



Proceeds of Crime Act 1987

No. 87 of 1987

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Proceeds of Crime Act 1987

No. 87 of 1987

An Act to provide for confiscation of the proceeds of crime, and for related purposes

[Assented to 5 June 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Proceeds of Crime Act 1987*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal objects

3. (1) The principal objects of this Act are:

- (a) to deprive persons of the proceeds of, and benefits derived from, the commission of offences against the laws of the Commonwealth or the Territories;

- (b) to provide for the forfeiture of property used in or in connection with the commission of such offences; and
 - (c) to enable law enforcement authorities effectively to trace such proceeds, benefits and property.
- (2) The objects of this Act include the objects of:
- (a) providing for the enforcement in the Territories of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of offences against the laws of the States;
 - (b) facilitating the enforcement in Australia, pursuant to the Mutual Assistance Act, of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of foreign serious offences; and
 - (c) assisting foreign countries, pursuant to the Mutual Assistance Act, to trace the proceeds of, benefits derived from and property used in or in connection with the commission of foreign serious offences.

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“AFP member” means a member or special member of the Australian Federal Police;

“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;

“appropriate officer” means the DPP or a person in a class of persons declared by the regulations to be within this definition;

“approved” means approved by the Minister in writing for the purposes of the provision in which the term occurs;

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

“bank” means:

- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of the *Banking Act 1959*; or
- (c) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution;

“Bankruptcy Act” means the *Bankruptcy Act 1966*;

“benefit” includes service or advantage;

“building society” means a society registered or incorporated as a building society, co-operative housing society or similar society under a law relating to such societies that is in force in a State or Territory;

“Commissioner” means the Commissioner of the Australian Federal Police;

- “confiscation order” means a forfeiture order or a pecuniary penalty order;
- “corresponding law” means a law of a State that is declared by the regulations to be a law that corresponds to this Act;
- “credit union” means a society or other body of persons that is registered or incorporated as a credit union or a credit society under a law in force in a State or Territory relating to credit unions or credit societies;
- “Crimes Act” means the *Crimes Act 1914*;
- “criminal investigation”, in relation to a foreign serious offence, has the same meaning as in the Mutual Assistance Act;
- “criminal proceeding”, in relation to a foreign serious offence, has the same meaning as in the Mutual Assistance Act;
- “Customs Act” means the *Customs Act 1901*;
- “Customs officer” means an officer of Customs within the meaning of the Customs Act;
- “DPP” means the Director of Public Prosecutions;
- “encumbrance”, in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property;
- “facsimile copy” means a copy obtained by facsimile transmission;
- “financial institution” means:
- (a) a bank;
 - (b) a building society;
 - (c) a credit union; or
 - (d) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;
- “fixed term deposit” means an interest bearing deposit lodged for a fixed period;
- “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;
- “foreign serious offence” has the same meaning as in the Mutual Assistance Act;
- “forfeiture order” means an order under subsection 19 (1);
- “indictable offence” means an offence against a law of the Commonwealth, or a law of a Territory, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence);
- “interest”, in relation to property, means:
- (a) a legal or equitable estate or interest in the property; or

- (b) a right, power or privilege in connection with the property; whether present or future and whether vested or contingent;
- “interstate 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;
- “interstate indictable offence” means an offence against a law of a State, being an offence in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of that State;
- “interstate 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;
- “interstate 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;
- “law enforcement authority” means the Australian Federal Police or the National Crime Authority;
- “magistrate” includes a justice of the peace;
- “magistrate’s court” means a court of summary jurisdiction constituted by a Stipendiary Magistrate, a Police Magistrate or a Special Magistrate;
- “Mutual Assistance Act” means the *Mutual Assistance in Criminal Matters Act 1987*;
- “narcotic substance” means:
 - (a) a narcotic substance within the meaning of the Customs Act; or
 - (b) a substance declared by the regulations to be a substance to which this definition applies;
- “Official Trustee” means the Official Trustee in Bankruptcy;
- “ordinary indictable offence” means an indictable offence that is not a serious offence;
- “pecuniary penalty order” means an order under subsection 26 (1);
- “penalty amount”, in relation to a pecuniary penalty order against a person, means the amount that the person is liable to pay the Commonwealth under the order;
- “petition” means a petition under the Bankruptcy Act;
- “police officer” means:
 - (a) an AFP member; or
 - (b) a member of the police force of a State or Territory;
- “premises” includes:
 - (a) a structure, building, aircraft, vehicle or vessel;
 - (b) a place (whether enclosed or built upon or not); and
 - (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“prescribed time”, in relation to a warrant issued under Division 1 of Part III in relation to property, means:

- (a) where an information is laid in respect of the relevant offence either before the warrant is issued or within 48 hours after the warrant is issued—the day that is one month after the date of the issue of the warrant; or
- (b) in any other case—the time that is 48 hours after the time of the issue of the warrant;

“proceeds”, in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence;

“proceeds of crime” means:

- (a) proceeds of an indictable offence; or
- (b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that:
 - (i) occurred outside Australia;
 - (ii) related to a narcotic substance; and
 - (iii) would, if they had occurred in Australia, have constituted an indictable offence or a State indictable offence;

“production order” means an order under section 66;

“property” means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible and includes an interest in any such real or personal property;

“property-tracking document”, in relation to an offence, means:

- (a) a document relevant to:
 - (i) identifying, locating or quantifying property of a person who committed the offence; or
 - (ii) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or
- (b) a document relevant to:
 - (i) identifying, locating or quantifying tainted property in relation to the offence; or
 - (ii) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

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

“relevant application period”, in relation to a person’s conviction of an indictable offence, means the period of 6 months after:

- (a) where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (a)—the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (b)—the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (c)—the day on which the court took the offence into account in passing sentence for the other offence referred to in that paragraph; or
- (d) where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (d)—the day on which the person is to be taken to have absconded in connection with the offence;

“relevant offence”, in relation to tainted property, means an offence by reason of the commission of which the property is tainted property;

“relevant Supreme Court” means:

- (a) in relation to property seized under a warrant issued under Division 1 of Part III—the Supreme Court of the State or Territory in which an information in respect of the relevant offence has been, or is to be, laid;
- (b) in relation to property seized under section 38—the Supreme Court of the State or Territory in which an information in respect of the relevant offence has been laid; or
- (c) in relation to a person’s conviction of an offence or the charging, or proposed charging, of a person with an offence—the Supreme Court of the State or Territory in which the person has been convicted or has been, or is to be, charged with the offence;

“restraining order” means an order under subsection 43 (2);

“State” includes the Northern Territory;

“State indictable offence” means an offence against a law of a State that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence);

“tainted property”, in relation to an offence, means:

- (a) property used in, or in connection with, the commission of the offence; or
- (b) proceeds of the offence;

and when used without reference to a particular offence means tainted property in relation to an indictable offence;

“Territory” does not include the Northern Territory;

“unlawful activity” means an act or omission that constitutes an offence against a law in force in the Commonwealth, a State, a Territory or a foreign country.

(2) A reference in this Act to a person being charged with an offence is a reference to an information being laid against the person for the offence whether or not:

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

(3) A reference in this Act to a benefit derived by a person includes a reference to a benefit derived by another person at the request or direction of the first person.

(4) A reference in this Act to the property of a person includes a reference to property in respect of which the person has the beneficial interest.

(5) A reference in this Act to a criminal offence is a reference to an offence against a law of the Commonwealth or of a Territory.

(6) Without prejudice to its effect by virtue of subsection (5), this Act has effect as if a reference in this Act to a criminal offence included a reference to an offence against a law of a State.

(7) A reference in this Act to acquiring property, or an interest in property, for sufficient consideration is a reference to acquiring the property or the interest for a consideration that is sufficient and that, having regard solely to commercial considerations, reflects the value of the property or the interest.

Meaning of "conviction" etc. of offence

5. (1) For the purposes of this Act, a person shall be taken to be convicted of an offence if:

- (a) the person is convicted, whether summarily or on indictment, of the offence;
- (b) the person is charged with, and found guilty of, the offence but is discharged without conviction;
- (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; or
- (d) the person absconds in connection with the offence.

(2) For the purposes of this Act, a person's conviction of an offence shall be taken to be quashed:

- (a) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (a)—if the conviction is quashed or set aside;
- (b) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (b)—if the finding of guilt is quashed or set aside;

- (c) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (c)—if 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) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (d)—if, 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.
- (3) For the purposes of this Act, a person shall be taken to have been convicted of an offence in a particular State or Territory if:
- (a) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (a)—the person was convicted of the offence in a court in that State or Territory;
 - (b) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (b)—the person was discharged without conviction by a court in that State or Territory;
 - (c) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (c)—the offence was taken into account by a court in that State or Territory in passing sentence on the person for the other offence referred to in that paragraph; or
 - (d) where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (d)—the information alleging the commission of the offence by the person was laid in that State or Territory.
- (4) For the purposes of this Act, where a person is to be taken to have been convicted of an offence in a particular State or Territory by reason of paragraph (3) (d), the person shall be taken to have been so convicted before the Supreme Court of that State or Territory.

(5) A reference in this Act, in relation to a person's conviction of an offence, to the commission of the offence shall, where the person is to be taken to have been convicted of the offence by reason of paragraph (1) (d), be read as a reference to the alleged commission of the offence by the person.

(6) This section does not apply to a foreign serious offence.

Meaning of "absconding"

6. For the purposes of this Act (except section 17), a person shall be taken to abscond in connection with an offence if and only if:

- (a) an information is laid alleging the commission of the offence by the person;

- (b) a warrant for the arrest of the person is issued in relation to that information; and
- (c) one of the following occurs:
 - (i) the person dies without the warrant being executed;
 - (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (A) the person cannot be found; or
 - (B) the person is, for any other reason, not amenable to justice and, if the person is outside Australia, extradition proceedings are not on foot;
 - (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (A) the person is, by reason of being outside Australia, not amenable to justice; and
 - (B) extradition proceedings are on foot;and subsequently those proceedings terminate without an order for the person's extradition being made.

Meaning of "serious offence"

7. (1) In this Act:

"serious offence" means:

- (a) a serious narcotics offence;
- (b) an organised fraud offence; or
- (c) a money laundering offence in relation to the proceeds of a serious narcotics offence or an organised fraud offence;

and includes an ancillary offence in respect of an offence referred to in paragraph (a), (b) or (c).

(2) In this section:

"ancillary offence", in relation to an offence (in this definition called the "main offence"), means:

- (a) an offence of conspiring to commit the main offence;
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the main offence;
- (c) an offence of receiving or assisting another person in order to enable the person to escape punishment for, or to dispose of the proceeds of, the main offence; or
- (d) an offence of attempting to commit the main offence;

"money laundering offence" means an offence against section 81;

"organised fraud offence" means an offence against section 83;

"possession" includes possession for supply;

"production" includes growing and manufacture;

"serious narcotics offence" means an offence:

- (a) constituted by the production, possession, supply, importation or export of a narcotic substance; and
- (b) involving a quantity of the narcotic substance that is equal to or greater than the trafficable quantity applicable to the narcotic substance;

“trafficable quantity”, in relation to a narcotic substance, means:

- (a) if paragraph (b) does not apply—a trafficable quantity of the substance within the meaning of the Customs Act; or
- (b) if the law against which the offence is committed is not the Customs Act and that law includes references to trafficable quantity—a trafficable quantity of the substance within the meaning of that law.

Related offences

8. For the purposes of this Act, 2 offences are related to one another if the elements of the 2 offences are substantially the same acts or omissions.

Meaning of “dealing with property”

9. For the purposes of this Act, dealing with property of a person includes:

- (a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;
- (b) removing the property from Australia; and
- (c) receiving or making a gift of the property.

Appropriate court in relation to indictable offence

10. (1) Where a person is convicted of an offence before the Supreme Court of a State or Territory, that Supreme Court is the appropriate court in relation to the conviction.

(2) Where a person is convicted of an offence before any other court of a State or Territory, the court before which the person was convicted and the Supreme Court of that State or Territory are both appropriate courts in relation to the conviction.

Act to bind Crown

11. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

Act to apply both within and outside Australia

12. This Act applies throughout the whole of Australia and also applies outside Australia.

Application

13. (1) Subject to subsection (2), Parts II and III (other than section 59) do not apply to a person's conviction of an offence if the person was convicted of the offence before the commencement of this Act.

(2) Subsection (1) does not apply in relation to interstate forfeiture orders, interstate pecuniary penalty orders, interstate restraining orders, foreign forfeiture orders, foreign pecuniary penalty orders or foreign restraining orders.

(3) Subject to subsection (1) this Act applies to:

- (a) an offence committed, or believed to have been committed, at any time (whether before or after the commencement of this Act); and
- (b) a person's conviction at any time of an offence (whether before or after the commencement of this Act).

PART II—CONFISCATION

Division 1—Application for confiscation order

Application for confiscation order

14. (1) Where a person is convicted of an indictable offence, the DPP may, subject to subsections (2), (3) and (4) apply to an appropriate court for one or both of the following orders:

- (a) a forfeiture order against property that is tainted property in respect of the offence;
- (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

(2) The DPP is not empowered to make an application after the end of the relevant application period in relation to the conviction.

(3) The DPP is not empowered to make an application to a court under subsection (1) for a forfeiture order against property in respect of a person's conviction of an offence if:

- (a) an application has previously been made:
 - (i) under that subsection;
 - (ii) under another law of the Commonwealth; or
 - (iii) under a law of a Territory;

for forfeiture or condemnation of the property in respect of the offence; and

(b) the application has been finally determined on the merits; except with the leave of the court.

(4) The DPP is not empowered to make an application to a court under subsection (1) for a pecuniary penalty order against a person in respect of benefits derived by the person from the commission of an offence if:

- (a) an application has previously been made:

- (i) under that subsection;
- (ii) under another law of the Commonwealth; or
- (iii) under a law of a Territory;

for a pecuniary penalty in respect of those benefits derived by the person from the commission of the offence; and

(b) the application has been finally determined on the merits; except with the leave of the court.

