



Crimes (Superannuation Benefits) Act 1989

No. 145 of 1989

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Crimes (Superannuation Benefits) Act 1989

No. 145 of 1989

An Act relating to certain superannuation benefits paid or payable to or in respect of certain persons convicted of corruption offences, and for related purposes

[Assented to 23 November 1989]

[Date of commencement 21 December 1989]

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

PART 1—INTRODUCTORY

Short title

1. This Act may be cited as the *Crimes (Superannuation Benefits) Act 1989*.

Definitions

2. In this Act, unless the contrary intention appears:
- “**abscond**” has the meaning given in section 4;
 - “**AFP**” means the Australian Federal Police;

“appropriate court” means:

- (a) in relation to a person’s conviction of an offence—the court of the State or Territory before which the person was convicted and in addition, where that court is not the Supreme Court of the State or Territory, that Supreme Court; and
- (b) in relation to 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, or is to be, charged with the offence;

“benefit” means any benefit payable under a superannuation scheme, including a lump sum payment and a pension;

“commencing day” means the day on which this Act commences;

“Commonwealth authority” means:

- (a) a body corporate incorporated for a public purpose (whether before, on or after the commencing day) by a law of the Commonwealth or of a Territory; or
- (b) a body corporate:
 - (i) incorporated (whether before, on or after the commencing day) under a law of the Commonwealth or a law in force in a State or Territory; and
 - (ii) in which the Commonwealth or a body corporate mentioned in paragraph (a) has the controlling interest; or
- (c) a body corporate, whether incorporated before, on or after the commencing day:
 - (i) that is a subsidiary of another body corporate mentioned in paragraph (a) or (b); and
 - (ii) in which that other body corporate has the controlling interest; or
- (d) an unincorporated authority or body (other than a prescribed authority or body) established for a public purpose (whether before, on or after the commencing day) by or under a law of the Commonwealth, of a Territory, or of the Australian Capital Territory, the Northern Territory or Norfolk Island; or
- (e) any other incorporated or unincorporated authority or body (however established), other than a prescribed authority or body, that is wholly or substantially financed, either directly or indirectly, by the Commonwealth, whether the authority or body was or is established before, on or after the commencing day;

“controlling interest”, in relation to a body corporate, means an interest that derives from ownership of at least 50% of the shares in the body corporate that confer voting rights;

“convicted” has the meaning given in section 6;

“corruption offence” means an offence by a person who was an employee at the time when it was committed, being an offence:

- (a) whose commission involved an abuse by the person of his or her office as such an employee; or
- (b) that, having regard to the powers and duties of such an employee, was committed for a purpose that involved corruption; or
- (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice;

“defendant”, in Part 3, has the meaning given in section 24;

“DPP” means the Director of Public Prosecutions;

“employee” has the meaning given in section 7;

“employee contributions”, in relation to a person, includes:

- (a) any amount paid or transferred into a fund, being an amount that is, under the person’s superannuation scheme, to be taken to be employee contributions; and
- (b) any other amount paid or transferred into a fund under the person’s superannuation scheme, being an amount:
 - (i) attributable to employer contributions paid by the person’s previous employer under another superannuation scheme (not being a superannuation scheme within the meaning of this Act) applicable to the person’s previous employment by that employer; and
 - (ii) payable to the person as an additional lump sum benefit on his or her resignation or retirement;

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

“extend”, in relation to the period of effect of a restraining order, includes further extend;

“fund” includes the Consolidated Revenue Fund;

“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;

“member”, in relation to a superannuation scheme, includes a person who is eligible for a benefit (including a deferred benefit) under the scheme;

“offence” means:

- (a) a common law offence; or
- (b) an offence against a law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a term longer than 12 months;

“police authority” means:

- (a) in relation to an offence against a law of a State or Territory that has its own police force—the Commissioner or head (however described) of the police force of the State or Territory; and
- (b) in relation to an offence against a law of the Commonwealth, or of a State or Territory other than a State or Territory mentioned in paragraph (a)—the Commissioner of Police of the AFP; and
- (c) in relation to a common law offence—the Commissioner or head (however described) of the police force of the State or Territory in which the offence was committed or, where the offence was committed in a Territory that does not have its own police force, the Commissioner of Police of the AFP;

“police officer” means:

