Proceeds of Crime Act 2002

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About this compilation

This compilation

This is a compilation of the *Proceeds of Crime Act 2002* that shows the text of the law as amended and in force on 1 September 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Chapter 1—Introduction

Part 1-1—Preliminary

1 Short title

This Act may be cited as the *Proceeds of Crime Act 2002*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	11 October 2002
2. Sections 3 to 338	A single day to be fixed by Proclamation, subject to subsection (3)	1 January 2003 (*Gazette* 2002, No. GN44)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

(3) If a provision covered by item 2 of the table does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Identifying defined terms

(1) Many of the terms in this Act are defined in the Dictionary in Chapter 6.

(2) Most of the terms that are defined in the Dictionary in Chapter 6 are identified by an asterisk appearing at the start of the term: as in "*proceeds". The footnote with the asterisk contains a signpost to the Dictionary.

(3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.

(4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.

(5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

(6) The following basic terms used throughout the Act are not identified with an asterisk:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Terms that are not identified		
Item	**This term:**	**is defined in:**
1	charged	section 338
2	convicted	section 331
3	deal	section 338
4	derived	section 336
5	property	section 338

4 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 1-2—Objects

5 Principal objects

The principal objects of this Act are:

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

(b) to deprive persons of *literary proceeds derived from the commercial exploitation of their notoriety from having committed offences; and

(ba) to deprive persons of *unexplained wealth amounts that the person cannot satisfy a court were not derived or realised, directly or indirectly, from certain offences; and

(c) to punish and deter persons from breaching laws of the Commonwealth or the non-governing Territories; and

(d) to prevent the reinvestment of proceeds, instruments, benefits, literary proceeds and unexplained wealth amounts in further criminal activities; and

(da) to undermine the profitability of criminal enterprises; and

(e) to enable law enforcement authorities effectively to trace proceeds, instruments, benefits, literary proceeds and unexplained wealth amounts; and

(f) to give effect to Australia's obligations under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and other international agreements relating to proceeds of crime; and

(g) to provide for confiscation orders and restraining orders made in respect of offences against the laws of the States or the *self-governing Territories to be enforced in the other Territories.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 1-3—Outline of this Act

6 General

This Act establishes a scheme to confiscate the proceeds of crime. It does this by:

(a) setting out in Chapter 2 processes by which confiscation can occur; and

(b) setting out in Chapter 3 ways in which Commonwealth law enforcement agencies can obtain information relevant to these processes; and

(c) setting out in Chapter 4 related administrative matters.

It concludes with miscellaneous provisions and with definitions and other interpretive material.

Note: See also Part IAE of the *Crimes Act 1914* (video link evidence).

7 The confiscation scheme (Chapter 2)

Chapter 2 sets out a number of processes relating to confiscation:

(aa) freezing orders limiting withdrawals from accounts with financial institutions before courts decide applications for restraining orders to cover the accounts (see Part 2-1A); and

(a) restraining orders prohibiting disposal of or dealing with property (see Part 2-1); and

(b) forfeiture orders under which property is forfeited to the Commonwealth (see Part 2-2); and

(c) forfeiture of property to the Commonwealth on conviction of a serious offence (see Part 2-3); and

(d) pecuniary penalty orders requiring payment of amounts based on benefits derived from committing offences (see Part 2-4); and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) literary proceeds orders requiring payment of amounts based on literary proceeds relating to offences (see Part 2-5); and

(f) unexplained wealth orders requiring payment of unexplained wealth amounts (see Part 2-6).

8 Information gathering (Chapter 3)

(1) Chapter 3 sets out 5 ways to obtain information:

(a) examining any person about the affairs of people covered by examination orders (see Part 3-1); and

(b) requiring people, under production orders, to produce property-tracking documents or make them available for inspection (see Part 3-2); and

(c) requiring financial institutions to provide information and documents relating to accounts and transactions (see Part 3-3); and

(d) requiring financial institutions, under monitoring orders, to provide information about transactions over particular periods (see Part 3-4); and

(e) searching for and seizing tainted property or evidential material, either under search warrants or in relation to conveyances (see Part 3-5).

(2) Chapter 3 also authorises the disclosure, to certain authorities for certain purposes, of information obtained under that Chapter or certain other provisions (see Part 3-6).

9 Administration (Chapter 4)

Chapter 4 sets out the following administrative matters:

(a) the powers and duties of the Official Trustee (see Part 4-1);

(b) the provision of legal assistance (see Part 4-2);

(c) the Confiscated Assets Account (see Part 4-3);

(d) charges over restrained property for payment of certain amounts (see Part 4-4);

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) enforcement of interstate orders in certain Territories (see Part 4-5).

10 Miscellaneous (Chapter 5)

Chapter 5 deals with miscellaneous matters.

11 Interpreting this Act (Chapter 6)

Chapter 6 contains the Dictionary, which sets out a list of all the terms that are defined in this Act. It also sets out the meanings of some important concepts.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 1-4—Application

Division 1—General

12 Act to bind Crown

(1) This Act binds the Crown in right of the Commonwealth, each of the States and each of the *self-governing Territories.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

13 Act to apply both within and outside Australia

This Act extends, except so far as the contrary intention appears:

(a) to acts, matters and things outside *Australia, whether or not in or over a foreign country; and

(b) to all persons, irrespective of their nationality or citizenship.

14 Application

This Act applies in relation to:

(a) an offence committed at any time (whether or not any person is convicted of the offence); and

(b) a person's conviction of an offence at any time;

whether the offence or conviction occurred before or after the commencement of this Act.

14A Concurrent operation of State and Territory laws

(1) This Act does not exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) Subsection (1) does not apply to the *national unexplained wealth provisions.

Note: For the interaction between the national unexplained wealth provisions and a law of a State or Territory, see section 14L.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—The national unexplained wealth provisions

Subdivision A—General

14B Constitutional basis of the national unexplained wealth provisions

What this section is about

(1) This section sets out the constitutional basis of the *national unexplained wealth provisions.

National unexplained wealth provisions

(2) The ***national unexplained wealth provisions*** are:
  (a) the *main unexplained wealth provisions; and
  (b) the *participating jurisdiction information gathering provisions; and
  (c) the *unexplained wealth machinery and transitional provisions.

Main unexplained wealth provisions

(3) The ***main unexplained wealth provisions*** are:
  (a) section 20A and Part 2-6; and
  (b) the other provisions of this Act in so far as they relate to that section or that Part; and
  (c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

Participating jurisdiction information gathering provisions

(4) The ***participating jurisdiction information gathering provisions*** are:
  (a) section 14M and Schedule 1; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the other provisions of this Act in so far as they relate to that section or that Schedule; and

(c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

Unexplained wealth machinery and transitional provisions

(5) The ***unexplained wealth machinery and transitional provisions*** are:

(a) the following provisions (the ***main machinery and transitional provisions***):

(i) sections 14A to 14L and 14N;

(ii) the definitions of ***adoption Act***, ***amendment reference***, ***cooperating State***, ***express amendment***, ***information gathering***, ***main machinery and transitional provisions***, ***main unexplained wealth provisions***, ***national unexplained wealth provisions***, ***non-participating State***, ***participating jurisdiction information gathering provisions***, ***participating State***, ***post-amended version 1 of this Act***, ***post-amended version 2 of this Act***, ***pre-amended version of this Act***, ***referral Act***, ***relevant law 1***, ***relevant law 2***, ***special confiscation law***, ***text reference 1***, ***text reference 2***, ***unexplained wealth*** and ***unexplained wealth machinery and transitional provisions*** in section 338;

(iii) Schedule 2; and

(b) the other provisions of this Act in so far as they relate to any of the main machinery and transitional provisions; and

(c) instruments made under this Act for the purposes of a provision referred to in paragraph (a) or (b).

Application in participating States

(6) The application of the *national unexplained wealth provisions in a *participating State is based on:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliaments of the participating States under paragraph 51(xxxvii) of the Constitution; and

(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Application in non-participating States

(7) The application of the *national unexplained wealth provisions (other than the *unexplained wealth machinery and transitional provisions) in a *non-participating State is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and

(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

(8) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State that:

(a) was a *participating State because it had referred to the Commonwealth Parliament:

(i) *text reference 1; and

(ii) *text reference 2; and

(iii) the *amendment reference; and

(b) ceased to be a participating State because it terminated either or both of the following:

(i) the referral of text reference 1;

(ii) the referral of the amendment reference; and

(c) has not terminated the referral of text reference 2;

is based on:

(d) the legislative powers that the Commonwealth Parliament has because of the referral of text reference 2 under paragraph 51(xxxvii) of the Constitution; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) the other legislative powers that the Commonwealth Parliament has under the Constitution.

(9) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State that:

(a) was a *participating State because it had:

(i) adopted *post-amended version 1 of this Act; and

(ii) adopted *post-amended version 2 of this Act; and

(iii) referred to the Commonwealth Parliament the *amendment reference; and

(b) ceased to be a participating State because it terminated either or both of the following:

(i) the adoption of post-amended version 1 of this Act;

(ii) the referral of the amendment reference; and

(c) has not terminated the adoption of post-amended version 2 of this Act;

is based on:

(d) the legislative powers that the Commonwealth Parliament has because of the adoption of post-amended version 2 of this Act under paragraph 51(xxxvii) of the Constitution; and

(e) the other legislative powers that the Commonwealth Parliament has under the Constitution.

(10) The application of the *unexplained wealth machinery and transitional provisions in a *non-participating State not covered by subsection (8) or (9) is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and

(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Application in a self-governing Territory

(11) The application of the *national unexplained wealth provisions in a *self-governing Territory is based on:

(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and

(b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite section 2H of the *Acts Interpretation Act 1901*, the national unexplained wealth provisions as applying in a self-governing Territory are laws of the Commonwealth.

Application outside Australia

(12) The application of the *national unexplained wealth provisions outside *Australia is based on:

(a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and

(b) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxix)) and section 122 of the Constitution; and

(c) the other legislative powers that the Commonwealth Parliament has under the Constitution.

14C What is a *participating State*?

Participating State

(1) A State is a ***participating State*** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:

(a) has, by its *referral Act, referred to the Commonwealth Parliament:

(i) *text reference 1 (see subsection (2)); and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) *text reference 2 (see subsection (3)); and
(iii) the *amendment reference (see subsection (4));
before the enactment of the *Unexplained Wealth Legislation Amendment Act 2018*; or

(b) has, by its *adoption Act:
(i) adopted *post-amended version 1 of this Act (see subsection (5)); and
(ii) adopted *post-amended version 2 of this Act (see subsection (6)); and
(iii) referred to the Commonwealth Parliament the amendment reference;
after the enactment of the *Unexplained Wealth Legislation Amendment Act 2018*.

Text reference 1

(2) ***Text reference 1*** of a State means the matters to which the *pre-amended version of this Act would relate if *express amendments were made to it in the terms, or substantially in the terms, of *relevant law 1, but excluding matters to which the pre-amended version of this Act otherwise relates.

Text reference 2

(3) ***Text reference 2*** of a State means the matters to which the *pre-amended version of this Act would relate if *express amendments were made to it in the terms, or substantially in the terms, of *relevant law 2, but excluding matters to which the pre-amended version of this Act otherwise relates.

Amendment reference

(4) The ***amendment reference*** of a State means the matters relating to:
(a) *unexplained wealth (see section 14D); and
(b) *information gathering (see section 14E);

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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to the extent of making laws with respect to those matters by making *express amendments of this Act.

Post-amended version 1 of this Act

(5) ***Post-amended version 1 of this Act***, in relation to the *adoption Act of a State, means this Act as amended by:

(a) *relevant law 1; and

(b) any other *express amendments of this Act that:

(i) were enacted at any time after the enactment of relevant law 1 but before the enactment of the adoption Act; and

(ii) were not amendments of the *main machinery and transitional provisions (see subsection 14B(5));

to the extent that this Act as so amended is a law with respect to *text reference 1 or the *amendment reference referred to the Commonwealth Parliament by the Parliament of another State for the purposes of paragraph 51(xxxvii) of the Constitution.

