magistrate from the information given by the applicant that it would be appropriate to make a freezing order, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the making of the order, and must not proceed to make the order 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 the order, noting on the order the facts that justify, in the magistrate's opinion, the making of the order and informing the applicant of the terms of the order; and
 - (e) the applicant must, as soon as practicable after the making of the order, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c); and
 - (f) the magistrate must, as soon as practicable after the making of the order, forward to the applicant a copy of the order.
- (3) A magistrate who makes an order under this section must file the order, or a copy of the order, and the affidavit verifying the grounds on which the application for the order was made, in the Magistrates Court.

19—Notice of freezing order to be given to financial institution

- (1) A freezing order issued in relation to an account at a financial institution takes effect on the date and at the time that notice of the order is given to the financial institution in accordance with this section.
- (2) Notice of a freezing order may be given to a financial institution—
 - (a) by giving the financial institution a copy of the freezing order; or
 - (b) if the applicant for the order was not given a copy of the order at the time the order was made—by giving the financial institution a notice in the prescribed form.
- (3) If notice of a freezing order is not given to the relevant financial institution within 72 hours after the order was made, the order will be of no force or effect.

20—Effect of freezing order

- (1) For the purposes of a freezing order, it is irrelevant whether or not money is deposited into the account in relation to which the freezing order was made after the order takes effect.
- (2) A freezing order does not prevent a financial institution from making withdrawals from an account for the purpose of meeting a liability imposed on the financial institution in connection with that account by any law of the State or the Commonwealth.

21—Duration of freezing order

- (1) Subject to this section, a freezing order ceases to be in force on—
 - (a) the making of a restraining order in respect of the money in the account; or
 - (b) the expiration of 72 hours after the time at which the freezing order took effect,whichever occurs first.
- (2) An authorised police officer may apply to a magistrate for an extension of the duration of a freezing order.
- (3) On an application under subsection (2), the magistrate—
 - (a) must have regard to the matters set out in section 17(2); and
 - (b) must not extend the duration of the freezing order unless satisfied that—
 - (i) an application for a restraining order in respect of the money in the account has been made; and
 - (ii) the application for the restraining order has not been determined.
- (4) An extension of the duration of a freezing order issued in relation to an account at a financial institution takes effect on the date and at the time that notice of the extension is given to the financial institution in accordance with this section.
- (5) Notice of the extension may be given to a financial institution by giving the financial institution a notice in the prescribed form.

- (6) If the duration of a freezing order is extended in accordance with this section, the freezing order ceases to be in force when the application for the restraining order referred to in subsection (3)(b) has been determined (and if a restraining order is not made in respect of the money in the account, the applicant for the extension must give the financial institution a notice in the prescribed form advising the financial institution of the cessation of the freezing order).

22—Failure to comply with freezing order

A financial institution that has been given notice of a freezing order must not, without reasonable excuse, fail to comply with the order.

Maximum penalty: \$20 000.

23—Offence to disclose existence of freezing order

- (1) A financial institution that has been given notice of a freezing order made in relation to an account must not, while the order is in force, disclose the existence or operation of the order to any person except—
- (a) a police officer; or
 - (b) an officer or agent of the financial institution, for the purpose of ensuring that the freezing order is complied with; or
 - (c) a legal practitioner acting for the financial institution, for the purpose of obtaining legal advice or representation in relation to the freezing order; or
 - (d) a person in whose name the account is held or who has an interest in the account.

Maximum penalty: \$20 000.

- (2) If the existence of a freezing order is disclosed to a person in accordance with subsection (1)(a), (b) or (c) in the course of the person performing duties as a police officer, an officer or agent of a financial institution or a legal practitioner, the person must not, while the order is in force, disclose to any other person the existence or operation of the order except—
- (a) for the purpose of performing duties as a police officer, an officer or agent of the financial institution or a legal practitioner (as the case may be); or
 - (b) for the purposes of, or in connection with, legal proceedings; or
 - (c) as otherwise required or authorised by this Act.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (3) A reference in this section to disclosing the existence or operation of a freezing order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the freezing order.

Part 3—Restraining orders

Division 1—Restraining orders

24—Restraining orders

- (1) A court must, on application by the DPP, make an order (a *restraining order*) that specified property must not be disposed of or otherwise dealt with by any person (except in the manner and circumstances, if any, specified in the order) if satisfied that—
 - (a) a person has been convicted of, or has been charged with, a serious offence, or it is proposed that the person be charged with a serious offence; or
 - (b) a person is suspected on reasonable grounds of having committed a serious offence; or
 - (c) there are reasonable grounds to suspect that the property is the proceeds of, or is an instrument of, a serious offence (whether or not the identity of the person who committed the offence is known); or
 - (d) there are reasonable grounds to suspect that a person has committed a serious offence and has derived literary proceeds in relation to the offence.
- (2) An application for an order under this section must specify the property to which the application relates.
- (3) The DPP may submit evidence in support of the application in the form of an affidavit.
- (4) Subject to subsection (5) and Division 3, the court must specify in the restraining order all property specified in the application for the order.
- (5) The court may only specify property in a restraining order made under subsection (1)(a),(b) or (d) if satisfied that there are reasonable grounds to suspect that the property is—
 - (a) in the case of a restraining order made under subsection (1)(a) or (b)—
 - (i) property of the suspect; or
 - (ii) property of another person (whether or not that other person's identity is known) that—
 - (A) is subject to the effective control of the suspect; or
 - (B) is proceeds of, or is an instrument of, the serious offence; or
 - (b) in the case of a restraining order made under subsection (1)(d)—
 - (i) property of the suspect; or
 - (ii) property of another person (whether or not that other person's identity is known) that is subject to the effective control of the suspect.
- (6) The court must make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

- (7) The court may specify that a restraining order covers property that is acquired by the suspect after the court makes the order.
- (8) A restraining order may be made subject to conditions.

25—Notice of application

- (1) Subject to subsection (4), the DPP must—
 - (a) give written notice of an application for a restraining order covering property to—
 - (i) the owner of the property (if the owner is known); and
 - (ii) any other person the DPP reasonably believes may have an interest in the property; and
 - (b) include with the notice a copy of the application and—
 - (i) in the case of the owner—any affidavit supporting the application; or
 - (ii) in any other case—a notice that the person may request the DPP give the person a copy of any affidavit supporting the application.
- (2) The DPP must comply with a request referred to in subsection (1)(b)(ii) as soon as practicable.
- (3) Subject to subsection (4), a court must not hear an application unless it is satisfied that the owner of the property to which the application relates has received reasonable notice of the application.
- (4) A court may, if the DPP requests, consider the application without notice having been given under subsection (1).
- (5) A court may, at any time before finally determining the application—
 - (a) direct the DPP to give or publish notice of the application to a specified person or class of persons; and
 - (b) specify the time and manner in which the notice is to be given or published.
- (6) A person who claims an interest in property may appear and adduce evidence at the hearing of the application.
- (7) A witness who is giving evidence relating to an application for a restraining order is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

26—Refusal to make an order for failure to give undertaking

- (1) A court may refuse to make a restraining order if the Crown refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the order.
- (2) The DPP may give such an undertaking on behalf of the Crown.

27—Order allowing expenses to be paid out of restrained property

- (1) A court that has made a restraining order may (when the restraining order is made or at a later time) order that one or more of the following may be met out of property, or a specified part of property, covered by the restraining order:
 - (a) the reasonable living expenses of the person whose property is restrained;
 - (b) the reasonable living expenses of any of the dependants of that person;
 - (c) the reasonable business expenses of that person;
 - (d) a specified debt incurred in good faith by that person.
- (2) The court may only make an order under subsection (1) if—
 - (a) the person whose property is restrained has applied for the order; and
 - (b) the person has notified the DPP, in writing, of the application and the grounds for the application; and
 - (c) the person has disclosed all of his or her interests in property, and his or her liabilities, in a statement on oath that has been filed in the court; and
 - (d) the court is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with—
 - (i) proceedings under this Act; or
 - (ii) proceedings for an offence against a law of the Commonwealth, a State or a Territory; and
 - (e) the court is satisfied that the person cannot meet the expense or debt out of property that is not covered by—
 - (i) a restraining order; or
 - (ii) a recognised Australian restraining order; or
 - (iii) a foreign restraining order that is registered under the Mutual Assistance Act.
- (3) Property that is covered by—
 - (a) a restraining order; or
 - (b) a recognised Australian restraining order; or
 - (c) a foreign restraining order that is registered under the Mutual Assistance Act,is taken, for the purposes of subsection (2)(e), not to be covered by the order if it would not be reasonably practicable for the Administrator to take custody and control of the property.

28—Excluding property from or revoking restraining orders in certain cases when expenses are not allowed

- (1) If—
 - (a) because of the operation of section 27(3), property that is covered by a restraining order is taken for the purposes of section 27(2)(e) not to be covered by the order; and

- (b) as a result, and for no other reason, the court refuses an application to make an order under section 27(1),
the court may—
 - (c) exclude the property from the restraining order; or
 - (d) if the property is the only property covered by the restraining order—revoke the restraining order.
- (2) The court must not exclude the property or revoke the order unless satisfied that the property is needed to meet one or more of the following:
 - (a) the reasonable living expenses of the person whose property is restrained;
 - (b) the reasonable living expenses of any of the dependants of that person;
 - (c) the reasonable business expenses of that person;
 - (d) a specified debt incurred in good faith by that person.
- (3) If the court excludes the property from, or revokes, the restraining order, the DPP must give written notice of the exclusion or revocation to—
 - (a) the owner of the property (if the owner is known); and
 - (b) any other person the DPP reasonably believes may have an interest in the property,however, the DPP need not give notice to the applicant for the order under section 27(1).

Division 2—Giving effect to restraining orders

29—Notice of a restraining order

- (1) If a court makes a restraining order covering property, the DPP must give written notice of the order to the owner of the property.
- (2) The DPP must, if the documents have not already been given to the owner, include with the notice—
 - (a) a copy of the application; and
 - (b) a copy of any affidavit supporting the application.
- (3) However, the court may, at the request of the DPP, order—
 - (a) that all or part of the application or affidavit is not to be given to the owner;
or
 - (b) that the DPP delay giving the notice (and any documents required to be included with the notice) for a specified period,if the court considers it appropriate in order to protect the integrity of any investigation or prosecution.
- (4) If the court orders the DPP to delay giving the notice (and the documents required to be included with the notice) for a specified period, the DPP must give the notice or documents as soon as practicable after the end of the period.

30—Registering restraining orders

- (1) A registration authority that keeps a register of property of a particular kind must, on the application of the DPP, record in the register particulars of a restraining order covering property of that kind.
- (2) If particulars of a restraining order covering property are recorded in a register in accordance with this section, each person who subsequently deals with the property is, in the absence of evidence to the contrary—
 - (a) taken not to be acting in good faith for the purposes of section 32; and
 - (b) taken to have notice of the restraining order for the purposes of section 33.

31—Notifying registration authorities of exclusions from or variations to restraining orders

- (1) If the DPP has made an application to a registration authority under section 30 in relation to particular property, the DPP must notify the registration authority if—
 - (a) the property is no longer covered by the order because—
 - (i) it is excluded from the order under section 34; or
 - (ii) the property covered by the order is varied under section 40; or
 - (b) a condition to which a restraining order is subject is varied under section 40.
- (2) A registration authority must, on being notified under subsection (1), vary the record of the restraining order made under section 30 accordingly.

32—Court may set aside a disposition contravening a restraining order

- (1) The DPP may apply to the court to set aside a disposition or dealing with property that contravenes a restraining order if that disposition or dealing was—
 - (a) not for sufficient consideration; or
 - (b) not in favour of a person who acted in good faith.
- (2) The DPP must give, to each party to the disposition or dealing, written notice of both the application and the grounds on which it seeks the setting aside of the disposition or dealing.
- (3) On an application under this section the court may—
 - (a) set aside the disposition or dealing from the day it occurred; or
 - (b) set aside the disposition or dealing from the day on which the order is made and declare the rights of any persons who acquired interests in the property on or after the day of the disposition or dealing and before the day on which the order is made.

33—Contravening restraining orders

- (1) A person is guilty of an offence if—
 - (a) the person disposes of, or otherwise deals with, property covered by a restraining order; and
 - (b) the person knows or is reckless as to the fact that—

- (i) the property is covered by a restraining order; and
- (ii) the disposition or dealing contravenes the order.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (2) A person is guilty of an offence if—
 - (a) the person disposes of, or otherwise deals with, property covered by a restraining order; and
 - (b) the disposition or dealing contravenes the order (whether or not the person knows or is reckless as to that fact); and
 - (c) either—
 - (i) the person was given notice of the order under section 29; or
 - (ii) particulars of the order were recorded in a register under section 30.

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

Division 3—Excluding property from restraining orders

34—Court may exclude property from a restraining order

- (1) The court to which an application for a restraining order under section 24(1)(a) or (b) was made may, when the order is made or at a later time, exclude specified property from the order if—
 - (a) an application is made under section 35 or 36; and
 - (b) the court is satisfied that—
 - (i) the property is neither proceeds nor an instrument of unlawful activity; and
 - (ii) the owner's interest in the property was lawfully acquired; and
 - (iii) it would not be contrary to the public interest for the property to be excluded from the order.
- (2) However—
 - (a) the court must not exclude property from a restraining order unless satisfied that neither a pecuniary penalty order nor a literary proceeds order could be made against—
 - (i) the person who owns the property; or
 - (ii) if the property is not owned by the suspect but is under his or her effective control—the suspect; and
 - (b) the court must not exclude property from a restraining order unless satisfied that the property could not be subject to an instrument substitution declaration if the suspect were convicted of the offence.

35—Application to exclude property from a restraining order after notice of the application for the order

- (1) A person whose property would be covered by a restraining order may apply to the court to exclude specified property from the restraining order within 14 days after being notified of the application for the order.
- (2) The person must give written notice to the DPP of both the application and the grounds on which the exclusion is sought.
- (3) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and
 - (b) must give the person notice of any grounds on which the DPP proposes to contest the application.

36—Application to exclude property from a restraining order after notice of the order

- (1) A person may apply to the court to exclude specified property from a restraining order at any time after being notified of the order.
- (2) However, unless the court gives leave, the person cannot apply if the person—
 - (a) appeared at the hearing of the application for the restraining order; or
 - (b) was notified of the application for the restraining order, but did not appear at the hearing of the application.
- (3) The court may give the person leave to apply if the court is satisfied that—
 - (a) if subsection (2)(a) applies—the person now has evidence relevant to the person’s application that was not available to the person at the time of the hearing; or
 - (b) if subsection (2)(b) applies—the person had a good reason for not appearing; or
 - (c) in any case—there are special grounds for giving the leave.
- (4) The person must give written notice to the DPP of the application and the grounds on which the exclusion is sought.
- (5) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and
 - (b) must give the person notice of any grounds on which the DPP proposes to contest the application.

37—Application not to be heard unless DPP has had reasonable opportunity to conduct an examination

The court must not hear an application to exclude specified property from the restraining order if—

- (a) the restraining order is in force; and
- (b) the DPP has not been given a reasonable opportunity to conduct examinations under this Act.

38—Giving security etc to exclude property from a restraining order

A court may exclude specified property from a restraining order that covers property if—

- (a) in the case of a restraining order that covers the property of the suspect—
 - (i) the suspect applies to the court to exclude the property; and
 - (ii) the suspect gives written notice of the application to the DPP; and
 - (iii) the suspect gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this Act; or
- (b) in the case of a restraining order that covers the property of a person who is not the suspect—
 - (i) the person applies to the court to exclude the property; and
 - (ii) the person gives written notice of the application to the DPP; and
 - (iii) the person gives an undertaking concerning the person's property that is satisfactory to the court.

Division 4—Further orders

39—Court may order Administrator to take custody and control of property

The court that made a restraining order, or any other court that could have made the restraining order, may order the Administrator to take custody and control of property covered by a restraining order if the court is satisfied that this is required.

40—Ancillary orders

- (1) The court that made a restraining order, or any other court that could have made the restraining order, may make any ancillary orders that the court considers appropriate including (without limiting the generality of this subsection) any of the following orders—
 - (a) an order varying the property covered by the restraining order;
 - (b) an order varying a condition to which the restraining order is subject;
 - (c) an order relating to an undertaking required under section 26;
 - (d) an order directing the owner of the property (including, if the owner is a body corporate, a specified director of the body corporate) to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;
 - (e) if the Administrator is ordered under section 39 to take custody and control of property, an order—
 - (i) regulating the manner in which the Administrator may exercise its powers or perform its duties under the restraining order; or
 - (ii) determining any question relating to the property, including a question relating to the liabilities of the owner or the exercise of powers or the performance of duties of the Administrator; or

- (iii) directing any person to do anything necessary or convenient to enable the Administrator to take custody and control of the property;
 - (f) an order giving directions about the operation of the restraining order and—
 - (i) a forfeiture order that covers the same property as the restraining order; or
 - (ii) a pecuniary penalty order or a literary proceeds order that relates to the same serious offence as the restraining order;
 - (g) an order requiring a person whose property is covered by a restraining order to do anything necessary or convenient to bring the property within the State.
- (2) The court may only make an ancillary order on the application of—
- (a) the DPP; or
 - (b) the owner of the property covered by the order; or
 - (c) if the Administrator was ordered to take custody and control of the property—the Administrator; or
 - (d) any other person who has the leave of the court.
- (3) A person who applies for an ancillary order must give written notice of the application to all other persons entitled to make such an application.
- (4) A court may, if the DPP requests, consider the application without notice having been given under subsection (3).
- (5) An ancillary order may be made—
- (a) if made by the court that made the restraining order—when making the restraining order; or
 - (b) in any case—at any time after the restraining order is made.
- (6) An order that is ancillary to a restraining order does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under section 46(4) or (5).