- (a) an AFP member; or
- (b) a member of the police force of a State or Territory;

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

“recovery order” means a superannuation order containing an order of the kind mentioned in subsection 19 (4);

“related offence” has the meaning given in section 3;

“relevant period”, in relation to a restraining order, means the period starting on the day when the order was made and ending:

- (a) if an order or orders have been made under section 38—at the time, or on the occurrence of the event, specified in the order, or the last of the orders, so made; or
- (b) if paragraph (a) does not apply but an order or orders have been made under paragraph 32 (1) (a) or (b) in relation to the restraining order—at the end of 6 months after the day when the order, or the last of the orders, was so made, or such longer period (if any) as is specified in the order, or the last of the orders; or
- (c) in any other case—at the end of 6 months after the day on which the restraining order was made, or such longer period (if any) as is specified in the order;

“restraining order” means an order under section 25;

“sentence” does not include a suspended sentence;

“State” includes the Australian Capital Territory, the Northern Territory and Norfolk Island;

“Superannuation Act” means the *Superannuation Act 1976*;

“superannuation authority” means:

- (a) in relation to the superannuation scheme established by the Superannuation Act—the Commissioner for Superannuation; or
- (b) in any other case—the person (however described) responsible for the administration of the relevant superannuation scheme;

“superannuation order” means an order under section 19, and includes such an order as varied under section 22;

“superannuation scheme”, in relation to a person, means a superannuation scheme (other than a scheme established under a law of a State) under which employer contributions or benefits are paid or payable, or have at any time been paid, by the Commonwealth or a Commonwealth authority to or in respect of the person, and includes any scheme or arrangement under which such contributions are vested in the person;

“Territory” does not include the Australian Capital Territory or the Northern Territory, and, except in section 14, does not include Norfolk Island.

Related offences

3. For the purposes of this Act, 2 offences are related to each other if the elements of the offences are substantially the same acts or omissions.

Abscond

4. For the purposes of this Act, other than subsection 19 (2), a person is to be taken to abscond in connection with an offence if and only if:

- (a) the person is charged with the offence; and
 - (b) a warrant for the arrest of the person is issued in relation to that information; and
 - (c) one of the following happens:
 - (i) at the end of the period of 6 months starting 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;
 - (ii) at the end of the period of 6 months starting on the day on which the warrant is issued:
 - (A) the person is not amenable to justice because he or she is outside Australia; and
 - (B) extradition proceedings are on foot;
- and those proceedings later end without an order for the person's extradition.

Charge with offence

5. 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 has been issued requiring the attendance of the person to answer the information; or
- (b) a warrant for the arrest of the person has been issued.

Conviction and quashing of conviction

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

- (a) the person is convicted of the offence, whether summarily or on indictment; or
- (b) the person absconds in connection with the offence.

(2) For the purposes of this Act, a person is to be taken to have been convicted of an offence in a particular State or Territory if:

- (a) where paragraph (1) (a) applies—the person was convicted of the offence in a court in that State or Territory; or
- (b) where paragraph (1) (b) applies—the information relating to the offence was laid in that State or Territory.

(3) 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 because of paragraph (2) (b), the person is to be taken to have been so convicted before the Supreme Court of that State or Territory.

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

- (a) where paragraph (1) (a) applies—if the conviction is quashed or set aside; or
- (b) where paragraph (1) (b) applies—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.

(5) A reference in this Act, in relation to a person's conviction of an offence, to the commission of the offence is, where paragraph (1) (b) applies, a reference to the alleged commission of the offence by the person.

Employee

7. (1) In this Act, “employee” means a person (other than a member of the AFP) employed by the Commonwealth or by a Commonwealth authority, whether the person is so employed under a law of the Commonwealth or of a State or Territory, or under a contract of service or apprenticeship.

(2) Without limiting subsection (1):

- (a) a member of the Parliament; or

- (b) a justice or judge of a federal court; or
- (c) a member of the Defence Force; or
- (d) a person (other than a person mentioned in subsection (3)) who is the holder of:
 - (i) an office established by a law of the Commonwealth; or
 - (ii) a prescribed office established by a law of a Territory;

is to be taken, for the purposes of this Act, to be employed by the Commonwealth.