(5) The court shall not grant leave under subsection (3) or (4) unless satisfied that:

- (a) the tainted property, or the benefit, to which the new application relates was identified only after the first application was determined;
- (b) necessary evidence became available only after the first application was determined; or
- (c) the court is otherwise satisfied that it is in the interests of justice to grant the leave.

(6) An application may be made under this section in relation to one or more indictable offences.

(7) An application may be made under this section for a pecuniary penalty order in respect of an offence even if section 30 applies to the offence.

Notice of application

15. (1) Where the DPP applies for a forfeiture order against property in respect of a person's conviction of an offence:

- (a) the DPP shall give written notice of the application to the person and to any other person the DPP has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at any time before the final determination of the application, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

(2) Where the DPP applies for a pecuniary penalty order against a person:

- (a) the DPP shall give the person written notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

Amendment of application

16. (1) Subject to subsection (2), where the DPP applies for a confiscation order, the court hearing the application may amend the application:

- (a) on application by the DPP; or
 - (b) with the consent of the DPP.
- (2) The court shall not amend the application so as to:
- (a) include additional property in an application for a forfeiture order; or
 - (b) include an additional benefit in an application for a pecuniary penalty order;

unless the court is satisfied that:

- (c) the property or benefit was not reasonably capable of identification when the application was originally made; or
 - (d) necessary evidence became available only after the application was originally made.
- (3) Where:
- (a) the DPP applies to amend an application for a forfeiture order; and
 - (b) the amendment would have the effect of including additional property in the application for the forfeiture order;

then:

- (c) the DPP shall give written notice of the application to amend to any person who the DPP has reason to believe may have an interest in property to be included in the application for the forfeiture order; and
 - (d) any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.
- (4) Where:
- (a) the DPP applies to amend an application for a pecuniary penalty order against a person; and
 - (b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order;

the DPP shall give the person written notice of the application to amend.

Making of confiscation order where person has absconded

17. Where a person is, by reason of paragraph 5 (1) (d), to be taken to have been convicted of an indictable offence, a court shall not make a confiscation order in reliance on the person's conviction of the offence unless the court is satisfied, on the balance of probabilities, that the person has absconded and:

- (a) the person has been committed for trial for the offence; or
- (b) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

Procedure on application

18. (1) Where an application is made to a court for a confiscation order in respect of a person's conviction of an offence, the court may, in determining the application, have regard to the transcript of any proceeding against the person for the offence.

(2) Where:

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

(3) Where:

- (a) a person is to be taken to have been convicted of an offence by reason of paragraph 5 (1) (c); and
- (b) an application is made to a court for a confiscation order in respect of the conviction;

the reference in subsection (1) to a proceeding against the person for the offence includes a reference to a proceeding against the person for the other offence referred to in that paragraph.

Division 2—Forfeiture orders

Forfeiture orders

19. (1) Where:

- (a) the DPP applies to a court for an order under this section against property in respect of a person's conviction of an offence; and
- (b) the court is satisfied that the property is tainted property in respect of the offence;

the court may, if it considers it appropriate, order that the property, or such of the property as is specified by the court in the order, is forfeited to the Commonwealth.

(2) Where the court orders that property (other than money) is forfeited to the Commonwealth, the court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(3) In considering whether it is appropriate to make a forfeiture order 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 by the operation of such an order; and

(b) the use that is ordinarily made, or was intended to be made, of the property.

(4) In considering whether it is appropriate to make a forfeiture order under subsection (1) in respect of particular property, the court may also have regard to the gravity of the offence concerned.

(5) A court that makes a forfeiture order against property may, if it is 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 in the property should not be transferred to that 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 order may, to the extent to which it relates to the interest, be discharged as provided by section 33.

(6) Where:

- (a) the DPP applies for a forfeiture order against particular property in reliance on a person's conviction of an offence; and
- (b) evidence is given, at the hearing of the application, that the property was in the person's possession at the time of, or immediately after, the commission of the offence;

then:

- (c) 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 shall presume that the property was used in, or in connection with, the commission of the offence; or
- (d) in any other case—the court shall not make a forfeiture order against the property unless it is satisfied that the property was used in, or in connection with, the commission of the offence.

(7) Where a court makes a forfeiture order, the court has power to give all directions that are necessary or convenient for giving effect to the order.

(8) Without limiting the generality of subsection (7), where a court makes a forfeiture order against registrable property, the court may direct an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

Effects of forfeiture order

20. (1) Subject to subsection (2), where a court makes a forfeiture order against property, the property vests absolutely in the Commonwealth.

- (2) Where a forfeiture order is made against registrable property:
- (a) the property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with;
 - (b) the Commonwealth is entitled to be registered as owner of the property; and
 - (c) the Minister has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

- (3) Where a court makes a forfeiture order against property:
- (a) the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Commonwealth, before the relevant time; and
 - (b) if, at the relevant time, the order has not been discharged, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorised by the Minister for the purposes of this paragraph.

(4) Without limiting the generality of paragraph (3) (b), the directions that may be given pursuant to that paragraph include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.

(5) A reference in this section to the appeal period in relation to a person's conviction of an offence is:

- (a) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (b)—a reference to the appeal period in relation to the finding of the person guilty of the offence; and
- (b) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (c)—a reference to the appeal period in relation to the person's conviction of the other offence referred to in that paragraph.

(6) In this section:

“appeal period”, in relation to a decision of a court or a finding, means the period ending:

- (a) if the period provided for the lodging of an appeal against the decision or finding has ended without such an appeal having been lodged—at the end of that period; or
- (b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined;

“relevant time”, in relation to a forfeiture order made in reliance on a person's conviction of an offence, means:

- (a) the end of the appeal period in relation to the making of the forfeiture order; or
 - (b) the end of the appeal period in relation to the person's conviction;
- whichever is the later.

Effect of forfeiture order on third parties

21. (1) Where an application is made for a forfeiture order against particular property, a person who claims an interest in the property may apply, before the forfeiture order is made, to the court for an order under subsection (6).

(2) Subject to subsections (3) and (7), where a court makes a forfeiture order against property, a person who claims an interest in the property may apply to the court for an order under subsection (6).

(3) A person who:

- (a) was given notice of the application for the forfeiture order; or
- (b) appeared at the hearing of the application;

shall not make an application to a court under subsection (2) except with the leave of the court.

(4) The court may grant the person leave to apply if the court is satisfied that there are special grounds for granting the leave.

(5) Without limiting the generality of subsection (4), the court may grant a person leave to apply if the court is satisfied that:

- (a) the person, for a good reason, did not attend the hearing of the application for the forfeiture order although the person had notice of the application; or
- (b) particular evidence proposed to be adduced by the person in connection with the application under subsection (2) was not available to the person at the time of the hearing of the application for the forfeiture order.

(6) If a person applies to a court for an order under this subsection in respect of the applicant's interest in property and the court is satisfied that:

- (a) the applicant was not, in any way, involved in the commission of the offence, or an offence, in respect of which forfeiture of the property is sought; and
- (b) if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest:
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property;

the court shall make an order:

- (c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest; and
- (d) either:
 - (i) directing the Commonwealth to transfer the interest to the applicant; or
 - (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

(7) Subject to subsection (8), an application under subsection (2) shall be made before the end of the period of 6 months commencing on the day on which the forfeiture order is made.

(8) Where a forfeiture order is made against property, the court that made the forfeiture order may grant a person claiming an interest in the property leave to apply under subsection (2) outside the period referred to in subsection (7) if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the part of the person.

(9) A person who makes an application under subsection (1) or (2) in respect of property shall give notice to the DPP and the Minister, as prescribed, of the making of the application.

(10) The DPP shall be a party to any proceedings upon an application under subsection (1) or (2) and the Minister may intervene in any such proceedings.

Discharge of forfeiture order on appeal or by quashing of conviction

22. (1) Where:

- (a) a court makes a forfeiture order against property in reliance on a person's conviction of an offence; and
- (b) the conviction is subsequently quashed;

the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided by subsection (1) or by a court hearing an appeal against the making of the order, the DPP shall:

- (a) as soon as practicable after the discharge of the order, give written notice of the discharge of the forfeiture order to any person the DPP has reason to believe may have had an interest in the property immediately before the making of the forfeiture order; and
- (b) if required to do so by a court—give or publish notice of the discharge of the forfeiture order to a specified person or class of persons in the manner and within the time that the court considers appropriate.

(3) A notice under subsection (2) shall include a statement to the effect that a person claiming an interest in the property may apply under subsection (4) for the transfer of the interest to the person.

(4) Where a forfeiture order against property is discharged as provided by subsection (1) or by a court hearing an appeal against the making of the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order may apply to the Minister, in writing, for the transfer of the interest to the person and, on receipt of an application from a person who had an interest in the property immediately before the making of the forfeiture order:

- (a) if the interest is still vested in the Commonwealth—the Minister shall arrange for the interest to be transferred to the person; or
- (b) in any other case—there is payable to the person an amount equal to the value of the interest.

(5) Where the Minister is required by this section to arrange for property to be transferred to a person, the Minister has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

Registered foreign forfeiture orders

23. (1) Where a foreign forfeiture order is registered in a court in Australia under the Mutual Assistance Act, this Division applies in relation to the order as if subsections 19 (5) and 20 (3), (4), (5) and (6) and sections 21 and 22 were omitted.

(2) Where a foreign forfeiture order against property is registered in a court in Australia under the Mutual Assistance Act, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.

Division 3—Pecuniary penalty orders

Application of Division

24. This Division applies to:

- (a) property that comes into the possession, or under the control, of a person either within or outside Australia and either before or after the commencement of this Act; and
- (b) benefits that are provided to a person either within or outside Australia and either before or after the commencement of this Act.

Special provisions in relation to serious offences

25. (1) Where an application is made to a court for a pecuniary penalty order against a person in reliance on the person's conviction of a serious offence, the court shall not make a pecuniary penalty order in reliance on the conviction until after the end of the period of 6 months commencing on the day of the conviction.

(2) Subsection (1) does not apply to an application for a pecuniary penalty order against a person who is to be taken to have been convicted of the serious offence by reason of paragraph 5 (1) (d).

Pecuniary penalty orders

26. (1) Where:

- (a) an application is made to a court for an order under this section in respect of benefits derived by a person from the commission of an offence; and
- (b) the court is satisfied that the person derived benefits from the commission of the offence;

the court may, if it considers it appropriate:

- (c) assess, in accordance with section 27, the value of the benefits so derived; and
- (d) order the person to pay to the Commonwealth a pecuniary penalty equal to the penalty amount.

(2) Subject to subsections (3) and (4), the penalty amount is the value of the benefits as assessed under paragraph (1) (c).

(3) Where:

- (a) property that is proceeds of the offence has been forfeited, under this Act or another law of the Commonwealth or under a law of a Territory, in relation to the offence; or
- (b) a forfeiture order is proposed to be made against property that is proceeds of the offence;

the penalty amount shall be taken to be reduced by an amount equal to the value of the property as at the time of the making of the pecuniary penalty order.

(4) Where the court making a pecuniary penalty order is satisfied that an amount of tax (whether payable under a law of the Commonwealth, a State, a Territory or a foreign country) that has been paid by the person is attributable in whole or in part to the benefits in respect of which the order is being made, the court may determine that the penalty amount be reduced by the amount that, in the opinion of the court, represents the extent to which the amount of tax so paid is attributable to those benefits and where the court makes such a determination the penalty amount shall be taken to be reduced accordingly.

(5) If the court considers it appropriate to do so, the court may reduce the amount payable by a person under a pecuniary penalty order made in relation to an offence by an amount equal to the amount payable by the person by way of fine, restitution, compensation or damages in relation to the offence.

(6) Where:

- (a) a court makes a pecuniary penalty order in relation to an offence;

- (b) in calculating the penalty amount, the court took into account a forfeiture of, or proposed forfeiture order in respect of, property; and
- (c) 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;

the DPP may apply to the court for a variation of the pecuniary penalty order to increase the penalty amount by the value of the property and the court may, if it considers it appropriate to do so, vary the order accordingly.

(7) Where:

- (a) a court makes a pecuniary penalty order against a person in relation to an offence;
- (b) in calculating the penalty amount, the court took into account, in accordance with subsection (4), an amount of tax paid by the person; and
- (c) an amount is repaid or refunded to the person in respect of that tax;

the DPP may apply to the court for a variation of the pecuniary penalty order to increase the penalty amount by the amount repaid or refunded and the court may, if it considers it appropriate to do so, vary the order accordingly.

(8) An amount payable by a person to the Commonwealth in accordance with a pecuniary penalty order is a civil debt due by the person to the Commonwealth.

(9) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth and the debt arising from the order shall be taken to be a judgment debt.

Assessment of pecuniary penalty

27. (1) In this section:

“offence period”, in relation to an application under subsection 14 (1) made in relation to 2 or more offences, means the period commencing when the earlier or earliest of those offences was committed and ending when the later or latest of those offences was committed.

(2) For the purposes of an application for a pecuniary penalty order against a person (in this subsection called the “defendant”), the value of the benefits derived by the defendant from the commission of an offence or offences shall be assessed by the court having regard to the evidence before it concerning all or any of the following:

- (a) the money, or the value of the property other than money, that came into the possession or under the control of:
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;

- by reason of the commission of the offence or any of the offences;
- (b) the value of any other benefit provided to:
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;by reason of the commission of the offence or any of the offences;
 - (c) if the offence or any of the offences consisted of the doing of an act or thing in relation to a narcotic substance:
 - (i) the market value, at the time of the offence, of similar or substantially similar narcotic substances; 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;
 - (d) the value of the defendant's property:
 - (i) where the application relates to a single offence—before and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period;
 - (e) the defendant's income and expenditure:
 - (i) where the application relates to a single offence—before and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period.

(3) The court, in quantifying the value of a benefit for the purposes of this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting the generality of this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.