41—Contravening ancillary orders relating to foreign property

A person who knowingly or recklessly contravenes an order made under section 40(1)(g) is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 4 years.

Division 5—Duration of restraining orders

42—When a restraining order comes into force

A restraining order is in force from the time it is made.

43—Application to revoke a restraining order

- (1) A person who was not notified of the application for a restraining order may apply to the court that made the order to revoke the order—
- (a) within 28 days after the person is notified that the order was made; or

- (b) within such longer period (not exceeding 3 months after the person is notified that the order was made) as the court allows.
- (2) The applicant must give written notice to the DPP and, if a person other than the DPP is appointed to act as the Administrator under this Act, the Administrator of the application and the grounds on which the revocation is sought.
- (3) The court may revoke the restraining order if satisfied there are no grounds on which to make the restraining order at the time of considering an application under subsection (1).
- (4) However, the restraining order remains in force until the court revokes the order.
- (5) The DPP may adduce additional material to the court relating to the application to revoke the restraining order.

44—Giving security etc to revoke a restraining order

A court may revoke a restraining order that covers property if—

- (a) in the case of a restraining order that covers the property of the suspect—
 - (i) the suspect applies to the court to revoke the order; and
 - (ii) the suspect gives written notice of the application to the DPP; and
 - (iii) the suspect gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this Act; or
- (b) in the case of a restraining order that covers the property of a person who is not the suspect—
 - (i) the person applies to the court to revoke the order; and
 - (ii) the person gives written notice of the application to the DPP; and
 - (iii) the person gives an undertaking concerning the person's property that is satisfactory to the court.

45—Notice of revocation of a restraining order

If a restraining order is revoked under section 43 or 44, the DPP must give written notice of the revocation to—

- (a) the owner of any property covered by the restraining order (if the owner is known); and
- (b) any other person the DPP reasonably believes may have an interest in the property,

however, the DPP need not give notice to the applicant for the order.

46—Cessation of restraining orders

- (1) A restraining order that relates to one or more serious offences ceases to be in force 28 days after—
 - (a) all charges that relate to the restraining order are withdrawn; or
 - (b) the suspect is acquitted of all serious offences with which the suspect was charged; or

- (c) the convictions for the serious offences of which the suspect was convicted are quashed,
- unless—
- (d) there is a confiscation order that relates to the serious offences; or
 - (e) there is an application for a confiscation order that relates to the serious offences before the court; or
 - (f) there is an application under—
 - (i) section 64; or
 - (ii) section 83; or
 - (iii) section 125,for confirmation of a forfeiture, or a confiscation order, that relates to the serious offences; or
 - (g) the suspect is charged with a related offence.
- (2) A restraining order relating to property ceases to be in force if, not more than 28 days after the order was made—
- (a) the suspect has not been convicted of, or charged with, the serious offence, or at least one serious offence, to which the restraining order relates; and
 - (b) there is no confiscation order or application for a confiscation order that relates to the property.
- (3) A restraining order ceases to be in force in respect of property covered by the restraining order if—
- (a) one of the following occurs:
 - (i) the court refuses an application for a forfeiture order that would have covered the property and—
 - (A) the time for an appeal against the refusal has expired without an appeal being lodged; or
 - (B) an appeal against the refusal has lapsed; or
 - (C) an appeal against the refusal has been dismissed and finally disposed of;
 - (ii) the court excludes the property from a forfeiture order;
 - (iii) a forfeiture order that covers the property is discharged or ceases to have effect;
 - (iv) the court excludes the property under section 76 from forfeiture under Part 4 Division 2; and
 - (b) no application is yet to be determined for—
 - (i) another confiscation order relating to a serious offence to which the restraining order relates; or
 - (ii) another confiscation order relating to a related offence; and

- (c) no other confiscation order relating to an offence referred to in paragraph (b) is in force.
- (4) A restraining order ceases to be in force to the extent that property that it covers vests absolutely in the Crown under Part 4 Division 2 or Division 3.
- (5) A restraining order that relates to one or more serious offences ceases to be in force in respect of property covered by the restraining order if—
 - (a) a pecuniary penalty order or a literary proceeds order relates to the offence or offences; and
 - (b) one or more of the following occurs:
 - (i) the pecuniary penalty order or the literary proceeds order is satisfied;
 - (ii) the property is sold or disposed of to satisfy the pecuniary penalty order or literary proceeds order;
 - (iii) the pecuniary penalty order or the literary proceeds order is discharged or ceases to have effect.
- (6) Despite subsection (1), if—
 - (a) a restraining order covers property of a person who is not a suspect; and
 - (b) the property is an instrument of, but is not proceeds of, a serious offence to which the order relates; and
 - (c) the property is not subject to the effective control of another person who is a suspect in relation to the order,

the restraining order ceases to be in force in respect of that property if the suspect has not been charged with the serious offence or a related offence within 28 days after the restraining order is made.

Part 4—Forfeiture

Division 1—Forfeiture orders

Subdivision 1—Forfeiture orders

47—Forfeiture orders

- (1) A court must, on application by the DPP, make an order (a *forfeiture order*) that property specified in the order is forfeited to the Crown if—
 - (a) a person has been convicted of one or more serious offences and the court is satisfied that the property to be specified in the order is proceeds of one or more of those offences; or
 - (b) the property to be specified in the order is covered by a restraining order made under section 24(1)(b) that has been in force for at least 6 months and the court is satisfied that the property is proceeds of one or more serious offences committed by the person whose conduct (or suspected conduct) formed the basis of the restraining order; or

- (c) the property to be specified in the order is covered by a restraining order made under section 24(1)(c) that has been in force for at least 6 months and the court is satisfied that—
 - (i) the application for the order alleges that the property is proceeds of one or more serious offences; and
 - (ii) no application has been made under Part 3 Division 3 for the property to be excluded from the restraining order, or that any such application has been withdrawn; and
 - (iii) the DPP has taken reasonable steps to identify and notify persons with an interest in the property.
- (2) For the purposes of making an order under subsection (1)(b) or (c)—
 - (a) a finding of the court under either of those paragraphs need not be based on a finding as to the commission of a particular serious offence; and
 - (b) the fact that a person has been acquitted of a serious offence with which the person has been charged, or the raising of a doubt as to whether a person engaged in conduct constituting a serious offence, does not affect the court's power to make the order under either of those paragraphs in relation to the offence; and
 - (c) in relation to an order under subsection (1)(c)—a finding of the court under that paragraph need not be based on a finding that a particular person committed any offence.
- (3) A court may, on application by the DPP, make an order (a *forfeiture order*) that property specified in the order is forfeited to the Crown, if—
 - (a) a person has been convicted of one or more serious offences the court is satisfied that the property is an instrument of one or more of the offences or is subject to an instrument substitution declaration under section 48; or
 - (b) the property to be specified in the order is covered by a restraining order made under section 24(1)(b) that has been in force for at least 6 months and the court is satisfied that the property is an instrument of one or more serious offences committed by the person whose conduct (or suspected conduct) formed the basis of the restraining order; or
 - (c) the property to be specified in the order is covered by a restraining order made under section 24(1)(c) that has been in force for at least 6 months and the court is satisfied that—
 - (i) the application for the order alleges that the property is an instrument of one or more serious offences; and
 - (ii) no application has been made under Part 3 Division 3 for the property to be excluded from the restraining order, or that any such application has been withdrawn; and
 - (iii) the DPP has taken reasonable steps to identify and notify persons with an interest in the property.

- (4) In considering whether it is appropriate to make a forfeiture order under subsection (3) in respect of particular property, the court may have regard to—
- (a) any hardship that may reasonably be expected to be caused to any person (other than the suspect) by the operation of the order; and
 - (b) the use that is ordinarily made, or was intended to be made, of the property; and
 - (c) the gravity of the offence or offences concerned; and
 - (d) any other matter the court thinks fit.
- (5) If evidence is given, at the hearing of an application for a forfeiture order under this section that relates to a person's conviction for a serious offence, that property was in the possession of a person at the time at which, or immediately after, the person committed a serious offence to which the application relates—
- (a) if no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offence—the court must presume that the property was used in, or in connection with, the commission of the offence; or
 - (b) in any other case—the court must not make a forfeiture order against the property unless it is satisfied that the property was used or intended to be used in, or in connection with, the commission of the offence.
- (6) An application for a forfeiture order under this section that relates to a person's conviction for a serious offence must be made before the end of the period of 6 months after the conviction day.
- (7) A court must not, if a person is taken under section 5(1)(d) to have been convicted of a serious offence, make a forfeiture order relating to the person's conviction unless—
- (a) the court is satisfied, on the balance of probabilities, that the person has absconded; and
 - (b) either—
 - (i) the person has been committed for trial for the offence; or
 - (ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, or the Magistrates Court (as the case requires) could lawfully find the person guilty of the offence.

48—Instrument substitution declarations

A court determining an application for a forfeiture order relating to a person's conviction of a serious offence may, on the application of the DPP, declare property to be subject to an *instrument substitution declaration* if satisfied that—

- (a) the convicted person had, at the time of the offence, an interest in the property; and
- (b) the property is of the same nature or description as property that was an instrument of the offence (whether or not the property is of the same value); and

- (c) the property that was an instrument of the offence is not available for forfeiture or is not able to be made the subject of an order for forfeiture.

49—Additional application for a forfeiture order

- (1) The DPP cannot, unless the court gives leave, apply for a forfeiture order under section 47 in relation to a serious offence if—
 - (a) an application has previously been made under that section for the forfeiture of the property in relation to the offence; and
 - (b) the application has been finally determined on the merits.
- (2) The court must not give leave unless it is satisfied that—
 - (a) the property to which the new application relates was identified only after the first application was determined; or
 - (b) necessary evidence became available only after the first application was determined; or
 - (c) it is in the interests of justice to grant the leave.
- (3) To avoid doubt, the DPP may apply for a forfeiture order against property in relation to a serious offence even though an application has previously been made for a pecuniary penalty order or a literary proceeds order in relation to the offence.

50—Notice of application

- (1) The DPP must give written notice of an application for a forfeiture order—
 - (a) if the order is sought relating to a person’s conviction of a serious offence—to the person; and
 - (b) to any other person—
 - (i) who claims an interest in; or
 - (ii) who the DPP reasonably believes may have an interest in,the property covered by the application.
- (2) However, a court to which an application for a forfeiture order is made may, on the application of the DPP, dispense with the requirement to give notice to a person under subsection (1) if the court is satisfied that the person has absconded in connection with an offence.
- (3) The court may, at any time before finally determining an application for a forfeiture order—
 - (a) direct the DPP to give or publish notice of the application to a specified person or class of persons; and
 - (b) specify the time and manner in which the notice is to be given or published.

51—Procedure on application

- (1) A person who claims an interest in property covered by an application for a forfeiture order may appear and adduce evidence at the hearing of the application.

- (2) If the application relates to a person's conviction of a serious offence, a court may, in determining the application, have regard to—
 - (a) the transcript of any proceedings against the person for—
 - (i) that offence; or
 - (ii) if the person is taken to be convicted of the offence because of section 5(1)(c)—the other offence referred to in that paragraph; and
 - (b) any evidence given in the proceedings.
- (3) The court may make a forfeiture order if a person entitled to be given notice of the relevant application fails to appear at the hearing of the application.

52—Amending an application

- (1) The court hearing an application for a forfeiture order may, on the application or with the consent of the DPP, amend the application.
- (2) However, the court must not amend the application to include additional property in the application unless—
 - (a) the court is satisfied that—
 - (i) the property was not reasonably capable of identification when the application was originally made; or
 - (ii) necessary evidence became available only after the application was originally made; or
 - (b) the forfeiture order applied for is an order to which section 47(1)(b) or (c) or (3)(b) or (c) applies and the court is satisfied that—
 - (i) including the additional property in the application for the order might have prejudiced the investigation of, or the prosecution of a person for, an offence; or
 - (ii) it is for any other reason appropriate to grant the application to amend.
- (3) The DPP must, on applying for an amendment to include additional property in the application, give written notice of the application to amend to any person whom the DPP reasonably believes may have an interest in the additional property.
- (4) However, the court may, on the application of the DPP, dispense with the requirement to give notice to a person under subsection (3) if the court is satisfied that the person has absconded in connection with an offence.
- (5) If the forfeiture order applied for is an order to which section 47(1)(a) or (3)(a) applies, any person who claims an interest in that additional property may appear and adduce evidence at the hearing of the application to amend.

53—Forfeiture orders can extend to other interests in property

- (1) A court may, in specifying an interest in property in a forfeiture order, specify any other interests in the property (regardless of whose they are) if—
 - (a) the amount received from disposing of the combined interests would be likely to be greater than the amount received from disposing of each of the interests separately; or

- (b) disposing of the interests separately would be impracticable or significantly more difficult than disposing of the combined interests.
- (2) If a court specifies other interests under subsection (1), the court may make such ancillary orders as it thinks fit for the protection of a person having one or more of those other interests.
- (3) Without limiting the generality of subsection (2), an ancillary order may include—
 - (a) an order directing the Crown to pay the person a specified amount as the value of the person’s interest in the property; or
 - (b) an order directing that specified other interests in the property be transferred to the person.
- (4) In deciding whether to make an ancillary order, the court must have regard to—
 - (a) the nature, extent and value of the person’s interest in the property concerned; and
 - (b) if the court is aware that any other person claims an interest in the property—the nature, extent and value of the interest; and
 - (c) any other matter that the court considers relevant.

54—Forfeiture orders must specify the value of forfeited property

A court must specify the amount it considers to be the value, at the time the order is made, of the property (other than money) specified in the forfeiture order.

55—Declaration by court in relation to buying back interests in forfeited property

A court that makes a forfeiture order may, if satisfied that—

- (a) it would not be contrary to the public interest for a person’s interest in the property to be transferred to the person; and
 - (b) there is no other reason why the person’s interest should not be transferred to the person,
- by order—
- (c) declare the nature, extent and value (at the time when the order is made) of the person's interest; and
 - (d) declare that the interest may be excluded under section 72 from the operation of the forfeiture order.

56—Court may make supporting directions

- (1) A court that makes a forfeiture order may give any directions that are necessary or convenient for giving effect to the order.
- (2) Without limiting the generality of subsection (1), a direction may, for a forfeiture order specifying registrable property, include a direction to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

Subdivision 2—Reducing the effect of forfeiture orders**57—Relieving certain dependants from hardship**

- (1) A court making a forfeiture order specifying a person's property must make an order directing the Crown to pay a specified amount to a specified dependant, or dependants, of the person if—
 - (a) the forfeiture order is not one to which section 47(1)(a) applies; and
 - (b) the court is satisfied—
 - (i) the forfeiture order would cause hardship to the dependant; and
 - (ii) the specified amount would relieve that hardship; and
 - (iii) if the dependant is aged at least 18 years—the dependant had no knowledge (at the time of the conduct) of the person's conduct that is the subject of the forfeiture order.
- (2) The specified amount must not exceed the difference between—
 - (a) the amount the court considers likely to be received from disposing of the person's property under the forfeiture order; and
 - (b) the amount the court considers likely to be the costs of administering this Act (referred to in section 209(1)) in connection with the forfeiture order.

58—Making exclusion orders before forfeiture order made

- (1) A court that is hearing, or is to hear, an application for a forfeiture order, must make an order excluding property from forfeiture (an *exclusion order*) if—
 - (a) a person applies for the exclusion order in accordance with section 60; and
 - (b) the application for a forfeiture order specifies the applicant's property; and
 - (c) if the forfeiture order would be one to which section 47(1)(a) or (3)(a) applies, the court is satisfied that—
 - (i) the applicant was not involved in the commission of a serious offence to which the application for a forfeiture order relates; and
 - (ii) the property to be specified in the exclusion order is neither proceeds nor an instrument of the offence; and
 - (d) if the forfeiture order would be one to which section 47(1)(b) or (c) or (3)(b) or (c) applies, the court is satisfied that the property to be specified in the exclusion order is neither proceeds nor an instrument of unlawful activity.
- (2) An exclusion order under subsection (1) must—
 - (a) specify the nature, extent and value (at the time of making the order) of the property concerned; and
 - (b) direct that the property be excluded from the operation of the forfeiture order.
- (3) An applicant for an exclusion order under subsection (1) must give written notice to the DPP of the application and the grounds on which the order is sought.
- (4) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and

- (b) must give the applicant notice of any grounds on which it proposes to contest the application.
- (5) However, the DPP need not give notice under subsection (4)(b) until it has had a reasonable opportunity to examine the applicant under Part 6 Division 1.
- (6) An application for an exclusion order under subsection (1) must not be heard until the DPP has had a reasonable opportunity to examine the applicant under Part 6 Division 1.