Post-amended version 2 of this Act

(6) ***Post-amended version 2 of this Act***, in relation to the *adoption Act of a State, means this Act as amended by:

(a) *relevant law 2; and

(b) any other *express amendments of this Act that:

(i) were enacted at any time after the enactment of relevant law 2 but before the enactment of the adoption Act; and

(ii) were amendments of the *main machinery and transitional provisions (see subsection 14B(5));

to the extent that this Act as so amended is a law with respect to *text reference 2 or the *amendment reference referred to the Commonwealth Parliament by the Parliament of another State for the purposes of paragraph 51(xxxvii) of the Constitution.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Certain things do not affect a participating State's status

(7) A State is a ***participating State*** even if the State's *referral Act or *adoption Act provides that:

(a) the reference to the Commonwealth Parliament of *text reference 1, *text reference 2 or the *amendment reference is to terminate in particular circumstances; or

(b) the adoption of *post-amended version 1 of this Act or *post-amended version 2 of this Act is to terminate in particular circumstances; or

(c) the reference to the Commonwealth Parliament of the amendment reference does not include the matter of including a provision in section 20A or Part 2-6 that:

(i) requires a person pay an amount otherwise than by order of a court; or

(ii) requires or permits property (within the meaning of subsection 14D(2)) to be restrained, forfeited or seized otherwise than by order of a court; or

(d) the reference to the Commonwealth Parliament of text reference 1, text reference 2 or the amendment reference has effect only:

(i) if and to the extent that the matter is not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); or

(ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

When a State ceases to be a participating State

(8) A State ceases to be a ***participating State*** if:

(a) in the case where the Parliament of the State has referred to the Commonwealth Parliament *text reference 1 and *text reference 2—either or both of those references terminate; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) in the case where the Parliament of the State has adopted the *post-amended version 1 of this Act and *post-amended version 2 of this Act—either or both of those adoptions terminate.

(9) A State ceases to be a ***participating State*** if:
(a) the State's referral of the *amendment reference terminates; and
(b) subsection (10) does not apply to the termination.

(10) A State does not cease to be a ***participating State*** because of the termination of its referral of the *amendment reference if:
(a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
(b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
(c) that State's amendment reference, and the amendment reference of every other State, terminates on the same day.

Other definitions

(11) In this Act:

adoption Act, of a State, means the Act of the State that:
(a) adopts *post-amended version 1 of this Act; and
(b) adopts *post-amended version 2 of this Act; and
(c) refers the *amendment reference to the Commonwealth Parliament.

express amendment of this Act means the direct amendment of the text of this Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.

pre-amended version of this Act, in relation to the *referral Act of a State, means this Act as originally enacted and as subsequently amended by amendments enacted at any time before the enactment of the referral Act of the State.

referral Act, of a State, means the Act of the State that refers *text reference 1, *text reference 2 and the *amendment reference to the Commonwealth Parliament.

relevant law 1 means Schedules 2 and 4 to the *Unexplained Wealth Legislation Amendment Act 2018*.

relevant law 2 means Schedule 1 to the *Unexplained Wealth Legislation Amendment Act 2018*.

14D Meaning of *unexplained wealth*

(1) For the purposes of the *amendment reference of a State (see subsection 14C(4)), ***unexplained wealth*** means property or wealth that might not have been lawfully acquired.

(2) The meaning of ***lawfully acquired***, ***property*** and ***wealth*** in subsection (1) includes, but is not limited to, the meaning of those terms in this Act as in force immediately before the enactment of the first *referral Act of a State.

14E Meaning of *information gathering*

For the purposes of the *amendment reference of a State (see subsection 14C(4)), ***information gathering*** means the production or provision of information for the purposes of, or relevant to, the taking of action, or the institution of proceedings, under a law of the State.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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14F When a non-participating State is a cooperating State

States that have referred text references 1 and 2

(1) A *non-participating State is a ***cooperating State*** if:

(a) an *express amendment of section 14G or 14J (about rollback), or Division 2 of Part 4-3 (about sharing proceeds), was enacted; and

(b) before the amendment was enacted, the State was a *participating State; and

(c) after the amendment was enacted, the State ceased to be a participating State because it terminated either or both of the following:

(i) the referral of *text reference 1;

(ii) the referral of the *amendment reference; and

(d) the termination was effected by a proclamation that was made under the State's *referral Act for the purposes of this section; and

(e) the State has not terminated its referral of *text reference 2.

Note: Under Division 2 of Part 4-3 (which is about sharing proceeds of confiscated assets under the national cooperative scheme), a non-participating State that is a cooperating State is treated in the same way as a participating State.

States that have adopted the post-amended versions of this Act

(2) A *non-participating State is also a ***cooperating State*** if:

(a) an *express amendment of section 14G or 14J (about rollback), or Division 2 of Part 4-3 (about sharing proceeds), was enacted; and

(b) before the amendment was enacted, the State was a *participating State; and

(c) after the amendment was enacted, the State ceased to be a participating State because it terminated either or both of the following:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) the adoption of *post-amended version 1 of this Act;
(ii) the referral of the *amendment reference; and

(d) the termination was effected by a proclamation that was made under the State's *adoption Act for the purposes of this section; and

(e) the State has not terminated its adoption of *post-amended version 2 of this Act.

(3) Despite subsections (1) and (2), a *non-participating State ceases to be, or is not, a ***cooperating State*** if a declaration under subsection (4) is in force in relation to the State.

(4) The Minister may, by legislative instrument, declare that a State is not a *cooperating State.

(5) A declaration made under subsection (4) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration.

Subdivision B—Rollback of particular express amendments

14G Effect of rollback by participating States on unexplained wealth proceedings

When this section applies

(1) This section applies if:

(a) a proclamation is made under the *referral Act or *adoption Act of a *participating State for the purposes of this section; and

(b) the proclamation declares that an *express amendment of this Act (other than this Subdivision) is not to apply to proceedings covered by subsection (3), (4) or (5); and

(c) the proclamation comes into force in the period of 6 months beginning on the day the amendment is enacted.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Application of this Act to proceedings

(2) This Act applies to the proceedings as if the amendment had not been enacted.

Proceedings for restraining orders

(3) Proceedings are covered by this subsection if:
  (a) the proceedings are instituted while the proclamation is in force; and
  (b) the proceedings are for the making of a *restraining order under section 20A in relation to a *suspect; and
  (c) the affidavit supporting the application for the order states that an *authorised officer suspects either or both of the following:
    (i) that the suspect has committed a *relevant offence of a *participating State;
    (ii) that the whole or any part of the suspect's *wealth was derived from a relevant offence of a participating State.

Proceedings for unexplained wealth orders

(4) Proceedings are covered by this subsection if:
  (a) the proceedings are instituted while the proclamation is in force; and
  (b) the proceedings are for the making of an *unexplained wealth order (including a *preliminary unexplained wealth order) in relation to a *suspect; and
  (c) the application for the order states that an *authorised officer suspects that the whole or any part of the suspect's *wealth was derived from a *relevant offence of a *participating State.

Proceedings for other orders

(5) Proceedings are covered by this subsection if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the proceedings are instituted while the proclamation is in force; and

(b) the proceedings are for the making of an order that relates to:

(i) a *restraining order made in proceedings covered by subsection (3); or

(ii) an *unexplained wealth order (including a *preliminary unexplained wealth order) made in proceedings covered by subsection (4).

14H Effect of rollback by self-governing Territories on unexplained wealth proceedings

When this section applies

(1) This section applies if:

(a) a law (the ***disapplying law***) of a *self-governing Territory is made for the purposes of this section; and

(b) the law declares that an *express amendment of this Act (other than this Subdivision) is not to apply to proceedings covered by subsection (3), (4) or (5); and

(c) the disapplying law comes into force in the period of 6 months beginning on the day the amendment is enacted.

Application of this Act to proceedings

(2) This Act applies to the proceedings as if the amendment had not been enacted.

Proceedings for restraining orders

(3) Proceedings are covered by this subsection if:

(a) the proceedings are instituted while the disapplying law is in force; and

(b) the proceedings are for the making of a *restraining order under section 20A in relation to a *suspect; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) the affidavit supporting the application for the order states that an *authorised officer suspects either or both of the following:

(i) that the suspect has committed a *Territory offence;

(ii) that the whole or any part of the suspect's *wealth was derived from a Territory offence.

Proceedings for unexplained wealth orders

(4) Proceedings are covered by this subsection if:

(a) the proceedings are instituted while the disapplying law is in force; and

(b) the proceedings are for the making of an *unexplained wealth order (including a *preliminary unexplained wealth order) in relation to a *suspect; and

(c) the application for the order states that an *authorised officer suspects that the whole or any part of the suspect's *wealth was derived from a *Territory offence.

Proceedings for other orders

(5) Proceedings are covered by this subsection if:

(a) the proceedings are instituted while the disapplying law is in force; and

(b) the proceedings are for the making of an order that relates to:

(i) a *restraining order that has been made in proceedings covered by subsection (3); or

(ii) an *unexplained wealth order (including a *preliminary unexplained wealth order) that has been made in proceedings covered by subsection (4).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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14J Effect of rollback by participating States on action taken under State reference information gathering provisions

When this section applies

(1) This section applies if:

(a) a proclamation is made under the *referral Act or *adoption Act of a *participating State for the purposes of this section; and

(b) the proclamation declares that an *express amendment of this Act (other than this Subdivision) is not to apply to:

(i) an application covered by subsection (3); or

(ii) an order made as a result of an application covered by subsection (3); or

(iii) a notice covered by subsection (4); and

(c) the proclamation comes into force in the period of 6 months beginning on the day the amendment is enacted.

Application of this Act to the application, order or notice

(2) This Act applies to the application, order or notice as if the amendment had not been enacted.

Applications for production orders

(3) This subsection covers an application if:

(a) the application is made while the proclamation is in force; and

(b) the application is for the making of a *production order under clause 1 of Schedule 1; and

(c) the application is made by an *authorised State/Territory officer of the State.

Notices to financial institutions

(4) This subsection covers a notice if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the notice is given while the proclamation is in force; and
(b) the notice is given to a *financial institution under clause 12 of Schedule 1; and
(c) the notice is given by an official of the State specified in subclause 12(3) of Schedule 1.

14K Effect of rollback by self-governing Territories on action taken under State reference information gathering provisions

When this section applies

(1) This section applies if:
(a) a law (the ***disapplying law***) of a *self-governing Territory is made for the purposes of this section; and
(b) the disapplying law declares that an *express amendment of this Act (other than this Subdivision) is not to apply to:
(i) an application covered by subsection (3); or
(ii) an order made as a result of an application covered by subsection (3); or
(iii) a notice covered by subsection (4); and
(c) the disapplying law comes into force in the period of 6 months beginning on the day the amendment is enacted.

Application of this Act to the application, order or notice

(2) This Act applies to the application, order or notice as if the amendment had not been enacted.

Applications for production orders

(3) This subsection covers an application if:
(a) the application is made while the disapplying law is in force; and
(b) the application is for the making of a *production order under clause 1 of Schedule 1; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) the application is made by an *authorised State/Territory officer of the Territory.

Notices to financial institutions

(4) This subsection covers a notice if:
(a) the notice is given while the disapplying law is in force; and
(b) the notice is given to a *financial institution under clause 12 of Schedule 1; and
(c) the notice is given by an official of the Territory specified in subclause 12(3) of Schedule 1.

Subdivision C—Interaction of the national unexplained wealth provisions and orders with State and Territory laws and orders

14L Concurrent operation of State and Territory laws with national unexplained wealth provisions

Concurrent operation of laws

(1) The *national unexplained wealth provisions do not exclude or limit the operation of a law of a State or Territory (including a *special confiscation law) to the extent that the law is capable of operating concurrently with those provisions.

(2) A *corresponding law of a State or Territory is a ***special confiscation law*** while the State is a *participating State or the Territory is a *self-governing Territory.

(3) Without limiting subsection (1), the *national unexplained wealth provisions do not exclude or limit the concurrent operation of a *special confiscation law merely because:
(a) that law, or an order made under that law:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) prevents or restricts a person from disposing of, or dealing with, property (for example, by way of a restraining order made under that law); or

(ii) confiscates or forfeits property of a person (for example, by way of a forfeiture order made under that law); or

(iii) requires the person to pay an amount (for example, by way of an unexplained wealth order made under that law); or

(iv) deals with a matter prescribed by the regulations; and

(b) the national unexplained wealth provisions, or an order made under those provisions, also:

(i) prevent or restrict the person from disposing of, or dealing with, the property (for example, by way of a restraining order under section 20A); or

(ii) require the person to pay an amount (for example, by way of an *unexplained wealth order); or

(iii) deal with a matter prescribed by the regulations.