(4) Where an application is made for a pecuniary penalty order against a person in respect of a single ordinary indictable offence, the following provisions have effect:

- (a) if, at the hearing of the application, evidence is given that the value of the person's property after the commission of the offence exceeded the value of the person's property before the commission of the offence, then, for the purposes of subsection 26 (1), the court shall, subject to paragraphs (b) and (c) and subsection (7), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the excess;
- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to

causes unrelated to the commission of the offence, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

(5) Where an application is made for a pecuniary penalty order against a person in respect of 2 or more ordinary indictable offences, the following provisions have effect:

- (a) if, at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period exceeded the value of the person's property before the offence period, then, for the purposes of subsection 26 (1), the court shall, subject to paragraphs (b) and (c) and to subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offences, paragraph (a) does not apply to the excess;
- (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offences, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

(6) Where an application is made for a pecuniary penalty order against a person in relation to a serious offence or serious offences:

- (a) all property of the person at the time the application is made; and
- (b) all property of the person at any time:
 - (i) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of 5 years immediately before the day on which the application is made;

whichever is the shorter;

shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person by reason of the commission of the offence or offences.

(7) A benefit shall not be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit under:

- (a) this Act;
- (b) another law of the Commonwealth;
- (c) a law of a Territory; or
- (d) a law of a State.

(8) In calculating, for the purposes of an application for a pecuniary penalty order, the value of benefits derived by a person from the commission

of an offence or offences, any expenses or outgoings of the person in connection with the commission of the offence or offences shall be disregarded.

(9) For the purposes of this section, where property of a person vests in the Official Trustee by reason of the person's bankruptcy, the property shall be taken to continue to be the property of the person.

(10) At the hearing of an application for a pecuniary penalty order, a police officer, or a Customs officer, who is experienced in the investigation of narcotics offences may testify, to the best of the officer's information, knowledge and belief:

- (a) with respect to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or
- (b) with respect to the amount, or the range of amounts, that was the amount, or range of amounts, ordinarily paid at a particular time, or during a particular period for the doing of an act or thing in relation to a narcotic substance;

notwithstanding any rule of law or practice relating to hearsay evidence, and the testimony is *prima facie* evidence of the matters testified to.

Court may lift corporate veil etc.

28. (1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person whether or not the person has:

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

(2) Without limiting the generality of subsection (1), the court may have regard to:

- (a) shareholdings in, debentures over or directorships of any company that has an interest (whether direct or indirect) in the property;
- (b) any 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 any other persons.

(3) Where a court, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property pursuant to subsection (1), the court may, on application by the DPP, make an order declaring that the property is available to satisfy the order.

(4) Where a court declares that property is available to satisfy a pecuniary penalty order:

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and

- (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.
- (5) Where the DPP makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person:
 - (a) the DPP shall give written notice of the application to the person and to any person who the DPP has reason to believe may have an interest in the property; and
 - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Amounts paid in respect of registered foreign pecuniary penalty orders

29. Where a foreign pecuniary penalty order is registered in a court in Australia under the Mutual Assistance Act, any amount paid (whether in Australia, in the foreign country in which the order was made or elsewhere) in satisfaction of the foreign pecuniary penalty order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign pecuniary penalty order in that court.

Division 4—Forfeiture in case of serious offence

Forfeiture of all restrained property if person convicted of serious offence

30. (1) If:

- (a) a person (in this subsection called the “defendant”) is convicted of a serious offence (otherwise than by reason of paragraph 5 (1) (d));
- (b) a restraining order is or was granted in respect of property (whether property of the defendant or of some other person) in reliance on:
 - (i) the defendant’s conviction of that offence; or
 - (ii) the charging or proposed charging of the defendant with that offence or a related offence;
- (c) the restraining order, to the extent to which it relates to the property, is not made by virtue of subparagraph 44 (7) (a) (ii) and is not the subject of a declaration under subsection 48 (4); and
- (d) the restraining order is in force at the end of the period of 6 months commencing on the day of the conviction;

the property is, under this subsection, forfeited to the Commonwealth at the end of that period.

(2) Subject to subsection (3), where property is forfeited to the Commonwealth by virtue of subsection (1), the property vests absolutely in the Commonwealth.

(3) Where registrable property is forfeited to the Commonwealth by virtue of subsection (1):

- (a) the property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with;
- (b) the Commonwealth is entitled to be registered as owner of the property; and
- (c) the Minister has power, on behalf of the Commonwealth, to do, or to authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(4) Where property is forfeited to the Commonwealth under this section in respect of a person's conviction of a serious offence:

- (a) the property shall not, except with the leave of the court that made the relevant restraining order and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Commonwealth, before the end of the appeal period in respect of the conviction; and
- (b) if, at the end of the appeal period in respect of the conviction, the conviction has not been quashed, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorised by the Minister for the purposes of this paragraph.

(5) Without limiting the generality of paragraph (4) (b), the directions that may be given pursuant to that paragraph include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.

(6) Where property is forfeited to the Commonwealth under subsection (1), the Minister may give all directions that are necessary or convenient to realise the Commonwealth's interest in the property.

(7) Without limiting the generality of subsection (6), where registrable property is forfeited to the Commonwealth under subsection (1), the Minister may direct an officer of the Department or a police officer to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

(8) A reference in this section to the appeal period in relation to the conviction of a person of an offence is:

- (a) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (b)—a reference to the appeal period in relation to the finding of the person guilty of the offence; and
- (b) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (c)—a reference to the

appeal period in relation to the conviction of the person of the other offence referred to in that paragraph.

(9) In this section:

“appeal period”, in relation to a person’s conviction of an offence, means the period ending:

- (a) if the period provided for the lodging of an appeal against the conviction has ended without such an appeal having been lodged—at the end of that period; or
- (b) if an appeal against the conviction has been lodged—when the appeal lapses or is finally determined.

Recovery of property to which section 30 applies

31. (1) Where property is forfeited to the Commonwealth under section 30, a person who claims an interest in the property may, subject to subsections (2) and (4), apply to the court that made the relevant restraining order for an order under subsection (6) or (7).

(2) The application shall, subject to subsection (3), be made before the end of the period of 6 months commencing on the day on which the property is forfeited to the Commonwealth.

(3) The court may grant a person leave to apply after the end of the period referred to in subsection (2) if the court is satisfied that the delay in making the application is not due to neglect on the part of the applicant.

(4) An application for an order under subsection (6) or (7) in relation to an interest in property shall not be made by a person who was given notice of:

- (a) proceedings on the application for the relevant restraining order; or
- (b) the making of the relevant restraining order;

except with the leave of the court.

(5) The court may grant a person leave to make an application if the court is satisfied that the person’s failure to seek to have the property excluded from the relevant restraining order was not due to any neglect on the part of the applicant.

(6) Where a person applies for an order under this subsection in respect of an interest in property, the court may:

- (a) if satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of the relevant serious offence; and
 - (ii) if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest:
 - (A) for sufficient consideration; and

- (B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
 - (b) if satisfied that:
 - (i) the property is not tainted property in relation to the relevant serious offence; and
 - (ii) the applicant's interest in the property was lawfully acquired;
- make an order:
- (c) declaring the nature, extent and value of the applicant's interest in the property; and
 - (d) either:
 - (i) directing the Commonwealth to transfer the interest to the applicant; or
 - (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

(7) Where a person applies for an order under this subsection in respect of an interest in property, the court may, if satisfied that:

- (a) it would not be contrary to the public interest for the interest to be transferred to the person; and
- (b) there is no other reason why the 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 section 30 shall cease to operate in relation to the interest if payment is made in accordance with section 33.

(8) In this section:

“relevant restraining order”, in relation to property forfeited to the Commonwealth under section 30, means the restraining order by virtue of which the property is forfeited.

Effect of quashing of conviction

32. (1) Where:

- (a) property is forfeited to the Commonwealth under section 30 in respect of a person's conviction of a serious offence; and
- (b) the conviction is subsequently quashed;

the DPP shall:

- (c) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person the DPP has reason to believe may have had an interest in the property immediately before the property was forfeited; and
- (d) if required to do so by a court—give or publish notice of the quashing of the conviction to a specified person or class of persons

in the manner and within the time that the court considers appropriate.

(2) A notice under subsection (1) shall include a statement to the effect that a person claiming an interest in the property may apply under subsection (3) for the transfer of the interest to the person.

(3) Where subsection (1) applies to property, any person who claims to have had an interest in the property immediately before it was forfeited may apply to the Minister, in writing, for the transfer of the interest to the person and, on receipt of an application from a person who had an interest in the property immediately before it was forfeited:

- (a) if the interest is still vested in the Commonwealth—the Minister shall arrange for the interest to be transferred to the person; or
- (b) in any other case—there is payable to the person an amount equal to the value of the interest.

(4) Where the Minister is required by this section to arrange for property to be transferred to a person, the Minister has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

Division 5—Miscellaneous

Person with interest in forfeited property may buy back the interest

33. (1) Where a court:

- (a) makes a forfeiture order against property; and
- (b) makes an order under subsection 19 (5) in respect of an interest in the property;

the payment to the Commonwealth, while the interest is still vested in the Commonwealth, of the amount specified in the order under subsection 19 (5) as the value of the interest discharges the forfeiture order to the extent to which it relates to the interest.

(2) Where:

- (a) property is forfeited to the Commonwealth under section 30;
- (b) a court makes an order under subsection 31 (7) in respect of an interest in the property; and
- (c) there is paid to the Commonwealth, while the interest is still vested in the Commonwealth, the amount specified in the order under subsection 31 (7) as the value of the interest;

section 30 ceases to apply in relation to the interest.

(3) Where subsection (1) or (2) applies to an interest in property, the Minister shall arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Commonwealth.

(4) Where the Minister is required by this section to arrange for an interest in property to be transferred to a person, the Minister has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

Buying out other interests in forfeited property

34. Where:

- (a) property is forfeited to the Commonwealth under this Part;
- (b) an interest in the property is required to be transferred to a person (in this section called the “purchaser”) under subsection 22 (4) or 33 (3), or under a direction under subparagraph 21 (6) (d) (i) or 31 (6) (d) (i);
- (c) the purchaser’s interest in the property, immediately before the forfeiture took place, was not the only interest in the property;
- (d) the purchaser gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:
 - (i) the purchaser intends to purchase that other interest from the Commonwealth; and
 - (ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that interest with the Minister;
- (e) the person served with notice under paragraph (d) in relation to that interest does not lodge a written objection to the purchase of that interest with the Minister within the period referred to in that paragraph; and
- (f) the person pays to the Commonwealth, while that interest is still vested in the Commonwealth, an amount equal to the value of that interest;

the Minister shall arrange for that interest to be transferred to the purchaser.

**PART III—CONTROL OF PROPERTY LIABLE TO
CONFISCATION**

Division 1—Search powers

Powers to search for, and seize, tainted property

35. (1) A police officer may:

- (a) search a person for tainted property; and
- (b) seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property;

but only if the search or seizure, as the case requires, is made:

- (c) with the consent of the person;
- (d) under a warrant issued under section 36; or
- (e) under section 38.

(2) A police officer may:

- (a) enter upon land, or upon or into premises;
- (b) search the land or premises for tainted property; and
- (c) seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property;

but only if the entry, search or seizure, as the case requires, is made:

- (d) with the consent of the occupier of the land or premises;
- (e) under a warrant issued under section 36; or
- (f) under section 38.

(3) Where a police officer may search a person under this Division, the police officer may also search:

- (a) the clothing that is being worn by the person; and
- (b) any property in, or apparently in, the person's immediate control.

(4) Nothing in this Division shall be taken to authorise a police officer to carry out a search by way of an examination of a body cavity of a person.

Search warrants in relation to tainted property

36. (1) Where a police officer has reasonable grounds for suspecting that there is tainted property of a particular kind:

- (a) on a person;
- (b) in the clothing that is being worn by a person; or
- (c) otherwise in a person's immediate control;

the police officer may:

- (d) lay before a magistrate an information on oath setting out those grounds; and
- (e) apply for the issue of a warrant to search the person for tainted property of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a person, the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable:

- (a) to search the person for tainted property of that kind; and
- (b) to seize property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property of that kind.

(3) Where a police officer has reasonable grounds for suspecting that there is upon any land, or upon or in any premises, tainted property of a particular kind, the police officer may:

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the land or premises for tainted property of that kind.

(4) Where an application is made under subsection (3) for a warrant to search land or premises, the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter upon the land, or upon or into the premises;
- (b) to search the land or premises for tainted property of that kind; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind.

(5) A warrant may be issued under subsection (2) or (4) in relation to tainted property whether or not an information has been laid in respect of the relevant offence.

(6) A magistrate shall not issue a warrant under subsection (2) or (4) unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought;
- (b) where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made—the magistrate is satisfied:
 - (i) that the property is tainted property; and
 - (ii) that an information will be laid in respect of the relevant offence within 48 hours; and
- (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

- (7) There shall be included in a warrant issued under this section:
- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence;
 - (b) a description of the kind of property authorised to be seized; and
 - (c) a time, not being later than the prescribed time, upon which the warrant ceases to have effect.

(8) There shall also be stated in a warrant issued under subsection (4) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night.

(9) If, in the course of searching, under a warrant issued under this section, for tainted property in relation to a particular offence, a police officer finds:

- (a) property that the police officer believes, on reasonable grounds, to be:
 - (i) tainted property in relation to the offence, although not of a kind specified in the warrant; or
 - (ii) tainted property in relation to another indictable offence; or
- (b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the Commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

(10) A police officer acting in accordance with a warrant issued under subsection (2) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant.

(11) A person shall not be searched under this section except by a person of the same sex.

Search warrants may be granted by telephone

37. (1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so, the police officer may make application for a search warrant under section 36 to a magistrate, by telephone, in accordance with this section.

(2) Before making the application, the police officer shall prepare an information of a kind referred to in subsection 36 (1) or (3), but may, if it is necessary to do so, make the application before the information has been sworn.

(3) Where a magistrate is, upon application made pursuant to subsection (1), satisfied:

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- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate shall complete and sign such a search warrant as the magistrate would have issued under section 36 if the application had been made to the magistrate in accordance with that section.

- (4) Where a magistrate signs a warrant under subsection (3):
 - (a) the magistrate shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the warrant; and
 - (b) the police officer shall complete a form of warrant in the terms furnished to the police officer by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.