59—Making exclusion orders after forfeiture

- (1) A court that made a forfeiture order must make an order excluding property from forfeiture (an *exclusion order*) if—
 - (a) a person applies for the exclusion order in accordance with section 60; and
 - (b) the forfeiture order specifies the applicant’s property; and
 - (c) if the forfeiture order was one to which section 47(1)(a) or (3)(a) applies, the court is satisfied that—
 - (i) the applicant was not involved in the commission of a serious offence to which the forfeiture order relates; and
 - (ii) the property to be specified in the exclusion order is neither proceeds nor an instrument of the offence; and
 - (d) if the forfeiture order was one to which section 47(1)(b) or (c) or (3)(b) or (c) applies, the court is satisfied that the property to be specified in the exclusion order is neither proceeds nor an instrument of unlawful activity.
- (2) An exclusion order under subsection (1) must—
 - (a) specify the nature, extent and value (at the time of making the order) of the property concerned; and
 - (b) direct that the property be excluded from the operation of the forfeiture order; and
 - (c) if the property has vested (in law or equity) in the Crown under this Division and is yet to be disposed of—direct the Crown to transfer the property to the applicant; and
 - (d) if the property has vested (in law or equity) in the Crown under this Division and has been disposed of—direct the Crown to pay the applicant an amount equal to the value specified under paragraph (a).
- (3) An applicant for an exclusion order under subsection (1) must give written notice to the DPP of the application and the grounds on which the order is sought.
- (4) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and
 - (b) must give the applicant notice of any grounds on which it proposes to contest the application.
- (5) However, the DPP need not give notice under subsection (4)(b) until it has had a reasonable opportunity to examine the applicant under Part 6 Division 1.

- (6) An application for an exclusion order under subsection (1) must not be heard until the DPP has had a reasonable opportunity to examine the applicant under Part 6 Division 1.

60—Applying for exclusion orders

- (1) A person may apply for an exclusion order if a forfeiture order that could specify the person's property has been applied for, but is yet to be made.
- (2) A person cannot, except with leave of the court, apply for an exclusion order after a forfeiture order specifying the person's property has been made if—
- (a) the person—
 - (i) appeared at the hearing of that application; or
 - (ii) was given notice of the application for the forfeiture order, but did not appear at the hearing of that application; or
 - (b) 6 months have elapsed since the forfeiture order was made.
- (3) The court may only give leave to apply under subsection (2) if satisfied that—
- (a) if subsection (2)(a)(i) applies—the person now has evidence relevant to the person's application that was not available to the person at the time of the hearing; or
 - (b) if subsection (2)(a)(ii) applies—the person had a good reason for not appearing; or
 - (c) if subsection (2)(b) applies—the person's failure to apply was not due to any neglect by the person; or
 - (d) in any case—there are special grounds for giving the leave.

61—Making compensation orders

- (1) A court that made a forfeiture order must make an order (a *compensation order*) if—
- (a) a person has applied for the compensation order; and
 - (b) the forfeiture order specifies the applicant's property as proceeds of a serious offence to which the forfeiture order relates; and
 - (c) the court is satisfied that, when the property first became proceeds of the serious offence, a proportion of the value of the property was not acquired using the proceeds of any unlawful activity.
- (2) A compensation order must—
- (a) specify the proportion of the value of the property not acquired using the proceeds of any offence referred to in subsection (1)(c); and
 - (b) direct the Crown to—
 - (i) if the property has not been disposed of—dispose of the property; and
 - (ii) pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the total of any costs of administering this Act (of a kind referred to in section 209(1)) in connection with the forfeiture order.

- (3) An applicant for a compensation order must give written notice to the DPP of the application and the grounds on which the order is sought.
- (4) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and
 - (b) must give the applicant notice of any grounds on which it proposes to contest the application.

62—Applying for compensation orders

- (1) Subject to this section, a person whose property is specified in a forfeiture order may apply for a compensation order.
- (2) If a person was given notice of an application for a forfeiture order, the person cannot apply for a compensation order relating to that forfeiture order unless—
 - (a) the person applies for the compensation order within 6 months after the forfeiture order was made; and
 - (b) the court gives leave.
- (3) If a person was not given notice of an application for a forfeiture order, the person cannot apply for a compensation order relating to a forfeiture order unless—
 - (a) the person applies for the compensation order within 6 months after the forfeiture order was made; or
 - (b) the court gives leave.

Subdivision 3—The effect of acquittals and quashing of convictions

63—Certain forfeiture orders unaffected by acquittal or quashing of conviction

A forfeiture order made under section 47(1)(b) or (c) or (3)(b) or (c) against a person in relation to a serious offence is not affected if—

- (a) having been charged with the offence, the person is acquitted; or
- (b) the person is convicted of the offence and the conviction is subsequently quashed.

64—Discharge of conviction based forfeiture order on quashing of conviction

- (1) A forfeiture order made under section 47(1)(a) or (3)(a) in relation to a person's conviction of a serious offence is discharged if—
 - (a) the person's conviction of the offence is subsequently quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
 - (b) the DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.
- (2) However, unless a court decides otherwise on an application under subsection (1), the quashing of the conviction does not affect the forfeiture order—
 - (a) for 14 days after the conviction is quashed; or

- (b) if the DPP makes an application under subsection (1).

65—Notice of application for confirmation of forfeiture order

- (1) The DPP must give written notice of an application for confirmation of the forfeiture order to—
- (a) the person whose conviction was quashed; and
 - (b) any person—
 - (i) who claims, or prior to the forfeiture claimed, an interest in property covered by the forfeiture order; and
 - (ii) whom the DPP reasonably believes may have had an interest in property covered by the forfeiture order before the forfeiture.
- (2) The court may, at any time before finally determining the application—
- (a) direct the DPP to give or publish notice of the application to a specified person or class of persons; and
 - (b) specify the time and manner in which the notice is to be given or published.

66—Procedure on application for confirmation of forfeiture order

- (1) A person who claims an interest in property covered by the forfeiture order may appear and adduce evidence at the hearing of the application for confirmation of the order.
- (2) A court may, in determining the application, have regard to—
- (a) the transcript of any proceeding against the person for—
 - (i) the serious offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of the offence because of section 5(1)(c)—the other offence referred to in that paragraph, including any appeals relating to the conviction; and
 - (b) any evidence given in the proceeding.

67—Court may confirm forfeiture order

A court may confirm a forfeiture order made under section 47(1)(a) or (3)(a) if satisfied that the court could, at the time it made that order, have instead made a forfeiture order under some other provision of section 47 (if the DPP had applied for an order under that other provision).

68—Effect of court's decision on confirmation of forfeiture order

- (1) If a court confirms the forfeiture order under section 67, the order is taken not to be affected by the quashing of the person's conviction of the serious offence.
- (2) If the court decides not to confirm the forfeiture order, the order is discharged.

69—Administrator must not deal with forfeited property before the court decides on confirmation of forfeiture order

The Administrator must not, during the period starting on the day after the person's conviction of the serious offence was quashed and ending when the court confirms, or decides not to confirm, the forfeiture order, do any of the things required under section 93 in relation to property covered by the order, or amounts received from the disposal of the property.

70—Giving notice if a forfeiture order is discharged on appeal or by quashing of a conviction

(1) If—

- (a) a forfeiture order that covered particular property is discharged by a court hearing an appeal against the making of the order; or
- (b) a forfeiture order that covered particular property is discharged under section 64 or section 68(2),

then the DPP—

- (c) must, as soon as practicable, give written notice of the discharge to any person the DPP reasonably believes may have had an interest in the property immediately before the order was made; and
 - (d) must, if required by a court, give or publish notice of the discharge to a specified person or class of persons.
- (2) The court may specify the time and manner in which a notice under subsection (1)(d) is to be given or published.
- (3) A notice given under this section must include a statement to the effect that a person claiming to have had an interest in that property may apply under section 71 for the transfer of the interest, or its value, to the person.

71—Returning property etc following the discharge of a forfeiture order

(1) If—

- (a) a forfeiture order has been discharged in relation to property specified in the forfeiture order—
 - (i) by a court hearing an appeal against the making of the order; or
 - (ii) under section 64 or 68; and
- (b) a person who had an interest in the property immediately before the order was made applies in writing to the Minister for the transfer of the interest to the person,

the Minister must—

- (c) if the property is vested in the Crown—cause an interest in the property equivalent to the interest held by the person immediately before the order was made to be transferred to the person; or
- (d) if the property is no longer vested in the Crown—cause an amount equal to the value of the interest held by the person immediately before the order was made in the property to be paid to the person.

- (2) The Minister may do or authorise the doing of anything necessary or convenient to effect a transfer, including—
- (a) executing any instrument; and
 - (b) applying for registration of an interest in the property on any appropriate register.

Subdivision 4—Buying back interests in forfeited property etc

72—A person may buy back interest in forfeited property

- (1) The payment to the Crown, while the property is still vested in the Crown, of an amount declared under section 55(c) to be the value of the person's interest, discharges the forfeiture order to the extent to which it relates to the interest and the Minister must cause the interest to be transferred to the person in whom it was vested immediately before the property was forfeited.
- (2) The Minister may do or authorise the doing of anything necessary or convenient to effect a transfer, including—
- (a) executing any instrument; and
 - (b) applying for registration of an interest in the property on an appropriate register.

73—A person may buy out another person's interest in forfeited property

The Minister must cause an interest in property to be transferred to a person if—

- (a) the property is forfeited to the Crown under this Division; and
- (b) the interest is required to be transferred to the person under section 71(1) or 72(1), or under a direction under section 59(2)(c); and
- (c) the person's interest in the property, immediately before the forfeiture, was not the only interest in the property; and
- (d) the person gives written notice to each other person who had an interest in the property immediately before the forfeiture that—
 - (i) the person intends to purchase that other interest from the Crown; and
 - (ii) the other person may, within 21 days after receiving the notice, lodge a written objection to the purchase of the interest with the Minister; and
- (e) no person served with a notice under paragraph (d) in relation to the interest lodges a written objection under that paragraph; and
- (f) the person pays to the Crown, while the property is still vested in the Crown, an amount equal to the value of the interest.

Division 2—Forfeiture on conviction of a serious offence

Subdivision 1—Forfeiture on conviction of a serious offence

74—Forfeiting restrained property without a forfeiture order if a person has been convicted of a serious offence

- (1) Property is forfeited to the Crown at the end of the relevant period if—
 - (a) a person is convicted of a serious offence; and
 - (b) either—
 - (i) at the end of the relevant period, the property is covered by a restraining order that relates to the offence; or
 - (ii) the property was covered by a restraining order that relates to the offence, but the property was excluded, or the order revoked, under section 38 or section 44; and
 - (c) the property is not subject to an order under section 76 excluding the property from forfeiture under this Division.
- (2) For the purposes of this section, it does not matter whether—
 - (a) the restraining order was made before or after the person’s conviction of the serious offence; or
 - (b) immediately before forfeiture, the property is the person’s property or another person’s property.
- (3) However, this section does not apply if the person is taken to have been convicted under section 5(1)(d).
- (4) A restraining order in relation to a related offence with which the person has been charged, or is proposed to be charged, is taken, for the purposes of this section, to be a restraining order in relation to the serious offence of which the person was convicted.
- (5) If—
 - (a) particular property is excluded from a restraining order under section 38, or a restraining order that covered particular property is revoked under section 44; and
 - (b) the security referred to in section 38(a)(iii) or section 44(a)(iii) (as the case requires) in connection with the exclusion or revocation is still in force,the security is taken, for the purposes of this section, to be the property referred to in subsection (1).
- (6) In this section—

relevant period means—

 - (a) the 6 month period starting on the day of the conviction; or
 - (b) if an extension order is in force at the end of that period—the extended period relating to the extension order.

75—Making an extension order extending the period before property is forfeited

- (1) The court that made the restraining order referred to in section 74(1)(b) may make an order (an *extension order*) specifying an extended period for the purposes of that section if—
 - (a) an application for the order is made within 6 months after the start of the day of the relevant conviction; and
 - (b) the applicant has also applied to the court under this Act to exclude property from the restraining order; and
 - (c) the court is satisfied that the applicant made the application to exclude property from the restraining order without undue delay, and has since diligently followed up that application.
- (2) The extended period must end not later than 15 months from the start of the day of the relevant conviction.
- (3) The extension order stops being in force if the application to exclude property from the restraining order is finally determined before the end of the 6 month period starting on the day of the relevant conviction.
- (4) The extended period ends if the application to exclude property from the restraining order is finally determined before the end of the extended period.

76—Excluding property from forfeiture under this Division

- (1) The court that made the restraining order referred to in section 74(1)(b) may make an order excluding particular property from forfeiture under this Division if—
 - (a) the person referred to in section 74(1)(a)—
 - (i) applies for the order; and
 - (ii) owns the property; and
 - (iii) has been convicted of a serious offence to which the restraining order relates; and
 - (b) the property is covered by the restraining order; and
 - (c) the court is satisfied that—
 - (i) the property is not proceeds of unlawful activity; and
 - (ii) the defendant's interest in the property was lawfully acquired; and
 - (iii) it would not be contrary to the public interest for the property to be excluded from such forfeiture.
- (2) To avoid doubt, an order under this section cannot be made in relation to property if the property has already been forfeited under this Division.
- (3) The person must give written notice to the DPP of both the application and the grounds on which the order is sought.
- (4) The DPP—
 - (a) may appear and adduce evidence at the hearing of the application; and

- (b) must give the applicant notice of any grounds on which it proposes to contest the application.

77—Court may declare that property has been forfeited under this Division

The court that made the restraining order referred to in section 74(1)(b) may declare that particular property has been forfeited under this Division if—

- (a) the DPP applies to the court for the declaration; and
- (b) the court is satisfied that the property is forfeited under this Division.

Subdivision 2—Recovery of forfeited property

78—Court may make orders relating to transfer of forfeited property etc

If property is forfeited to the Crown under section 74, the court that made the restraining order referred to in section 74(1)(b) may, if—

- (a) a person who claims an interest in the property applies under section 80 for an order under this section; and
- (b) the court is satisfied that—
 - (i) the person was not involved in the commission of the serious offence to which the forfeiture relates; and
 - (ii) the person’s interest in the property—
 - (A) is not subject to the effective control of the person whose conviction caused the forfeiture; and
 - (B) is not proceeds of the serious offence or an instrument of the offence; and
- (c) the court is satisfied that—
 - (i) the property was not used in, or in connection with, an unlawful activity and was not derived or realised, directly or indirectly, by any person from an unlawful activity; and
 - (ii) the applicant acquired the property lawfully; and
 - (iii) the applicant is not the person convicted of the serious offence to which the forfeiture relates,

by order—

- (d) declare the nature, extent and value of the applicant’s interest in the property; and
- (e) —
 - (i) if the interest is still vested in the Crown—direct the Crown to transfer the interest to the applicant; or
 - (ii) declare that there is payable by the Crown to the applicant an amount equal to the value declared under paragraph (d).

79—Court may make orders relating to buying back forfeited property

If property is forfeited to the Crown under section 74, the court that made the restraining order referred to in section 74(1)(b) may, if—

- (a) a person who claims an interest in the property applies under section 80 for an order under this section; and
- (b) the court is satisfied that—
 - (i) it would not be contrary to the public interest for the person's interest to be transferred to the person; and
 - (ii) there is no other reason why the person's interest should not be transferred to the person,

by order—

- (c) declare the nature, extent and value (as at the time when the order is made) of the interest; and
- (d) declare that the forfeiture ceases to operate in relation to the person's interest if payment is made under section 72.

80—Applying for orders under sections 78 and 79

- (1) An application for an order under section 78 or 79 must be made before the end of the period of 6 months commencing on the day on which the property to which the application relates is forfeited to the Crown.
- (2) However, the court may give a person leave to apply after the end of that period if the court is satisfied that the delay in making the application is not due to neglect on the part of the person.
- (3) A person who was given notice of—
 - (a) proceedings for the application for the restraining order by virtue of which the property is forfeited; or
 - (b) the making of the restraining order,must not apply for an order under section 78 or 79 relating to the property.
- (4) However, the court may give a person leave to apply if the court is satisfied that the person's failure to seek to have the property excluded from the forfeiture by an order under section 76 was not due to any neglect on the part of the person.

81—A person may buy back interest in forfeited property

- (1) If—
 - (a) property is forfeited to the Crown under section 74; and
 - (b) a court makes an order under section 79 in respect of an interest in the property; and
 - (c) the amount specified in the order as the value of the interest is, while the interest is still vested in the Crown, paid to the Crown,

the Administrator must cause the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Crown.

- (2) The Administrator may do or authorise the doing of anything necessary or convenient to effect a transfer, including—
- (a) executing any instrument; and
 - (b) applying for registration of an interest in the property on an appropriate register.

82—A person may buy out another person's interest in forfeited property

The Administrator must cause an interest in property to be transferred to a person if—

- (a) the property is forfeited to the Crown under section 74; and
- (b) the interest is required to be transferred to the person under this Division; and
- (c) the person's interest in the property, immediately before the forfeiture, was not the only interest in the property; and
- (d) the person gives written notice to each other person who had an interest in the property immediately before the forfeiture that—
 - (i) the person intends to purchase the other interest from the Crown; and
 - (ii) the other person may, within 21 days after receiving the notice, lodge a written objection to the purchase of the interest with the Administrator; and
- (e) no person served with notice under paragraph (d) in relation to the interest lodges a written objection under that paragraph; and
- (f) the purchaser pays to the Crown, while the interest is still vested in the Crown, an amount equal to the value of the interest.