(4) Subsection (3) applies even if the *special confiscation law, or order made under that law, does any one or more of the following:

(a) prevents or restricts a person from disposing of, or dealing with, property in circumstances in which a *restraining order under section 20A could not be obtained to prevent or restrict such disposal or dealing;

(b) prevents or restricts, in particular circumstances, disposal of, or dealing with, more or less property than could be covered by a restraining order under section 20A in those circumstances;

(c) prevents or restricts disposal of, or dealing with, property that is or could be excluded from a restraining order under section 20A;

(d) confiscates or forfeits, in particular circumstances, property of a greater or lesser value than the *unexplained wealth amount of a person under an *unexplained wealth order that is or could be made in those circumstances;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) requires payment of an amount that is greater or lesser than the amount that is or could be payable under an unexplained wealth order;

(f) deals with a matter prescribed by the regulations.

This section does not affect section 14A

(5) This section does not by implication affect section 14A (which deals with the concurrent operation of this Act, except the *national unexplained wealth provisions, and laws of States and Territories).

Application of this section

(6) This section applies in relation to the operation of the *national unexplained wealth provisions and a law of a *participating State or *self-governing Territory in the period referred to in subsection (7), including in relation to:

(a) orders that are made under a *special confiscation law in that period in relation to proceedings that are instituted under the special confiscation law before or in that period; and

(b) orders that are made under a special confiscation law before that period and that are in force at any time in that period; and

(c) orders that are made under the national unexplained wealth provisions in that period in relation to proceedings that are instituted under the national unexplained wealth provisions before or in that period.

(7) For the purposes of subsection (6), the period is as follows:

(a) for a *participating State that has a *referral Act—the period starts at the commencement of this section and ends only if the State ceases to be a participating State, in which case, the period ends at the time the State so ceases;

(b) for a participating State that has an *adoption Act—the period starts at the commencement of the State's adoption Act and ends only if the State ceases to be a participating

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State, in which case, the period ends at the time the State so ceases;

(c) for a *self-governing Territory—the period starts at the commencement of this section and does not end.

Subdivision D—Other matters

14M Information gathering by participating States and self-governing Territories

Schedule 1 has effect.

14N Transitional, application and saving provisions relating to the national cooperative scheme on unexplained wealth

Schedule 2 has effect.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Chapter 2—The confiscation scheme

Part 2-1A—Freezing orders

15A Simplified outline of this Part

A freezing order can be made against an account with a financial institution if:

(a) there are grounds to suspect the account balance reflects proceeds or an instrument of certain offences; and

(b) a magistrate is satisfied that, unless the order is made, there is a risk that the balance of the account will be reduced so that a person will not be deprived of all or some of the proceeds or instrument.

Division 1—Making freezing orders

15B Making freezing orders

(1) A magistrate must order that a *financial institution not allow a withdrawal from an *account with the institution, except in the manner and circumstances specified in the order, if:

(a) an *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 applies for the order in accordance with Division 2; and

(b) there are reasonable grounds to suspect that the balance of the account:

(i) is *proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Commonwealth concern (whether or not the identity of the person who committed the offence is known); or

(ii) is wholly or partly an *instrument of a *serious offence; and

(c) the magistrate is satisfied that, unless an order is made under this section, there is a risk that the balance of the account will be reduced so that a person will not be deprived of all or some of such proceeds or such an instrument.

Note 1: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and the Immigration and Border Protection Department.

Note 2: The balance of the account may be proceeds of an offence even though the balance is only partly derived from the offence: see section 329.

(2) An order made under subsection (1) covers the balance of the *account from time to time.

Order need not be based on commission of particular offence

(3) The reasonable grounds referred to in paragraph (1)(b), and the satisfaction referred to in paragraph (1)(c), need not be based on a finding as to the commission of a particular offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—How freezing orders are obtained

15C Affidavit supporting application made in person

If an *authorised officer applies in person to a magistrate for a *freezing order relating to an *account with a *financial institution, the application must be supported by an affidavit of an authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338:

(a) setting out sufficient information to identify the account (for example, the account number); and

(b) identifying the financial institution; and

(c) setting out the grounds to suspect that the balance of the account:

(i) is *proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(ii) is wholly or partly an *instrument of a *serious offence; and

(d) setting out the grounds on which a person could be satisfied that, unless the order is made, there is a risk that the balance of the account will be reduced so that a person will not be deprived of all or some of such proceeds or of such an instrument.

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and the Immigration and Border Protection Department.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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15D Applying for freezing orders by telephone or other electronic means

(1) An *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 may apply to a magistrate for a *freezing order by telephone, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effectiveness of the order.

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and the Immigration and Border Protection Department.

(2) An application under subsection (1):

(a) must include all information that would be required in an ordinary application for a *freezing order and supporting affidavit; and

(b) if necessary, may be made before the affidavit is sworn.

(3) The magistrate may require:

(a) communication by voice to the extent that it is practicable in the circumstances; and

(b) any further information.

15E Making order by telephone etc.

(1) The magistrate may complete and sign the same form of *freezing order that would be made under section 15B if satisfied that:

(a) a freezing order should be issued urgently; or

(b) the delay that would occur if an application were made in person would frustrate the effectiveness of the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) If the magistrate makes the *freezing order, he or she must inform the applicant, by telephone, fax or other electronic means, of the terms of the order and the day on which and the time at which it was signed.

(3) The applicant must then:
  (a) complete a form of *freezing order in terms substantially corresponding to those given by the magistrate; and
  (b) state on the form:
    (i) the name of the magistrate; and
    (ii) the day on which the order was signed; and
    (iii) the time at which the order was signed.

(4) The applicant must give the magistrate the form of *freezing order completed by the applicant by the end of:
  (a) the second *working day after the magistrate makes the order; or
  (b) the first working day after the magistrate makes the order, if it is served on the *financial institution concerned before the first working day after the magistrate makes the order.

(5) If, before the magistrate made the *freezing order, the applicant did not give the magistrate an affidavit supporting the application and meeting the description in section 15C, the applicant must do so by the time by which the applicant must give the magistrate the form of freezing order completed by the applicant.

(6) If the applicant does not comply with subsection (5), the *freezing order is taken never to have had effect.

(7) The magistrate must attach the form of *freezing order completed by the magistrate to the documents provided under subsection (4) and (if relevant) subsection (5).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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15F Unsigned freezing orders in court proceedings

If:

(a) it is material, in any proceedings, for a court to be satisfied that a *freezing order applied for under section 15D was duly made; and

(b) the form of freezing order signed by the magistrate is not produced in evidence;

the court must assume that the order was not duly made unless the contrary is proved.

15FA Prohibition of publication of evidence—proceedings for freezing orders

(1) If an *authorised officer applies to a magistrate for a *freezing order in accordance with this Division, the magistrate may make an order under subsection (2).

(2) If it appears to the magistrate to be necessary in order to prevent prejudice to the administration of justice, the magistrate may make an order prohibiting or restricting the publication of all or any of the following matters:

(a) if the application is made under section 15C (in person)—the matters referred to in that section that are contained in an affidavit made in support of the application;

(b) if the application is made under section 15D (by telephone or other electronic means)—the matters referred to in paragraph 15D(2)(a) that are contained, or that are to be contained, in an affidavit made in support of the application.

(3) The magistrate may make an order under subsection (2) at any time after the application is made and before it is determined.

(4) The power conferred by subsection (2) is in addition to, and is not taken to derogate from, any other power of the magistrate.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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15G Offence for making false statements in applications

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, an application for a *freezing order.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

15H Offences relating to orders made under section 15E

Offence for stating incorrect names in telephone orders

(1) A person commits an offence if:

(a) the person states a name of a magistrate in a document; and

(b) the document purports to be a form of *freezing order under section 15E; and

(c) the name is not the name of the magistrate who made the order.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Offence for unauthorised form of order

(2) A person commits an offence if:

(a) the person states a matter in a form of *freezing order under section 15E; and

(b) the matter departs in a material particular from the order made by the magistrate.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Offence for service of unauthorised form of order

(3) A person commits an offence if:

(a) the person presents a document to a person; and

(b) the document purports to be a form of *freezing order under section 15E; and

(c) the document:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms given by the magistrate under that section.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Offence for giving form of order different from that served

(4) A person commits an offence if:

(a) the person gives a magistrate a form of *freezing order under section 15E relating to a *financial institution; and

(b) the person does so after presenting to the financial institution a document purporting to be a form of the freezing order; and

(c) the form given to the magistrate is not in the same form as the document presented to the financial institution.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Giving effect to freezing orders

15J Service of freezing order etc. on financial institution and account-holder

(1) If a magistrate makes a *freezing order relating to an *account with a *financial institution, the applicant for the order must cause the things described in subsection (2) to be given to:

(a) the financial institution; and

(b) each person in whose name the account is held.

(2) The things are as follows:

(a) a copy of the order (or of a form of the order under section 15E);

(b) a written statement of the name and contact details of the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the applicant.

Note: If the copy of the order is given to the financial institution after the end of the first working day after the order is made, the order does not come into force: see subsection 15N(1).

15K Freezing order does not prevent withdrawal to enable financial institution to meet its liabilities

A *freezing order relating to an *account with a *financial institution does not prevent the institution from allowing a withdrawal from the account to enable the institution to meet a liability imposed on the institution by or under a written law of the Commonwealth, a State or a Territory.

15L Offence for contravening freezing orders

A *financial institution commits an offence if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the institution allows a withdrawal from an *account with the institution; and
(b) there is a *freezing order relating to the account; and
(c) allowing the withdrawal contravenes the order.

Penalty: Imprisonment for 5 years or 300 penalty units or both.

15M Protection from suits etc. for those complying with orders

No action, suit or proceeding lies against:
(a) a *financial institution; or
(b) an *officer or *agent of the institution acting in the course of that person's employment or agency;

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

Note: This section does not affect any action that may lie against anyone else for the making or operation of a freezing order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Duration of freezing orders

15N When a freezing order is in force

(1) A *freezing order relating to an *account with a *financial institution comes into force when a copy of the order (or of a form of the order under section 15E) is given to the institution. However, the order does not come into force if the copy is given to the institution after the end of the first *working day after the order is made.

(2) The *freezing order remains in force until:
  (a) the end of the period specified in the order (as affected by section 15P if relevant) from when the copy of the order was given to the institution; or
  (b) if, before the end of that period, a court makes a decision on an application for a *restraining order to cover the *account—the time the court makes that decision.

(3) The *freezing order, as originally made, must not specify a period of more than 3 *working days.

15P Order extending a freezing order

(1) A magistrate may make an order extending the period specified in a *freezing order made in relation to an *account with a *financial institution if:
  (a) an *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 applies for the extension; and
  (b) the magistrate is satisfied that an application has been made to a court (but not decided by the court) for a *restraining order to cover the account (whether or not the restraining order is also to cover other property).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and the Immigration and Border Protection Department.

(2) The extension may be for:

(a) a specified number of *working days; or

(b) the period ending when the court decides the application for the *restraining order.

(3) The extension does not have effect unless a copy of the order for the extension is given to the *financial institution before the time the *freezing order would cease to be in force apart from the extension.

(4) The following provisions apply in relation to an order extending a *freezing order in a way corresponding to the way in which they apply in relation to a freezing order:

(a) Division 2 (except paragraphs 15C(c) and (d));

(b) section 15J (except the note to that section).

(5) Division 2 applies because of subsection (4) as if:

(a) section 15C also required that an affidavit supporting an application:

(i) identify the *freezing order; and

(ii) state that an application has been made for a *restraining order to cover the *account; and

(b) the reference in subsection 15E(1) to section 15B were a reference to subsection (1) of this section.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—Varying scope of freezing orders

15Q Magistrate may vary freezing order to allow withdrawal to meet reasonable expenses

(1) A magistrate may vary a *freezing order relating to an *account with a *financial institution so that the institution may allow a withdrawal from the account to meet one or more of the following relating to a person in whose name the account is held:

(a) the reasonable living expenses of the person;

(b) the reasonable living expenses of any of the *dependants of the person;

(c) the reasonable business expenses of the person;

(d) a specified debt incurred in good faith by the person.