(5) Where a police officer completes a form of warrant in accordance with subsection (4), the police officer shall, not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is earlier, give the magistrate who signed the warrant the form of warrant completed by the police officer and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by the magistrate and deal with the documents in the manner in which the magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 36.

(7) A form of warrant duly completed by a police officer in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any search, entry or seizure that the warrant so signed authorises.

(8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorised in accordance with this section, and the warrant signed by a magistrate in accordance with this section authorising the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorised by such a warrant.

(9) In this section, "magistrate" does not include a person by virtue only of the person being a justice of the peace.

Searches in emergencies

38. (1) A police officer may:

- (a) search a person for tainted property; or
- (b) enter upon land, or upon or into premises, and search for tainted property;

and may seize tainted property that the police officer finds in the course of that search if:

- (c) the police officer believes, on reasonable grounds, that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property; and
- (d) the search, entry or seizure, as the case may be, is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or of a warrant issued under this Act.

(2) Subsection (1) does not apply in respect of particular tainted property unless an information has been laid in respect of the relevant offence.

(3) Where a person is searched under this section, the search shall, if it is practicable in the circumstances to do so, be carried out by a person of the same sex.

Responsibility for seized property

39. (1) Subject to subsection (2), where property is seized under this Division, the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act, and shall ensure that all reasonable steps are taken to preserve the property while it is so kept.

(2) Where:

- (a) a police officer seizes property under this Division; and
- (b) the officer believes on reasonable grounds that the property will afford evidence as to the commission of an offence that is the subject of a special investigation being conducted by the National Crime Authority;

the Chairman of the National Crime Authority shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act, and shall ensure that all reasonable steps are taken to preserve the property while it is so kept.

(3) In this section:

“special investigation” has the same meaning as in the *National Crime Authority Act 1984*.

Return of seized property

40. (1) Where property has been seized under this Division (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the relevant Supreme Court for an order that the property be returned to the person.

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(2) Where a person makes an application under subsection (1) and the court is satisfied that:

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the relevant offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property;

the court shall order the responsible custodian to return the property to the person and where such an order is made the responsible custodian shall arrange for the property to be returned to the person.

(3) Where:

- (a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);
- (b) at the time when the property was seized, an information had not been laid in respect of a relevant offence; and
- (c) at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a relevant offence;

the responsible custodian shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where:

- (a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);
- (b) before the property was seized a person had been convicted of a relevant offence or an information had been laid in respect of a relevant offence; and
- (c) no forfeiture order has been made against the property within the period of 14 days after the property was seized;

the responsible custodian shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where:

- (a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);
- (b) but for this subsection, the responsible custodian would be required to arrange for the property 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 in relation to the property;

the following provisions have effect:

- (d) if the restraining order directs the Official Trustee to take custody and control of the property—the responsible custodian shall arrange for the property to be given to the Official Trustee in accordance with the restraining order;
 - (e) if the court that made the restraining order has made an order under subsection (6) in relation to the property—the responsible custodian shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.
- (6) Where:
- (a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);
 - (b) a restraining order is made in relation to the property; and
 - (c) at the time when the restraining order is made, the property is in the possession of the responsible custodian;

the responsible custodian may apply to the court that made the restraining order for an order that the responsible custodian retain possession of the property and the court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence or any other offence, make an order that the responsible custodian may retain the property for so long as the property is so required as evidence as to the commission of that offence.

(7) Where the responsible custodian applies to a court for an order under subsection (6), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

- (8) Where:
- (a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);
 - (b) an application is made for a restraining order or a forfeiture order in respect of the property;
 - (c) the application is refused; and
 - (d) at the time when the application is refused, the property is in the possession of the responsible custodian;

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

- (9) Where:
- (a) property has been seized under this Division; and
 - (b) while the property is in the possession of the responsible custodian, a forfeiture order is made in respect of the property;

the responsible custodian shall deal with the property as required by the order.

(10) In this section:

“responsible custodian”, in relation to property seized under this Division, means:

- (a) if subsection 39 (1) applies to the property—the Commissioner; or
- (b) if subsection 39 (2) applies to the property—to the Chairman of the National Crime Authority.

Issue of search warrants by Territory courts in relation to interstate indictable offences

41. (1) This Division (other than section 40) applies to the issue of search warrants in a Territory as if:

- (a) a reference in this Division to an offence included a reference to an interstate indictable offence; and
- (b) a reference in this Division to tainted property included a reference to property:
 - (i) used in, or in connection with, the commission of an interstate indictable offence; or
 - (ii) derived or realised, directly or indirectly, by any person from the commission of an interstate indictable offence.

(2) If property is seized under a warrant issued by virtue of subsection (1) the following provisions have effect:

- (a) if:
 - (i) by the end of the period of 7 days commencing on the day the property was seized, no person has been convicted of or charged with the interstate indictable offence in reliance on the commission of which the warrant was issued and an application for an interstate forfeiture order has not been made in respect of the property;
 - (ii) a person has been charged with and convicted of the interstate indictable offence but by the end of the period of 6 months commencing on the day on which the person is convicted an application for an interstate forfeiture order has not been made in respect of the property; or
 - (iii) a person has been charged with the interstate indictable offence and has been discharged or acquitted;

the Commissioner shall arrange for the property to be returned to the person from whose possession it was seized;

- (b) if a court of the State concerned makes an order:
 - (i) directing that the property be returned to the person from whose possession it was seized; or
 - (ii) directing that that person be allowed access to the property; the Commissioner shall take such steps as are necessary to give effect to the order.

Search for and seizure of tainted property in relation to foreign offences

42. (1) Where a police officer is authorised, under the Mutual Assistance Act, to apply to a magistrate of a State or Territory for a search warrant under this Act in relation to tainted property in respect of a foreign serious offence, the police officer may apply for the warrant accordingly and this Division applies to the application and to any warrant issued as a result of the application as if:

- (a) references in this Division to tainted property were references to tainted property in relation to the foreign serious offence;
- (b) references to a magistrate were references to a magistrate of the State or Territory specified in the police officer's authorisation under the Mutual Assistance Act; and
- (c) subsection 36 (5), paragraph 36 (6) (b), subsection 36 (9) and section 40 were omitted.

(2) If, in the course of searching, under a warrant issued under section 36, for tainted property in relation to a foreign serious offence, a police officer finds:

- (a) any property that the police officer believes, on reasonable grounds, to be tainted property in relation to the foreign serious offence, although not of the kind specified in the warrant;
- (b) any property that the police officer believes, on reasonable grounds, to be tainted property in relation to another foreign serious offence in respect of which a search warrant under section 36 is in force; or
- (c) any thing that the police officer believes, on reasonable grounds:
 - (i) to be relevant to a criminal proceeding in the foreign country in respect of the foreign serious offence; or
 - (ii) will afford evidence as to the commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

(3) Where property has been seized under a warrant issued under section 36 in respect of a foreign serious offence, a person who claims an interest in the property may apply to the Supreme Court of the State or Territory in which the warrant was issued for an order that the property be returned to the person.

(4) Where a person makes an application under subsection (3) and the court is satisfied that:

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the relevant foreign serious offence; and

(c) the person who is believed or alleged to have committed the relevant foreign serious offence has no interest in the property;
the court shall order the Commissioner to return the property to the person and where such an order is made the Commissioner shall arrange for the property to be returned to the person.

(5) Where:

- (a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence; and
- (b) at the end of the period of 30 days after the day on which the property was seized:
 - (i) neither a foreign restraining order, nor a foreign forfeiture order, in relation to the property has been registered in a court in Australia under the Mutual Assistance Act; and
 - (ii) a restraining order has not been made under this Act in respect of the property in relation to the foreign serious offence;

the Commissioner shall, subject to subsections (6) and (7), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(6) Where:

- (a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence;
- (b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to the person as soon as practicable after the end of a particular period; and
- (c) before the end of that period:
 - (i) a foreign restraining order in relation to the property is registered in a court in Australia under the Mutual Assistance Act; or
 - (ii) a restraining order is made under this Act in respect of the property in relation to the foreign serious offence;

the following provisions have effect:

- (d) if there is in force, at the end of that period, a direction by a court that the Official Trustee take custody and control of the property—the Commissioner shall arrange for the property to be given to the Official Trustee in accordance with the direction;
- (e) if there is in force at the end of that period an order under subsection (7) in relation to the property—the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(7) Where:

- (a) property has been seized pursuant to a warrant issued under section 36 in respect of a foreign serious offence;
- (b) either:

- (i) a foreign restraining order in respect of the property has been registered in an Australian court under the Mutual Assistance Act; or
 - (ii) a restraining order is made under this Act in respect of the property in relation to the foreign serious offence; and
- (c) at the time when the restraining order is registered or made, the property is in the possession of the Commissioner;

the Commissioner may apply to the court in which the restraining order was registered, or by which the restraining order was made, for an order that the Commissioner retain possession of the property and the court may, if satisfied that the property is required by the Commissioner to be dealt with in accordance with a request under the Mutual Assistance Act by the foreign country that requested the registration of, or the obtaining of, the restraining order, make an order that the Commissioner may retain the property for so long as the property is so required.

(8) Where:

- (a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence; and
- (b) while the property is in the possession of the Commissioner a foreign forfeiture order in respect of the property is registered in a court in Australia under the Mutual Assistance Act;

the Commissioner shall deal with the property as required by the forfeiture order.

(9) Where:

- (a) a warrant is issued under section 36 in respect of a foreign serious offence; and
- (b) property is seized pursuant to the warrant because it may afford evidence as to the commission of a criminal offence;

the property shall, for the purposes of subsections (3), (4), (5), (6) and (7) of this section, be taken not to be property seized pursuant to the warrant.

Division 2—Restraining orders

Restraining orders

43. (1) Where a person (in this section and section 44 called the “defendant”):

- (a) has been convicted of an indictable offence; or
- (b) has been, or is about to be, charged with an indictable offence;

the DPP may apply to the relevant Supreme Court for an order under subsection (2) against:

- (c) specified property of the defendant;
- (d) all the property of the defendant (including property acquired after the making of the order);

- (e) all the property of the defendant (including property acquired after the making of the order) other than specified property; or
 - (f) specified property of a person other than the defendant.
- (2) Where the DPP applies to a court for an order under this subsection against property, the court may, subject to section 44, by order:
- (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; or
 - (b) if the court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or of such part of the property as is specified in the order.
- (3) A restraining order against a person's property may be made subject to such conditions as the court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, all or any of the following:
- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;
 - (b) the person's reasonable expenses in defending a criminal charge;
 - (c) a specified debt incurred by the person in good faith (being a debt to which neither paragraph (a) nor (b) applies).
- (4) A court shall not make provision of a kind referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to a restraining order.
- (5) Notwithstanding anything in the Bankruptcy Act, money that has come into the custody and control of the Official Trustee under a restraining order shall not be paid into the Common Investment Fund established under section 20B of that Act.
- (6) Where the Official Trustee is given a direction under paragraph (2) (b) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:
- (a) becoming a party to any civil proceedings affecting the property;
 - (b) ensuring that the property is insured; and
 - (c) if the property consists, in whole or in part, of a business—employing, or terminating the employment of, persons in the business.
- (7) Where the DPP applies to a court for an order under subsection (2), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Grounds for making restraining order

44. (1) Where the offence concerned is a serious offence, the court shall, subject to subsections (3), (4), (7) and (10), make a restraining order against the property.

(2) Where the offence concerned is an ordinary indictable offence the court shall, subject to subsections (3), (4), (5), (6), (7) and (10), make a restraining order against the property unless the court is satisfied that it is not in the public interest to make such an order.

(3) If the defendant has not been convicted of the offence concerned, the court shall not make a restraining order unless:

- (a) the application for the order is supported by an affidavit of a police officer stating that the officer believes that the defendant committed the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(4) Where the application is made in reliance on the proposed charging of the defendant with the offence concerned, the court shall not make a restraining order unless it is satisfied that the defendant will be charged with the offence or a related offence within 48 hours.

(5) Where:

- (a) the offence concerned is an ordinary indictable offence; and
- (b) the application seeks a restraining order against specified property of the defendant;

the court shall not make a restraining order against the property unless:

- (c) the application is supported by an affidavit of a police officer stating that the officer believes that:
 - (i) the property is tainted property in relation to the offence; or
 - (ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
- (d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(6) Where:

- (a) the offence is an ordinary indictable offence; and
- (b) the application seeks a restraining order against all the property of the defendant or against all the property of the defendant other than specified property;

the court shall not make a restraining order against the property unless:

- (c) the application is supported by an affidavit of a police officer stating that the officer believes that the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
- (d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(7) Where the application seeks a restraining order against specified property of a person other than the defendant, the court shall not make a restraining order against the property unless:

- (a) the application is supported by an affidavit of a police officer stating that:
 - (i) the officer believes that the property is tainted property in relation to the offence; or
 - (ii) the officer believes that:
 - (A) the property is subject to the effective control of the defendant; and
 - (B) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(8) In determining whether there are reasonable grounds to believe that property is in the effective control of the defendant the court may have regard to the matters referred to in subsection 28 (2).

(9) The court may make a restraining order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(10) A court may refuse to make a restraining order if the Commonwealth refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

(11) For the purposes of an application under section 43, the DPP may, on behalf of the Commonwealth, give to the court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.

(12) An affidavit made by a police officer for the purposes of this section that states that the officer believes a particular matter shall set out the grounds on which the officer holds that belief.

Notice of application for restraining order

45. (1) Subject to subsection (2), the DPP shall give written notice of an application for a restraining order against property to:

- (a) the owner of the property; and
- (b) any other person the DPP has reason to believe may have an interest in the property.

(2) The court may make a restraining order where notice of the application has not been given in accordance with subsection (1), if the court is satisfied that:

- (a) there are circumstances of urgency requiring the making of such an order; or
- (b) it would be contrary to the public interest to give notice of the application;

but, subject to subsection (3), a restraining order made by virtue of this subsection shall cease to have effect at the end of such period (not exceeding 14 days) as is specified by the court in the restraining order.