Subdivision 3—The effect of acquittals and quashing of convictions

83—The effect on forfeiture of convictions being quashed

- (1) If, after forfeiture of property under section 74 in relation to a person's conviction of a serious offence—
- (a) the person's conviction is subsequently quashed; and
 - (b) the forfeiture does not also relate to the person's conviction of other offences that have not been quashed; and
 - (c) the DPP does not, within 14 days after the conviction is quashed, apply to the court that made the restraining order referred to in section 74(1)(b) for the forfeiture to be confirmed,

the Administrator must, as soon as practicable after 14 days after the conviction is quashed have elapsed—

- (d) if the property is vested in the Crown—cause an interest in the property equivalent to the interest held by the person immediately before the order was made to be transferred to the person; or
- (e) if the property is no longer vested in the Crown—cause an amount equal to the value of the interest held by the person immediately before the order was made in the property to be paid to the person.

- (2) If—
- (a) the DPP makes an application of the kind referred subsection (1)(c); and
 - (b) the court decides not to confirm the forfeiture,
- the Administrator must, as soon as practicable after the application is determined—
- (c) if the property is vested in the Crown—cause an interest in the property equivalent to the interest held by the person immediately before the order was made to be transferred to the person; or
 - (d) if the property is no longer vested in the Crown—cause an amount equal to the value of the interest held by the person immediately before the order was made in the property to be paid to the person.
- (3) The Administrator may do or authorise the doing of anything necessary or convenient to effect a transfer, including—
- (a) executing any instrument; and
 - (b) applying for registration of an interest in the property on any appropriate register.

84—Notice of application for confirmation of forfeiture

- (1) The DPP must give written notice of an application for confirmation of the forfeiture to—
- (a) the person whose conviction was quashed; and
 - (b) any person—
 - (i) who claims, or prior to the forfeiture claimed, an interest in the forfeited property; and
 - (ii) whom the DPP reasonably believes may have had an interest in the forfeited property before the forfeiture.
- (2) A court may, at any time before finally determining the application—
- (a) direct the DPP to give or publish notice of the application to a specified person or class of persons; and
 - (b) specify the time and manner in which the notice is to be given or published.

85—Procedure on application for confirmation of forfeiture

- (1) A person who claims an interest in property covered by the forfeiture may appear and adduce evidence at the hearing of the application for confirmation of the forfeiture.
- (2) A court may, in determining the application, have regard to—
- (a) the transcript of any proceeding against the person for—
 - (i) the serious offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of that offence because of section 5(1)(c)—the other offence referred to in that paragraph,including any appeals relating to the conviction; and
 - (b) any evidence given in the proceeding.

86—Court may confirm forfeiture

The court may confirm the forfeiture if satisfied that it could make a forfeiture order under section 47 in relation to the serious offence in relation to which the person's conviction was quashed if the DPP were to apply for an order under that section.

87—Effect of court's decision on confirmation of forfeiture

If a court confirms the forfeiture under section 86, the forfeiture is taken not to be affected by the quashing of the person's conviction of the serious offence.

88—Administrator must not deal with forfeited property before the court decides on confirmation of forfeiture

The Administrator must not, during the period starting on the day after the person's conviction of the serious offence was quashed and ending when the court confirms, or decides not to confirm, the forfeiture, do any of the things required under section 93 in relation to the forfeited property, or amounts received from the disposal of the property.

89—Giving notice if forfeiture ceases to have effect on quashing of a conviction

- (1) If property was forfeited under section 74 but section 83(1) or (2) applies to the forfeiture, then the DPP—
 - (a) must, as soon as practicable after the forfeiture ceases to have effect, give written notice of the cessation to any person the DPP reasonably believes may have had an interest in that property immediately before the forfeiture; and
 - (b) must, if required by a court, give or publish notice of the cessation to a specified person or class of persons.
- (2) The court may specify the time and manner in which a notice under subsection (1)(b) is to be given or published.

Division 3—Forfeited property

90—What property is forfeited and when

- (1) Subject to this section—
 - (a) property specified in a forfeiture order vests absolutely in the Crown at the time the order is made; and
 - (b) property forfeited under section 74 vests absolutely in the Crown at the time of the forfeiture.
- (2) If property specified in the forfeiture order, or forfeited under section 74, is registrable property—
 - (a) the property vests in equity in the Crown, but does not vest in the Crown at law until the applicable registration requirements have been complied with; and
 - (b) the DPP has power to do anything necessary or convenient to give notice of, or otherwise protect, the Crown's equitable interest in the property; and
 - (c) the Crown is entitled to be registered as the owner of the property; and

- (d) the Administrator has power to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as the owner.
- (3) If a person—
- (a) was, immediately before his or her death, the joint owner of property specified in the forfeiture order; and
 - (b) died before the order was made, but—
 - (i) after the DPP applied for the order; or
 - (ii) while a restraining order covering the property was in force,
- that property is taken to have vested in the Crown immediately before the person's death (and any such restraining order is also taken to have continued to apply to the property as if the person had not died).
- (4) If—
- (a) a person who is convicted of a serious offence was, immediately before his or her death, the joint owner of property; and
 - (b) the period that would apply under section 74 if the property were subject to forfeiture under that section in relation to the conviction had not ended before the person's death; and
 - (c) the period had ended immediately before the person's death the property would have been forfeited under section 74,
- the property is taken to have vested in the Crown immediately before the person's death.
- (5) An action by the DPP under subsection (2)(b) is not a dealing for the purposes of section 91(1) or section 92(1).
- (6) The Administrator's powers under subsection (2)(d) include executing any instrument required to be executed by a person transferring an interest in property of that kind.

91—When the Crown can begin dealing with property specified in a forfeiture order

- (1) The Crown may only dispose of, or otherwise deal with, property specified in a forfeiture order after, and only if the order is still in force—
- (a) —
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the order—the end of the period; or
 - (ii) if an appeal against the order has been lodged within the period provided for lodging an appeal against the order—the appeal lapses or is finally determined; or
 - (b) if the order was made in relation to a person's conviction of a serious offence—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction—the end of the period; or

- (ii) if an appeal against the conviction has been lodged—the appeal lapses or is finally determined,

whichever is the later.

- (2) However, the Crown may dispose of, or otherwise deal with, property specified in a forfeiture order at an earlier time with the leave of, and in accordance with any directions of, the court.
- (3) For the purposes of subsection (1)(b)—
 - (a) if the person is to be taken to have been convicted of the offence because of section 5(1)(b)—an appeal against the finding of the person guilty of the offence is taken to be an appeal against the conviction; and
 - (b) if the person is to be taken to have been convicted of the offence because of section 5(1)(c)—an appeal against the person’s conviction of the other offence referred to in that paragraph is taken to be an appeal against the conviction.

92—When the Crown can begin dealing with property forfeited under section 74

- (1) The Crown may only dispose of, or otherwise deal with, property forfeited under section 74 in relation to a person’s conviction of a serious offence if—
 - (a) the period applying under section 74(6) has come to an end; and
 - (b) the conviction has not been quashed by that time.
- (2) For the purposes of subsection (1), the Crown may dispose of or otherwise deal with the property—
 - (a) if the conviction is one in relation to which neither section 5(1)(b) nor (c) applies—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction—after the end of the period; or
 - (ii) if an appeal against the conviction has been lodged within the period provided for lodging an appeal against the conviction—after the appeal lapses or is finally determined; or
 - (b) if the person is taken to have been convicted because of section 5(1)(b)—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the finding of the person guilty of the serious offence—after the end of the period; or
 - (ii) if an appeal has been lodged within the period provided for lodging an appeal against the finding of the person guilty of the serious offence—after the appeal lapses or is finally determined; or
 - (c) if the person is taken to have been convicted because of section 5(1)(c)—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the person’s conviction of the other offence referred to in that paragraph—after the end of the period; or

- (ii) if an appeal has been lodged within the period provided for lodging an appeal against the person's conviction of the other offence referred to in that paragraph—after the appeal lapses or is finally determined.
- (3) However, the Crown may dispose of, or otherwise deal with, the property earlier with the leave of, and in accordance with any directions of, the court.

93—How forfeited property must be dealt with

- (1) The Administrator must—
 - (a) in the case of a forfeiture order—if the order is still in force at the later time referred to in section 91(1); or
 - (b) in the case of a forfeiture under section 74—after the relevant period referred to in that section,as soon as practicable dispose of property (other than money) specified in the order or forfeited under section 74.
- (2) Any amounts received from the disposal of property in accordance with this section must, along with any monetary amounts specified in the forfeiture order or forfeited under section 74, then be dealt with in accordance with section 209.

94—Dealings with forfeited property

A person is guilty of an offence if—

- (a) the person knows that a forfeiture order has been made in respect of registrable property; and
- (b) the person disposes of, or otherwise deals with, the property before the Crown's interest has been registered on the appropriate register (whether or not the person knows the Crown's interest has not yet been registered); and
- (c) the forfeiture order has not been discharged.

Maximum penalty: \$20 000 or imprisonment for 4 years.

Part 5—Other confiscation orders

Division 1—Pecuniary penalty orders

Subdivision 1—Pecuniary penalty orders

95—Making pecuniary penalty orders

- (1) A court must, on application by the DPP, make an order (a *pecuniary penalty order*) requiring a specified person to pay an amount determined under Subdivision 2 to the Crown if satisfied that the person has been convicted of, or has committed, a serious offence and—
 - (a) the person has derived benefits from the commission of the offence; or
 - (b) an instrument of the offence is owned by the person or is under his or her effective control.

Criminal Assets Confiscation Bill 2005

Part 5—Other confiscation orders

Division 1—Pecuniary penalty orders

- (2) The court's power to make a pecuniary penalty order in relation to benefits derived from the commission of a serious offence is not affected by the existence of another confiscation order in relation to the offence.
- (3) The court cannot make a pecuniary penalty order in relation to an instrument of a serious offence if—
 - (a) a pecuniary penalty has been imposed in respect of the instrument under this Act or any other law; or
 - (b) the instrument has been forfeited, or an application has been made for a forfeiture order that would cover the instrument, under this Act or any other law in relation to the offence.
- (4) A literary proceeds amount is a pecuniary penalty for the purposes of subsection (3)(a).
- (5) An application for a pecuniary penalty order must be made—
 - (a) before the end of the period of 9 months commencing on the conviction day; or
 - (b) if an extension order is in force at the end of that period—before the end of the period of 3 months commencing on the day the extended period relating to the extension order ends.
- (6) An application for a pecuniary penalty order, may be made in relation to one or more serious offences.
- (7) An application may be made for a pecuniary penalty order in relation to a serious offence even if—
 - (a) a forfeiture order in relation to the offence, or an application for such a forfeiture order, has been made; or
 - (b) Part 4 Division 2 applies to the offence.
- (8) A person who would be subject to a pecuniary penalty order if it were made may appear and adduce evidence at the hearing of the application.

96—Additional application for a pecuniary penalty order

- (1) The DPP cannot, unless the court gives leave, apply for a pecuniary penalty order against a person in respect of benefits derived from the commission of a serious offence or an instrument of the offence if—
 - (a) an application has previously been made for a pecuniary penalty under this Division in respect of the benefits or instrument; and
 - (b) the application has been finally determined on the merits.
- (2) The court must not give leave unless it is satisfied that—
 - (a) the benefit or instrument to which the new application relates was identified only after the first application was determined; or
 - (b) necessary evidence became available only after the first application was determined; or
 - (c) it is in the interests of justice to grant the leave.

- (3) An application for a literary proceeds order is not, for the purposes of this section, an application for a pecuniary penalty.

97—Pecuniary penalty orders made in relation to serious offence convictions

- (1) A court must not make a pecuniary penalty order in relation to a person's conviction of a serious offence until after the end of the period of 6 months commencing on the conviction day.
- (2) However, the court may make a pecuniary penalty order in relation to the person's conviction when it passes sentence on the person.
- (3) Subsection (1) does not apply if the person is taken to have been convicted of the serious offence because of section 5(1)(d).

98—Making of pecuniary penalty order if person has absconded

A court must not, if a person is taken under section 5(1)(d) to have been convicted of a serious offence, make a pecuniary penalty order relating to the person's conviction unless—

- (a) the court is satisfied, on the balance of probabilities, that the person has absconded; and
- (b) either—
- (i) the person has been committed for trial for the offence; or
 - (ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, or the Magistrates Court (as the case requires) could lawfully find the person guilty of the offence.

Subdivision 2—Pecuniary penalty order amounts

99—Determining penalty amounts

The amount that a person is ordered to pay under a pecuniary penalty order (the *penalty amount*) is determined by—

- (a) in the case of an application relating to benefits derived from the commission of a serious offence—
- (i) assessing under this Subdivision the total value of the benefits the person derived from—
 - (A) the commission of the serious offence; and
 - (B) the commission of any other offence that constitutes unlawful activity; and
 - (ii) subtracting from the total value the sum of the reductions (if any) in the penalty amount under sections 107 and 108; or
- (b) in the case of an application relating to an instrument of a serious offence— assessing the value of the instrument (as at the time of assessment) and subtracting from the value the sum of the reductions (if any) in the penalty amount under sections 107 and 108.

100—Evidence the court is to consider in assessing the value of benefits

In assessing the value of benefits that a person has derived from the commission of a serious offence or serious offences, the court must have regard to the evidence before it concerning—

- (a) the money, or the value of property other than money, that, in connection with the commission of the offence or offences, came into the possession or under the control of—
 - (i) the person; or
 - (ii) another person at the person’s request or direction; and
- (b) the value of any other benefit that, in connection with the commission of the offence or offences, was provided to—
 - (i) the person; or
 - (ii) another person at the person’s request or direction or in accordance with an arrangement entered into by the person; and
- (c) if any of the illegal activity consisted of doing an act or thing in relation to a drug—
 - (i) the market value, at the time of the offence, of similar or substantially similar drugs; and
 - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing; and
- (d) the value of the person’s property before, during and after the commission of the offence or offences; and
- (e) the person’s income and expenditure before, during and after the commission of the offence or offences; and
- (f) any other matter the court considers relevant.

101—Value of benefits derived

- (1) If—
 - (a) an application is made for a pecuniary penalty order against a person in relation to a serious offence or serious offences; and
 - (b) at the hearing of the application, evidence is given that the value of the person’s property during or after the commission of the offence or offences, or any other unlawful activity that the person has engaged in, exceeded the value of the person’s property before the commission of the offence or offences,

the court is to treat the value of the benefits derived by the person from the commission of the offence or offences as being not less than the amount of the greatest excess.

- (2) The amount treated as the value of the benefits under this section is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to the commission of the serious offence or serious offences or any other unlawful activity that the person has engaged in.
- (3) If, at the hearing of the application, evidence is given of the person's expenditure during or after the commission of the serious offence or serious offences, or any other unlawful activity that the person has engaged in, the amount of the expenditure is presumed, unless the contrary is proved, to be the value of a benefit that was provided to the person in connection with the commission of the serious offence or serious offences.
- (4) Subsection (3) does not apply to expenditure to the extent that it resulted in the acquisition of property that is taken into account under subsection (1).

102—Value of benefits may be as at time of assessment

- (1) In quantifying the value of a benefit for the purposes of this Subdivision, a court may treat as the value of the benefit the value that the benefit would have had if derived at the time the court makes its assessment of the value of benefits.
- (2) Without limiting subsection (1), the court may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time the court makes its assessment.

103—Matters that do not reduce the value of benefits

In assessing the value of benefits that a person has derived from the commission of a serious offence or serious offences, the following must not be subtracted:

- (a) any expenses or outgoings the person incurred in relation to the offence or offences;
- (b) the value of any part of the benefits derived from the commission of the offence or offences that the person derives as agent for, or otherwise on behalf of, another person (whether or not the other person receives any of the benefits).

104—Benefits already the subject of pecuniary penalty

- (1) A benefit is not to be taken into account for the purposes of this Subdivision if a pecuniary penalty has been imposed in respect of the benefit under this Act or any other law.
- (2) A literary proceeds amount is a pecuniary penalty for the purposes of this section.

105—Property under a person's effective control

For the purpose of assessing the value of benefits that a person has derived from the commission of a serious offence, the court may treat as property of the person any property that is, in the court's opinion, subject to the person's effective control.

106—Effect of property vesting in an insolvency trustee

For the purpose of assessing the value of benefits that a person has derived from the commission of a serious offence, the person's property is taken to continue to be the person's property if it vests in any of the following:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966* of the Commonwealth—the trustee of the composition or scheme of arrangement;
- (c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth—the trustee of the deed or the composition;
- (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966* of the Commonwealth—the trustee of the estate.

107—Reducing penalty amounts to take account of forfeiture and proposed forfeiture

If a pecuniary penalty order relates to benefits derived from the commission of a serious offence, the penalty amount under the order is reduced by an amount equal to the value, at the time of the making of the order, of any property that is proceeds of the serious offence if—

- (a) the property has been forfeited, under this Act or any other law, in relation to the offence to which the order relates; or
- (b) an application has been made for a forfeiture order that would cover the property.

108—Reducing penalty amounts to take account of fines etc

- (1) If a pecuniary penalty order relates to benefits derived from the commission of a serious offence, the court may, if it considers it appropriate, reduce the penalty amount under the order by an amount equal to a monetary sum payable by the person in relation to the offence.

- (2) In this section—

monetary sum means a monetary amount paid by way of fine, restitution, compensation or damages.

109—Varying pecuniary penalty orders to increase penalty amounts

- (1) A court may, on the application of the DPP, vary a pecuniary penalty order against a person—
 - (a) —
 - (i) if the penalty amount was reduced under section 107 to take account of a forfeiture of property or a proposed forfeiture order against property; and

- (ii) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made,
by increasing the penalty amount by an amount equal to the value of the property; and
- (b) —
 - (i) if the penalty amount was reduced under section 107 to take account of an amount of tax paid by the person; and
 - (ii) an amount is repaid or refunded to the person in respect of that tax,
by increasing the penalty amount by an amount equal to the amount repaid or refunded.
- (2) The DPP's application may deal with more than one increase to the same penalty amount.