(3) Without limiting subsection (1), a person is to be taken, for the purposes of this Act, to be employed by a Commonwealth authority if:

- (a) the person constitutes, or is a member of, the authority; or
- (b) where the authority is a body corporate—the person is a director of the body corporate.

Property of a person

8. (1) For the purpose of making a restraining order against a person's property, that property is to be taken to include property in which the person has a beneficial interest.

(2) For the purpose of making a restraining order against the property of a person who is a defendant within the meaning of Part 3, that property is to be taken to include:

- (a) any property of the person that has been transferred by way of gift to another person within 2 years immediately before the day on which the restraining order is made or the day on which the person is charged with the relevant offence, whichever is the first to happen; or
- (b) where property of the person has been transferred to another person within that period for a consideration whose value is less than the commercial value of the property when the transfer was made—an interest in the property equal to the proportion worked out using the formula:

$$\frac{VP - VC}{VP}$$

where:

VP (value of the property) is the number of dollars in the commercial value of the property when the transfer was made;

VC (value of consideration) is the number of dollars in the value of the consideration for the transfer when the transfer was made.

(3) Property that is to be taken to be property of a person under subsection (1) is available to satisfy a recovery order made against the person, whether or not a restraining order has been made against the property.

(4) Property that is to be taken to be property of a person under subsection (2) is available to satisfy a recovery order made against the person if, and only if, a restraining order has been made against the property.

Dealing with property

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

- (a) if a debt owing by the person is secured by an encumbrance on the property—incurring any further liability or increasing the amount of that debt by any means; or
- (b) removing the property from Australia; or
- (c) receiving or making a gift of the property.

Effective control of property

10. (1) Property may be subject to the effective control of a person within the meaning of this Act whether or not the person has an interest in the property.

(2) Without limiting the generality of any other provision of this Act, in determining:

- (a) whether or not property is subject to the effective control of a person; or
- (b) whether or not there are reasonable grounds to believe that property is subject to the effective control of a person;

regard may be had to:

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
- (d) a trust that has a relationship to the property; and
- (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind mentioned in paragraph (c) or trusts of the kind mentioned in paragraph (d), and other persons.

Sufficient consideration

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

Application to convictions and offences

12. (1) This Act does not apply to a person's conviction of an offence if the conviction happened before the commencing day.

(2) This Act applies to an offence committed, or believed to have been committed, at any time, whether before, on or after the commencing day.

Act binds the Crown

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

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Application and extension of Act

14. (1) This Act applies throughout the whole of Australia and also applies outside Australia.

(2) This Act extends to the external Territories.

PART 2—SUPERANNUATION ORDERS

Notice of charge etc.

15. (1) Where:

- (a)** a person who is or was (whether before, on or after the commencing day) an employee is charged with an offence; and
- (b)** the relevant police authority thinks that the offence is, or may be, a corruption offence;

the police authority in relation to the offence may notify the Minister in writing of the charge.

(2) A notice must contain particulars of the charge and set out the reasons why the police authority thinks that the offence is, or may be, a corruption offence.

(3) Where a police authority notifies the Minister that a person has been charged with an offence, the authority must notify the Minister in writing if:

- (a)** the person is acquitted or convicted of the offence; or
- (b)** the charge is withdrawn or otherwise disposed of without the conviction of the person.

Authority to apply for superannuation order

16. Where:

- (a)** a person who is or was (whether before, on or after the commencing day) an employee is convicted of an offence; and
- (b)** the Minister is of the opinion that the offence is a corruption offence;

the Minister may, by notice in writing, authorise the DPP to apply to the appropriate court for a superannuation order in respect of the person.

Application for superannuation order

17. (1) Where:

- (a) the DPP is authorised to apply for a superannuation order in respect of a person who is convicted of an offence; and
- (b) if the person has not absconded in connection with the offence—the person is sentenced in respect of the offence to imprisonment for life or for a term longer than 12 months;

the DPP must make that application to the appropriate court.

(2) The DPP must not make an application for a superannuation order otherwise than under subsection (1).

(3) The DPP must take reasonable steps to give written notice of an application to the person in respect of whom the superannuation order is sought.

Application for superannuation order: evidence

18. (1) In determining an application for a superannuation order in respect of a person, the appropriate court may have regard to the transcript of any proceedings against the person for the offence to which the application relates.