(2) The magistrate may vary the *freezing order only if:

(a) a person in whose name the *account is held has applied for the variation; and

(b) the person has given written notice of the application and the grounds for the application to the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the *authorised officer who applied for the freezing order; and

(c) the magistrate is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with:

(i) proceedings under this Act; or

(ii) proceedings for an offence against a law of the Commonwealth, a State or a Territory; and

(d) the magistrate is satisfied that the person cannot meet the expense or debt out of property that is not covered by:

(i) a freezing order; or

(ii) a *restraining order; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(iii) an *interstate restraining order; or

(iv) a *foreign restraining order that is registered under the *Mutual Assistance Act.

(3) The variation does not take effect until written notice of it is given to the *financial institution.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 6—Revoking freezing orders

15R Application to revoke a freezing order

(1) A person may apply to a magistrate to revoke a *freezing order.

(2) The applicant for the revocation must give written notice of the application and the grounds on which the revocation is sought to the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the *authorised officer who applied for the *freezing order.

(3) One or more of the following may adduce additional material to the magistrate relating to the application to revoke the *freezing order:

(a) the *authorised officer who applied for the freezing order;

(b) the authorised officer whose affidavit supported the application for the freezing order;

(c) another authorised officer described in the paragraph of the definition of ***authorised officer*** in section 338 that describes the authorised officer mentioned in paragraph (a) or (b) of this subsection.

(4) The magistrate may revoke the *freezing order if satisfied that it is in the interests of justice to do so.

15S Notice of revocation of a freezing order

(1) If a *freezing order relating to an *account with a *financial institution is revoked under section 15R, an *authorised officer (the ***notifying officer***) described in the paragraph of the definition of ***authorised officer*** in section 338 that describes the authorised officer who applied for the freezing order must cause written notice of the revocation to be given to:

(a) the financial institution; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) each person in whose name the account is held.

(2) However, the notifying officer need not give notice to the applicant for the revocation.

(3) Subsection (1) does not require more than one *authorised officer to cause notice of the revocation to be given.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2-1—Restraining orders

16 Simplified outline of this Part

Restraining orders can be made against property, in relation to certain offences, on grounds that relate to possible forfeiture or confiscation orders relating to those offences. (There is not always a requirement that a person has been convicted of such an offence.)

Division 1—Making restraining orders

17 Restraining orders—people convicted of or charged with indictable offences

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) a *proceeds of crime authority applies for the order; and

(d) a person has been convicted of, or has been charged with, an *indictable offence, or it is proposed that he or she be charged with an indictable offence; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) (unless there are no such requirements) the court is satisfied that the *authorised officer who made the affidavit holds the

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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suspicion or suspicions stated in the affidavit on reasonable grounds.

Property that a restraining order may cover

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:

(a) all or specified *suspect;

(aa) all or specified *bankruptcy property of the suspect;

(b) all property of the suspect other than specified property;

(ba) all bankruptcy property of the suspect other than specified bankruptcy property;

(c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect;

(d) specified property of another person (whether or not that other person's identity is known) that is *proceeds of the offence or an *instrument of the offence.

Affidavit requirements

(3) The application for the order must be supported by an affidavit of an *authorised officer stating:

(a) if the *suspect has not been convicted of an indictable offence—that the authorised officer suspects that the suspect committed the offence; and

(b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that:

(i) the property is subject to the *effective control of the suspect; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) the property is *proceeds of the offence or an *instrument of the offence.

The affidavit must include the grounds on which the *authorised officer holds those suspicions.

Refusal to make a restraining order

(4) Despite subsection (1), the court may refuse to make a *restraining order in relation to an *indictable offence that is not a *serious offence if the court is satisfied that it is not in the public interest to make the order.

Note: A court can also refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

Risk of property being disposed of etc.

(5) The court must make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

Later acquisitions of property

(6) The court may specify that a *restraining order covers property that is acquired by the *suspect after the court makes the order. Otherwise, no property that is acquired after a court makes a restraining order is covered by the order.

18 Restraining orders—people suspected of committing serious offences

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) a *proceeds of crime authority applies for the order; and

(d) there are reasonable grounds to suspect that a person has committed a *serious offence; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds.

Note: A court can refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

Property that a restraining order may cover

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:

(a) all or specified property of the *suspect;

(aa) all or specified *bankruptcy property of the suspect;

(b) all property of the suspect other than specified property;

(ba) all bankruptcy property of the suspect other than specified bankruptcy property;

(c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect;

(d) specified property of another person (whether or not that other person's identity is known) that is:

(i) in any case—*proceeds of the offence; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) if the offence to which the order relates is a *serious offence—an *instrument of the offence.

Affidavit requirements

(3) The application for the order must be supported by an affidavit of an *authorised officer stating:

(a) that the authorised officer suspects that the *suspect committed the offence; and

(b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that:

(i) the property is subject to the *effective control of the suspect; or

(ii) in any case—the property is *proceeds of the offence; or

(iii) if the offence to which the order relates is a *serious offence—the property is an *instrument of the offence.

The affidavit must include the grounds on which the *authorised officer holds those suspicions.

Restraining order need not be based on commission of a particular offence

(4) The reasonable grounds referred to in paragraph (1)(d) need not be based on a finding as to the commission of a particular *serious offence.

Risk of property being disposed of etc.

(5) The court must make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

Later acquisitions of property

(6) The court may specify that a *restraining order covers property that is acquired by the *suspect after the court makes the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Otherwise, no property that is acquired after a court makes a restraining order is covered by the order.

19 Restraining orders—property suspected of being proceeds of indictable offences etc.

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) a *proceeds of crime authority applies for the order; and

(d) there are reasonable grounds to suspect that the property is:

(i) the *proceeds of a *terrorism offence or any other *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern (whether or not the identity of the person who committed the offence is known); or

(ii) an *instrument of a *serious offence; and

(e) the application for the order is supported by an affidavit of an *authorised officer stating that the authorised officer suspects that:

(i) in any case—the property is proceeds of the offence; or

(ii) if the offence to which the order relates is a serious offence—the property is an *instrument of the offence;

and including the grounds on which the authorised officer holds the suspicion; and

(f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion stated in the affidavit on reasonable grounds.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Property that a restraining order may cover

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is:

(a) in any case—*proceeds of the offence; or

(b) if the offence to which the order relates is a *serious offence—an *instrument of the offence.

Refusal to make a restraining order

(3) Despite subsection (1), the court may refuse to make a *restraining order in relation to an *indictable offence that is not a *serious offence if the court is satisfied that it is not in the public interest to make the order.

Note: A court can also refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

Restraining order need not be based on commission of a particular offence

(4) The reasonable grounds referred to in paragraph (1)(d) need not be based on a finding as to the commission of a particular offence.

Risk of property being disposed of etc.

(5) The court must make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

20 Restraining orders—people suspected of deriving literary proceeds from indictable offences etc.

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) a *proceeds of crime authority applies for the order; and

(d) there are reasonable grounds to suspect that a person has committed an *indictable offence or a *foreign indictable offence, and that the person has derived *literary proceeds in relation to the offence; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) (unless there are no such requirements) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds.

Property that a restraining order may cover

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:

(a) all or specified property of the *suspect;

(aa) all or specified *bankruptcy property of the suspect;

(b) all property of the suspect other than specified property;

(ba) all bankruptcy property of the suspect other than specified bankruptcy property;

(c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Affidavit requirements

(3) The application for the order must be supported by an affidavit of an *authorised officer stating:

(a) if the *suspect has not been convicted of the offence—that the authorised officer suspects that the suspect committed the offence; and

(c) that the authorised officer suspects that the suspect derived *literary proceeds in relation to the offence; and

(d) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that the property is subject to the *effective control of the suspect.

The affidavit must include the grounds on which the *authorised officer holds those suspicions.

Refusal to make a restraining order

(4) Despite subsection (1), the court may refuse to make a *restraining order in relation to an *indictable offence that is not a *serious offence if the court is satisfied that it is not in the public interest to make the order.

Note: A court can also refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

Restraining order need not be based on commission of a particular offence

(5) The reasonable grounds referred to in paragraph (1)(d) need not be based on a finding as to the commission of a particular *indictable offence or *foreign indictable offence (as the case requires).

Risk of property being disposed of etc.

(6) The court must make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Later acquisitions of property

(7) The court may specify that a *restraining order covers property that is acquired by the *suspect after the court makes the order. Otherwise, no property that is acquired after a court makes a restraining order is covered by the order.

20A Restraining orders—unexplained wealth

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) a *proceeds of crime authority applies for the order; and

(d) there are reasonable grounds to suspect that a person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and

(g) there are reasonable grounds to suspect either or both of the following:

(i) that the person has committed an offence against a law of the Commonwealth, a *foreign indictable offence, a *relevant offence of a *participating State, a *State offence that has a federal aspect or a *Territory offence;

(ii) that the whole or any part of the person's wealth was derived or realised, directly or indirectly, from an

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offence against a law of the Commonwealth, a foreign indictable offence, a relevant offence of a participating State, a State offence that has a federal aspect or a Territory offence.

Property that a restraining order may cover

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:

(a) all or specified property of the *suspect;

(b) all or specified *bankruptcy property of the suspect;

(c) all property of the suspect other than specified property;

(d) all bankruptcy property of the suspect other than specified bankruptcy property;

(e) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect.

Affidavit requirements

(3) The application for the order must be supported by an affidavit of an *authorised officer stating:

(a) that the authorised officer suspects that the *total wealth of the *suspect exceeds the value of the suspect's *wealth that was *lawfully acquired; and

(b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the *suspect—that the authorised officer suspects that the property is subject to the *effective control of the suspect; and

(c) that the authorised officer suspects either or both of the following:

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(i) that the suspect has committed an offence against a law of the Commonwealth, a *foreign indictable offence, a *relevant offence of a *participating State, a *State offence that has a federal aspect or a *Territory offence;

(ii) that the whole or any part of the suspect's wealth was derived or realised, directly or indirectly, from an offence against a law of the Commonwealth, a foreign indictable offence, a relevant offence of a participating State, a State offence that has a federal aspect or a Territory offence.

The affidavit must include the grounds on which the authorised officer holds those suspicions.

Refusal to make a restraining order

(4) Despite subsection (1), the court may refuse to make a *restraining order if the court is satisfied that:

(a) there are not reasonable grounds to suspect that the person's *total wealth exceeds by $100,000 or more the value of the person's *wealth that was *lawfully acquired; or

(b) it is not in the public interest to make the order.

Note: A court can also refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

(4A) If the court refuses to make a *restraining order under this section, it may make any order as to costs it considers appropriate, including costs on an indemnity basis.

Risk of property being disposed of etc.

(5) The court must make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

Later acquisitions of property

(6) The court may specify that a *restraining order covers property that is acquired by the *suspect after the court makes the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Otherwise, no property that is acquired after a court makes a restraining order is covered by the order.

21 Refusal to make an order for failure to give undertaking

(1) The court may refuse to make a *restraining order if the Commonwealth refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the order.

(2) The *responsible authority may give such an undertaking on behalf of the Commonwealth.

22 Restraining orders must only relate to one suspect

(1) A *restraining order must only relate to one *suspect.

Note: A restraining order might not relate to any suspect if the person who is suspected of committing the offence is not known and the restraining order only restrains proceeds of the offence. The restraining order may also cover the property of one or more other persons who are not the suspect.

(2) A *restraining order may relate to more than one offence in relation to that *suspect.

23 Conditions on restraining orders

A *restraining order may be made subject to conditions.

24 Allowance for expenses

(1) The court may allow any one or more of the following to be met out of property, or a specified part of property, covered by a *restraining order:

(a) the reasonable living expenses of the person whose property is restrained;

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(b) the reasonable living expenses of any of the *dependants of that person;
(c) the reasonable business expenses of that person;
(d) a specified debt incurred in good faith by that person.