Division 2—Literary proceeds orders

Subdivision 1—Literary proceeds orders

110—Meaning of literary proceeds

- (1) Literary proceeds are any benefit that a person derives from the commercial exploitation of—
 - (a) the person's notoriety resulting from the person committing a serious offence;
or
 - (b) the notoriety of another person involved in the commission of the serious offence resulting from the first-mentioned person committing the offence.
- (2) The commercial exploitation may be by any means, including—
 - (a) publishing material in written or electronic form; or
 - (b) any use of media from which visual images, words or sounds can be produced; or
 - (c) any live entertainment, representation or interview.
- (3) A court may, in determining—
 - (a) whether a person has derived literary proceeds; or
 - (b) the value of literary proceeds that a person has derived,
treat as property of the person any property that, in the court's opinion—
 - (c) is subject to the person's effective control; or
 - (d) was not received by the person, but was transferred to, or (in the case of money) paid to, another person at the person's direction.

111—Making literary proceeds orders

- (1) A court may, on application by the DPP, make an order (a *literary proceeds order*) requiring a person to pay an amount to the Crown if the court is satisfied that the person—
 - (a) has committed a serious offence (whether or not the person has been convicted of the offence); and
 - (b) has derived literary proceeds in relation to the offence.
- (2) For the purposes of this section, the literary proceeds must have been derived after the commencement of this Act.
- (3) More than one literary proceeds order may be made against a person in relation to the same serious offence.
- (4) The court's power to make a literary proceeds order in relation to a serious offence is not affected by the existence of another confiscation order in relation to the offence.
- (5) A person who would be subject to a literary proceeds order if it were made may appear and adduce evidence at the hearing of the application.

112—Matters taken into account in deciding whether to make literary proceeds orders

In determining whether to make a literary proceeds order, the court may take into account any matter it thinks fit, and must take into account—

- (a) the nature and purpose of the product or activity from which the literary proceeds were derived; and
- (b) whether supplying the product or carrying out the activity was in the public interest; and
- (c) the social, cultural or educational value of the product or activity; and
- (d) the seriousness of the offence to which the product or activity relates; and
- (e) how long ago the offence was committed.

Subdivision 2—Literary proceeds amounts

113—Determining literary proceeds amounts

- (1) The amount that a person is ordered to pay under a literary proceeds order (the *literary proceeds amount*) is the amount that the court thinks appropriate.
- (2) However, the amount must not exceed the amount of the literary proceeds relating to the serious offence to which the order relates, less any deductions or reductions arising under section 114 or section 121.
- (3) In determining the amount, the court is to have regard to any matters it thinks fit, including—
 - (a) the amount of the literary proceeds relating to the serious offence; and
 - (b) if the person stood trial for the serious offence—the evidence adduced in the proceedings for the offence; and

- (c) if the person was convicted of the serious offence—the transcript of the sentencing proceedings.

114—Deductions from literary proceeds amounts

In determining the amount to be paid under a literary proceeds order against a person, the court must deduct, to the extent that the property is literary proceeds—

- (a) any expenses and outgoings that the person incurred in deriving the literary proceeds; and
- (b) the value of any property of the person forfeited under—
 - (i) this Act; or
 - (ii) a recognised Australian forfeiture order; or
 - (iii) a foreign forfeiture order,relating to the serious offence to which the literary proceeds order relates; and
- (c) any amount payable by the person under—
 - (i) a pecuniary penalty order; or
 - (ii) a recognised Australian pecuniary penalty order; or
 - (iii) a foreign pecuniary penalty order,relating to the serious offence to which the literary proceeds order relates; and
- (d) the amount of any previous literary proceeds order made against the person in relation to the same exploitation of the person's notoriety resulting from the person committing the serious offence in question.

115—Varying literary proceeds orders to increase literary proceeds amounts

- (1) A court may, on the application of the DPP, vary a literary proceeds order against a person—
 - (a) —
 - (i) if the value of property of the person forfeited under a forfeiture order, a recognised Australian forfeiture order or a foreign forfeiture order was deducted from the literary proceeds amount under section 114(b); and
 - (ii) an appeal against the forfeiture, or against the order, is allowed,by increasing the amount to be paid under the literary proceeds order by an amount equal to the value of the property; and
 - (b) —
 - (i) if an amount payable under a pecuniary penalty order, a recognised Australian pecuniary penalty order or a foreign pecuniary penalty order was deducted under section 114(c) from the amount to be paid under the literary proceeds order; and
 - (ii) an appeal against the amount payable, or against the order, is allowed,

by increasing the amount to be paid under the literary proceeds order by an amount equal to the amount that was payable; and

(c) —

(i) if, in determining the amount to be paid under the literary proceeds order, the court took into account, under section 121, an amount of tax paid by the person who is the subject of the order; and

(ii) an amount is repaid or refunded to the person in respect of that tax, by increasing the amount to be paid under the literary proceeds order by an amount equal to the amount repaid or refunded.

(2) The DPP's application may deal with more than one increase to the amount to be paid under the literary proceeds order.

Subdivision 3—Literary proceeds amounts may cover future literary proceeds

116—Literary proceeds orders can cover future literary proceeds

(1) A court may, on the application of the DPP, include in a literary proceeds order one or more amounts in relation to benefits that the person who is the subject of the order may derive in the future if the court is satisfied that—

(a) the person will derive the benefits; and

(b) if the person derives the benefits, they will be literary proceeds in relation to the serious offence to which the order relates.

(2) Each amount included in the order is to be an amount that the court considers would be a literary proceeds amount in relation to a benefit that the person may derive in the future, if the court were to make a literary proceeds order after the person derived the benefit.

117—Enforcement of literary proceeds orders in relation to future literary proceeds

If—

(a) an amount is included in a literary proceeds order in relation to benefits that the person who is the subject of the order may derive in the future; and

(b) the person subsequently derives the benefits,

then, from the time the person derives the benefits, Part 5 Division 3 Subdivision 4 applies to the amount as if it were a literary proceeds amount.

Division 3—Matters generally applicable to orders under this Part

Subdivision 1—Applications for confiscation orders under this Part

118—Notice of application

(1) The DPP must give written notice of an application for a confiscation order under this Part to the person who would be subject to the order if it were made, and must include a copy of the application, and any affidavit supporting the application, with the notice.

- (2) However, if the DPP requests and the court considers it appropriate—
 - (a) in order to protect the integrity of any investigation or prosecution; or
 - (b) for any other reason,the DPP may delay giving a copy of an affidavit to the person.
- (3) The court may, at any time before finally determining an application for a confiscation order under this Part—
 - (a) direct the DPP to give or publish notice of the application to a specified person or class of persons; and
 - (b) specify the time and manner in which the notice is to be given or published.

119—Amending an application

- (1) The court hearing an application for a confiscation order under this Part may, on the application of the DPP or with the consent of the DPP, amend the application.
- (2) However, the court must not amend the application to include an additional benefit or instrument or additional literary proceeds (as the case requires) in the application unless the court is satisfied that—
 - (a) the benefit, instrument or literary proceeds were not reasonably capable of identification when the application was originally made; or
 - (b) necessary evidence became available only after the application was originally made.
- (3) The DPP must, on applying for an amendment to include an additional benefit or instrument or additional literary proceeds (as the case requires) in the application, give written notice of the application to amend to the person who would be subject to the confiscation order if it were made.

Subdivision 2—Ancillary orders

120—Ancillary orders

- (1) The court that made a confiscation order under this Part, or any other court that could have made the confiscation order, may make any ancillary orders that the court considers appropriate.
- (2) An ancillary order may be made—
 - (a) if made by the court that made the confiscation order under this Part—when making the order; or
 - (b) in any case—at any time after the confiscation order is made.

Subdivision 3—Reducing pecuniary penalty amount or literary proceeds amount

121—Reducing penalty amounts and literary proceeds amounts to take account of tax paid

- (1) A court making a pecuniary penalty order that relates to proceeds of a serious offence, or a literary proceeds order, against a person under this Part must reduce the penalty amount or literary proceeds amount under the order by an amount that, in the court's opinion, represents the extent to which tax that the person has paid is attributable to the benefits or literary proceeds (as the case requires) to which the order relates.
- (2) The tax may be tax imposed under a law of the Commonwealth, a State, a Territory or a foreign country.

Subdivision 4—Enforcement

122—Enforcement of confiscation orders under this Part

- (1) A confiscation order under this Part is enforceable under the *Enforcement of Judgments Act 1991*.
- (2) However, if a pecuniary penalty order was made under section 97(2) when sentence was being passed on the person for the serious offence to which the order relates, the order cannot be enforced against the person within the period of 6 months commencing on the day the order was made.
- (3) If a pecuniary penalty order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

123—Property subject to a person's effective control

- (1) If—
 - (a) a person is subject to a confiscation order made by a court under this Part; and
 - (b) the DPP applies to the court for an order under this section; and
 - (c) the court is satisfied that particular property is subject to the effective control of the person,

the court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the confiscation order.

- (2) An order under subsection (1) may be enforced against the property as if the property were the person's property.
- (3) A restraining order may be made in respect of the property as if—
 - (a) the property were the person's property; and
 - (b) the person had committed a serious offence.
- (4) The DPP must, on applying for an order under subsection (1) relating to particular property, give written notice of the application to—
 - (a) the person who is subject to the confiscation order; and
 - (b) a person whom the DPP has reason to believe may have an interest in the property.

- (5) The person who is subject to the confiscation order, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

Subdivision 5—Effect of acquittals and quashing of convictions

124—Acquittals do not affect confiscation orders under this Part

The fact that a person has been acquitted of a serious offence with which the person has been charged does not affect the court's power to make a confiscation order under this Part in relation to the offence.

125—Discharge of confiscation order under this Part if made in relation to a conviction

- (1) A confiscation order under this Part made in relation to a person's conviction of a serious offence is discharged if—
- (a) the person's conviction of the offence is subsequently quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
 - (b) the DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.
- (2) However, unless a court decides otherwise on an application under subsection (1), the quashing of the conviction does not affect the order—
- (a) for 14 days after the conviction is quashed; or
 - (b) if the DPP makes an application under subsection (1).

126—Confiscation order under this Part unaffected if not made in relation to a conviction

A confiscation order under this Part made in relation to a serious offence, but not in relation to a person's conviction of the offence, is not affected if the person is convicted of the offence and the conviction is subsequently quashed.

127—Notice of application for confirmation of confiscation order under this Part

The DPP must give written notice of an application for confirmation of a confiscation order under this Part to the person who is the subject of the order.

128—Procedure on application for confirmation of confiscation order under this Part

- (1) The person who is the subject of a confiscation order under this Part may appear and adduce evidence at the hearing of the application for confirmation of the order.
- (2) The court may, in determining the application, have regard to—
- (a) the transcript of any proceeding against the person for—
 - (i) the serious offence of which the person was convicted; or

- (ii) if the person was taken to be convicted of the serious offence because of section 5(1)(c)—the other offence referred to in that paragraph,
 - including any appeals relating to the conviction; and
- (b) any evidence given in the proceeding.

129—Court may confirm confiscation order under this Part

- (1) A court may confirm a confiscation order under this Part if satisfied that, when the DPP applied for the order, the court could have made the order—
 - (a) in the case of a pecuniary penalty order—on the ground that the person had committed the serious offence or some other serious offence; or
 - (b) in the case of a literary proceeds order—on the ground that the person had committed the serious offence in relation to which the person’s conviction was quashed or some other serious offence; or
 - (c) in any case—without relying on the person’s conviction of the serious offence.
- (2) A court that confirms a confiscation order under this Part may—
 - (a) make such variations to the confiscation order as the court thinks fit; and
 - (b) make such ancillary orders as the court thinks fit.

130—Effect of court’s decision on confirmation of confiscation order under this Part

- (1) If a court confirms a confiscation order under this Part in accordance with section 129, the order is taken not to be affected by the quashing of the person’s conviction of the serious offence.
- (2) If the court decides not to confirm the confiscation order, the order is discharged.

Part 6—Information gathering

Division 1—Examinations

Subdivision 1—Examination orders

131—Examination orders relating to restraining orders

- (1) If an application for a restraining order has been made or a restraining order is in force, a relevant court may, on the application of the DPP, make an order (an *examination order*) for the examination of any person, including—
 - (a) a person whose property is to be or is, or a person who has or claims an interest in property that is to be or is, the subject of the restraining order; or
 - (b) a person identified in the affidavit or other evidence submitted in support of the application for the restraining order as a suspect for the serious offence to which the restraining order relates; or
 - (c) a spouse of a person referred to in paragraph (a) or (b),

about the affairs (including the nature and location of any property) of a person referred to in paragraph (a), (b) or (c).

- (2) An examination order ceases to have effect if the restraining order to which it relates ceases to have effect.

- (3) In this section—

relevant court means—

- (a) if an application for a restraining order has been made—the court to whom the application has been made; or
- (b) if a restraining order is in force—the court that made the restraining order or any other court that could have made the restraining order.

132—Examination orders relating to applications for confirmation of forfeiture

- (1) If an application relating to the quashing of a person's conviction of a serious offence is made under section 64, 83, or 125, the court to which the application is made may, on the application of the DPP, make an order (an *examination order*) for the examination of any person, including—

- (a) the person whose conviction is quashed; or
- (b) a person whose property is, or a person who has an interest in property that is, the subject of the forfeiture, pecuniary penalty order or literary proceeds order (as the case may require) to which the application relates; or
- (c) a spouse of a person referred to in paragraph (a) or (b),

about the affairs (including the nature and location of any property) of a person referred to in paragraph (a), (b) or (c).

- (2) The examination order ceases to have effect—

- (a) if the application is withdrawn; or
- (b) when the court finally determines the application.

Subdivision 2—Examination notices

133—Examination notices

- (1) The DPP may give to a person who is the subject of an examination order a written notice (an *examination notice*) for the examination of the person.
- (2) A person who is the subject of an examination order may be given more than one examination notice under this section.
- (3) However, the DPP must not give an examination notice if—
- (a) an application has been made under section 43 for the restraining order to which the notice relates to be revoked; and
- (b) the court to which the application is made orders that examinations are not to proceed.
- (4) The fact that criminal proceedings have been commenced (whether or not under this Act) does not prevent the DPP giving the examination notice.

134—Form and content of examination notices

- (1) An examination notice—
 - (a) must be in the prescribed form; and
 - (b) must require the person to attend the examination; and
 - (c) must specify the time and place of the examination; and
 - (d) must specify such further information as the regulations may require.
- (2) An examination notice may require the person to produce at the examination the documents specified in the notice.

Subdivision 3—Conducting examinations

135—Time and place of examination

- (1) The examination of a person subject to an examination order must be conducted—
 - (a) at the time and place specified in the examination notice; or
 - (b) at such other time and place as the DPP decides on the request of—
 - (i) the person being examined, or the legal practitioner representing the person; or
 - (ii) a person who is entitled to be present during an examination because of a direction under section 137(2).
- (2) If a person who is required by an examination notice to attend an examination refuses or fails to attend the examination at the time and place required in accordance with subsection (1), the DPP may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought before the DPP for the purpose of conducting the examination.
- (3) An examination of a person subject to an examination order may be conducted by video link or telephone in a manner determined by the DPP.
- (4) If, after the examination notice is given—
 - (a) an application has been made under section 43 for the restraining order to which the notice relates to be revoked; and
 - (b) the court to which the application is made orders that examinations are not to proceed,the DPP must—
 - (c) give the person a written notice withdrawing the examination notice; and
 - (d) if the examination of the person has started but not finished—stop the examination.
- (5) Nothing in this section prevents the DPP giving the person a further examination notice if the application for revocation of the restraining order is unsuccessful.
- (6) The fact that criminal proceedings have been commenced (whether or not under this Act) does not prevent the examination of a person.

136—Requirements made of person examined

- (1) A person subject to an examination order may be examined on oath by the DPP.
- (2) The DPP may, for that purpose—
 - (a) require the person to take an oath; and
 - (b) administer an oath to the person.
- (3) The oath to be taken by the person for the purposes of the examination is an oath that the statements that the person will make will be true.
- (4) An examination must not relate to a person's affairs—
 - (a) if the examination relates to a restraining order and the person is no longer a person whose affairs can, under section 131, be subject to the examination; or
 - (b) if the examination relates to the quashing of a conviction for a serious offence and the person is no longer a person whose affairs can, under section 132, be subject to the examination.
- (5) The DPP may require the person to answer a question that—
 - (a) is put to the person at the examination; and
 - (b) is relevant to the affairs (including the nature and location of any property) of a person referred to in section 131(1)(a), (b) or (c) or section 132(1)(a), (b) or (c).

137—Examination to take place in private

- (1) An examination is to take place in private.
- (2) The DPP may give directions about who may be present during an examination.
- (3) The following people are entitled to be present at the examination:
 - (a) the DPP;
 - (b) the person being examined, and the legal practitioner representing the person;
 - (c) any other person who is entitled to be present because of a direction under subsection (2).