(2) In an application for a superannuation order, any finding of fact made by a court in any proceedings for the offence to which the application relates, is *prima facie* evidence of that fact and the finding may be proved by the production of documents, under the seal of the court, in which the finding appears.

(3) In an application for a superannuation order in respect of a person, a certificate signed or sealed by the person's superannuation authority:

- (a) stating that employer contributions or benefits made or payable by the Commonwealth or a specified Commonwealth authority in respect of the person are held in a specified fund under the relevant superannuation scheme; and
- (b) stating the amount that equals the sum of those contributions or benefits as at the specified day plus the amount of interest on those contributions or benefits accrued under the scheme before that day;

is *prima facie* evidence of the matters stated in the certificate.

(4) In an application for a superannuation order in respect of the person, a certificate signed or sealed by the person's superannuation authority:

- (a) stating that benefits have been paid to the person under the relevant superannuation scheme; and
- (b) stating the amount that equals the sum of the benefits so paid as at the specified day; and
- (c) stating another amount that equals the part of the amount referred to in paragraph (b) that is attributable to the sum of the employee contributions paid under the scheme by the person as at the specified

day plus the amount of interest on those contributions accrued under the scheme before that day;

is *prima facie* evidence of the matters stated in the certificate.

(5) A document purporting to be sealed with the seal of a court is to be taken to have been lawfully sealed with the seal of that court unless the contrary is proved.

(6) A document purporting to be signed or sealed by a person's superannuation authority is to be taken to have been signed or duly sealed by that superannuation authority unless the contrary is proved.

Superannuation orders: making

19. (1) Subject to subsection (2), where an application is made for a superannuation order in respect of a person, the court must, if satisfied that the offence to which the application relates is a corruption offence, by order, declare:

- (a) that the person was convicted of a corruption offence; and
- (b) that this Part applies in relation to the rights of, and benefits paid or payable to or in respect of, the person under any superannuation scheme.

(2) Where a person is, because of paragraph 6 (1) (b), to be taken to have been convicted of an offence, a court must not make a superannuation order in relation to the person unless the court is also 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 it, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

(3) Where:

- (a) employer contributions or benefits made or payable by the Commonwealth or a Commonwealth authority in respect of the person under any superannuation scheme have been paid into, and are held in, a fund under the scheme; and
- (b) the person would, but for subsection 21 (1), become entitled, subject to and in accordance with the scheme, to the benefit, or to a benefit attributable to the employer contributions, as the case may be;

the court must:

- (c) work out, and specify in the superannuation order, the amount that it thinks reflects the value of the sum of those contributions or benefits as at the day on which the order is made, plus the interest on those contributions or benefits accrued under the scheme before that day; and
- (d) include in the superannuation order an order that the amount so specified be paid to the Commonwealth or Commonwealth authority, whichever the court considers appropriate.

(4) Where any benefits have been paid to the person under any superannuation scheme (whether before, on or after the commencing day), the court must:

- (a) specify in the superannuation order the amount worked out using the formula:

$$AB - EC$$

where:

AB (amount of benefits) is the amount that the court thinks reflects the value of the sum of the benefits paid by the Commonwealth or Commonwealth authority to the person under the scheme as at the day on which the order is made;

EC (employee contributions) is the amount that the court thinks is equal to the part of **AB** that is attributable to the sum of the employee contributions paid under the scheme by the person as at that day plus the interest on those contributions accrued under the scheme before that day; and

- (b) include in the superannuation order an order that the person pay the amount so specified to the Commonwealth or Commonwealth authority, whichever the court considers appropriate.

(5) For the purposes of subsections (3) and (4), the value of an amount of employer contributions or benefits, and of accrued interest, is their value worked out having regard to any decline in the purchasing power of money between the day on which the contributions or benefits were made or paid, or the interest accrued, as the case may be, and the day as at which their value must be worked out.

(6) The DPP must give written notice of a superannuation order to the person's superannuation authority.

When does a superannuation order take effect?

20. (1) A superannuation order made in relation to a person who has absconded takes effect on the day on which it is made.

(2) A superannuation order made in relation to a person, other than a person who has absconded, does not take effect until:

- (a) the end of the period (if any) allowed for appealing against the conviction or sentence under the relevant Commonwealth, State or Territory law; or
- (b) if the person appeals against his or her conviction or sentence, or both—the appeal, and any proceedings resulting from it, are finally determined, withdrawn or otherwise disposed of.