(2) The court may only make an order under subsection (1) if:
(a) the person whose property is restrained has applied for the order; and
(b) the person has notified the *responsible authority in writing of the application and the grounds for the application; and
(c) the person has disclosed all of his or her *interests in property, and his or her liabilities, in a statement on oath that has been filed in the court; and
(ca) the court is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with:
(i) proceedings under this Act; or
(ii) proceedings for an offence against a law of the Commonwealth, a State or a Territory; and
(d) the court is satisfied that the person cannot meet the expense or debt out of property that is not covered by:
(i) a *restraining order; or
(ii) an *interstate restraining order; or
(iii) a *foreign restraining order that is registered under the *Mutual Assistance Act.

(3) Property that is covered by:
(a) a *restraining order; or
(b) an *interstate restraining order; or
(c) a *foreign restraining order that is registered under the *Mutual Assistance Act;
is taken, for the purposes of paragraph (2)(d), not to be covered by the order if it would not be reasonably practicable for the *Official Trustee to take custody and control of the property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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24A Excluding property from or revoking restraining orders in certain cases when expenses are not allowed

(1) If:

(a) because of the operation of subsection 24(3), property that is covered by a *restraining order is taken, for the purposes of paragraph 24(2)(d), not to be covered by the order; and

(b) as a result, and for no other reason, the court refuses an application to make an order under subsection 24(1);

the court may:

(c) exclude the property from the restraining order; or

(d) if the property is the only property covered by the restraining order—revoke the restraining order.

(2) The court must not exclude the property or revoke the order unless the court is satisfied that the property is needed to meet any one or more of the following:

(a) the reasonable living expenses of the person whose property is restrained;

(b) the reasonable living expenses of any of the *dependants of that person;

(c) the reasonable business expenses of that person;

(d) a specified debt incurred in good faith by that person.

(3) If the court excludes the property from the *restraining order, the *responsible authority must give written notice of the exclusion to:

(a) the owner of the property (if the owner is known); and

(b) any other person the authority reasonably believes may have an *interest in the property.

However, the authority need not give notice to the applicant for the order under subsection 24(1).

(4) If the court revokes the *restraining order, the *responsible authority must give written notice of the revocation to:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the owner of any property covered by the restraining order (if the owner is known); and

(b) any other person the authority reasonably believes may have an *interest in the property.

However, the authority need not give notice to the applicant for the order under subsection 24(1).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—How restraining orders are obtained

25 Proceeds of crime authority may apply for a restraining order

A *proceeds of crime authority may apply for a *restraining order.

26 Notice of application

(1) Subject to subsection (4), the *responsible authority must:
  (a) give written notice of an application for a *restraining order covering property to the owner of the property (if the owner is known); and
  (b) include with the notice a copy of the application and any affidavit supporting the application.

(2) Subject to subsection (4), the *responsible authority must also:
  (a) give written notice of an application for a *restraining order covering property to any other person the authority reasonably believes may have an *interest in the property; and
  (b) include with the notice:
    (i) a copy of the application; and
    (ii) a further notice that the person may request that the authority give the person a copy of any affidavit supporting the application.

  The authority must comply with any such request as soon as practicable.

(3) The court must not (unless subsection (4) applies) hear the application unless it is satisfied that the owner of the property to which the application relates has received reasonable notice of the application.

(4) The court must consider the application without notice having been given if the *responsible authority requests the court to do so.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) The court may, at any time before finally determining the application, direct the *responsible authority to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

(6) A person who claims an *interest in property may appear and adduce evidence at the hearing of the application.

27 Proceeds of crime authority may choose under which section it applies for a restraining order

To avoid doubt, the fact that a *proceeds of crime authority may apply for a *restraining order under a section of Division 1 against property in relation to an offence does not prevent a proceeds of crime authority from applying for a *restraining order under a different section of Division 1 against that property in relation to that offence.

28 Prejudice to investigations

A witness who is giving evidence relating to an application for a *restraining order is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

28A Prohibition of publication of evidence—proceedings for restraining orders

(1) If a *proceeds of crime authority applies to a court for a *restraining order, the court may make an order under subsection (2).

(2) If it appears to the court to be necessary in order to prevent prejudice to the administration of justice, the court may make an order prohibiting or restricting the publication of all or any of the

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matters referred to in the following provisions (whichever is applicable) that are contained in an affidavit made in support of the application:

(a) subsection 17(3);
(b) subsection 18(3);
(c) paragraph 19(1)(e);
(d) subsection 20(3);
(e) subsection 20A(3).

(3) The court may make an order under subsection (2) at any time after the application is made and before it is determined.

(4) The power conferred by subsection (2) is in addition to, and is not taken to derogate from, any other power of the court.

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Division 3—Excluding property from restraining orders

Note: In addition to this Division, section 44 provides for property to be excluded from a restraining order on the giving of satisfactory security.

29 Excluding property from certain restraining orders

(1) The court to which an application for a *restraining order under section 17, 18 or 19 was made must, when the order is made or at a later time, exclude a specified *interest in property from the order if:

(a) an application is made under section 30 or 31; and

(b) the court is satisfied that the relevant reason under subsection (2) or (3) for excluding the interest from the order exists.

Note: Section 32 may prevent the court from hearing the application until the responsible authority has had a reasonable opportunity to conduct an examination of the applicant.

(2) The reasons for excluding a specified *interest in property from a *restraining order are:

(a) for a restraining order under section 17 if the offence, or any of the offences, to which the order relates is a *serious offence—the interest is neither *proceeds nor an *instrument of *unlawful activity; or

(b) for a restraining order under section 17 if paragraph (a) does not apply—the interest is neither proceeds nor an instrument of the offence, or any offence, to which the order relates; or

(c) for a restraining order under section 18—the interest is neither:

(i) in any case—proceeds of unlawful activity; nor

(ii) if an offence to which the order relates is a serious offence—an *instrument of any serious offence; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) for a restraining order under section 19—the interest is neither:

(i) in any case—proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; nor

(ii) if an offence to which the order relates is a serious offence—an *instrument of any serious offence.

Note: One of the circumstances in which property ceases to be proceeds of an offence or unlawful activity involves acquisition of the property by an innocent third party for sufficient consideration: see paragraph 330(4)(a).

(3) If the offence, or each offence, to which a *restraining order relates is a *serious offence that is an offence against section 15, 24, 29 or 31 of the *Financial Transaction Reports Act 1988* or section 53, 59, 136, 137, 139, 140, 141, 142 or 143 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, a further reason for excluding a specified *interest in property from the order is that each of the following requirements is met:

(a) there are no reasonable grounds to suspect that the interest is *proceeds of the offence, or any of the offences;

(b) there is a *suspect in relation to the order, but he or she has not been convicted of, or charged with, the offence, or any of the offences;

(c) the conduct in question was not for the purpose of, in preparation for, or in contemplation of, any other *indictable offence, any *State indictable offence or any *foreign indictable offence;

(d) the interest could not have been covered by a restraining order if none of the offences had been serious offences.

(4) However, the court must not exclude a specified *interest in property from a *restraining order under section 17 or 18 unless it is also satisfied that neither a *pecuniary penalty order nor a *literary proceeds order could be made against:

(a) the person who has the interest; or

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(b) if the interest is not held by the *suspect but is under his or her *effective control—the suspect.

29A Excluding property from a restraining order made under section 20A

The court to which an application for a *restraining order under section 20A was made must, when the order is made or at a later time, exclude a specified *interest in property from the order if:

(a) an application is made under section 30 or 31; and

(b) the court is satisfied that the interest is held by a person other than the *suspect and is not subject to the *effective control of the suspect.

Note: Section 32 may prevent the court from hearing the application until the responsible authority has had a reasonable opportunity to conduct examinations in relation to the restraining order.

30 Application to exclude property from a restraining order before restraining order has been made

(1) A person may apply for an order under section 29 or 29A if a *restraining order that could cover property in which the person claims an *interest has been applied for, but is yet to be made.

(2) The person must give written notice to the *responsible authority of both the application and the grounds on which the exclusion is sought.

(3) The *responsible authority may appear and adduce evidence at the hearing of the application.

(4) The *responsible authority must give the person notice of any grounds on which it proposes to contest the application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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31 Application to exclude property from a restraining order after restraining order has been made

(1) A person may apply for an order under section 29 or 29A if a *restraining order that covers property in which the person claims an *interest has been made.

(1A) An application under subsection (1):

(a) must be made to the court that made the *restraining order; and

(b) may be made at any time after the restraining order is made.

(2) However, unless the court gives leave, the person cannot apply if he or she:

(a) was notified of the application for the *restraining order, but did not appear at the hearing of that application; or

(b) appeared at the hearing of that application.

(3) The court may give the person leave to apply if the court is satisfied that:

(a) if paragraph (2)(a) applies—the person had a good reason for not appearing; or

(b) if paragraph (2)(b) applies—the person now has evidence relevant to the person's application that was not available to the person at the time of the hearing; or

(c) in either case—there are other special grounds for granting the leave.

(4) The person must give written notice to the *responsible authority of both the application and the grounds on which the exclusion is sought.

(5) The *responsible authority may appear and adduce evidence at the hearing of the application.

(6) The *responsible authority must give the person notice of any grounds on which it proposes to contest the application. However,

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the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

32 Application not to be heard unless responsible authority has had reasonable opportunity to conduct an examination

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

(a) the restraining order is in force; and

(b) the *responsible authority has not been given a reasonable opportunity to conduct *examinations in relation to the application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Giving effect to restraining orders

33 Notice of a restraining order

(1) If a court makes a *restraining order covering property that a person owns, the *responsible authority must give written notice of the order to the person.

Note: A person who was not notified of the application for a restraining order may apply to revoke the restraining order within 28 days of being notified of the order: see section 42.

(2) The *responsible authority must include a copy of the application and any affidavit supporting the application with the notice (if those documents have not already been given to the person).

(3) However, the court may order that:

(a) all or part of the application or affidavit is not to be given to the person; or

(b) the *responsible authority delay giving the notice (and the documents included with the notice) for a specified period;

if the authority requests the court to do so and the court considers that this is appropriate in order to protect the integrity of any investigation or prosecution.

(4) If the court orders the *responsible authority to delay giving the notice (and the documents included with the notice) for a specified period, the authority must give the notice as soon as practicable after the end of that period.

34 Registering restraining orders

(1) A *registration authority that keeps a register of property of a particular kind may record in the register particulars of a *restraining order covering property of that kind.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The *registration authority can only do so on the application of the *responsible authority for the *restraining order.

(3) Each person who subsequently deals with the property:
  (a) is taken not to be acting in good faith for the purposes of section 36; and
  (b) is taken to have notice of the *restraining order for the purposes of section 37.

35 Notifying registration authorities of exclusions from or variations to restraining orders

(1) If the *responsible authority for a *restraining order covering particular property has previously applied to a *registration authority under section 34 for the recording in a register of particulars of the order, the responsible authority must notify the registration authority if:
  (a) the property is no longer covered by the order because it is excluded from the order under section 29 or 29A or because the property covered by the order is varied under section 39; or
  (b) a condition to which a restraining order is subject is varied under section 39.

(2) The notice must be given within a reasonable time after the order under section 39 is made.

36 Court may set aside a disposition contravening a restraining order

(1) The *responsible authority may apply to the court to set aside a disposition or dealing with property that contravenes a *restraining order if that disposition or dealing was:
  (a) not for *sufficient consideration; or
  (b) not in favour of a person who acted in good faith.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The *responsible authority must give, to each party to the disposition or dealing, written notice of both the application and the grounds on which it seeks the setting aside of the disposition or dealing.

(3) The court may:
  (a) set aside the disposition or dealing from the day it occurred; or
  (b) set aside the disposition or dealing from the day on which the order is made and declare the rights of any persons who acquired *interests in the property on or after the day of the disposition or dealing and before the day on which the order is made.

37 Contravening restraining orders

(1) A person commits an offence if:
  (a) the person disposes of, or otherwise deals with, property; and
  (b) the person knows that, or is reckless as to the fact that, the property is covered by a *restraining order; and
  (c) the disposition or dealing contravenes the order.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person commits an offence if:
  (a) the person disposes of, or otherwise deals with, property; and
  (b) the property is covered by a *restraining order; and
  (c) the disposition or dealing contravenes the order; and
  (d) either:
    (i) particulars of the order were recorded in a register under subsection 34(1); or
    (ii) the person was given notice of the order under section 33.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) Strict liability applies to paragraphs (2)(b) and (c) and subparagraph (2)(d)(i).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—Further orders

38 Court may order Official Trustee to take custody and control of property

The court may order the *Official Trustee to take custody and control of property, or specified property, covered by a *restraining order if the court is satisfied that this is required.