138—Role of the examinee's legal practitioner during examination

- (1) The legal practitioner representing a person being examined may, at such times during the examination as the DPP determines—
 - (a) address the DPP; and
 - (b) examine the person being examined,about any matter about which the DPP has examined the person.
- (2) The DPP may require a legal practitioner who, in the DPP's opinion, is trying to obstruct the examination by exercising rights under subsection (1), to stop addressing the DPP, or stop his or her examination, as the case requires.

139—Record of examination

- (1) The DPP—
 - (a) may cause a record to be made of statements made at an examination; and
 - (b) must, at the request of the person being examined—
 - (i) make a record of statements made at an examination; and
 - (ii) if the record is not a written record—cause the record to be reduced to writing.
- (2) If a record made under subsection (1) is in writing or is reduced to writing, the DPP must, if the person being examined makes a request in writing, provide without charge a copy of the written record.

140—Questions of law

The DPP may—

- (a) on his or her own initiative; or
- (b) at the request of the person being examined,

refer a question of law arising at an examination to the court that made the examination order.

141—DPP may restrict publication of certain material

- (1) The DPP may—
 - (a) on his or her own initiative; or
 - (b) at the request of the person being examined,give directions preventing or restricting disclosure to the public of—
 - (c) matters contained in answers given, or documents produced, in the course of the examination; or
 - (d) the whole or part of any written record of the examination.
- (2) In deciding whether or not to give a direction, the DPP must have regard to—
 - (a) whether—
 - (i) an answer that has been or may be given; or
 - (ii) a document that has been or may be produced; or
 - (iii) a matter that has arisen or may arise,during the examination is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of a serious offence; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the DPP does not give the direction; and
 - (c) whether giving the direction is in the public interest; and
 - (d) any other relevant matter.

142—Protection of DPP etc

- (1) The DPP has, in the performance of his or her duties under this Division, the same protection and immunity as a Judge of the Supreme Court.
- (2) A legal practitioner appearing at an examination on behalf of the person being examined has the same protection and immunity as a legal practitioner appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, the person being examined has the same protection and, in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in proceedings in the Supreme Court.

Subdivision 4—Offences

143—Failing to attend an examination

A person who—

- (a) is required by an examination notice to attend an examination; and
- (b) refuses or fails to attend the examination at the time and place specified in the notice,

is guilty of an offence.

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

144—Offences relating to appearance at an examination

- (1) A person attending an examination to answer questions or produce documents must not—
 - (a) refuse or fail to be sworn; or
 - (b) refuse or fail to answer a question that the DPP requires the person to answer; or
 - (c) refuse or fail to produce at the examination a document specified in the examination notice that required the person's attendance; or
 - (d) leave the examination before being excused by the DPP.

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

- (2) Subsection (1)(c) does not apply if the person complied with the notice in relation to production of the document to the extent that it was practicable to do so.

145—Self-incrimination

- (1) If a natural person is required to give information, answer a question or produce, or provide a copy of, a document under section 144 and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty (including a penalty in the nature of a confiscation order under this Act), the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence (other than proceedings in respect of the making of a false or misleading statement or declaration).

- (2) To avoid doubt, an answer given or document produced under section 144 is admissible in proceedings—
- (a) on, or ancillary to, an application under this Act; or
 - (b) for enforcement of a confiscation order.

146—Unauthorised presence at an examination

A person who—

- (a) is present at an examination; and
- (b) is not entitled to be present,

is guilty of an offence.

Maximum penalty: \$2 500.

147—Breaching conditions on which records of statements are provided

A person who breaches a condition imposed under section 141(1)(d) relating to a record given to the person under section 139 is guilty of an offence.

Maximum penalty: \$2 500.

148—Breaching directions preventing or restricting publication

- (1) A person is guilty of an offence if—
- (a) the person publishes a matter contained in answers given or documents produced in the course of an examination; and
 - (b) the publication is in contravention of a direction given under section 141 by the DPP.

Maximum penalty: \$2 500.

- (2) However, subsection (1) does not apply to the disclosure of a matter—
- (a) to obtain legal advice or legal representation in relation to the order; or
 - (b) for the purposes of, or in the course of, legal proceedings.

Division 2—Production orders

149—Interpretation

- (1) For the purposes of this Division, a *property-tracking document* is any of the following:
- (a) a document relevant to identifying, locating or quantifying property of a person—
 - (i) who has been convicted of, charged with, or who it is proposed will be charged with, a serious offence; or
 - (ii) whom there are reasonable grounds to suspect of having engaged in conduct constituting a serious offence;
 - (b) a document relevant to identifying or locating a document necessary for the transfer of property of a person referred to in paragraph (a);
 - (c) a document relevant to identifying, locating or quantifying—

- (i) proceeds of a serious offence, or an instrument of a serious offence, of which a person has been convicted or with which a person has been charged or is proposed to be charged; or
 - (ii) proceeds of a serious offence, or an instrument of a serious offence, that a person is reasonably suspected of having committed;
 - (d) a document relevant to identifying or locating a document necessary for the transfer of property referred to in paragraph (c);
 - (e) a document relevant to identifying, locating or quantifying literary proceeds in relation to a serious offence of which a person has been convicted or which a person is reasonably suspected of having committed;
 - (f) a document that would assist in the reading or interpretation of a document referred to in this definition.
- (2) A document referred to in subsection (1) does not need to be relevant to identifying, locating or quantifying proceeds of a particular serious offence.

150—Making production orders

- (1) Subject to this section, a magistrate may, on the application of an authorised officer, make an order (a *production order*) requiring a person to—
- (a) produce one or more property-tracking documents; or
 - (b) make one or more property-tracking documents available,
- to an authorised officer for inspection.
- (2) A magistrate must not make a production order unless the magistrate is satisfied by information on oath that the person is reasonably suspected of having possession or control of the documents.
- (3) To avoid doubt, an authorised officer applying for a production order need not give notice of the application to any person.

151—Contents of production orders

- (1) A production order must—
- (a) specify the nature of the documents required; and
 - (b) specify the place at which the person must produce the documents or make the documents available; and
 - (c) specify the time at which, or the times between which, the person must produce the documents or make the documents available; and
 - (d) specify the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the order, is to be responsible for giving the order to the person; and
 - (e) if the order specifies that information about the order must not be disclosed—set out the effect of section 157; and
 - (f) set out the effect of section 158.
- (2) Subject to subsection (3), the time or times specified under subsection (1)(c) must be at least 14 days from the day on which the order is given.

- (3) A magistrate making a production order may specify an earlier time or times under subsection (1)(c) if satisfied that it will not cause hardship to the person required to produce documents or make documents available.

152—Powers under production orders

An authorised officer may inspect, take extracts from, or make copies of, a document produced or made available under a production order.

153—Retaining produced documents

- (1) An authorised officer may retain a document produced under a production order for as long as is necessary for the purposes of this Act.
- (2) A person to whom a production order is given may require the authorised officer to—
- (a) certify in writing a copy of the document retained to be a true copy and give the person the copy; or
 - (b) allow the person to—
 - (i) inspect the document; and
 - (ii) take extracts from the document; and
 - (iii) make copies of the document.

154—Self-incrimination

- (1) If a natural person is required to give information, answer a question or produce, or provide a copy of, a document or record under a production order and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty (including in the nature of a confiscation order under this Act), the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.
- (2) To avoid doubt, an answer given or document produced under a production order is admissible in proceedings—
- (a) on, or ancillary to, an application under this Act; or
 - (b) for enforcement of a confiscation order.

155—Varying production orders

- (1) The magistrate who made a production order may—
- (a) on the application of the person required to produce a document to an authorised officer under the production order; and
 - (b) if satisfied that the document is essential to the person's business activities, vary the order so that it instead requires the person to make the document available for inspection.
- (2) If the magistrate who made the production order is unavailable, then any other magistrate may vary the order.

156—Making false statements in applications

A person who makes a false or misleading statement in, or in connection with, an application for a production order or an application for a variation of a production order is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

157—Disclosing existence or nature of production orders

- (1) A person who—
- (a) is given a production order that specifies that information about the order must not be disclosed; and
 - (b) either—
 - (i) discloses the existence or nature of the order to another person; or
 - (ii) discloses information to another person from which the other person could infer the existence or nature of the order,

is guilty of an offence.

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

- (2) Subsection (1) does not apply if the disclosure is made—
- (a) to an employee, agent or other person in order to obtain a document that is required by the order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
 - (b) to obtain legal advice or legal representation in relation to the order; or
 - (c) for the purposes of, or in the course of, legal proceedings.

158—Failing to comply with a production order

- (1) A person who —
- (a) is given a production order in relation to a property-tracking document; and
 - (b) fails to comply with the order; and
 - (c) has not been excused from complying under subsection (2),

is guilty of an offence.

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

- (2) A person is excused from complying if—
- (a) the person gives an authorised officer a statutory declaration stating that the person does not have possession or control of the document; and
 - (b) the authorised officer notifies the person in writing that the person is excused from complying with the production order.

159—Destroying etc a document subject to a production order

A person is guilty of an offence if the person destroys, defaces or otherwise interferes with a property-tracking document knowing, or recklessly indifferent to the fact, that a production order is in force requiring the document to be produced or made available to an authorised officer.

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

Division 3—Notices to financial institutions

160—Giving notices to financial institutions

- (1) A police officer of or above the rank of Superintendent may give a written notice to a financial institution requiring the institution to provide to an authorised officer any information or documents relevant to any of the following:
 - (a) determining whether an account is held by a specified person with the financial institution;
 - (b) determining whether a specified person is a signatory to an account;
 - (c) if a person holds an account with the institution—the current balance of the account;
 - (d) details of transactions on such an account over a specified period of up to 6 months;
 - (e) details of any related accounts (including names of those who hold those accounts);
 - (f) a transaction conducted by the financial institution on behalf of a specified person.
- (2) A notice must—
 - (a) state that the police officer believes that the notice is required—
 - (i) to determine whether to take any action under this Act; or
 - (ii) in relation to proceedings under this Act; and
 - (b) specify the name of the financial institution; and
 - (c) specify the information or documents required to be provided; and
 - (d) specify the form and manner in which the information or documents are to be provided; and
 - (e) state that the information or documents must be provided within 14 days of the notice; and
 - (f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 163; and
 - (g) set out the effect of section 164.
- (3) The police officer must not issue the notice unless the officer reasonably believes that giving the notice is required—
 - (a) to determine whether to take any action under this Act; or

- (b) in relation to proceedings under this Act.

161—Immunity from liability

No liability attaches to—

- (a) a financial institution; or
- (b) an officer, employee or agent of the institution,

in relation to any action taken by the institution or person under a notice under section 160 or in the mistaken belief that action was required under the notice.

162—Making false statements in notices

A person who makes a false or misleading statement (whether orally, in a document or in any other way) in, or in connection with, a notice under section 160 is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

163—Disclosing existence or nature of notice

- (1) A person who—

- (a) is given a notice under section 160 that specifies that information about the notice must not be disclosed; and
- (b) either—
 - (i) discloses the existence or nature of the order to another person; or
 - (ii) discloses information to another person from which the other person could infer the existence or nature of the order,

is guilty of an offence.

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

- (2) Subsection (1) does not apply if the disclosure is made—

- (a) to an employee, agent or other person in order to obtain a document that is required by the order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
- (b) to obtain legal advice or legal representation in relation to the order; or
- (c) for the purposes of, or in the course of, legal proceedings.

164—Failing to comply with a notice

A person who—

- (a) is given a notice under section 160; and
- (b) fails to comply with the notice,

is guilty of an offence.

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

Division 4—Monitoring orders

165—Making monitoring orders

- (1) A judge of the District Court may, on the application of an authorised officer, make an order (a *monitoring order*) that a financial institution provide information about transactions conducted during a specified period (including a future period) through an account held by a specified person with the institution.
- (2) A judge must not make a monitoring order unless satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought—
 - (a) has committed, or is about to commit, a serious offence; or
 - (b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
 - (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

166—Contents of monitoring orders

- (1) A monitoring order must—
 - (a) specify the name or names in which the account is believed to be held; and
 - (b) specify the information that the financial institution is required to provide; and
 - (c) specify the period during which the order operates; and
 - (d) specify the enforcement agency to which the information is to be provided; and
 - (e) specify the form and manner in which the information is to be given; and
 - (f) if the order specifies that information about the order must not be disclosed—set out the effect of section 169; and
 - (g) set out the effect of section 170.
- (2) The period referred to in subsection (1)(c) must—
 - (a) begin no earlier than the day on which notice of the monitoring order is given to the financial institution; and
 - (b) end no later than 3 months after the date of the order.

167—Immunity from liability

No liability attaches to—

- (a) a financial institution; or
- (b) an officer, employee or agent of the institution,

in relation to any action taken by the institution or person in complying with a monitoring order or in the mistaken belief that action was required under the order.

168—Making false statements in applications

A person who makes a false or misleading statement (whether orally, in a document or in any other way) in, or in connection with, an application for a monitoring order is guilty of an offence.

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

169—Disclosing existence or operation of monitoring order

- (1) A person who discloses the existence or the operation of a monitoring order to another person and the disclosure—

- (a) is not to a person specified in subsection (4); and
- (b) is not for a purpose specified in subsection (4),

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (2) A person who discloses information to another person from which the other person could infer the existence or operation of a monitoring order, and the disclosure—

- (a) is not to a person specified in subsection (4); and
- (b) is not for a purpose specified in subsection (4),

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (3) A person who—

- (a) receives information relating to a monitoring order in accordance with subsection (4); and
- (b) ceases to be a person to whom information could be disclosed in accordance with subsection (4); and
- (c) makes a record of, or discloses, the existence or the operation of the order,

is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 4 years.

- (4) A person may disclose the existence or the operation of a monitoring order to the following persons for the following purposes:

- (a) the head of the enforcement agency specified under section 166(1)(d) or an authorised officer of that agency—
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for purposes arising in the course of proceedings before a court;
- (b) the Director of AUSTRAC, or a member of the staff of AUSTRAC who is authorised by the Director of AUSTRAC as a person who may be advised of the existence of a monitoring order—
 - (i) for the purpose of performing that person's duties; or

- (ii) for the purpose of, or for purposes connected with, legal proceedings; or
- (iii) for purposes arising in the course of proceedings before a court;
- (c) an officer or agent of the financial institution for the purpose of ensuring that the order is complied with;
- (d) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the order.

170—Failing to comply with monitoring order

A person who—

- (a) is given a monitoring order; and
- (b) fails to comply with the order,

is guilty of an offence.

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

Division 5—Search and seizure

Subdivision 1—Preliminary

171—Interpretation

In this Division—

material liable to seizure under this Act means—

- (a) tainted property; or
- (b) evidence relating to—
 - (i) property in respect of which action has been or could be taken under this Act; or
 - (ii) benefits derived from the commission of a serious offence; or
 - (iii) literary proceeds.

Subdivision 2—Search warrants

172—Warrants authorising seizure of property

- (1) A magistrate may, on application by an authorised officer, issue a warrant authorising—
 - (a) the seizure of material liable to seizure under this Act; or
 - (b) the search of a particular person, or particular premises, and the seizure of material liable to seizure under this Act 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.

173—Applications for warrants

- (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—
 - (i) the applicant's name; and
 - (ii) the applicant's rank or position title (as the case requires); and
 - (iii) the enforcement agency of which the applicant is a member, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised 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 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
 - (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.

174—Powers conferred by warrant

- (1) A warrant authorises an authorised officer, with such assistants as he or she 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; and
 - (b) if the warrant authorises a search of a person—to search the person and seize anything that the authorised officer suspects on reasonable grounds to be material liable to seizure under this Act; and
 - (c) if the warrant authorises a search of premises—to enter into, break open and search the premises and anything in the premises and seize anything that the authorised officer suspects on reasonable grounds to be material liable to seizure 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) An authorised officer, or a person assisting an authorised officer, may use such force as is reasonably necessary for the execution of a warrant but, subject to subsection (4), must not use force to open a part of the premises or to open anything in the premises, unless the person (if any) apparently in charge of the premises has been given a reasonable opportunity to open the premises or thing.
- (4) The person apparently in charge of premises need not be given a reasonable opportunity to open the premises or anything in the premises if—
 - (a) it is not possible to give the person such an opportunity; or
 - (b) the authorised officer, or person assisting an authorised officer, reasonably suspects that the premises, or the thing in the premises might be concealed, destroyed, lost or altered if such an opportunity were given.
- (5) An authorised officer who executes a warrant—
 - (a) must prepare a notice in the prescribed form containing—
 - (i) the authorised officer's name; and
 - (ii) the authorised officer's rank or position title (as the case requires); and
 - (iii) the enforcement agency of which the authorised officer is a member; and
 - (iv) the name of the magistrate who issued the warrant and the date and time of its issue; and
 - (v) 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; or

- (ii) in any other case—give the notice to the occupier of the premises or leave it in a prominent position on those premises.
- (6) A warrant, if not executed at the expiration of one month from the date of its issue, then expires.

175—Hindering execution of warrant

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

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

176—Person with knowledge of a computer or a computer system to assist access etc

- (1) An authorised officer responsible for executing a warrant may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable or necessary to allow an authorised officer to do one or more of the following:
- (a) access data held in or accessible from a computer that is on the premises specified in the warrant;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that—
- (a) there are reasonable grounds for suspecting that material liable to seizure under this Act is accessible from the computer referred to in subsection (1)(a); and
 - (b) the specified person is—
 - (i) reasonably suspected of possessing, or having under his or her control, material liable to seizure under this Act; or
 - (ii) the owner or lessee of the computer; or
 - (iii) an employee of the owner or lessee of the computer; and
 - (c) the specified person has knowledge of—
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person who fails to comply with an order under this section is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.