Effect of superannuation orders

21. (1) Where a court makes a superannuation order in respect of a person:

- (a) all rights of, and benefits payable to or in respect of, the person or a dependant of the person (being rights or benefits arising out of

the person's membership of any superannuation scheme) cease, or cease to be payable, on the day on which the order takes effect, and the person ceases to be a member of the scheme on that day; and

- (b) any amount of the kind mentioned in subsection 19 (3) that is vested in the person ceases to be so vested on that day; and
- (c) the Commonwealth or a Commonwealth authority is not liable to pay any employer contribution or benefit under the scheme in respect of the person on or after that day.

(2) An amount payable by a person to the Commonwealth or a Commonwealth authority under a superannuation order is a debt due by the person to the Commonwealth or the Commonwealth authority, as the case may be.

(3) An order under subsection 19 (3) or (4) against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth or the relevant Commonwealth authority against the person to recover a debt due by the person to the Commonwealth or the Commonwealth authority, and the debt arising from the order is to be taken to be a judgment debt.

(4) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person who is an employee, the person is entitled, on the day on which he or she ceases to be a member of the relevant superannuation scheme, to payment of an amount equal to the sum of the employee contributions paid under the scheme by the person (being contributions that are held in a fund under the scheme) plus the amount of interest on those contributions accrued under the scheme.

(5) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person who:

- (a) was an employee when the relevant corruption offence was committed but ceases to be an employee before being charged with the offence; and
- (b) would, but for that subsection, have been entitled to payment of benefits under the relevant superannuation scheme on or after the day on which the superannuation order takes effect;

the person is entitled, on the day on which he or she ceases to be a member of the scheme, to payment of an amount worked out using the formula:

AC – AR

where:

AC (amount of contributions) is an amount equal to the sum of the employee contributions paid under the scheme by the person plus the amount of interest on those contributions accrued under the scheme;

AR (amount received) is an amount equal to that part of the sum of all amounts paid by way of benefit before the day on which the superannuation order takes effect that is attributable to AC.

Superannuation orders: variation

22. (1) If a superannuation order made in respect of a person:

- (a) specifies an amount under subsection 19 (3) or (4); and
- (b) takes effect on a day that is later than the day on which the order is made;

the DPP may, as soon as practicable after the order takes effect, apply to the court that made the order to vary the order by substituting for the specified amount an increased amount, having regard to any amount of employer contributions or benefits paid by the Commonwealth or a Commonwealth authority in respect of the person during the prescribed period.

(2) Where the DPP makes an application, the court must vary the superannuation order accordingly and, for the purposes of working out the increased amount to be specified in the superannuation order, as varied, subsections 19 (3), (4) and (5) apply as if references in subsections 19 (3) and (4) to the day on which the order is made were references to the day on which the variation is made.

(3) In this section:

“prescribed period” means the period starting on the day on which the superannuation order is made and ending on the day on which the variation is made.

Superannuation orders: revocation

23. (1) A superannuation order made in relation to a person is to be taken to have been revoked if:

- (a) the person’s conviction is quashed; or
- (b) the person’s sentence is reduced or otherwise changed so that the person is not sentenced to imprisonment, or is sentenced to imprisonment for a term of 12 months or less; or
- (c) where the person is taken to be convicted because of paragraph 6 (1) (b)—the person is brought before a court in respect of the offence concerned and, having been convicted of that offence, is not sentenced to imprisonment, or is sentenced to imprisonment for a term of 12 months or less, in respect of the offence.

(2) Where a superannuation order is taken to have been revoked, the DPP must give written notice of the fact to:

- (a) the person in respect of whom the order was made; and
- (b) the person’s superannuation authority.

- (3) Where:
- (a) a superannuation order is made in relation to a person who is taken to be convicted because of paragraph 6.(1) (b); and
 - (b) the superannuation order is to be taken to have been revoked;
- there is payable to the person an amount determined by the Minister for Finance, being an amount that the Minister considers to be a fair recompense to the person, having regard to:
- (c) any amount paid to the person under subsection 21 (4) or (5); and
 - (d) any amount recovered from the person under a recovery order against the person; and
 - (e) any other financial loss sustained by the person as a result of the superannuation order; and
 - (f) any other matters that the Minister thinks are relevant in the circumstances of the case.