(3) The court may, on application made by the DPP before the end of the period referred to in subsection (2), extend the period of operation of a restraining order granted by virtue of that subsection if the court is satisfied that there are circumstances justifying the extension.

(4) The DPP shall give written notice of an application under subsection (3) for the extension of the period of operation of a restraining order to:

- (a) the owner of the property against which the restraining order was made; and
- (b) any other person who the DPP has reason to believe may have an interest in the property.

(5) The court may, at any time before the final determination of an application for:

- (a) a restraining order; or
- (b) an extension of the period of operation of a restraining order;

direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

Persons who may appear and adduce evidence

46. (1) Where:

- (a) the DPP applies for a restraining order against property; and
- (b) notice of the application is given in accordance with subsection 45 (1);

any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

(2) Where the DPP applies for the extension of the period of operation of a restraining order that has been made in respect of property, any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Notice of restraining orders

47. (1) Subject to subsection (2), where a restraining order is made against a person's property, the DPP shall give the person written notice of the order.

(2) Where:

- (a) a court makes a restraining order; and

- (b) the court is satisfied that it would be in the public interest to delay giving notice of the order to a person;

the court may order that giving the person notice of the restraining order be delayed for such period as is specified in the order under the subsection and the DPP shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

Court may make further orders

48. (1) Where a court makes a restraining order, the court may, at the time when it makes the restraining order or at any later time, make any ancillary orders that the court considers appropriate and, without limiting the generality of this, the court may make any one or more of the following orders:

- (a) an order varying the property to which the restraining order relates;
- (b) an order varying any condition to which the restraining order is subject;
- (c) an order for the examination on oath of the person (in this section called the "respondent") whose property is subject to the restraining order or another person before the court or the registrar of the court concerning the affairs of the respondent, including the nature and location of the property of the respondent;
- (d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the restraining order;
- (e) where the restraining order directed the Official Trustee to take custody and control of property:
 - (i) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the restraining order;
 - (ii) an order determining any question relating to the property to which the restraining order relates, including any question relating to the liabilities of the respondent, and the exercise of the powers, or the performance of the duties, of the Official Trustee with respect to the property to which the restraining order relates;
 - (iii) an order directing the respondent to furnish to the Official Trustee, within a period specified in the order, a statement, verified by the oath of the respondent, setting out such particulars of the property of the respondent as the court thinks proper.

(2) An order under subsection (1) may be made on application by:

- (a) the DPP;
- (b) the respondent;

- (c) where the restraining order directed the Official Trustee to take custody and control of property—the Official Trustee; or
- (d) with the leave of the court—any other person.

(3) Where:

- (a) a person (in this subsection called the “defendant”) has been convicted of, or has been charged or is about to be charged with, an offence;
- (b) a court, in reliance on the conviction, charging or proposed charging makes a restraining order against property; and
- (c) a person having an interest in the property applies to the court for a variation of the order to exclude the person’s interest from the order;

the court shall grant the application if:

- (d) where the applicant is not the defendant and the offence is an ordinary indictable offence:
 - (i) if the restraining order was made against the property by virtue of subparagraph 44 (7) (a) (ii)—the court is satisfied that:
 - (A) the interest is not tainted property; and
 - (B) a pecuniary penalty order cannot be made against the defendant; or
 - (ii) in any other case—the court is satisfied that the interest is not tainted property;
- (e) where the applicant is the defendant and the offence is an ordinary indictable offence—the court is satisfied that:
 - (i) the interest is not tainted property; and
 - (ii) a pecuniary penalty order cannot be made against the defendant;
- (f) where the applicant is not the defendant, the restraining order was not made by virtue of subparagraph 44 (7) (a) (ii) and the offence is a serious offence—the court is satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest:
 - (A) for sufficient consideration; and
 - (B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
- (g) in any case—the court is satisfied that it is in the public interest to do so having regard to all the circumstances, including:
 - (i) any financial hardship or other consequence of the interest remaining subject to the order;

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- (ii) the seriousness of the offence; and
- (iii) the likelihood that the interest will be:
 - (A) subject to a forfeiture order;
 - (B) subject to section 30; or
 - (C) required to satisfy a pecuniary penalty order.

(4) Where:

- (a) a person (in this subsection called the “defendant”) has been convicted of, or has been charged or is about to be charged with, a serious offence;
 - (b) a court, in reliance on the conviction, charging or proposed charging, makes a restraining order against property;
 - (c) the defendant has an interest in the property;
 - (d) the defendant applies to the court for a declaration under this subsection in relation to the interest; and
 - (e) the court is satisfied that:
 - (i) the property was not used in, or in connection with, the commission of the offence; and
 - (ii) the defendant’s interest in the property was lawfully acquired;
- the court may, by order, declare that the restraining order, to the extent to which it relates to the property, shall be disregarded for the purposes of section 30.

(5) Where a person is examined before a court or the registrar of a court pursuant to an order under subsection (1), the person is not excused from answering a question when required to do so by the court or the registrar, as the case may be, on the ground that the answer to the question might tend to incriminate the person or make the person liable to a penalty.

(6) Where a person is examined before a court or the registrar of a court pursuant to an order under subsection (1), a statement or disclosure made by the person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.

(7) For the purposes of subsection (6), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(8) Where the DPP applies to a court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

Official Trustee to discharge pecuniary penalty

49. (1) Where:

- (a) a pecuniary penalty order is made against a person (in this subsection called the “defendant”) in reliance on the defendant’s conviction of an offence; and
- (b) at the time when the pecuniary penalty order is made, the Official Trustee has custody and control of property under a restraining order made, in reliance on the defendant’s conviction of the offence or a related offence or in reliance on the charging or proposed charging of the defendant with the offence or a related offence, against:
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under subsection 28 (3) is made;

the court may include in the pecuniary penalty order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2) Where:

- (a) a pecuniary penalty order is made against a person (in this subsection called the “defendant”) in reliance on the defendant’s conviction of an offence;
- (b) a restraining order is subsequently made against:
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under subsection 28 (3) is in force;in reliance on the defendant’s conviction of the offence; and
- (c) the restraining order includes a direction that the Official Trustee take custody and control of the property;

the court making the restraining order may include in the restraining order a direction to the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(3) For the purposes of enabling the Official Trustee to comply with a direction given by a court under subsection (1) or (2), the court may, in the order in which the direction is given or by a subsequent order:

- (a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the court specifies; and
- (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the

deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(5) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall not:

- (a) if the property is money—apply the money in accordance with subsection (6) until the end of the relevant appeal period; and
- (b) if the property is not money—shall not sell or otherwise dispose of the property until the end of the relevant appeal period.

(6) Where the Official Trustee is given a direction under subsection (1) or (2) in relation to property, the Official Trustee shall, as soon as practicable after the end of the relevant appeal period:

- (a) if the property is money:
 - (i) apply the money in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the restraining order; and
 - (ii) subject to subsection (7), pay the remainder of the money to the Commonwealth; and
- (b) if the property is not money:
 - (i) sell or otherwise dispose of the property;
 - (ii) apply the proceeds of the sale or disposition in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the restraining order (including expenses incurred in connection with the sale or disposition of any property to which the restraining order relates); and
 - (iii) subject to subsection (7), pay the remainder of those proceeds to the Commonwealth.

(7) Where the money or proceeds to which subparagraph (6) (a) (ii) or (b) (iii) applies exceeds the penalty amount, the Official Trustee shall:

- (a) pay to the Commonwealth an amount equal to the penalty amount; and
- (b) pay the balance to the person whose property was subject to the restraining order.

(8) Where the Official Trustee pays, in accordance with a direction under this section, money to the Commonwealth in satisfaction of a person's liability under a pecuniary penalty order, the person's liability under the pecuniary penalty order shall, to the extent of the payment, be deemed to be discharged.

(9) Where:

- (a) a restraining order is made against property in reliance on a person's conviction of an offence or in reliance on the charging, or proposed charging of a person with an offence; and

- (b) before or after the restraining order is made, a pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related indictable offence;
- the relevant appeal period in respect of the property is:
- (c) the appeal period in relation to the person's conviction of the offence; or
 - (d) the appeal period in relation to the making of the pecuniary penalty order;
- whichever ends last.

(10) A reference in this section to the appeal period in relation to a person's conviction of an offence is:

- (a) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (b)—a reference to the appeal period in relation to the finding of the person guilty of the offence; and
- (b) in a case where the person is to be taken to have been convicted of the offence by reason of paragraph 5 (1) (c)—a reference to the appeal period in relation to the person's conviction of the other offence referred to in that paragraph.

(11) In this section, "appeal period", in relation to a decision of a court or a finding, means the period ending:

- (a) if the period provided for the lodging of an appeal against the decision or finding has ended without such an appeal having been lodged—at the end of that period; or
- (b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined.

Charge on property subject to restraining order

50. (1) Where:

- (a) a pecuniary penalty order is made against a person (in this subsection called the "defendant") in reliance on the defendant's conviction of an offence; and
- (b) a restraining order is, or has been, made against:
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under subsection 28 (3) is, or has been, made;

in reliance on the defendant's conviction of the offence or a related offence or in reliance on the charging, or proposed charging, of the defendant with the offence or a related offence;

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 Commonwealth of the penalty amount.

(2) Where a charge is created by subsection (1) on property of a person, the charge ceases to have effect in respect of the property:

- (a) upon the quashing of the conviction in reliance on which the pecuniary penalty order was made;
- (b) upon the discharge of the pecuniary penalty order or the restraining order by a court hearing an appeal against the making of the order;
- (c) upon payment to the Commonwealth of the penalty amount in satisfaction of the pecuniary penalty order;
- (d) upon the person becoming a bankrupt;
- (e) upon the sale or other disposition of the property:
 - (i) under an order under section 49;
 - (ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or
 - (iii) where the restraining order directed the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee; or
- (f) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

- (3) A charge created on property by subsection (1):
 - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee or the DPP may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of paragraph (2) (f), be deemed to have notice of the charge at the time of the purchase or acquisition.

Registration of restraining orders

51. Where a restraining order applies to property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions may, on application by the DPP, record on the register kept pursuant to those provisions the prescribed particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 52, be deemed to have notice of the restraining order at the time of the dealing.

Contravention of restraining orders

52. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence punishable, upon conviction, by:

- (a) if the person is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) in the case of a body corporate—a fine not exceeding \$50,000.

(2) Where:

- (a) a restraining order is made against property;
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the DPP may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the DPP makes an application under subsection (2) in relation to a disposition or dealing, the court may make an order:

- (a) setting the disposition or dealing aside as from the day on which the disposition or dealing took place; or
- (b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

Duties of Official Trustee

53. (1) Where, after the Official Trustee has been directed by an order under subsection 49 (1) or (2) to pay an amount to the Commonwealth out of property of a person, the Official Trustee is given notice in writing of the presentation of a creditor's petition against the person, the Official Trustee:

- (a) shall refrain from taking action to sell the property under any direction to do so contained in an order under section 51; and
- (b) shall not pay the Commonwealth any money pursuant to the direction to do so contained in the first-mentioned order;

until the petition has been dealt with by a bankruptcy court, has been withdrawn or has lapsed.

(2) Where, after the Official Trustee has been directed by an order under subsection 51 (1) to pay an amount to the Commonwealth out of property of a person, the Official Trustee is given notice in writing of the reference to a bankruptcy court of a debtor's petition against the person, the Official Trustee:

- (a) shall refrain from taking action to sell the property under any direction to do so contained in an order under section 51; and

(b) shall not pay the Commonwealth any money pursuant to the direction to do so contained in the first-mentioned order; until the petition has been dealt with by a bankruptcy court.

(3) Where:

(a) property of a person is in the custody and control of the Official Trustee in accordance with this Division; and

(b) the person becomes a bankrupt;

the property shall be deemed to be in the possession, or under the control, of the Official Trustee as, or on behalf of, the trustee of the estate of the bankrupt, and not otherwise.

(4) In this section, "bankruptcy court" means a court having jurisdiction in bankruptcy under the Bankruptcy Act.

Protection of Official Trustee from personal liability in certain cases

54. (1) Where:

(a) a court has made a restraining order directing the Official Trustee to take custody and control of all the property of a person or of all the property of a person other than specified property;

(b) the Official Trustee has taken custody and control of any property, without notice of any claim by another person in respect of that property; and

(c) the first-mentioned person did not, at the date of the restraining order, have any beneficial interest in the property referred to in paragraph (b);

the Official Trustee is not personally liable for:

(d) any loss or damage arising from its having taken custody and control of the property sustained by a person claiming the property or an interest in the property; or

(e) the cost of proceedings taken to establish a claim to the property or to an interest in the property;

unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(2) Where the Official Trustee has, in accordance with a restraining order made in reliance on a person's conviction of an offence or in reliance on the charging, or proposed charging, of a person with an offence, taken custody and control of property specified in the restraining order, the Official Trustee is not personally liable for:

(a) any loss or damage arising from its having taken custody and control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property); or

(b) the cost of proceedings taken to establish a claim to the property; or to an interest in the property;

unless the court in which the claim is made is of the opinion that the Official Trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(3) The Official Trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory in respect of property of which it has been directed by a restraining order to take custody and control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the order, except to the extent, if any, of the rents and profits received by the Official Trustee in respect of that property on or after the date of the order.

(4) Where the Official Trustee, having been directed by a restraining order to take custody and control of a business carried on by a person, carries on that business, the Official Trustee is not personally liable for any payment in respect of long service leave or extended leave for which the person was liable or for any payment in respect of long service leave or extended leave to which a person employed by the Official Trustee in its capacity of custodian and controller of the business, or the legal personal representative of such a person, becomes entitled after the date of the order.

Costs payable to Official Trustee

55. (1) Where the Official Trustee takes custody or control of property in accordance with a restraining order, the Official Trustee is entitled to receive costs, in respect of the exercise of its powers and the performance of its duties in relation to the property, equal to the costs that the Official Trustee would be entitled to receive if it were exercising the powers or performing the duties in consequence of its having taken custody and control of the property by virtue of a direction given under section 50 of the Bankruptcy Act.

(2) References in subsection (1) to costs are references to costs, charges and expenses (including the remuneration and expenses of the Official Trustee).