177—Providing documents after execution of a search warrant

If—

- (a) documents were on, or accessible from, the premises of a financial institution at the time when a search warrant relating to those premises was executed; and
- (b) those documents were not able to be located at that time; and
- (c) the financial institution provides them to the authorised officer who executed the warrant as soon as practicable after the execution of the warrant,

then the documents are taken to have been seized under the warrant.

Subdivision 3—Seizure without warrant

178—Seizure without warrant allowed in certain circumstances

An authorised officer may seize material if —

- (a) the officer suspects on reasonable grounds that the material is liable to seizure under this Act and the person in possession of the material consents to the seizure; or
- (b) the material is found in the course of a search conducted under another law and the officer suspects on reasonable grounds that the material is liable to seizure under this Act.

179—Stopping and searching vehicles

(1) If an authorised officer suspects on reasonable grounds that—

- (a) material liable to seizure under this Act is in or on a vehicle; and
- (b) it is necessary to exercise a power under this section in order to prevent the material from being concealed, destroyed, lost or altered; and
- (c) because the circumstances are serious and urgent, it is necessary to exercise the power without the authority of a search warrant,

the authorised officer may, with such assistants as he or she considers necessary—

- (d) stop and detain the vehicle; and
- (e) search the vehicle, and any container in or on the vehicle, for the material; and
- (f) seize the material if he or she finds it there.

(2) If, in the course of exercising a power under subsection (1), the authorised officer finds other material liable to seizure under this Act, the authorised officer may seize the material if he or she suspects on reasonable grounds that it is necessary—

- (a) to seize it in order to prevent its concealment, loss or destruction; and
- (b) because the circumstances are serious and urgent, to seize it without the authority of a search warrant.

- (3) An authorised officer, or a person assisting an authorised officer, may use such force as is reasonably necessary in exercising a power under this section, but must not use force to open a part of the vehicle or any container in or on the vehicle unless the person (if any) apparently in charge of the vehicle has been given a reasonable opportunity to open that part or container.
- (4) The person apparently in charge of a vehicle need not be given a reasonable opportunity to open part of the vehicle or a container in or on the vehicle if—
 - (a) it is not possible to give the person such an opportunity; or
 - (b) the authorised officer, or person assisting an authorised officer, reasonably suspects that the part or container might be concealed, destroyed, lost or altered if such an opportunity were given.

Subdivision 4—Dealing with material liable to seizure under this Act

180—Receipts for material seized

The authorised officer who executes a warrant, or a person assisting the authorised officer, must provide a receipt for material liable to seizure under this Act that is seized under the warrant or under Subdivision 3 (as the case requires).

181—Responsibility for material seized

If material liable to seizure under this Act is seized under a search warrant or under Subdivision 3, the responsible custodian must—

- (a) arrange for the material to be kept until it is dealt with in accordance with this Act; and
- (b) ensure that all reasonable steps are taken to preserve the material while it is kept.

182—Effect of obtaining forfeiture orders

If—

- (a) material liable to seizure under this Act is seized under a search warrant or under Subdivision 3; and
- (b) while the material is in the possession of the responsible custodian, a forfeiture order is made covering the material,

the responsible custodian must deal with the material as required by the order.

183—Returning seized material

- (1) If—
 - (a) material liable to seizure under this Act is seized under a search warrant or under Subdivision 3 on the ground that it is evidence relating to—
 - (i) property in respect of which action has been or could be taken under this Act; or
 - (ii) benefits derived from the commission of a serious offence; or
 - (iii) literary proceeds; and

(b) either—

- (i) the reason for the material's seizure no longer exists or it is decided that the material is not to be used in evidence; or
- (ii) if the material was seized under Subdivision 3—the period of 60 days after the material's seizure has ended,

the authorised officer who executed the warrant, or who seized the material under Subdivision 3, (as the case requires) must take reasonable steps to return the material to the person from whom it was seized or to the owner if that person is not entitled to possess it.

(2) However, the authorised officer does not have to take those steps if—

(a) if subsection (1)(b)(ii) applies—

- (i) proceedings in respect of which the material might afford evidence have been instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (ii) there is an order in force under section 184; or

(b) the authorised officer is otherwise authorised to retain, destroy or dispose of the material; or

(c) the material is forfeited or forfeitable to the Crown or is the subject of a dispute as to ownership.

184—Magistrate may order that material be retained

(1) If an authorised officer has seized material liable to seizure under this Act under this Division, and proceedings in respect of which the material might afford evidence have not commenced before the end of—

- (a) 60 days after the seizure; or
- (b) a period previously specified in an order of a magistrate under this section,

the authorised officer may apply to a magistrate for an order that the authorised officer may retain the material for a further period.

(2) Before making an application, an authorised officer must—

- (a) take reasonable steps to discover whose interests would be affected by the retention of the material; and
- (b) if it is practicable to do so, notify such persons of the proposed application.

(3) A magistrate may, if satisfied that it is necessary for the purpose of initiating or conducting proceedings under this Act, order that the authorised officer may retain the material for a specified time.

185—Return of seized material to third parties

(1) A person who claims an interest in material liable to seizure under this Act that has been seized under a search warrant, or under Subdivision 3, on the ground that it is suspected of being tainted property may apply to a court for an order that the material be returned to the person.

- (2) A court must order the responsible custodian of the material to return the material to the applicant if the court is satisfied that—
 - (a) the applicant is entitled to possession of the material; and
 - (b) the material is not tainted property in relation to the relevant serious offence; and
 - (c) the person in respect of whose suspected commission of, or conviction for, a serious offence the material was seized has no interest in the material.
- (3) If the court makes an order under subsection (2), the responsible custodian of the material must arrange for the material to be returned to the applicant.

186—Return of seized material if applications are not made for restraining orders or forfeiture orders

- (1) If—
 - (a) material liable to seizure under this Act has been seized under a search warrant, or under Subdivision 3, on the ground that a person believes on reasonable grounds that it is tainted property; and
 - (b) at the time when the material was seized, an application had not been made for a restraining order or a forfeiture order that would cover the material; and
 - (c) such an application is not made during the period of 25 days after the day on which the material was seized,

the responsible custodian of the material must arrange for the material to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

- (2) However, this section does not apply to material to which section 187 applies.

187—Effect of obtaining restraining orders

- (1) If—
 - (a) material liable to seizure under this Act has been seized under a search warrant, or under Subdivision 3, on the ground that a person believes on reasonable grounds that it is tainted property; and
 - (b) but for this subsection, the responsible custodian of the material would be required to arrange for the material to be returned to a person as soon as practicable after the end of a particular period; and
 - (c) before the end of that period, a restraining order is made covering the material,then—
 - (d) if the restraining order directs the Administrator to take custody and control of the material—the responsible custodian must arrange for the material to be given to the Administrator in accordance with the restraining order; or
 - (e) if the court that made the restraining order has made an order under subsection (3) in relation to the material—the responsible custodian must arrange for the material to be kept until it is dealt with in accordance with another provision of this Act.

(2) If—

- (a) material liable to seizure under this Act has been seized under a search warrant, or under Subdivision 3, on the ground that a person believes on reasonable grounds that it is tainted property; and
- (b) a restraining order is made in relation to the material; and
- (c) at the time when the restraining order is made, the material is in the possession of the responsible custodian,

the responsible custodian of the material may apply to the court that made the restraining order for an order that the responsible custodian retain possession of the material.

- (3) The court may, if satisfied that there are reasonable grounds for believing that the material may afford evidence as to the commission of an offence, make an order that the responsible custodian may retain the material for so long as the material is required as evidence as to the commission of that offence.
- (4) A witness who is giving evidence relating to an application for an order under subsection (2) is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

188—Effect of refusing applications for restraining orders or forfeiture orders

If—

- (a) material liable to seizure under this Act has been seized under a search warrant, or under Subdivision 3, on the ground that a person believes on reasonable grounds that it is tainted property; and
- (b) an application is made for a restraining order or a forfeiture order that would cover the material; and
- (c) the application is refused; and
- (d) at the time when the application is refused, the material is in the possession of the responsible custodian,

the responsible custodian must arrange for the material to be returned to the person from whose possession it was seized as soon as practicable after the refusal.

Subdivision 5—Miscellaneous

189—Making false statements in applications

A person who makes a false or misleading statement (whether orally, in a document or in any other way) in, or in connection with, an application for a search warrant is guilty of an offence.

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

Part 7—Administration

Division 1—Powers and duties of the Administrator

Subdivision 1—Preliminary

190—Appointment of Administrator

- (1) The Minister may appoint a person, or a person for the time being holding or acting in a particular office or position, as the Administrator under this Act.
- (2) An appointment under this section may be subject to such conditions as the Minister thinks fit.

191—Property to which the Administrator’s powers and duties under this Division apply

- (1) The Administrator must perform a duty imposed by, and may exercise a power conferred by, this Division in relation to controlled property.
- (2) However, the Administrator must perform a duty imposed, and may exercise a power conferred, by Subdivision 4 in relation to property that is the subject of a restraining order, whether or not the property is controlled property.

Subdivision 2—Obtaining information about controlled property

192—Access to documents

- (1) The Administrator, or another person authorised in writing by the Administrator to exercise powers under this section, for the purpose of—
 - (a) ensuring that all controlled property is under the Administrator’s custody and control; or
 - (b) ensuring the effective exercise of the Administrator’s powers or the performance of the Administrator’s duties, under this Division in relation to the controlled property,may, by notice in writing, require—
 - (c) the suspect in relation to a restraining order covering the controlled property; or
 - (d) any other person entitled to, or claiming an interest in, the controlled property,to produce specified documents in the possession of the person—
 - (e) to a specified person; and
 - (f) at a specified place, and within a specified period or at a specified time on a specified day, being a place, and a period or a time and day, that are reasonable in the circumstances.

- (2) If documents are produced under subsection (1), the Administrator, or other person making the requirement, or the person to whom the documents are produced may—
- (a) make copies of, or take extracts from, the documents; and
 - (b) require—
 - (i) the person required to produce the documents; or
 - (ii) any other person who was a party to the compilation of the documents,to explain any matter relating to the documents, or the compilation of the documents.
- (3) If documents required under subsection (1) to be produced are not produced, the Administrator, or other person making the requirement, or the person to whom the documents are required to be produced, may require the person required to produce the documents to state—
- (a) where the documents may be found; and
 - (b) who last had possession, custody or control of the documents and where that person may be found.
- (4) A person who refuses or fails to comply with a requirement under this section is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (5) A person who obstructs or hinders a person in the exercise of a power under this section is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (6) The production of documents under this section does not prejudice a lien that a person has on the documents.

193—Suspect to assist Administrator

- (1) The suspect in relation to a restraining order covering controlled property must not, unless excused by the Administrator or with a reasonable excuse, refuse or fail to—
- (a) produce to the Administrator such documents as the Administrator may require (including documents of an associated entity (within the meaning of the *Bankruptcy Act 1966* of the Commonwealth) of the person) that—
 - (i) are in the person’s possession; and
 - (ii) relate to any of the person’s affairs; and
 - (b) attend before the Administrator at such a time and place as the Administrator may reasonably require; and
 - (c) give to the Administrator such information about any of the person’s conduct and examinable affairs as the Administrator may require; and
 - (d) give to the Administrator such assistance as the Administrator may reasonably require,

in connection with the exercise of the Administrator's powers or the performance of the Administrator's duties under this Division in relation to the controlled property.

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

- (2) A person who obstructs or hinders the Administrator in the exercise of a power under subsection (1) is guilty of an offence.

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

194—Power to obtain information and evidence

- (1) The Administrator may, by notice in writing, require a person—

- (a) to give to the Administrator such information as the Administrator may require; and
- (b) to attend before the Administrator, or a person authorised in writing by the Administrator, and—

- (i) give evidence; and

- (ii) produce all documents in the possession of the person notified,

relating to the exercise of the Administrator's powers or the performance of the Administrator's duties under this Division.

- (2) The Administrator, or a person authorised in writing by the Administrator, may require the information or evidence to be given on oath (and for that purpose may administer an oath) and either orally or in writing.

- (3) A person who refuses or fails to comply with a requirement under this section is guilty of an offence.

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

195—Self-incrimination

- (1) If a natural person is required to give information, answer a question or produce, or provide a copy of, a document or record under section 194 and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty (including in the nature of a confiscation order under this Act), the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.

- (2) To avoid doubt, an answer given or document produced under section 194 is admissible in proceedings—

- (a) on, or ancillary to, an application under this Act; or

- (b) for enforcement of a confiscation order.

196—Failure of person to attend

A person who, being required under section 194(1)(b) to attend before the Administrator or a person authorised in writing by the Administrator, fails to attend as required is guilty of an offence.

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

197—Refusal to be sworn or give evidence etc

A person who, being required under section 194(1)(b) to attend before the Administrator or a person authorised in writing by the Administrator—

- (a) attends before the Administrator or a person authorised in writing by the Administrator; and
- (b) refuses or fails—
 - (i) to be sworn; or
 - (ii) to answer a question that the person is required to answer by the Administrator or a person authorised under that paragraph, as the case may require; or
 - (iii) to produce any documents that the person is required to produce,

is guilty of an offence.

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

Subdivision 3—Dealings relating to controlled property

198—Preserving controlled property

The Administrator may do anything that is reasonably necessary for the purpose of preserving the controlled property, including—

- (a) becoming a party to any civil proceedings affecting the property; and
- (b) ensuring that the property is insured; and
- (c) realising or otherwise dealing with any of the property that is securities or investments; and
- (d) if any of the property is a business—
 - (i) employing, or terminating the employment of, persons in the business; or
 - (ii) doing anything necessary or convenient to carry on the business on a sound commercial basis.

199—Rights attaching to shares

The Administrator may exercise the rights attaching to any of the controlled property that is shares—

- (a) as if the Administrator were the registered holder of the shares; and
- (b) to the exclusion of the registered holder.

200—Destroying or disposing of property

- (1) The Administrator may destroy controlled property if—
 - (a) it is in the public interest to do so; or
 - (b) it is required for the health or safety of the public.

- (2) The Administrator may dispose of controlled property, by sale or other means—
 - (a) with the agreement of all parties with an interest in the property; or
 - (b) if the property is likely to lose value in the opinion of the Administrator; or
 - (c) if, in the Administrator's opinion, the cost of controlling the property until the Administrator finally deals with it is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with.
- (3) However, before destroying or disposing of property under this section, the Administrator must (not less than 14 days before the proposed destruction or sale) give written notice of the proposed destruction or disposal to—
 - (a) the owner of the controlled property; and
 - (b) any other person whom the Administrator has reason to believe may have an interest in the property.

201—Objection to proposed destruction or disposal

A person who has been notified under section 200(3) of a proposed destruction or sale under that section may object in writing to the Administrator within 14 days of receiving the notice.

202—Procedure if person objects to proposed destruction or disposal

- (1) If an objection to a proposed destruction or disposal of controlled property has been made, the Administrator may apply to the court that made the restraining order covering the controlled property for an order that the Administrator may destroy or dispose of the property.
- (2) The court may make an order to destroy the controlled property if—
 - (a) it is in the public interest to do so; or
 - (b) it is required for the health or safety of the public.
- (3) In determining whether it is in the public interest to destroy the controlled property, the court may take into account—
 - (a) the use to which the property would be put if it were sold; and
 - (b) whether the cost of restoring the property to a saleable condition would exceed its realisable value; and
 - (c) whether the cost of sale would exceed its realisable value; and
 - (d) whether the sale of the property would otherwise be legal; and
 - (e) any other matter the court thinks fit.
- (4) The court may make an order to dispose of the controlled property if, in the court's opinion—
 - (a) the property is likely to lose value; or
 - (b) the cost of controlling the property until it is finally dealt with by the Administrator is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with.

- (5) The court may also order—
- (a) that a specified person bear the costs of controlling the controlled property until it is finally dealt with by the Administrator; or
 - (b) that a specified person bear the costs of an objection to a proposed destruction or disposal of the property.

203—Proceeds from sale of property

Amounts realised from a sale of controlled property under section 200—

- (a) are taken to be covered by the restraining order that covered the property; and
- (b) if the restraining order covered the property on the basis that the property was proceeds of a serious offence or an instrument of a serious offence to which the order relates—continue to be proceeds of the offence or an instrument of the offence.

Subdivision 4—Discharging pecuniary penalty orders and literary proceeds orders

204—Direction by a court to the Administrator

- (1) A court that makes a pecuniary penalty order or literary proceeds order may, in the order, direct the Administrator to pay the Crown, out of property that is subject to a restraining order, an amount equal to—
- (a) the penalty amount under a pecuniary penalty order; or
 - (b) the amount to be paid under a literary proceeds order,
- if—
- (c) the order is made against a person in relation to one or more serious offences; and
 - (d) the restraining order has already been made against that person in relation to the serious offence or one or more of the serious offences, or in relation to one or more related offences.
- (2) A court that makes a restraining order may, in the order, direct the Administrator to pay the Crown, out of property that is subject to a restraining order, an amount equal to—
- (a) the penalty amount under a pecuniary penalty order; or
 - (b) the amount to be paid under a literary proceeds order,
- if—
- (c) the pecuniary penalty order or literary proceeds order has been made against a person in relation to one or more serious offences; and
 - (d) the restraining order is subsequently made—
 - (i) against the person in relation to the serious offence or one or more of the serious offences; or
 - (ii) against property of another person in relation to which an order is in force under section 123(1).