PART 3—RESTRAINING ORDERS

Application for restraining order

24. (1) Where a person (in this Part called “the defendant”):

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

the DPP may apply to the appropriate court for a restraining order against specified property of the defendant or of another person, or both.

(2) For the purposes of an application, the DPP may, on behalf of the Commonwealth, give the court such undertakings with respect to the payment of damages or costs, or both, as the court requires.

Making of restraining orders

25. (1) Subject to this Part, where an application is made for a restraining order against property and the appropriate court is satisfied that:

- (a) the offence concerned is, or may be, a corruption offence; and
- (b) if the defendant has been sentenced in respect of the offence—the sentence is one of imprisonment for life or for a term longer than 12 months; and
- (c) the defendant is, or has been, a member of a superannuation scheme;

the court may, by order, 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 the manner and circumstances (if any) specified in the order.

(2) A restraining order must not be made against a person’s property to any extent greater than is necessary to ensure the recovery of any amount payable, or reasonably likely to be payable, by the defendant under a recovery order.

(3) Subsection (2) does not prevent the court from making a restraining order against a person's property, being property whose value is more than the amount payable, or reasonably likely to be payable, by the defendant under a recovery order if there is no other property of sufficient value in respect of which the court can make a restraining order.

(4) A court may make a restraining order against property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in a manner that would defeat the operation of this Act.

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

(6) A court may refuse to make a restraining order if the Commonwealth refuses or fails to give 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.

Restraining order may be subject to conditions

26. (1) A restraining order against a person's property may be made subject to such conditions as the court thinks fit, for example, conditions providing 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 any dependants of the person) and reasonable business expenses;
- (b) the person's taxed legal 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) or (b) applies).

(2) The court must not make provision of a kind mentioned in subsection (1) unless satisfied that the person cannot meet the expense or debt concerned out of property that is not subject to a restraining order.

Affidavit of police officer needed in certain cases

27. (1) Where an application is made for a restraining order and the defendant has not been convicted of the offence concerned, the court must 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 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 so believing.

(2) Where an application for a restraining order is made against specified property of a person other than the defendant, the court must not make a restraining order against the property unless:

- (a) the application is supported by an affidavit of a police officer stating that the officer believes that the property is subject to the effective control of the defendant; and
- (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for so believing.

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

(4) 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 effect 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 the court thinks appropriate.

Notice of application for restraining order

28. (1) Subject to subsection (2), the DPP must 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) Where notice of an application has not been given, the court must consider the application if the DPP asks it to do so but, subject to subsection (3), a restraining order made by virtue of this subsection ceases to have effect at the end of the period (not exceeding 14 days) specified by the court in the restraining order.

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

(4) The DPP must give written notice of an application under subsection (3) for the extension of the period of effect 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.

Persons who may appear and adduce evidence

29. (1) Where:

- (a) the DPP applies for a restraining order against property; and
- (b) notice of the application is given under subsection 28 (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 effect of a restraining order 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.

Witnesses not required to answer questions etc. in certain cases

30. On the hearing of an application for a restraining order, a witness is not 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.

Notice of restraining orders

31. (1) Subject to subsection (2), where a restraining order is made against a person's property, the DPP must 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 include in the restraining order an order that giving the person notice of the restraining order be delayed for the specified period and the DPP must give the person notice of the restraining order as soon as practicable after the end of the specified period.

Ancillary orders

32. (1) Where an appropriate court makes a restraining order, it may, at the same time or at any later time, make any ancillary orders that it thinks appropriate, for example:

- (a) an order varying the property to which the restraining order relates; and
- (b) an order varying any condition to which the restraining order is subject; and
- (c) an order for the examination on oath of:
 - (i) the owner of property subject to the restraining order; or
 - (ii) another person;

before the court or the registrar of the court concerning the affairs of the owner, including the nature and location of any of the owner's property; and

(d) an order about carrying out any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the restraining order.

(2) An ancillary order may be made on application by:

- (a) the DPP; or
- (b) the owner of property subject to the restraining order; or
- (c) with the leave of the court—any other person.

(3) Where:

- (a) a defendant has been convicted of, or has been charged or is about to be charged with, an offence; and
- (b) an appropriate court makes a restraining order against property in reliance on the conviction, charging or proposed charging; and
- (c) a person, other than the defendant, who has 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 must grant the application if satisfied that the applicant's interest in the property is not subject to the effective control of the defendant.