Note: Part 4-1 sets out the Official Trustee's powers over the property.

39 Ancillary orders

(1) The court that made a *restraining order, or any other court that could have made the restraining order, may make any ancillary orders that the court considers appropriate 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 covered by the *restraining order;

(b) an order varying a condition to which the restraining order is subject;

(c) an order relating to an undertaking required under section 21;

(ca) an order directing the *suspect in relation to the restraining order to give a sworn statement to a specified person, within a specified period, setting out all of his or her *interests in property, and his or her liabilities;

(d) an order directing the owner or a previous owner of the property (including, if the owner or previous owner is a body corporate, a specified *director of the body corporate) to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;

(da) if the court is satisfied that there are reasonable grounds to suspect that a person (other than the owner or a previous

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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owner) has information relevant to identifying, locating or quantifying the property—an order directing the person to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;

(e) if the *Official Trustee is ordered under section 38 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; or

(ii) an order determining any question relating to the property, including a question relating to the liabilities of the owner or the exercise of powers or the performance of duties of the Official Trustee; or

(iii) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property;

(f) an order giving directions about the operation of the restraining order and any one or more of the following:

(i) a *forfeiture order that covers the same property as the restraining order;

(ii) a *pecuniary penalty order or a *literary proceeds order that relates to the same offence as the restraining order;

(g) an order requiring a person whose property is covered by a restraining order, or who has *effective control of property covered by a restraining order, to do anything necessary or convenient to bring the property within the jurisdiction.

Note 1: If there is a pecuniary penalty order that relates to the same offence as a restraining order, the court may also order the Official Trustee to pay an amount equal to the relevant pecuniary penalty out of property covered by the restraining order: see section 282.

Note 2: If there is an unexplained wealth order that relates to a restraining order under section 20A, the court may also order the Official Trustee to pay an amount equal to the unexplained wealth amount out of property covered by the restraining order: see section 282A.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The court can only make an ancillary order on the application of:
  (a) the *responsible authority; or
  (b) the owner of the property covered by the order; or
  (c) if the *Official Trustee was ordered to take custody and control of the property—the Official Trustee; or
  (d) any other person who has the leave of the court.

(3) A person who applies for an ancillary order must give written notice of the application to all other persons entitled to make such an application.

(3A) Despite subsection (3), the court must consider an application for an ancillary order without notice having been given under that subsection if:
  (a) the *responsible authority requests the court to do so; and
  (b) the *restraining order to which the application relates was considered, in accordance with subsection 26(4), without notice having been given.

(4) An ancillary order may be made:
  (a) if it is made by the court that made the *restraining order—when making the restraining order; or
  (b) in any case—at any time after the restraining order is made.

(4A) The court may, at any time before finally determining the application, direct the *responsible authority to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

(4B) If the court makes the ancillary order after a request under subsection (3A), the *responsible authority must give written notice to any person whom the authority reasonably believes may be affected by the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) An order that is ancillary to a *restraining order does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under subsection 45(4) or (5).

Note: A restraining order ceases to be in force under those subsections if a confiscation order covering the same property or relating to the same offence is satisfied.

39A Privilege against self incrimination etc. does not apply

(1) A person is not excused from giving a sworn statement under paragraph 39(1)(ca), (d) or (da) on the grounds that to do so would tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of a natural person, a sworn statement is not admissible in civil or criminal proceedings against the person who made the statement except:

(a) in criminal proceedings for giving false or misleading information; or

(b) in proceedings on an application under this Act; or

(c) in proceedings ancillary to an application under this Act; or

(d) in proceedings for enforcement of a *confiscation order.

39B Application to revoke ancillary order

(1) A person may apply to the court that made an ancillary order under section 39 to revoke the order if:

(a) the person is affected by the order; and

(b) the application for the ancillary order was heard without notice having been given under subsection 39(3) following a request under subsection 39(3A).

(2) The application must be made within 14 days after the person was notified of the ancillary order.

(3) The applicant must give written notice of the application, and the grounds on which the revocation is sought, to any person who was

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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entitled to make the application for the ancillary order (see subsection 39(2)).

(4) The effect of the ancillary order is stayed until the court determines the application.

(5) The court may revoke the ancillary order on application under subsection (1) if it considers it appropriate to do so.

(6) The court may have regard to any matter it considers appropriate in determining the application.

(7) If:

(a) the ancillary order directed a person to do a thing within a particular period; and

(b) an application is made to revoke the order under this section;

the court may, if it considers it appropriate to do so, vary the order to extend that period by a specified period.

40 Contravening ancillary orders relating to foreign property

A person commits an offence if:

(a) the court makes an order under paragraph 39(1)(g); and

(b) the person contravenes the order.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Note: An order under paragraph 39(1)(g) requires a person whose property is covered by a restraining order, or who has effective control of property covered by a restraining order, to do anything necessary or convenient to bring the property within the jurisdiction.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 6—Duration of restraining orders

41 When a restraining order is in force

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

42 Application to revoke a restraining order

(1) A person who was not notified of the application for a *restraining order may apply to the court to revoke the order.

(1A) The application must be made:

(a) within 28 days after the person is notified of the order; or

(b) if the person applies to the court, within that period of 28 days, for an extension of the time for applying for revocation—within such longer period, not exceeding 3 months, as the court allows.

(2) The applicant must give written notice to the *responsible authority and the *Official Trustee of both the application and the grounds on which the revocation is sought.

(3) However, the *restraining order remains in force until the court revokes the order.

(4) The *responsible authority may adduce additional material to the court relating to the application to revoke the *restraining order.

(5) The court may revoke the *restraining order if satisfied that:

(a) there are no grounds on which to make the order at the time of considering the application to revoke the order; or

(b) it is otherwise in the interests of justice to do so.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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43 Notice of revocation of a restraining order

If a *restraining order is revoked under section 42, the *responsible authority must give written notice of the revocation to:

(a) the owner of any property covered by the restraining order (if the owner is known); and

(b) any other person the authority reasonably believes may have an *interest in the property.

However, the authority need not give notice to the applicant for the revocation.

44 Giving security etc. to revoke etc. a restraining order

(1) A court may:

(a) revoke a *restraining order that covers a *suspect's property; or

(b) exclude specified property from such a restraining order;

if:

(c) the suspect applies to the court to revoke the order or exclude the property; and

(d) the suspect gives written notice of the application to the *responsible authority; and

(e) the suspect gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this Act.

(2) A court may:

(a) revoke a *restraining order that covers the property of a person who is not a *suspect; or

(b) exclude specified property from such a restraining order;

if:

(c) the person applies to the court to revoke the order or exclude the property; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) the person gives written notice of the application to the *responsible authority; and

(e) the person gives an undertaking concerning the person's property that is satisfactory to the court.

45 Cessation of certain restraining orders

Effect on restraining orders of withdrawal of charges, acquittals etc.

(1) A *restraining order that relates to one or more offences ceases to be in force 28 days after one of the following occurs:

(a) the charge, or all of the charges, that relate to the restraining order are withdrawn;

(b) the *suspect is acquitted of the offence, or all of the offences, with which he or she was charged;

(c) the suspect's conviction for the offence, or all of the offences, of which he or she was convicted are *quashed;

unless:

(d) there is a *confiscation order that relates to the offence; or

(e) there is an application for such a confiscation order before the court; or

(f) there is an application under:

(i) Division 6 of Part 2-2; or

(ii) Division 4 of Part 2-3; or

(iii) Division 5 of Part 2-4 or 2-5;

for confirmation of a forfeiture, or a confiscation order, that relates to the offence; or

(g) the suspect is charged with a *related offence; or

(h) a new trial is ordered in relation to the offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Restraining orders if there is no conviction etc.

(2) A *restraining order ceases to be in force if, within 28 days after the order was made:

(a) the *suspect has not been convicted of, or charged with, the offence, or at least one offence, to which the restraining order relates; and

(b) there is no *confiscation order or application for a confiscation order that relates to the offence.

Restraining orders and forfeiture orders etc.

(3) A *restraining order ceases to be in force in respect of property covered by the restraining order if:

(a) either:

(i) the court refuses an application for a *forfeiture order that would have covered the property; or

(ii) the court excludes the property from a forfeiture order; or

(iii) a forfeiture order that covers the property is discharged or ceases to have effect; or

(iv) the court excludes the property under section 94 from forfeiture under Part 2-3; and

(b) in the case of a refusal of an application for a *forfeiture order:

(i) the time for an appeal against the refusal has expired without an appeal being lodged; or

(ii) an appeal against the refusal has lapsed; or

(iii) an appeal against the refusal has been dismissed and finally disposed of; and

(c) no application for another *confiscation order relating to:

(i) an offence to which the restraining order relates; or

(ii) a *related offence;

is yet to be determined; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) no other confiscation order relating to such an offence is in force.

(4) A *restraining order ceases to be in force to the extent that property that it covers vests absolutely in the Commonwealth under Division 4 of Part 2-2 or Division 1 of Part 2-3.

Restraining orders, pecuniary penalty orders and literary proceeds orders

(5) A *restraining order that relates to one or more offences ceases to be in force in respect of property covered by the restraining order if:

(a) a *pecuniary penalty order or a *literary proceeds order relates to that offence or those offences; and

(b) one or more of the following occurs:

(i) the pecuniary penalty order or the literary proceeds order is satisfied;

(ii) the property is sold or disposed of to satisfy the pecuniary penalty order or literary proceeds order;

(iii) the pecuniary penalty order or the literary proceeds order is discharged or ceases to have effect.

Restraining orders and instruments owned by third parties

(6) Despite subsection (1), if:

(a) a *restraining order covers property of a person who is not a *suspect; and

(b) the property is an *instrument of an offence to which the order relates; and

(c) the property is not *proceeds of such an offence; and

(ca) the property is not an instrument of a *serious offence to which the order relates; and

(d) the property is not subject to the *effective control of another person who is a suspect in relation to the order;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

Restraining orders and charges relating to unexplained wealth orders

(6A) If:

(a) a *restraining order referred to in paragraph 179SA(1)(b) would otherwise cease to be in force under this section at a particular time; but

(b) a charge on the property against which the restraining order was made is created by subsection 179SA(1) before that time;

then despite anything in subsection (1), (2), (3) or (6) of this section, the restraining order does not cease to be in force until the charge ceases to have effect in respect of the property in accordance with subsection 179SA(2).

Section does not apply to unexplained wealth restraining orders

(7) To avoid doubt, this section does not apply to a *restraining order made under section 20A.

45A Cessation of restraining orders relating to unexplained wealth

Restraining orders made before application for unexplained wealth order

(1) A *restraining order made under section 20A ceases to be in force if:

(a) no application for an *unexplained wealth order had been made in relation to the *suspect to whom the restraining order relates before the restraining order was made; and

(b) no such application has been made in relation to the suspect within 28 days after the restraining order was made.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) A *restraining order made under section 20A ceases to be in force if:

(a) an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and

(b) the application is made within 28 days after the making of the restraining order; and

(c) the court refuses to make either:

(i) a *preliminary unexplained wealth order in connection with the application for the unexplained wealth order; or

(ii) the unexplained wealth order itself; and

(d) one of the following applies:

(i) the time for an appeal against the refusal has expired without an appeal being lodged;

(ii) an appeal against the refusal has lapsed;

(iii) an appeal against the refusal has been dismissed and finally disposed of.

(3) A *restraining order made under section 20A ceases to be in force if:

(a) an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and

(b) the application is made within 28 days after the making of the restraining order; and

(c) the court makes the unexplained wealth order; and

(d) either:

(i) the unexplained wealth order is complied with; or

(ii) an appeal against the unexplained wealth order has been upheld and finally disposed of.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Restraining orders made after application for unexplained wealth order

(3A) A *restraining order made under section 20A ceases to be in force if:

(a) the restraining order was made at the same time as or after an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and

(b) the court refuses to make either:

(i) a *preliminary unexplained wealth order in connection with the application for the unexplained wealth order; or

(ii) the unexplained wealth order itself; and

(c) one of the following applies:

(i) the time for an appeal against the refusal has expired without an appeal being lodged;

(ii) an appeal against the refusal has lapsed;

(iii) an appeal against the refusal has been dismissed and finally disposed of.