- (3) A court that made a pecuniary penalty order, a literary proceeds order or a restraining order may, on the application of the DPP, direct the Administrator to pay the Crown, out of property that is subject to a restraining order, an amount equal to—
- (a) the penalty amount under a pecuniary penalty order; or
 - (b) the amount to be paid under a literary proceeds order,
- if—
- (c) the pecuniary penalty order or literary proceeds order has been made against a person in relation to one or more serious offences; and
 - (d) the restraining order has been made—
 - (i) against the person in relation to the serious offence or one or more of the serious offences; or
 - (ii) against property of another person in relation to which an order is in force under section 123(1).
- (4) For the purposes of enabling the Administrator to comply with a direction given by a court under this section, a court may, in the order in which the direction is given or by a subsequent order—
- (a) direct the Administrator to sell or otherwise dispose of such of the property that is subject to the restraining order as the court specifies; and
 - (b) appoint an officer of the court or any other person—
 - (i) to execute any deed or instrument in the name of a person who owns or has an interest in the property; and
 - (ii) to do any act or thing necessary to give validity and operation to the deed or instrument.
- (5) The execution of a deed or instrument by a person appointed by an order under subsection (4) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the interest in the property.

205—Administrator not to carry out directions during appeal periods

- (1) If the Administrator is given a direction under section 204 in relation to property, the Administrator must not take any action to comply with the direction until—
- (a) if the person has not been convicted of the serious offence, or any of the serious offences, to which the pecuniary penalty order or literary proceeds order relates—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the pecuniary penalty order or literary proceeds order to which the direction relates—the end of that period; or
 - (ii) if an appeal against the pecuniary penalty order or literary proceeds order has been lodged—when the appeal lapses or is finally determined; or

- (b) if the person is convicted of the serious offence, or any of the serious offences, to which the pecuniary penalty order or literary proceeds order relates—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction or convictions to which the direction relates—the end of that period; or
 - (ii) if an appeal against the conviction or convictions has been lodged—when the appeal lapses or is finally determined; or
 - (iii) the appeal period under paragraph (a),whichever ends last.
- (2) For the purposes of subsection (1)(b)—
 - (a) if the person is to be taken to have been convicted of a serious offence because of section 5(1)(b)—references to lodging of an appeal against the conviction are references to lodging of an appeal against the finding that the person is guilty of the offence; and
 - (b) if the person is to be taken to have been convicted of a serious offence because of section 5(1)(c)—references to lodging of an appeal against the conviction are references to lodging of an appeal against the person’s conviction of the other offence referred to in that paragraph.

206—Discharge of pecuniary penalty orders and literary proceeds orders

If the Administrator pays the Crown, in accordance with a direction under this Subdivision, an amount of money equal to—

- (a) the penalty amount under a pecuniary penalty order made against a person; or
 - (b) the amount to be paid under a literary proceeds order made against a person,
- that money must be dealt with as required by section 209 and the person’s liability under a pecuniary penalty order or literary proceeds order (as the case requires) is discharged.

Division 2—Legal assistance

207—Payments to Legal Services Commission for representing suspects and other persons

- (1) The Administrator may pay to the Legal Services Commission, out of the property of a suspect that is covered by a restraining order, legal assistance costs—
 - (a) for representing the suspect in criminal proceedings; and
 - (b) for representing the suspect in proceedings under this Act.
- (2) The Administrator may pay to the Legal Services Commission, out of the property of a person other than the suspect that is covered by a restraining order, legal assistance costs for representing the person in proceedings under this Act.
- (3) The Administrator may only pay legal assistance costs referred to in this section with the authority of the court under subsection (4).

- (4) If the court is satisfied, on application by the Legal Services Commission, that it is unlikely that anyone other than a particular assisted person could, assuming that property subject to a restraining order were not forfeited, establish a lawful claim to the property (or a particular part of, or interest in, the property)—
- (a) the court must authorise the application of the property (or the relevant part of, or interest in, the property) towards payment of legal assistance costs; and
 - (b) may make any other order that may be necessary or appropriate in the circumstances (such as an order for partition of the property or an order for its sale or conversion into money).
- (5) The Legal Services Commission may only make an application under subsection (4) for an order authorising the application of restrained property towards payment of legal assistance costs if satisfied that the assisted person has no other source of funds (within or outside the State) to which the Commission could reasonably have recourse for the legal assistance costs.
- (6) Before the court authorises the application of property subject to a restraining order towards payment of legal assistance costs, the court must allow the Attorney-General an opportunity to appear and be heard on the matter.

208—Disclosure of information to Legal Services Commission

The DPP or the Administrator may, for the purpose of assisting the Legal Services Commission to determine whether a person should receive legal assistance under this Division, disclose to the Commission information obtained under this Act that is relevant to making that determination.

Division 3—Victims of Crime Fund

209—Credits to the Victims of Crime Fund

- (1) Subject to any direction of a court under this Act—
- (a) any proceeds of confiscated assets; and
 - (b) any money deriving from the enforcement in the State of an order under a corresponding law,
- must be applied towards the costs of administering this Act (including any costs involved in dealing with, or disposing of property in accordance with this Act and salary and other costs associated with the employment of the Administrator) and the balance must be paid into the Victims of Crime Fund.
- (2) Any money—
- (a) paid to the Crown under the equitable sharing program, being the Crown's share of proceeds resulting from a breach of the criminal law of a State or Territory; or
 - (b) received by the Commonwealth from a foreign country within the meaning of the Mutual Assistance Act under a treaty or arrangement providing for mutual assistance in criminal matters and paid by the Commonwealth to the Crown,
- must be paid into the Victims of Crime Fund.

- (3) The purposes for which money may be applied from the Victims of Crime Fund include payments to the Commonwealth or to another State or a Territory of the Commonwealth, under the equitable sharing program.

- (4) In this section—

costs of administering this Act includes the payment of any money in accordance with section 57;

equitable sharing program means an arrangement under which—

- (a) the Crown shares with the Commonwealth or a reciprocating State the proceeds resulting from a breach of the criminal law of the State if 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 Crown the proceeds of any unlawful activity if the Crown has made a significant contribution to the recovery of those proceeds.

proceeds of confiscated assets means—

- (a) the amount referred to in section 72(1) or 73(f);
- (b) the amount referred to in section 81(1)(c) or 82(f);
- (c) the amounts referred to in section 93(2);
- (d) an amount payable to the Crown under a confiscation order;
- (e) the amount referred to in section 206.

Division 4—Charges on property

Subdivision 1—Charge to secure certain amounts payable to the Crown

210—Charge on property subject to restraining order

- (1) If—

- (a) a confiscation order is made against a person in relation to a serious offence; and
- (b) a restraining order relating to the offence or a related offence is, or has been, made against—
- (i) the person's property; or
- (ii) another person's property in relation to which an order under section 123(1) is, or has been, made,

then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Crown of the penalty amount or the literary proceeds amount (as the case requires).

- (2) The charge ceases to have effect in respect of the property—

- (a) if the order was made in relation to the person's conviction of the serious offence and that conviction is quashed—upon the order being discharged under Part 5 Division 3 Subdivision 5; or

- (b) upon the discharge of the order or the restraining order by a court hearing an appeal against the making of the order; or
- (c) upon payment to the Crown of the penalty amount or the amount to be paid under the literary proceeds order in satisfaction of the order; or
- (d) upon the sale or other disposition of the property—
 - (i) under an order under Part 7 Division 1 Subdivision 4; or
 - (ii) by the owner of the property with the consent of the court that made the order; or
 - (iii) if the restraining order directed the Administrator to take custody and control of the property—by the owner of the property with the consent of the Administrator; or
- (e) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, had no notice of the charge,

whichever first occurs.

Subdivision 2—Charge to secure certain amounts payable to Legal Services Commission

211—Legal Services Commission charges

- (1) If—
 - (a) the Legal Services Commission is to be paid an amount out of property that is covered by a restraining order; and
 - (b) either—
 - (i) the court revokes the restraining order; or
 - (ii) the order ceases to be in force under section 46,

there is created by force of this section a charge on the property to secure the payment of the amount to the Legal Services Commission.

- (2) A charge created under subsection (1) ceases to have effect—
 - (a) when the amount owing is paid to the Legal Services Commission; or
 - (b) when the person sells or disposes of the property with the consent of the Administrator,

whichever occurs first.

Subdivision 3—Registering and priority of charges

212—Charges may be registered

- (1) If a charge is created by this Act on property of a particular kind, the Administrator or the DPP may cause the charge to be registered under the provisions of an Act providing for the registration of title to, or charges over, property of that kind.
- (2) For the purposes of section 210(2)(e), a person who purchases or otherwise acquires an interest in the property after registration of the charge is taken to have notice of the charge at the time of the purchase or acquisition.

213—Priority of charges

A charge created by this Act—

- (a) is subject to every encumbrance on the property that came into existence before the charge and that would otherwise have priority; and
- (b) has priority over all other encumbrances; and
- (c) subject to this Act, is not affected by a change of ownership of the property.

Part 8—Miscellaneous

214—Authorised officers to be issued identity cards

- (1) An authorised officer (other than the DPP or a police officer) must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) An authorised officer (other than the DPP) must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—
 - (a) in the case of an authorised officer who is a police officer—his or her warrant card; or
 - (b) in any other case—his or her identity card.

215—Immunity from civil liability

- (1) No personal liability attaches to the Administrator, the DPP, an authorised officer or any other person engaged in the administration of this Act for an honest act or omission in the exercise, or purported exercise, of a power, function or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

216—Manner of giving notices etc

A notice, order or other document required or authorised by this Act to be given to or served on a person may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business; or
- (d) in any other manner prescribed by regulation.

217—Registration of orders made under corresponding laws

- (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.

218—Certain proceedings to be civil

- (1) Proceedings on an application for a freezing order, a restraining order or a confiscation order are civil proceedings.
- (2) Except in relation to an offence under this Act—
 - (a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
 - (b) the rules of evidence applicable in civil proceedings apply to proceedings under this Act.

219—Consent orders

- (1) A court may make an order in a proceeding under Part 3, Part 4 or Part 5 with the consent of—
 - (a) the applicant in the proceeding; and
 - (b) each person that the court has reason to believe has an interest in property the subject of the proceeding.
- (2) An order may be made—
 - (a) without consideration of the matters that the court would otherwise consider in the proceeding; and
 - (b) if the order is an order under section 47(1)(b)—before the end of the period of 6 months referred to in section 47(1)(b).

220—Onus and standard of proof

- (1) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.
- (2) Subject to section 47(7) and section 98, any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

221—Applications to certain courts

- (1) If, during the course of criminal proceedings before a court in respect of a serious offence, the DPP applies for an order under this Act relating to the offence, the court must deal with the application during the course of the criminal proceedings unless satisfied by the defendant that to do so would not be appropriate in the circumstances.
- (2) If an application for an order under this Act is made to a court before which a person was convicted of a serious offence—
 - (a) the application may be dealt with by the court; and
 - (b) any power in relation to the relevant order may be exercised by the court,

whether or not the court is constituted in the same way as when the person was convicted of the offence.

222—Proof of certain matters

- (1) A certificate of conviction of an offence that complies with a requirement of *Evidence Act 1929*—
 - (a) is admissible in civil proceedings under this Act; and
 - (b) is evidence of the commission of the offence by the person to whom it relates.
- (2) In proceedings—
 - (a) on an application for an order under this Act; or
 - (b) ancillary to such an application; or
 - (c) for the enforcement of an order made under this Act,the transcript of any examination is evidence of the answers given by a person to a question put to the person in the course of the examination.
- (3) In proceedings for an offence against this Act, an allegation in the complaint or information that a person named in the complaint or information was on a specified date an authorised person in relation to this Act, or a specified provision or provisions of this Act, will be accepted, in the absence of proof to the contrary, as proof of the authorisation.

223—Stay of proceedings

The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) is not a ground on which a court may stay proceedings under this Act that are not criminal proceedings.

224—Effect of the confiscation scheme on sentencing

A court passing sentence on a person in respect of the person's conviction of a serious offence—

- (a) may have regard to any cooperation by the person in resolving any action taken against the person under this Act; and
- (b) must not have regard to any forfeiture order that relates to the offence, to the extent that the order forfeits proceeds of the offence; and
- (c) must have regard to the forfeiture order to the extent that the order forfeits any other property; and
- (d) must not have regard to any pecuniary penalty order, or any literary proceeds order, that relates to the offence.

225—Deferral of sentencing pending determination of confiscation order

If—

- (a) an application is made for a confiscation order in respect of a person's conviction of a serious offence to the court before which the person was convicted; and

- (b) the court has not, when the application is made, passed sentence on the person for the offence,

the court may, if satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the confiscation order.

226—Appeals

- (1) A person—
 - (a) against whom a confiscation order is made; or
 - (b) who has an interest in property against which a forfeiture order is made; or
 - (c) who has an interest in property that is declared in an order under section 123 to be available to satisfy a pecuniary penalty order or literary proceeds order,may appeal against the confiscation order, forfeiture order or order under section 123—
 - (d) in the case of an order made in relation to a conviction of a serious offence—as if the order was, or was part of, the sentence imposed on the person in respect of the offence; or
 - (e) in any other case—as if the person had been convicted of the serious offence to which the order relates and the order was, or was part of, the sentence imposed on the person in respect of the offence.
- (2) The DPP—
 - (a) has the same right of appeal as a person referred to in subsection (1) has under this section; and
 - (b) may appeal against a refusal by a court to make an order as if such an order had been made and the DPP was appealing against that order.
- (3) On an appeal under this section, the court may confirm, discharge or vary the order.
- (4) Nothing in this section affects any other right of appeal.

227—Costs

- (1) A court may, if—
 - (a) a person brings, or appears at, proceedings under this Act—
 - (i) to prevent a forfeiture order or restraining order from being made against property of the person; or
 - (ii) to have property of the person excluded from a forfeiture order or restraining order; and
 - (b) the person is successful in those proceedings; and
 - (c) the court is satisfied that the person was not involved in any way in the commission of the serious offence in respect of which the forfeiture order or restraining order was sought or made,order the Crown to pay the person costs in connection with the proceedings or such part of those costs as is determined by the court.

- (2) To avoid doubt, the costs referred to in subsection (1) are not limited to costs of a kind that are normally recoverable by the successful party to civil proceedings.

228—Interest

- (1) If—
- (a) money of a person is seized or forfeited under this Act; and
 - (b) not less than one month after the seizure or forfeiture, the money (or an equal amount of money) is required under this Act to be paid back to the person or the person is required to be compensated by the Crown under this Act in respect of the seizure or forfeiture,
- the person is entitled to be paid interest on the money at the prescribed rate.
- (2) An amount payable by the Crown under this section is recoverable as a debt.
- (3) Except as provided by this section, no interest is payable by the Crown in respect of property seized or forfeited under this Act.

229—Effect of a person’s death

- (1) A notice authorised or required to be given to a person under this Act is, if the person has died, taken to be given to the person if given to the person’s legal representative.
- (2) A reference in this Act to a person’s interest in property or a thing includes, if the person has died, a reference to an interest in the property or thing that the person had immediately before his or her death.
- (3) Nothing in this Act prevents an order from being applied for and made—
- (a) in respect of a person’s interest in property or a thing; or
 - (b) on the basis of the activities of a person,
- after the death of the person.

230—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Controlled Substances Act 1984*

2—Repeal of section 43

Section 43—delete this section

3—Amendment of section 44—Matters to be considered when court fixes penalty

Section 44(d)(ii)—delete "an application for forfeiture of property has been made under the *Criminal Assets Confiscation Act 1996* in respect of that financial gain" and substitute:

that financial gain is the subject of an application under the *Criminal Assets Confiscation Act 2005*

4—Amendment of section 52A—Seized property and forfeiture

Section 52A(12)—delete subsection (12) and substitute:

(12) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005*.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

5—Amendment of section 348—Interpretation

Section 348, definition of *ancillary order*, (a) and (b)—delete paragraphs (a) and (b)

Part 4—Amendment of *Financial Transaction Reports (State Provisions) Act 1992*

6—Amendment of section 5—Further reports of suspect transactions

Section 5(2)(b)—delete "*Criminal Assets Confiscation Act 1996*" and substitute:
Criminal Assets Confiscation Act 2005

7—Amendment of section 6—Reports of suspect transactions not reported under Commonwealth Act

- (1) Section 6(1)(b)—delete "*Criminal Assets Confiscation Act 1996*" and substitute:
Criminal Assets Confiscation Act 2005
- (2) Section 6(7)(b)—delete "*Criminal Assets Confiscation Act 1996*" and substitute:
Criminal Assets Confiscation Act 2005

Part 5—Amendment of *Legal Services Commission Act 1977*

8—Amendment of section 5—Interpretation

Section 5, definition of *restraining order*—delete "*Criminal Assets Confiscation Act 1996*" and substitute:
Criminal Assets Confiscation Act 2005

9—Amendment of section 18B—Special provisions in relation to property subject to a restraining order

Section 18B(4)(b)—delete "*Criminal Assets Confiscation Act 1996*" and substitute:
Criminal Assets Confiscation Act 2005

Part 6—Repeal of *Criminal Assets Confiscation Act 1996*

10—Repeal of Act

The *Criminal Assets Confiscation Act 1996* is repealed.

Part 7—Transitional provisions

11—Transitional provision

- (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) In this clause—
former Act means the *Criminal Assets Confiscation Act 1996*.