(4) Where a person is examined before a court or a registrar under an order under subsection (1), the person is not excused from answering a question when required to do so by the court or 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 forfeiture or a penalty.

(5) Where a person is examined before a court or registrar under an order under subsection (1), the 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 result 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.

(6) For the purposes of subsection (5), proceedings on an application for a superannuation order or a restraining order are not criminal proceedings.

(7) On the hearing of an application for an order under subsection (1), a witness is not 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 the person for, an offence.

Charge on property subject to restraining order

33. (1) Where:

- (a) a recovery order is made against a defendant; and
- (b) a restraining order is, or has been, made against:
 - (i) property of the defendant; or

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- (ii) property of another person in relation to which an order is, or has been, made under subsection 40 (1);

in reliance on the defendant's conviction of a particular offence or a related corruption offence or on the charging, or proposed charging, of the defendant with a particular offence or a related corruption 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 of the amount specified in the recovery order to the Commonwealth or the relevant Commonwealth authority, as the case requires.

- (2) A charge on property of a person ceases to have effect:
 - (a) if the relevant recovery order ceases to have effect; or
 - (b) upon payment to the Commonwealth, or the relevant Commonwealth authority, of the amount specified in the order; or
 - (c) upon the person becoming a bankrupt; or
 - (d) upon the sale or other disposition of the property by the owner of the property with the consent of the court that made the recovery order; or
 - (e) upon the sale of the property to a purchaser in good faith for sufficient consideration who, at the time of the purchase, has no notice of the charge;

whichever first occurs.

- (3) A charge on property:
 - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, but for this subsection, have priority over the charge; and
 - (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) a charge is created on property of a particular kind; and
 - (b) 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 DPP may cause the charge 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 is to be taken, for the purposes of paragraph (2) (e), to have notice of the charge at the time of the purchase or acquisition.

Registration of restraining orders

34. (1) Where:

- (a) a restraining order applies to property of a particular kind; and
- (b) 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 under those provisions particulars of the restraining order.

(2) Where particulars of a restraining order are recorded under subsection (1), a person who later deals with the property is to be taken, for the purposes of section 35, to have notice of the restraining order at the time of the dealing.

Contravention of restraining orders

35. (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 imprisonment for a period not exceeding 5 years.

(2) Where:

- (a) a restraining order is made against property; and
- (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 it 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.

Restraining orders: revocation

36. Where a court has made a restraining order against a person's property, the court may, on application made 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 amount that may be specified in a recovery order against the person; or

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

When do restraining orders cease to have effect?

37. (1) A restraining order ceases to have effect if any of the following things happen:

- (a) the defendant is acquitted of the offence, or the charge is withdrawn or otherwise disposed of without conviction and the defendant has not been charged with a related corruption offence before the acquittal, withdrawal or disposal;
- (b) the defendant is convicted of the offence but is not sentenced to imprisonment, or is sentenced to imprisonment for a term of 12 months or less, in respect of the offence;
- (c) the Minister refuses to authorise the DPP to apply for a superannuation order in respect of the defendant;
- (d) the appropriate court refuses to make a recovery order against the defendant;
- (e) such an order is made in respect of the defendant but is later satisfied or is taken to have been revoked;
- (f) where the restraining order was made in reliance on the proposed charging of the person with an offence—the defendant is not charged with the offence or a related corruption offence before the end of the period of 48 hours after the order is made.

(2) Subject to this section, a restraining order ceases to have effect, if it has not already done so under subsection (1), at the end of the relevant period in relation to the order.

(3) If, within the relevant period in relation to a restraining order, an application is made under section 38 for an extension of the period of effect of the restraining order and the court refuses the application after the end of the relevant period, the restraining order ceases to have effect when the court refuses the application.

(4) If, within the relevant period in relation to a restraining order, an application is made under section 38 for an extension of the period of effect of the restraining order and the application is granted, the restraining order ceases to have effect at the time, or on the occurrence of the event, specified in an order made by the court under that section.

Extension of period of effect of restraining orders

38. (1) The DPP may, before the end of the relevant period in relation to a restraining order 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 effect of the order.