(3B) A *restraining order made under section 20A ceases to be in force if:

(a) the restraining order was made at the same time as or after an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and

(b) the court makes the unexplained wealth order (whether before or after the restraining order was made or applied for); and

(c) either:

(i) the unexplained wealth order is complied with; or

(ii) an appeal against the unexplained wealth order has been upheld and finally disposed of.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Court may make costs order if restraining order ceases

(4) If a *restraining order ceases under subsection (1), (2) or (3A), the court may, on application by a person with an *interest in the property covered by the restraining order, make any order as to costs it considers appropriate, including costs on an indemnity basis.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2-2—Forfeiture orders

46 Simplified outline of this Part

Forfeiture orders can be made, forfeiting property to the Commonwealth, if certain offences have been committed. (It is not always a requirement that a person has been convicted of such an offence.)

Orders are made on the application of a proceeds of crime authority (the Commissioner of the Australian Federal Police or the DPP). Other orders can be made to reduce the effect of forfeiture orders on grounds such as hardship to the person's dependants.

Note: If a person is convicted of a serious offence, forfeiture can be automatic under Part 2-3. There is no need for a forfeiture order.

Division 1—Making forfeiture orders

47 Forfeiture orders—conduct constituting serious offences

(1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:

(a) the *responsible authority for a *restraining order under section 18 that covers the property applies for an order under this subsection; and

(b) the restraining order has been in force for at least 6 months; and

(c) the court is satisfied that a person whose conduct or suspected conduct formed the basis of the restraining order engaged in conduct constituting one or more *serious offences.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: The order can be made before the end of the period of 6 months referred to in paragraph (1)(b) if it is made as a consent order: see section 316.

(2) A finding of the court for the purposes of paragraph (1)(c) need not be based on a finding as to the commission of a particular offence, and can be based on a finding that some *serious offence or other was committed.

(3) The raising of a doubt as to whether a person engaged in conduct constituting a *serious offence is not of itself sufficient to avoid a finding by the court under paragraph (1)(c).

Refusal to make a forfeiture order

(4) Despite subsection (1), the court may refuse to make an order under that subsection relating to property that the court is satisfied:
(a) is an *instrument of a *serious offence other than a *terrorism offence; and
(b) is not *proceeds of an offence;
if the court is satisfied that it is not in the public interest to make the order.

48 Forfeiture orders—convictions for indictable offences

(1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:
(a) a *proceeds of crime authority applies for the order; and
(b) a person has been convicted of one or more *indictable offences; and
(c) the court is satisfied that the property to be specified in the order is *proceeds of one or more of the offences.

(2) A court with *proceeds jurisdiction may make an order that property specified in the order is forfeited to the Commonwealth if:
(a) a *proceeds of crime authority applies for the order; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) a person has been convicted of one or more *indictable offences; and

(c) subsection (1) does not apply; and

(d) the court is satisfied that the property to be specified in the order is an *instrument of one or more of the offences.

(3) In considering whether it is appropriate to make an order under subsection (2) 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 the order; and

(b) the use that is ordinarily made, or was intended to be made, of the property to be specified in the order; and

(c) the gravity of the offence or offences concerned.

Note: Section 52 limits the court's power to make a forfeiture order if one or more of the person's convictions were due to the person absconding.

49 Forfeiture orders—property suspected of being proceeds of indictable offences etc.

(1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:

(a) the *responsible authority for a *restraining order under section 19 that covers the property applies for an order under this subsection; and

(b) the restraining order has been in force for at least 6 months; and

(c) the court is satisfied that one or more of the following applies:

(i) the property is *proceeds of one or more *indictable offences;

(ii) the property is proceeds of one or more *foreign indictable offences;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(iii) the property is proceeds of one or more *indictable offences of Commonwealth concern;

(iv) the property is an instrument of one or more *serious offences; and

(e) the court is satisfied that the authority has taken reasonable steps to identify and notify persons with an *interest in the property.

(2) A finding of the court for the purposes of paragraph (1)(c):

(a) need not be based on a finding that a particular person committed any offence; and

(b) need not be based on a finding as to the commission of a particular offence, and can be based on a finding that some offence or other of a kind referred to in paragraph (1)(c) was committed.

(3) Paragraph (1)(c) does not apply if the court is satisfied that:

(a) no application has been made under Division 3 of Part 2-1 for the property to be excluded from the *restraining order; or

(b) any such application that has been made has been withdrawn.

Refusal to make a forfeiture order

(4) Despite subsection (1), the court may refuse to make an order under that subsection relating to property that the court is satisfied:

(a) is an *instrument of a *serious offence other than a *terrorism offence; and

(b) is not *proceeds of an offence;

if the court is satisfied that it is not in the public interest to make the order.

50 Existence of other confiscation orders

The court's power to make a *forfeiture order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: There are restrictions on a proceeds of crime authority applying for forfeiture orders if previous applications for forfeiture etc. have already been made: see section 60.

51 Acquittals do not affect forfeiture orders under section 47 or 49

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *forfeiture order under section 47 or 49 in relation to the offence.

52 Making of forfeiture order if person has absconded

If, because of paragraph 331(1)(d), a person is taken to have been convicted of an *indictable offence, a court must not make a *forfeiture order relating to the person's conviction unless:

(a) the court is satisfied, on the balance of probabilities, that the person has *absconded; and

(b) either:

(i) the person has been committed for trial for the offence; or

(ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Other relevant matters when a court is considering whether to make forfeiture orders

54 Presumption in certain cases that property is an instrument of an offence

If:

(a) a *proceeds of crime authority applies for:

(i) a *forfeiture order under section 47 or 49 against particular property in relation to a person's commission of a *serious offence; or

(ii) a forfeiture order under section 48 against particular property in relation to a person's conviction of an *indictable 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 person committed 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 must presume that the property was used in, or in connection with, the commission of the offence; or

(d) in any other case—the court must not make a forfeiture order against the property unless it is satisfied that the property was used or intended to be used in, or in connection with, the commission of the offence.

55 Forfeiture orders can extend to other interests in property

(1) In specifying an *interest in property in a *forfeiture order, the court may also specify other interests in the property (regardless of whose they are) if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the amount received from disposing of the combined interests would be likely to be greater than the amount received from disposing of each of the interests separately; or

(b) disposing of the interests separately would be impracticable or significantly more difficult than disposing of the combined interests.

(2) If the court so specifies other *interests in the *forfeiture order, the court may make such ancillary orders as it thinks fit for the protection of a person having one or more of those other interests. These ancillary orders may include:

(a) an order directing the Commonwealth to pay the person a specified amount as the value of the person's interest in the property; or

(b) an order directing that specified other interests in the property be transferred to the person.

(3) In deciding whether to make an ancillary order, the court must have regard to:

(a) the nature, extent and value of the person's *interest in the property concerned; and

(b) if the court is aware that any other person claims an interest in the property—the nature, extent and value of the interest claimed; and

(c) any other matter that the court considers relevant.

(4) For the purposes of an order described in paragraph (2)(a), an amount may be specified wholly or partly by reference to a specified proportion of the difference between:

(a) the amount received from disposing of the combined interests specified in the *forfeiture order; and

(b) the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the forfeiture order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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56 Forfeiture orders must specify the value of forfeited property

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

57 Court may make orders relating to buying back forfeited property

(1) If:

(a) a court makes a *forfeiture order against property; and

(b) a person who claims to have had an *interest in the property before the forfeiture order was made has made an application under section 57A for an order under this section; and

(c) the court is satisfied that the person had the interest immediately before the forfeiture order was made; and

(d) the court is satisfied that the person is not a *suspect in relation to the forfeiture order; and

(e) in a case where the property was covered by a *restraining order when the forfeiture order was made—the court is satisfied that the person is not a suspect in relation to the restraining order; and

(f) in a case where the forfeiture order was made under section 47 or 48—the court is satisfied that, when the conduct that is the subject of the forfeiture order occurred, the person had no knowledge of the conduct; and

(g) in a case where the property was *proceeds of an offence or an *instrument of an offence—the court is satisfied that, when the property became proceeds of an offence or an instrument of an offence, the person had no knowledge of the conduct constituting the offence; and

(h) the court is satisfied that, if the interest were to be transferred to the person under section 89:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) the amount paid to the Commonwealth under paragraph 89(1)(c) would not be property that is covered by subsection (6); and

(ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 89(1)(c) would be borrowed by the person under a loan—the person's financial circumstances are such that the person will be able to repay the loan, meet the person's eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection (6); and

(i) the court is satisfied that:

(i) it would not be contrary to the public interest for the interest to be transferred to the person; and

(ii) there is no other reason why the interest should not be transferred to the person;

the court may make an order:

(j) declaring the nature, extent and value (as at the time when the order is made under this subsection) of the interest; and

(k) declaring that the interest may be excluded, under section 89, from the operation of the forfeiture order.

Note: Money can be property.

(2) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (1)(h)(ii) was made under an arrangement entered into before or after the application mentioned in paragraph (1)(b) was made.

(3) For the purposes of this section, ***loan*** includes anything that may reasonably be regarded as equivalent to a loan, and ***borrow*** has a corresponding meaning.

(4) For the purposes of this section, each of the following are ***eligible living expenses*** of the person:

(a) the person's reasonable living expenses;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the reasonable living expenses of any of the *dependants of the person;
(c) the reasonable business expenses of the person.

(5) For the purposes of this section, an ***eligible debt*** of the person is a debt incurred in good faith by the person.

(6) This subsection covers any of the following property:
(a) property that is wholly or partly derived or realised by the person, directly or indirectly, from *unlawful activity;
(b) property that is used in, or in connection with, the commission of unlawful activity;
(c) property that is intended to be used in, or in connection with, the commission of unlawful activity.

57A Applying for an order under section 57

Before a forfeiture order has been made

(1) A person may apply to a court for an order under section 57 in relation to an *interest in property if an application for a *forfeiture order that could specify property in which the person claims that interest has been made to the court, but the forfeiture order is yet to be made.

After a forfeiture order has been made

(2) A person who claims to have had an *interest in property specified in a *forfeiture order immediately before the forfeiture order was made may, at any time after the forfeiture order is made, apply to the court that made the forfeiture order for an order under section 57 in relation to the interest.

(3) However, unless the court gives leave, the person cannot apply under subsection (2) if the person:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) was notified of the application for the *forfeiture order, but did not make an application under subsection (1) before the forfeiture order was made; or

(b) appeared at the hearing of the application for the forfeiture order.

(4) The court may give the person leave to apply under subsection (2) if the court is satisfied that:

(a) if the person was notified of the application for the *forfeiture order, but did not make an application under subsection (1) before the forfeiture order was made—the person had a good reason for not making an application under subsection (1) before the forfeiture order was made; or

(b) in any case:

(i) the person now has evidence relevant to the making of the section 57 order that was not available to the person at the time the forfeiture order was made; or

(ii) there are other special grounds for granting the leave.

(5) However, the court must not hear an application under subsection (2) if:

(a) the *Official Trustee has taken any action in relation to the property under section 70; and

(b) it would not be practicable for the court to make an order in relation to the interest under section 57.

Other matters

(6) An applicant under subsection (1) or (2) must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

(7) The *responsible authority may appear and adduce evidence at the hearing of an application under subsection (1) or (2).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(8) To avoid doubt, the *responsible authority may represent the Commonwealth in proceedings relating to an application under subsection (1) or (2).

(9) The *responsible authority must give an applicant under subsection (1) or (2) notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(10) An application under subsection (1) or (2) must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

58 The court may also make supporting directions

(1) If 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.

(2) This includes, for a *forfeiture order specifying *registrable property, a direction to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—How forfeiture orders are obtained

59 Proceeds of crime authority may apply for a forfeiture order

(1) A *proceeds of crime authority may apply for a *forfeiture order.

(2) If the application relates to a person's conviction of an *indictable offence, the application must be made before the end of the period of 6 months after the *conviction day.