(3) The regulations may make provision for, or in respect of, the remuneration and expenses of the Official Trustee in relation to the performance by the Official Trustee of functions under this Act.

Court may revoke restraining orders

56. Where a court has made a restraining order against a person's property, the court may, on application made to it by the person, revoke the order if:

- (a) where the order was made in reliance on the person's conviction of an offence or the charging, or proposed charging, of the person with an offence—the person gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed upon the person under this Act in respect of the person's conviction of the offence or a related offence; or

- (b) the person gives undertakings satisfactory to the court concerning the person's property.

Time when restraining order ceases to be in force

57. (1) If, at the end of the period of 48 hours after the making of a restraining order in reliance on the proposed charging of a person with an offence, the person has not been charged with the offence or a related indictable offence, the order ceases to be in force at the end of that period.

(2) Subject to subsection (5), where:

- (a) a restraining order is made in reliance on a person's conviction of an offence or the charging of a person with an offence; or
- (b) a restraining order is made in reliance on the proposed charging of a person with an offence and the person is, within the succeeding period of 48 hours, charged with the offence or a related indictable offence;

the following provisions have effect:

- (c) if, within the relevant period in relation to the restraining order, the charge is withdrawn and the person is not charged with a related indictable offence by the time the charge is withdrawn, the restraining order ceases to be in force when the charge is withdrawn;
- (d) if, within the relevant period in relation to the restraining order, the person is acquitted of the charge and the person is not charged with a related indictable offence by the time of the acquittal, the restraining order ceases to be in force when the acquittal occurs;
- (e) if:
 - (i) a court makes a confiscation order in reliance on the person's conviction of the offence or a related indictable offence;
 - (ii) the confiscation order is satisfied or otherwise ceases to be in force; and
 - (iii) when the order is satisfied or otherwise ceases to be in force:
 - (A) no application for another confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is yet to be determined; and
 - (B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

the restraining order ceases to be in force when the confiscation order is satisfied or otherwise ceases to be in force;

- (f) if:
 - (i) a court refuses an application for a confiscation order in reliance on the person's conviction of the offence or a related indictable offence; and
 - (ii) when the court refuses the application:

- (A) no application for another confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is yet to be determined; and
- (B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

the restraining order ceases to be in force when the court refuses the application;

- (g) if some or all of the property subject to the restraining order is forfeited under section 30, the restraining order, to the extent to which it relates to that property, ceases to be in force when that property is forfeited;
- (h) if, within the relevant period in relation to the restraining order, an application is made to a court under subsection (3) for an extension to the period of operation of the restraining order and the court refuses the application after the end of the relevant period, the restraining order ceases to be in force when the court refuses the application;
- (j) if, within the relevant period in relation to the restraining order, an application is made to a court under subsection (3) for an extension of the period of operation of the restraining order and that application is granted, the restraining order ceases to be in force at such time, or on the occurrence of such event, as is specified in an order of the court made under that subsection; or
- (k) in any other case, the restraining order ceases to be in force at the end of the relevant period in relation to the restraining order.

(3) The DPP may, before the end of the relevant period in relation to a restraining order against property made in reliance on a person's conviction of an offence or the charging, or proposed charging, of a person with an offence, apply to the court that made the restraining order for an extension of the period of operation of the restraining order and, if the court is satisfied:

- (a) that a forfeiture order may still be made in respect of the property or part of the property; or
- (b) where the property is:
 - (i) property of the person; or
 - (ii) property of another person:
 - (A) against which the restraining order was made by virtue of subparagraph 44 (7) (a) (ii); or
 - (B) in relation to which an order under subsection 28 (3) has been, or is likely to be, made;

that a pecuniary penalty order may still be made against the person; the court may:

- (c) by order, extend the period of operation of the restraining order; and

- (d) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.

(4) The DPP shall give a person written notice of an application under subsection (3) in relation to a restraining order in respect of property of the person.

(5) Where:

- (a) a restraining order has been made in reliance on a person's conviction of an offence or the charging, or proposed charging, of a person with an offence; and
- (b) in reliance on the person's conviction of the offence or a related indictable offence, a court has made a forfeiture order in respect of part or all of the property and has also made a pecuniary penalty order against the person;

the court may make such further orders, and give such directions, as it considers appropriate in relation to the operation of the restraining order, the forfeiture order and the pecuniary penalty order, and this Act has effect, in relation to those orders and to the property subject to those orders, subject to any further orders, or any directions, so given.

(6) A reference in this section to the relevant period in relation to a restraining order is a reference to the period of 6 months after the making of the restraining order or, if an order or orders has or have been made under section 48 by virtue of paragraph 48 (1) (a), (b) or (e) in relation to the restraining order, the period of 6 months after the making of the order, or the last of the orders, under section 48.

Notice of applications under this Division

58. (1) A person who makes an application under section 48 in relation to a restraining order shall give written notice of that application to each other person who is entitled, by virtue of subsection 48 (2), to make an application under section 48 in relation to the restraining order.

(2) A person who makes an application under section 56 in relation to a restraining order shall give written notice of that application, to:

- (a) the DPP; and
- (b) where the order directed the Official Trustee to take control of property—the Official Trustee.

Interim restraining order may be made in respect of foreign offence

59. (1) Where the DPP is authorised, under the Mutual Assistance Act, to apply for a restraining order under this Act in respect of a foreign serious offence, the DPP may apply for the order accordingly and this Division applies to the application and to any restraining order made as a result of the application as if:

- (a) a reference in subsection 43 (1) to an indictable offence were a reference to the foreign serious offence;

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- (b) the reference in subsection 43 (1) to the relevant Supreme Court were a reference to the court specified in the DPP's authorisation under the Mutual Assistance Act;
- (c) a reference in this Division to a person being charged with an indictable offence were a reference to the commencement in a foreign country of a criminal proceeding in which it is alleged that the person committed the foreign serious offence;
- (d) the reference in paragraph 43(3) (b) to a person's reasonable expenses in defending a criminal charge included a reference to the person's reasonable expenses in being represented in a criminal proceeding in a foreign country;
- (e) a reference in this Division to a serious offence were a reference to the foreign serious offence; and
- (f) subsections 44 (2), (4), (5) and (6) and 48 (3) and (4) and sections 49, 50, 53 and 57 were omitted.

(2) Where:

- (a) a person (in this subsection referred to as the "defendant") has been alleged, in a criminal proceeding in a foreign country, to have committed a serious foreign offence;
- (b) a court makes a restraining order under section 43 against property in respect of the offence; and
- (c) a person having an interest in the property applies to the court under section 48 for an order varying the restraining order to exclude the person's interest from the restraining order;

the court shall grant the application:

- (d) where the applicant is not the defendant—if the court is satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest:
 - (A) for sufficient consideration; and
 - (B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
- (e) in any case—if the court is satisfied that it is in the public interest to do so having regard to any financial hardship or other consequence of the interest remaining subject to the order.

(3) Subject to subsections (4) and (5), a restraining order made in respect of a foreign serious offence ceases to have effect at the end of the period of 30 days commencing on the day on which the order is made.

(4) A court that makes a restraining order in respect of a foreign serious offence may, on application made by the DPP before the end of the period

referred to in subsection (3), extend the period of operation of the restraining order.

(5) Where:

- (a) a restraining order against property is made in respect of a foreign serious offence; and
- (b) before the end of the period referred to in subsection (3) (including that period as extended under subsection (4)) a foreign restraining order against the property is registered in a court in Australia under the Mutual Assistance Act;

the restraining order referred to in paragraph (a) ceases to have effect upon the registration of the foreign restraining order referred to in paragraph (b).

Registered foreign restraining orders—general

60. Where a foreign restraining order is registered in a court in Australia under the Mutual Assistance Act, this Division applies in relation to the order as if:

- (a) sections 48, 49, 50, 56, 57 and 58 were omitted;
- (b) a reference in this Division to a restraining order directing the Official Trustee to take custody and control of property were a reference to an order under section 61;
- (c) a reference in this Division to an order under subsection 49 (1) or (2) were a reference to an order under subsection 63 (1);
- (d) a reference in this Division to an order under section 49 were a reference to an order under section 63; and
- (e) the reference in section 55 to a restraining order were a reference to an order under section 61.

Registered foreign restraining orders—court may direct Official Trustee to take custody and control of property

61. (1) Where a foreign restraining order against property is registered in a court in Australia under the Mutual Assistance Act, the court may, if satisfied, upon application by the DPP, that the circumstances so require, by order direct the Official Trustee to take custody and control of the property, or of such part of the property as is specified in the court's order.

(2) The DPP shall give written notice of an application for an order under subsection (1) in respect of property to:

- (a) the owner of the property; and
- (b) any other person the DPP has reason to believe may have an interest in the property.

(3) Where the DPP applies to a court for an order under subsection (1), the court may, at any time before the final determination of the application, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

(4) A person who claims an interest in property in respect of which an application under subsection (1) is made may appear and adduce evidence at the hearing of the application.

(5) Where an order is made under subsection (1) in respect of property of a person (in this subsection called the “respondent”), the court may, at the time when it makes the order or at any later time, make any one or more of the following orders:

- (a) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the order under subsection (1);
- (b) an order determining any question relating to that property, including any question relating to the liabilities of the respondent and the exercise of the powers, or the performance of the duties, of the Official Trustee with respect to that property;
- (c) an order directing the respondent to furnish to the Official Trustee, within a period specified in the order under this subsection, a statement, verified by the oath of the respondent, setting out such particulars of the property of the respondent as the court thinks proper.

(6) Where the Official Trustee is given a direction under subsection (1) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

- (a) becoming a party to any civil proceedings affecting the property;
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business—employing, or terminating the employment of, persons in the business.

(7) Notwithstanding anything in the Bankruptcy Act, money that has come into the custody and control, of the Official Trustee under an order under subsection (1) shall not be paid into the Common Investment Fund established by section 20B of that Act.

Registered foreign restraining orders—undertakings

62. Where:

- (a) a foreign restraining order against property is registered in a court in Australia under the Mutual Assistance Act; or
- (b) a court makes an order under section 61 in respect of property;

the court may, upon application by a person claiming an interest in the property, make an order as to the giving, or carrying out, of an undertaking by the DPP, on behalf of the Commonwealth, with respect to the payment of damages or costs in relation to the registration, making or operation of the order.

Registered foreign restraining orders—Official Trustee to discharge registered foreign pecuniary penalty orders

63. (1) Where:

- (a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence;
- (b) the foreign restraining order is registered in a court in Australia under the Mutual Assistance Act;
- (c) a foreign pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related foreign serious offence;
- (d) the foreign pecuniary penalty order has been or is registered in a court in Australia under the Mutual Assistance Act; and
- (e) an order has been or is made under section 61 directing the Official Trustee to take control of the property;

the court in which the foreign pecuniary penalty order is registered may, by order, direct the Official Trustee to pay to the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of that property.

(2) For the purposes of enabling the Official Trustee to comply with the order under subsection (1), the court may, in that order or by a subsequent order:

- (a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the court specifies; and
- (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, or interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

(3) The execution of the deed or instrument by the person appointed by an order under subsection (2) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

(4) Where an order is made under subsection (1) in relation to property, the Official Trustee shall, as soon as practicable after the order is made:

- (a) if the property is money:
 - (i) apply the money in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the order under section 61 in respect of the property; and
 - (ii) subject to subsection (5), pay the remainder of the money to the Commonwealth; and
- (b) if the property is not money:
 - (i) sell or otherwise dispose of the property;

- (ii) apply the proceeds of the sale or disposition in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the order under section 61 in respect of the property (including expenses incurred in connection with the sale or disposition of any of the property to which the order under section 61 relates); and
- (iii) subject to subsection (5), pay the remainder of those proceeds to the Commonwealth.

(5) Where the money or proceeds to which subparagraph (4) (a) (ii) or (b) (iii) applies, exceeds the penalty amount, the Official Trustee shall:

- (a) pay to the Commonwealth an amount equal to the penalty amount; and
- (b) pay the balance to the person whose property was subject to the order under section 61.

(6) Where the Official Trustee pays, in accordance with an order under subsection (1), money to the Commonwealth in satisfaction of a person's liability under a foreign pecuniary penalty, the person's liability under the foreign pecuniary penalty order shall, to the extent of the payment, be deemed to be discharged.

Registered foreign restraining orders—charge on property subject to order

64. (1) Where:

- (a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence;
- (b) the foreign restraining order is registered in a court in Australia under the Mutual Assistance Act;
- (c) a foreign pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related foreign serious offence; and
- (d) the foreign pecuniary penalty order has been or is registered in a court in Australia under the Mutual Assistance Act;

then, upon the registration of the foreign restraining order or the foreign pecuniary penalty order, whichever last occurs, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the penalty amount.

(2) Where a charge is created by subsection (1) on property of a person, the charge ceases to have effect in respect of the property:

- (a) upon payment to the Commonwealth of the penalty amount in satisfaction of the foreign pecuniary penalty order;
- (b) upon the person becoming a bankrupt;
- (c) upon the sale or other disposition of the property;
 - (i) under an order under section 63;

- (ii) by the owner of the property with the consent of the court in which the foreign pecuniary penalty order is registered; or
- (iii) where an order under section 61 directed the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee;
- (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge; or
- (e) upon the cancellation of the registration of the relevant foreign restraining order, or the cancellation of the registration of the relevant foreign pecuniary penalty order, in accordance with the Mutual Assistance Act;

whichever first occurs.

(3) A charge created on property by subsection (1):

- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
- (b) has priority over all other encumbrances; and
- (c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee or the DPP may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of paragraph (2) (d), be deemed to have notice of the charge at the time of purchase or acquisition.

Registered foreign restraining orders—time when order ceases to be in force

65. A foreign restraining order registered in a court in Australia under the Mutual Assistance Act ceases to be in force when the registration is cancelled in accordance with that Act.