(2) Where, on an application for an extension of the period of effect of a restraining order, the court is satisfied:

- (a) that a recovery order has been, or may still be, made against the person; and
- (b) where the property concerned is the property of another person—
an order under subsection 40 (1) has been, or may still be, made;

the court may:

- (c) by order, extend the period of effect of the restraining order; and
- (d) make such other order or orders as it thinks appropriate in relation to the operation of the restraining order.

(3) The DPP must give a person written notice of an application in relation to a restraining order in respect of the person's property.

Notice of applications

39. (1) A person who applies under section 32 for an ancillary order in relation to a restraining order must give written notice of the application to each other person who is entitled under subsection 32 (2) to make an application under section 32 in relation to the restraining order.

(2) A person who applies under section 36 for revocation of a restraining order must give written notice of the application to the DPP.

PART 4—MISCELLANEOUS

Court may lift corporate veil etc.

40. (1) Where an appropriate court makes a recovery order against a person, it may, on application by the DPP, if it thinks that particular property is subject to the effective control of the person, make an order declaring that the whole, or a specified part, of that property is available to satisfy the recovery order.

(2) Where a court declares that property is available to satisfy a recovery order:

- (a) the recovery 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 restraining order is made.

(3) Where the DPP applies for an order under subsection (1) that property is available to satisfy a recovery order against a person:

- (a) the DPP must give written notice of the application to the person and to any other 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 payable under section 19, 21 or 23

41. (1) Where an amount is payable under an order made under subsection 19 (3) in respect of employer contributions or benefits that are held in a fund other than the Consolidated Revenue Fund, the amount is payable out of the fund by the person responsible for the administration of the fund.

(2) Where an amount is payable under an order made under subsection 19 (3) in respect of employer contributions or benefits that have been paid into the Consolidated Revenue Fund, the Minister for Finance is to make arrangements:

- (a) for the payment of the amount out of the Consolidated Revenue Fund; or
- (b) where it is not appropriate to make such a payment—for any other appropriate action to be taken;

and the order is to be taken to have been satisfied by the taking of any action that gives effect to the arrangements.

(3) An amount payable to a person under subsection 21 (4) or (5) is payable:

- (a) if the relevant superannuation scheme is established by an Act—by the Commonwealth; and
- (b) in any other case—by the relevant superannuation authority out of the fund established under the relevant superannuation scheme.

(4) Where an amount mentioned in subsection (3) is payable by the Commonwealth, the amount is payable out of the fund established under the relevant Act or, if an amount attributable to the employee contributions of the person has been paid into the Consolidated Revenue Fund, out of the Consolidated Revenue Fund.

(5) An amount payable to a person under subsection 23 (3) is payable by the Commonwealth out of the Consolidated Revenue Fund.

(6) The Consolidated Revenue Fund is appropriated to the extent necessary to pay any amount that is payable under this section out of that Fund.

Multiple payments in respect of same employee contributions not allowed

42. (1) In spite of this Act and the AFP Act, where an amount has been paid to a person under subsection 21 (4) or (5) of this Act in respect of employee contributions and interest on those contributions, the person is not entitled to payment of another amount under either of those subsections, or under subsection 47 (2) or (3), 49 (2) or 51 (3) of the AFP Act, in respect of the same employee contributions and interest.

(2) In spite of this Act and the AFP Act, where an amount has been paid to a person under subsection 47 (2) or (3), 49 (2) or 51 (3) of the AFP Act in respect of employee contributions and interest on those

contributions, the person is not entitled to payment to another amount under subsection 21 (4) or (5) of this Act in respect of the same employee contributions and interest.

(3) In this section:

“AFP Act” means the *Australian Federal Police Act 1979*.

Possible superannuation order not to be taken into account in sentencing

43. A court shall not, in sentencing a person convicted of an offence punishable by imprisonment for life or for a term longer than 12 months, take into account the possibility that a superannuation order may be made in relation to the person.

Constitution of appropriate courts

44. Where an application for a superannuation order or a restraining order is made to a court before which a person was convicted of a corruption offence:

- (a) the application may be dealt with by the court; and
- (b) any power in relation to the order may be exercised by the court; whether or not it is constituted in the same way in which it was constituted when the person was convicted of the offence.

Regulations

45. 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 17 August 1989
Senate on 6 October 1989*]