PART IV—INFORMATION GATHERING POWERS

Division 1—Production orders

Production orders

66. (1) Where:

- (a) a person has been convicted of an indictable offence and a police officer has reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; or

- (b) a police officer has reasonable grounds for suspecting that:
 - (i) a person has committed an indictable offence; and
 - (ii) a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence;

the police officer may:

- (c) lay before a Judge of the Supreme Court of:
 - (i) the State or Territory in which the person was convicted of the offence or in which the offence is believed to have been committed; or
 - (ii) a State or Territory in which the document is, or some or all of the documents are, believed to be located;
- an information on oath setting out those grounds; and
- (d) apply to the Judge for an order under subsection (4) against the person suspected of having possession or control of the document or documents; and
- (e) apply for an order under subsection (4) against the person referred to in paragraph (b).

(2) Where a police officer applying for an order under this section in respect of an offence includes in the information under subsection (1) information on oath that the officer has reasonable grounds to believe that:

- (a) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) property specified in the information is subject to the effective control of the person;

the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in subsection 28 (2).

(4) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (5) and (8), make an order that the person:

- (a) produce to a police officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) make available to a police officer, for inspection, any documents of that kind that are in the person's possession or control.

(5) An order under paragraph (4) (a) shall not be made in respect of bankers' books.

(6) A Judge shall not make an order under this section unless:

- (a) the informant or some other person has given the Judge, either orally or by affidavit, such information (if any) as the Judge requires concerning the grounds on which the order is sought; and

(b) the Judge is satisfied that there are reasonable grounds for making the order.

(7) An order that a person produce a document or documents to a police officer shall specify the time when and the place where the document is or the documents are to be produced.

(8) An order that a person make a document or documents available to a police officer for inspection shall specify the time or times when the document is or the documents are to be made available.

(9) Where a document is produced to a police officer pursuant to an order under this section, the police officer may do any one or more of the following:

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document;
- (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(10) Where a document is made available to a police officer for inspection pursuant to an order under this section, the police officer may do any one or more of the following:

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document.

(11) Where a police officer retains a document pursuant to an order under this section, the police officer shall, on request by the person to whom the order was addressed:

- (a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; and
- (b) unless the person has received a copy of the document under paragraph (a)—permit the person to do any one or more of the following:
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.

(12) A person is not excused from producing or making available a document when required to do so by an order under this section on the ground that:

- (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

(13) Where a person produces or makes available a document pursuant to an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or

indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against subsection 68 (1).

(14) For the purposes of subsection (13), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(15) In this section:

“bankers’ books” means any accounting records used in the ordinary business of banking and includes ledgers, day-books, cash-books and account books.

Variation of production order

67. Where a court makes a production order requiring a person to produce a document to a police officer, the person may apply to the court for a variation of the order and if the court is satisfied that the document is essential to the business activities of the person, the court may vary the production order so that it requires the person to make the document available to a police officer for inspection.

Failure to comply with production order

68. (1) Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, the person is guilty of an offence against this subsection if the person:

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without:
 - (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) An offence against subsection (1) is punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

Production orders in relation to foreign offences

69. (1) Where a police officer is authorised, under the Mutual Assistance Act, to apply to a Judge of a court for a production order under this Act in respect of a foreign serious offence, the police officer may apply for the order accordingly and this Division applies to the application and to any production order made as a result of the application as if:

- (a) a reference in this Division to an indictable offence were a reference to the foreign serious offence; and
- (b) paragraph 66 (1) (c) referred to the court specified in the police officer's authorisation under the Mutual Assistance Act.

(2) Where a police officer takes possession of a document under a production order made in respect of a foreign serious offence, the police officer may retain the document for a period of one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with (which may include a direction that the document be sent to an authority of the foreign country that requested the obtaining of the production order).

Division 2—Search powers

Powers to search for, and seize, documents relevant to locating etc. property

70. A police officer may:

- (a) enter upon land, or upon or into premises;
- (b) search the land or premises for any property-tracking document in relation to an indictable offence; and
- (c) seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document in relation to an indictable offence;

but only if the entry, search or seizure, as the case may be, is made:

- (d) with the consent of the occupier of the land or premises; or
- (e) under a warrant issued under section 71.

Search warrant for location etc. of property

71. (1) Where:

- (a) a person has been convicted of an indictable offence and a police officer has reasonable grounds for suspecting that there is upon any land, or upon or in any premises, a property-tracking document in relation to the offence; or
- (b) a police officer has reasonable grounds for suspecting that:
 - (i) a person has committed an indictable offence; and
 - (ii) there is upon any land, or upon or in any premises, a property-tracking document in relation to the offence;

the police officer may:

- (c) lay before a Judge of the Supreme Court of:
 - (i) the State or Territory in which the person was convicted of the offence or in which the offence is believed to have been committed; or
 - (ii) the State or Territory in which the document is believed to be located;

an information on oath setting out those grounds; and

- (d) apply to the Judge for a search warrant under subsection (4) in respect of the land or premises.

(2) Where a police officer applying for a warrant under this section in respect of an offence includes in the information under subsection (1) information on oath that the officer has reasonable grounds to believe that:

- (a) the person who was convicted of the offence or who is believed to have committed the offence derived a benefit, directly or indirectly, from the commission of the offence; and
- (b) property specified in the information is subject to the effective control of the person;

the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in subsection 28 (2).

(4) Where an application is made under subsection (1) for a search warrant in respect of land or premises, the Judge may, subject to subsections (5) and (6), issue a search warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter upon the land or upon or into the premises;
- (b) to search the land or premises for documents of the kind referred to in subsection (1); and
- (c) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a document of that kind.

(5) A Judge shall not issue a search warrant under subsection (4) unless the Judge is satisfied that:

- (a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document;
- (b) a production order has been given in respect of the document and has not been complied with;
- (c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; or
- (d) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person.

- (6) A Judge shall not issue a search warrant under this section unless:
- (a) the informant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the search warrant is sought; and
 - (b) the Judge is satisfied that there are reasonable grounds for issuing the search warrant.
- (7) There shall be stated in a search warrant issued under this section:
- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the indictable offence that has been or is believed to have been committed;
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) a description of the kind of documents authorised to be seized; and
 - (d) a date, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.
- (8) If, in the course of searching, under a warrant issued under this section, for a property-tracking document in relation to a particular offence, a police officer finds:
- (a) any document that the police officer believes, on reasonable grounds, to be:
 - (i) a property-tracking document in relation to the offence, although not of a kind specified in the warrant; or
 - (ii) a property-tracking document in relation to another indictable offence; or
 - (b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;
- and the police officer believes, on reasonable grounds, that it is necessary to seize that document or thing in order to prevent its concealment, loss or destruction, the warrant shall be deemed to authorise the police officer to seize that document or thing.

Search warrants in relation to foreign offences

72. (1) Where a police officer is authorised, under the Mutual Assistance Act, to apply to a court for a search warrant under this Act in relation to a property-tracking document in respect of a foreign serious offence, the police officer may apply for the warrant accordingly and this Division applies to the application and to any warrant issued as a result of the application as if:

- (a) a reference in this Division to an indictable offence were a reference to the foreign serious offence;
- (b) paragraph 71 (1) (c) referred to the court specified in the police officer's authorisation under the Mutual Assistance Act; and
- (c) subsection 71 (8) were omitted.

(2) If, in the course of searching, under a warrant issued under section 71, for a property-tracking document in relation to a foreign serious offence, a police officer finds:

(a) any document that the police officer believes, on reasonable grounds, to be a property-tracking document in relation to the offence, although not of the kind specified in the warrant; or

(b) any thing that the police officer believes, on reasonable grounds:

(i) to be relevant to a criminal proceeding or a criminal investigation in the foreign country in respect of the offence; or

(ii) will afford evidence of the commission of a criminal offence;

and the police officer believes, on reasonable grounds, that it is necessary to seize that document or thing in order to prevent its concealment, loss or destruction, the warrant shall be deemed to authorise the police officer to seize that document or thing.

(3) Where a police officer takes possession of a document under a warrant issued in respect of a foreign serious offence, the police officer may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with (which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant).

Division 3—Monitoring orders

Monitoring orders

73. (1) A police officer may apply to a Judge of the Supreme Court of a State or Territory for an order (in this section called a “monitoring order”) directing a financial institution to give information to a law enforcement agency.

(2) A monitoring order shall direct a financial institution to give information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(3) A monitoring order shall apply in relation to transactions conducted during the period specified in the order (being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order).

(4) A Judge shall not make a monitoring order unless he or she is 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, an indictable offence that is a serious offence;

(b) was involved in the commission, or is about to be involved in the commission, of an indictable offence that is a serious offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an indictable offence that is a serious offence.

(5) A monitoring order shall specify:

- (a) the name or names in which the account is believed to be held;
- (b) the class of information that the institution is required to give; and
- (c) the law enforcement authority to which the information is to be given, and the manner in which the information is to be given.

(6) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 81 and 82 in relation to the institution.

(7) Where a financial institution that has been given notice of a monitoring order knowingly:

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order;

the institution is guilty of an offence against this subsection punishable, upon conviction, by a fine not exceeding \$100,000.

(8) A reference in this section to a transaction conducted through an account includes a reference to:

- (a) the making of a fixed term deposit; and
- (b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

Existence and operation of monitoring order not to be disclosed

74. (1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except:

- (a) if the order specifies the Australian Federal Police as the law enforcement authority to which information is to be given—the Commissioner or an AFP member;
- (b) if the order specifies the National Crime Authority as the law enforcement authority to which information is to be given—a member, or member of staff, of the National Crime Authority;
- (c) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (d) a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person of a kind referred to in paragraph (1) (a), (b), (c) or (d) to whom a disclosure of the existence or operation of a monitoring order has been made (whether in accordance with subsection (1) or a previous application of this subsection or otherwise) shall not:

- (a) while he or she is such a person—disclose the existence or operation of the order except to another person of a kind referred to in paragraph (1) (a), (b), (c) or (d) for the purposes of:
 - (i) if the disclosure is made by the Commissioner, an AFP member, or a member, or member of staff, of the National Crime Authority—the performance of that person’s duties;
 - (ii) if the disclosure is made by an officer or agent of the institution—ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or
 - (iii) if the disclosure is made by a barrister or solicitor—giving legal advice or making representations in relation to the order; or
 - (b) when he or she is no longer such a person—make a record of, or disclose, the existence or the operation of the order in any circumstances.
- (3) Nothing in subsection (2) prevents the disclosure by a person of a kind referred to in paragraph (1) (a) or (b) of the existence or operation of a monitoring order:
- (a) for the purposes of, or in connection with, legal proceedings; or
 - (b) in the course of proceedings before a court.
- (4) A person of a kind referred to in paragraph (1) (a) or (b) shall not be required to disclose to any court the existence or operation of a monitoring order.
- (5) A person who contravenes subsection (1) or (2) is guilty of an offence against this subsection punishable, upon conviction, by:
- (a) if the person is a natural person—a fine not exceeding \$20,000 or imprisonment for a period not exceeding 10 years, or both; or
 - (b) if the person is a body corporate—a fine not exceeding \$100,000.
- (6) For the purposes of this section, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition of “director” in subsection (7) by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or the corporation, as the case may be.
- (7) A reference in this section to disclosing the existence or operation of a monitoring 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 monitoring order.
- (8) In this section:
- “agent” includes, if the agent is a corporation, the officers and agents of the corporation;
 - “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;
- (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;

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

“officer” means a director, secretary, executive officer or employee.

Monitoring orders in relation to foreign offences

75. (1) Where a police officer is authorised, under the Mutual Assistance Act, to apply to a Judge of a court for a monitoring order under this Act in respect of a foreign serious offence, the police officer may apply for the order accordingly and this Division applies to the application and to any order made as a result of the application as if:

- (a) a reference in this Division to an indictable offence that is a serious offence were a reference to the foreign serious offence; and
- (b) a reference in this Division to the Supreme Court of a State or Territory were a reference to the court specified in the police officer’s authorisation under the Mutual Assistance Act.

(2) Where a law enforcement authority is given information pursuant to a monitoring order made in relation to a foreign serious offence, the authority shall, as soon as practicable after receiving the information, pass the information on to the Attorney-General or to an officer of the Attorney-General’s Department specified by the Attorney-General by written notice to the authority.

Division 4—Obligations of financial institutions

Interpretation

76. In this Division:

“customer generated financial transaction document”, in relation to a financial institution, means a financial transaction document of the institution:

- (a) that relates to:
 - (i) the opening or closing by a person of an account with the institution;

- (ii) the operation by a person of an account with the institution;
 - (iii) the opening or use by a person of a deposit box held by the institution;
 - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
 - (v) the transmission of funds between Australia and a foreign country or between foreign countries on behalf of a person; or
 - (vi) an application by a person for a loan from the institution (where a loan is made to the person pursuant to the application); and
- (b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person);

“essential customer-generated financial transaction document”, in relation to a financial institution, means a customer generated financial transaction document other than a document that relates to the operation of an account held with the institution;

“financial transaction document”, in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document relating to:

- (a) the opening, operating or closing of an account held with the institution; and
- (b) the opening or use of a deposit box held by the institution; but does not include a cheque or payment order;

“minimum retention period”, in relation to a financial transaction document of a financial institution, means:

- (a) if the document relates to the opening of an account with the institution—the period of 7 years after the day on which the account is closed;
- (b) if the document relates to the opening by a person of a deposit box held by the institution—the period of 7 years after the day on which the deposit box ceases to be used by the person; or
- (c) in any other case—the period of 7 years after the day on which the transaction takes place.

Retention of records by financial institutions

77. (1) A financial institution shall, subject to section 78, retain each essential customer generated financial transaction document in its original form for the minimum retention period applicable to the document.

(2) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each customer generated financial transaction document that is not an essential customer generated financial transaction document for the minimum retention period applicable to the document.

(3) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each financial transaction document:

- (a) that is not a customer generated financial transaction document; and
- (b) whose retention is necessary to preserve a record of the financial transaction concerned;

for the minimum retention period applicable to the document.

(4) Subsections (2) and (3) do not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$200 or such higher amount as is prescribed by the regulations for the purposes of this subsection.

(5) A financial institution required to retain documents under this section shall retain and store them in a way that makes retrieval of the documents reasonably practicable.

(6) A financial institution that contravenes subsection (1), (2), (3) or (5) is guilty of an offence against this section punishable, upon conviction, by a fine not exceeding \$10,000.

(7) This section does not limit any other obligation of a financial institution to retain documents.

Register of original documents

78. (1) Where a financial institution is required by law to release an original of an essential customer-generated financial transaction document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original is returned, whichever occurs first.

(2) The financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence against this section punishable, upon conviction, by a fine not exceeding \$10,000.

Communication of information by financial institutions to law enforcement agencies

79. (1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that:

- (a) the information may be relevant to an investigation of, or the prosecution of a person for, an offence against a law of the Commonwealth or of a Territory; or

- (b) the information would otherwise be of assistance in the enforcement of this Act or the regulations;

the institution may give the information to a police officer or a member, or member of staff, of the National Crime Authority.

(2) An action, suit or proceeding does not lie against:

- (a) a financial institution; or
- (b) an officer, employee or agent of the institution acting in the course of the person's employment or agency;

in relation to any action taken by that institution or person pursuant to subsection (1).

Protection for financial institution where information given pursuant to section 79

80. Where a financial institution, or a person who is an officer, employee or agent of the institution, gives information pursuant to subsection 79 (1) as soon as practicable after forming the belief referred to in that subsection, the institution or person shall be taken, for the purposes of sections 81 and 82, not to have been in possession of that information at any time.

PART V—OFFENCES

Division 1—Money laundering

Money laundering

81. (1) In this section:

“transaction” includes the receiving or making of a gift.

(2) A person who, after the commencement of this Act, engages in money laundering is guilty of an offence against this section punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$200,000 or imprisonment for a period not exceeding 20 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$600,000.

(3) A person shall be taken to engage in money laundering if, and only if:

- (a) the person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or
- (b) the person receives, possesses, conceals, disposes of or brings into Australia any money, or other property, that is proceeds of crime;

and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

Possession etc. of property suspected of being proceeds of crime

82. (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Australia any money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence against this section punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$15,000.

(2) Where a person is charged with an offence against this section, it is a defence to the charge if the person satisfies the court that he or she had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

Division 2—Organised fraud

Organised fraud

83. (1) A person who engages in organised fraud is guilty of an offence against this section punishable, upon conviction, by:

- (a) if the offender is a natural person—a fine not exceeding \$250,000 or imprisonment for a period not exceeding 25 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$750,000.

(2) A person shall be taken to engage in organised fraud if, and only if, he or she engages, after the commencement of this Act, in acts or omissions:

- (a) that constitute 3 or more public fraud offences; and
- (b) from which the person derives substantial benefit.

(3) Where a person is charged with an offence against subsection (1) in relation to a number of public fraud offences and the jury is not satisfied that the person is guilty of the offence against subsection (1) but is satisfied that the person is guilty of one or more of the public fraud offences, the jury shall acquit the person of the offence against subsection (1) and may find the person guilty of that public fraud offence or those public fraud offences and the person is punishable accordingly.

(4) In this section:

“public fraud offence” means an offence under any of the following provisions:

- (a) sections 29D and 86A of the Crimes Act;
- (b) sections 5, 6, 7 and 8 of the *Crimes (Taxation Offences) Act 1980*.

Division 3—Miscellaneous

Prosecution of offences

84. (1) An offence against section 52, 68, 73, 75, 81, 82, 83 or 97 is an indictable offence.

(2) Notwithstanding that the offences referred to in subsection (1) are indictable offences, a court of summary jurisdiction may hear and determine proceedings in respect of an offence against section 52, 68, 73, 75, 82 or 97 if the court is satisfied that it is appropriate to do so and the defendant and prosecutor consent.

(3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is:

- (a) if the offence is against section 73—a fine not exceeding \$10,000; or
- (b) if the offence is against section 52, 68, 75, 82 or 97:
 - (i) if the offender is a natural person—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both; or
 - (ii) if the offender is a body corporate—a fine not exceeding \$10,000.

Conduct by directors, servants or agents

85. (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent of agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

PART VI—ENFORCEMENT OF STATE ORDERS IN TERRITORIES

Division 1—Interstate restraining orders

Registration of interstate restraining orders

86. (1) If an interstate restraining order expressly applies to:

- (a) specified property in a Territory;
- (b) all property in a Territory of a specified person; or
- (c) all property (other than specified property) in a Territory of a specified person;

a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by the person on whose application the order was made or by an appropriate officer.

(2) A copy of any amendments made to an interstate restraining order (before or after registration), sealed by the court making the amendments, may be registered in the same way, and the amendments do not, for the purposes of this Act, have effect until they are registered.

(3) Registration of an interstate restraining order may be refused to the extent that the order would not, on registration, be capable of enforcement in the Territory.

(4) Registration shall be effected in accordance with the rules of the Supreme Court of the Territory.

Effect of registration

87. (1) An interstate restraining order registered in the Supreme Court of a Territory may be enforced in the Territory as if it were a restraining order made under section 43 at the time of registration.

(2) This Act (other than sections 30, 31, 47, 48, 49, 50, 56 and 57) applies to an interstate restraining order registered in the Supreme Court of a Territory as it applies to a restraining order made under section 43.

Duration of registration

88. An interstate restraining order ceases to be registered under this Act if:

- (a) it ceases to be in force in the State in which it was made; or
- (b) the registration is cancelled under section 89.

Cancellation of registration

89. (1) The registration of an interstate restraining order in the Supreme Court of a Territory may be cancelled by the Supreme Court or a prescribed officer of the Supreme Court if:

- (a) registration was improperly obtained; or
- (b) particulars of any amendments made to the restraining order, or of any ancillary orders or directions made by a court, are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.

(2) The registration of an interstate restraining order in the Supreme Court of a Territory may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the Territory.

Charge on property subject to registered interstate restraining order

90. (1) If:

- (a) an interstate restraining order is made against property in reliance on a person's conviction of an interstate indictable offence or in reliance on the charging, or proposed charging, of a person with an interstate indictable offence;
- (b) an interstate pecuniary penalty order is made against the person in reliance on the person's conviction of that offence or a related interstate indictable offence;
- (c) the interstate restraining order is registered under this Division in the Supreme Court of a Territory; and
- (d) the interstate pecuniary penalty order is registered in a court of the Territory under the *Service and Execution of Process Act 1901*;

then, upon the registration referred to in paragraph (c) or the registration referred to in paragraph (d) (whichever last occurs), a charge is created on the property to secure payment of the amount due under the interstate pecuniary order.

(2) Where a charge is created by subsection (1) on property of a person to secure payment of the amount due under an interstate pecuniary penalty order, the charge ceases to have effect in respect of the property:

- (a) upon the quashing of the conviction in reliance on which the interstate pecuniary penalty order was made;

- (b) upon the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order;
- (c) upon payment of the amount due under the interstate pecuniary penalty order;
- (d) upon the person becoming bankrupt;
- (e) upon the sale or other disposition of the property:
 - (i) under an order made by a court under the corresponding law of the State in which the interstate pecuniary penalty order was made;
 - (ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or
 - (iii) where the interstate restraining order directed a person to take control of the property—by the owner of the property with the consent of that person; or
- (f) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

- (3) A charge created on property by subsection (1):
 - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the Official Trustee or the DPP may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of paragraph (2) (f), be deemed to have notice of the charge at the time of the purchase or acquisition.

Powers of Official Trustee in relation to interstate restraining orders

91. Where:

- (a) an interstate restraining order is registered in the Supreme Court of a Territory under this Division; and
- (b) the restraining order directs a State official to take control of property;

the Official Trustee may, in accordance with an agreement between the Official Trustee and the State official, exercise the same powers in relation to the property that the State official would have been able to exercise if the property were located in that State.

Division 2—Interstate forfeiture orders

Registration of interstate forfeiture orders

92. (1) If an interstate forfeiture order expressly applies to property in a Territory, a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by the person on whose application the order was made or by an appropriate officer.

(2) A copy of any amendments made to an interstate forfeiture order (before or after registration), sealed by the court making the amendments, may be registered in the same way, and the amendments do not, for the purposes of this Act, have effect until they are registered.

(3) Registration of an interstate forfeiture order may be refused to the extent that the order would not, on registration, be capable of enforcement in the Territory.

(4) Registration shall be effected in accordance with the rules of the Supreme Court of the Territory.

Effect of registration

93. (1) An interstate forfeiture order registered in the Supreme Court of a Territory may be enforced in the Territory as if it were a forfeiture order made under this Act at the time of registration.

(2) This Act (other than sections 21, 22 and 100) applies to an interstate forfeiture order registered in a Territory as it applies to a forfeiture order made under section 19.

Duration of registration

94. An interstate forfeiture order ceases to be registered under this Act if:

- (a) the order ceases to be in force in the State in which it was made;
or
- (b) the registration is cancelled under section 95.

Cancellation of registration

95. (1) The registration of an interstate forfeiture order in the Supreme Court of a Territory may be cancelled by the Supreme Court or a prescribed officer of the Supreme Court if:

- (a) registration was improperly obtained; or
- (b) particulars of any amendments made to the forfeiture order, or of any ancillary orders or directions made by a court, are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.

(2) The registration of an interstate forfeiture order in the Supreme Court of a Territory may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the Territory.

Division 3—Miscellaneous

Interim registration of facsimile copies

96. (1) A facsimile copy of a sealed copy of an interstate restraining order or an interstate forfeiture order, or of a sealed copy of any amendments made to such an order, shall be regarded for the purposes of this Act as the same as the sealed copy, if the facsimile copy is itself certified in accordance with the rules of the Supreme Court.

(2) Registration effected by means of a facsimile copy ceases to have effect at the end of the period of 5 days commencing on the day of registration unless a sealed copy that is not a facsimile copy has been registered by that time.

(3) Registration of the sealed copy before the end of the period referred to in subsection (2) has effect as from the day of registration of the facsimile copy.

PART VII—MISCELLANEOUS

Dealings with forfeited property

97. (1) A person who knows that a forfeiture order has been made in respect of registrable property shall not, unless the forfeiture order has been discharged, dispose of, or otherwise deal with, the property before the Commonwealth's interest has been registered on the appropriate register.

(2) A person who contravenes subsection (1) is guilty of an offence against this section punishable, upon conviction, by:

- (a) where the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

State and Territory courts to have jurisdiction

98. (1) Jurisdiction is vested in the several courts of the States and Territories with respect to matters arising under this Act.

(2) Subject to subsections (3) and (5), the jurisdiction vested in a court by virtue of subsection (1) is not limited by any limits to which any other jurisdiction of the court may be subject.

(3) A court is not empowered to make a forfeiture order in respect of property if:

- (a) the court does not have jurisdiction with respect to the recovery of property of that kind; or
- (b) the court does not have jurisdiction with respect to the recovery of property of that kind of a value equal to the value of the property.

(4) A reference in subsection (3) to a court having jurisdiction with respect to the recovery of property includes a reference to the court having

jurisdiction, under a corresponding law, to make an interstate forfeiture order in respect of property.

(5) A court is not empowered to make a pecuniary penalty order of a particular amount if the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount.

(6) Jurisdiction is vested in a court of a Territory (including the Northern Territory) by virtue of subsection (1) so far only as the Constitution permits.

(7) Where an application for a confiscation order is made to a court before which a person was convicted of an indictable offence:

- (a) the application may be dealt with by the court; and
- (b) any power in relation to the confiscation order may be exercised by the court;

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

Standard of proof

99. Subject to section 17, 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.

Appeals

100. (1) A person who has an interest in property against which a forfeiture order is made may appeal against that order:

- (a) in the case of a person convicted of the offence in reliance on which the order was made—in the same manner as if the order were, or were part of, a sentence imposed on the person in respect of the offence; or
- (b) in any other case—in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.

(2) A person against whom a pecuniary penalty order is made may appeal against that order in the same manner as if it were, or were part of, a sentence imposed on the person in respect of the offence in reliance on which the order was made.

- (3) Where a court:
 - (a) makes a pecuniary penalty order; and
 - (b) makes an order under subsection 28 (3) declaring that particular property is available to satisfy the order;

a person who has an interest in the property may appeal against the order under subsection 28 (3) in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.

(4) On an appeal against a forfeiture order, a pecuniary penalty order or an order made under subsection 28 (3), the order may be confirmed, discharged or varied.

(5) The DPP may appeal against a forfeiture order, a pecuniary penalty order or an order under subsection 28 (3) or against the refusal of a court to make such an order in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence in reliance on which the order was made.

(6) Nothing in this section shall be taken to affect any right of appeal that a person would have apart from this section.

Costs

101. (1) Where:

- (a) a person brings, or appears at, proceedings under this Act before a court in order:
 - (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;
- (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 offence in respect of which the forfeiture order or restraining order was sought or made;

the court may order the Commonwealth to pay all costs incurred by the person in connection with the proceedings or such part of those costs as is determined by the court.

(2) 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.

Legal assistance

102. (1) A person who brings, or appears at, or proposes to bring or appear at, proceedings under this Act in order:

- (a) to prevent a forfeiture order or restraining order from being made against property of the person; or
- (b) to have property of the person excluded from a forfeiture order or restraining order;

may apply to the Attorney-General for the provision of assistance under this section.

(2) Where a person applies for assistance under this section, the Attorney-General may, if satisfied that:

- (a) it would involve hardship to the applicant to refuse the application; and
- (b) it is reasonable, in all the circumstances, that the application should be granted;

authorise the provision by the Commonwealth to the applicant of such legal or financial assistance in relation to the proceedings as the Attorney-General determines.

(3) An authorisation under subsection (2) may be made either unconditionally or subject to such conditions as the Attorney-General determines.

Operation of other laws not affected

103. Nothing in this Act limits or restricts:

- (a) the operation of any other law of the Commonwealth or of a Territory providing for the forfeiture of property or the imposition of pecuniary penalties; or
- (b) the remedies available to the Commonwealth, apart from this Act, for the enforcement of its rights and the protection of its interests.

Regulations

104. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[*Minister's second reading speech made in—
House of Representatives on 30 April 1987
Senate on 29 May 1987*]