60 Additional application for a forfeiture order

(1) A *proceeds of crime authority cannot, unless the court gives leave, apply for a *forfeiture order under a section of Division 1 in relation to an offence if:

(a) an application has previously been made:

(i) under this Division for an order under the same section of Division 1; or

(ii) under another law of the Commonwealth (other than Division 1); or

(iii) under a law of a *non-governing Territory;

for the forfeiture or condemnation of the property in relation to the offence; and

(b) the application has been finally determined on the merits.

(2) The court must not give leave unless it is satisfied that:

(a) the property to which the new application relates was identified only after the first application was determined; or

(b) necessary evidence became available only after the first application was determined; or

(c) it is in the interests of justice to grant the leave.

(3) To avoid doubt:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) a *proceeds of crime authority may apply for a *forfeiture order under a section of Division 1 against property in relation to an offence even though an application has previously been made under a different section of Division 1 for forfeiture of that property in relation to that offence; and

(b) a proceeds of crime authority may apply for a forfeiture order against property in relation to an offence even though an application has previously been made for a *pecuniary penalty order or a *literary proceeds order in relation to that offence.

61 Notice of application

(1) The *responsible authority must give written notice of an application for a *forfeiture order to:

(a) if the order is sought relating to a person's conviction of an offence—the person; and

(b) any person who claims an *interest in property covered by the application; and

(c) any person whom the authority reasonably believes may have an interest in that property.

(2) The court hearing the application may, at any time before finally determining the application, direct the *responsible authority to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

62 Amending an application

(1) The court hearing an application for a *forfeiture order may amend the application:

(a) on application by the *responsible authority; or

(b) with the consent of the authority.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) However, the court must not amend the application to include additional property in the application unless:

(a) the court is satisfied that:

(i) the property was not reasonably capable of identification when the application was originally made; or

(ii) necessary evidence became available only after the application was originally made; or

(b) the *forfeiture order applied for is an order under section 47 or 49 and the court is satisfied that:

(i) including the additional property in the application for the order might have prejudiced the investigation of, or the prosecution of a person for, an offence; or

(ii) it is for any other reason appropriate to grant the application to amend.

(3) On applying for an amendment to include additional property in the application, the *responsible authority must give written notice of the application to amend to any person whom the authority reasonably believes may have an *interest in that additional property.

(4) If the *forfeiture order applied for is an order under section 48, any person who claims an *interest in that additional property may appear and adduce evidence at the hearing of the application to amend.

63 Court may dispense with notice requirements if person has absconded

The court to which an application for a *forfeiture order is made in relation to an offence may, on application by the *responsible authority, dispense with the requirements to give notice to a person under subsections 61(1) and 62(3) if the court is satisfied that the person has *absconded in connection with the offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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64 Procedure on application

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

(2) The court may, in determining the application, have regard to:
  (a) the transcript of any proceeding against the person for an offence that constitutes *unlawful activity; and
  (b) the evidence given in any such proceeding.

(3) The court may still make a *forfeiture order if a person entitled to be given notice of the relevant application fails to appear at the hearing of the application.

65 Applications to courts before which persons are convicted

If an application for a *forfeiture 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 relevant 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.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Effect of forfeiture orders

66 What property is forfeited and when—general rule

Property specified in a *forfeiture order vests absolutely in the Commonwealth at the time the order is made.

67 First exception—registrable property

(1) Despite section 66, if property specified in the *forfeiture order is *registrable property:

(a) that 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; and

(b) the *responsible authority has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and

(c) the Commonwealth is entitled to be registered as the owner of that property; and

(d) the *Official Trustee 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 the owner.

(2) Any action by the *responsible authority under paragraph (1)(b) is not a dealing for the purposes of subsection 69(1).

(3) The *Official Trustee's powers under paragraph (1)(d) include executing any instrument required to be executed by a person transferring an *interest in property of that kind.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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68 Second exception—if a joint owner dies before the order was made

(1) Despite section 66, if a person:

(a) was, immediately before his or her death, the joint owner of property specified in the *forfeiture order; but

(b) died before the order was made, but:

(i) after the *responsible authority applied for the order; or

(ii) while a *restraining order covering the property was in force;

that property is taken to have vested in the Commonwealth immediately before the person's death.

(2) Any such *restraining order is also taken to have continued to apply to the property as if the person had not died.

68A Third exception—property located outside Australia

(1) Despite section 66, if property specified in a *forfeiture order is property located outside *Australia:

(a) that property vests in equity in the Commonwealth; and

(b) that property only vests in the Commonwealth at law to the extent permitted under the law in force in the place where that property is located; and

(c) the *responsible authority has power, on behalf of the Commonwealth, to do anything necessary or convenient to:

(i) give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; or

(ii) arrange for the enforcement of, or give effect to, the forfeiture order.

Note: The following is an example of action by the responsible authority under subparagraph (1)(c)(ii): arranging for a request under section 32 of the *Mutual Assistance Act in relation to the enforcement of the forfeiture order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) Any action by the *responsible authority under subparagraph (1)(c)(i) is not a dealing for the purposes of subsection 69(1).

(3) Despite section 66 and subsection (1) of this section, if:

(a) property specified in a *forfeiture order is property located outside *Australia; and

(b) under the law in force in the place where that property is located, that property vests in a person;

that property vests in that person under that law.

(4) Subsection (3) does not affect any equitable interest vested in the Commonwealth by paragraph (1)(a).

69 When can the Commonwealth begin dealing with forfeited property?

(1) The Commonwealth, and persons acting on its behalf, can only dispose of, or otherwise deal with, property specified in a *forfeiture order after, and only if the order is still in force at, the later of the following times:

(a) when:

(i) if the period provided for lodging an appeal against the order has ended without such an appeal having been lodged—that period ends; or

(ii) if an appeal against the order has been lodged—the appeal lapses or is finally determined;

(b) if the order was made in relation to a person's conviction of an offence—when:

(i) if the period provided for lodging an appeal against the conviction has ended without such an appeal having been lodged—that period ends; or

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) However, such disposals and dealings may occur earlier with the leave of the court and in accordance with any directions of the court.

(3) For the purposes of paragraph (1)(b):

(a) if the person is to be taken to have been convicted of the offence because of paragraph 331(1)(b)—an appeal against the finding of the person guilty of the offence is taken to be an appeal against the conviction; and

(b) if the person is to be taken to have been convicted of the offence because of paragraph 331(1)(c)—an appeal against the person's conviction of the other offence referred to in that paragraph is taken to be an appeal against the conviction.

Controlled property

(4) If property covered by a *forfeiture order is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the *Official Trustee under that Division.

70 How must the Commonwealth deal with forfeited property?

(1) If the *forfeiture order is still in force at the later time mentioned in subsection 69(1), the *Official Trustee must, on the Commonwealth's behalf and as soon as practicable:

(a) dispose of any property specified in the order that is not money; and

(b) apply:

(i) any amounts received from that disposal; and

(ii) any property specified in the order that is money;

to payment of its remuneration and other costs, charges and expenses of the kind referred to in subsection 288(1) payable to or incurred by it in connection with the disposal and with the *restraining order that covered the property; and

(ba) apply:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) any amounts received from that disposal; and

(ii) any property specified in the order that is money;

to payment of an *associated GST entity's liability (if any) to pay *GST in connection with the disposal; and

(c) credit the remainder of the money and amounts received to the *Confiscated Assets Account as required by section 296.

(2) However, if the *Official Trustee is required to deal with property specified in a *forfeiture order but has not yet begun:

(a) the Minister; or

(b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;

may direct that the property be alternatively disposed of, or otherwise dealt with, as specified in the direction.

(3) Such a direction could be that property is to be disposed of in accordance with the provisions of a specified law.

Note: The quashing of a conviction of an offence relating to a forfeiture may prevent things being done under this section: see section 86.

71 Dealings with forfeited property

A person commits an offence if:

(a) the person knows that a *forfeiture order has been made in respect of *registrable property; and

(b) the person disposes of, or otherwise deals with, the property before the Commonwealth's interest has been registered on the appropriate register; and

(c) the forfeiture order has not been discharged.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4A—Controlled property

71A Official Trustee may take custody and control of forfeited property

(1) The *Official Trustee may take custody and control of any or all of the property covered by a *forfeiture order.

Note: Part 4-1 sets out the Official Trustee's powers over the property.

(2) If the *Official Trustee decides to take custody and control of property under subsection (1), the court that made the *forfeiture order that covers the property may make either or both of the following orders:

(a) an order determining any question relating to the exercise of powers conferred on the Official Trustee under Division 3 of Part 4-1, or the performance of duties imposed on the Official Trustee under that Division, to the extent that those powers or duties relate to the property;

(b) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property.

(3) The court may only make an order under subsection (2) on the application of:

(a) the *responsible authority; or

(b) the person who, immediately before the making of the *forfeiture order, was the owner of the property covered by that order; or

(c) the *Official Trustee; or

(d) any other person who has the leave of the court.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—Reducing the effect of forfeiture orders

Subdivision A—Relieving hardship

72 Relieving certain dependants from hardship

(1) The court making a *forfeiture order specifying a *person's property must make another order directing the Commonwealth to pay a specified amount to a *dependant of the person if:

(a) the forfeiture order is not to be made under section 48; and

(b) the court is satisfied that:

(i) the forfeiture order would cause hardship to the dependant; and

(ii) the specified amount would relieve that hardship; and

(iii) if the dependant is aged at least 18 years—the dependant had no knowledge of the person's conduct that is the subject of the forfeiture order.

(2) The specified amount must not exceed the difference between:

(a) what the court considers is likely to be the amount received from disposing of the *person's property under the *forfeiture order; and

(b) what the court considers is likely to be the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the forfeiture order.

(3) An order under this section may relate to more than one of the person's *dependants.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Subdivision B—Excluding property from a forfeiture order

73 Making exclusion orders

(1) A court that made a *forfeiture order, or that is hearing, or is to hear, an application (a ***forfeiture application***) for a forfeiture order, must make an order excluding a specified *interest in property from forfeiture (an ***exclusion order***) if:

(a) a person applies for the exclusion order; and

(b) the forfeiture order, or the forfeiture application, specifies property in which the applicant has an interest; and

(c) if the forfeiture order was (or the forfeiture order applied for would be) made under section 47 or 49—the court is satisfied that the applicant's interest in the property is neither of the following:

(i) *proceeds of *unlawful activity;

(ii) if an offence on which the order was (or would be) based is a *serious offence—an instrument of any serious offence; and

(d) if the forfeiture order was (or the forfeiture order applied for would be) made under section 48—the court is satisfied that the applicant's interest in the property is neither proceeds nor an instrument of any of the offences to which the forfeiture order or forfeiture application relates.

(2) An *exclusion order must:

(a) specify the nature, extent and value (at the time of making the order) of the *interest concerned; and

(b) direct that the interest be excluded from the operation of the relevant *forfeiture order; and

(c) if the interest has vested (in law or equity) in the Commonwealth under this Part and is yet to be disposed of—direct the Commonwealth to transfer the interest to the applicant; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) if the interest has vested (in law or equity) in the Commonwealth under this Part and has been disposed of—direct the Commonwealth to pay the applicant an amount equal to the value specified under paragraph (a).

74 Applying for exclusion orders

Before a forfeiture order has been made

(1) A person may apply for an *exclusion order if a *forfeiture order that could specify property in which the person claims an *interest has been applied for, but is yet to be made.

After a forfeiture order has been made

(2) A person who claims an *interest in property specified in a *forfeiture order may, at any time after the forfeiture order is made, apply to the court that made the forfeiture order for an *exclusion order.

(3) However, unless the court gives leave, the person cannot apply for an *exclusion order if he or she:
  (a) was notified of the application for the *forfeiture order, but did not appear at the hearing of that application; or
  (b) appeared at the hearing of that application.

(4) The court may give the person leave to apply if the court is satisfied that:
  (a) if paragraph (3)(a) applies—the person had a good reason for not appearing; or
  (b) if paragraph (3)(b) applies—the person now has evidence relevant to the person's application that was not available to the person at the time of the hearing; or
  (c) in either case—there are other special grounds for granting the leave.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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75 Giving notice of matters relevant to an application

(1) An applicant for an *exclusion order must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

Note: The responsible authority in relation to an application for an exclusion order is the authority responsible for the forfeiture order or forfeiture application referred to in section 73 (making exclusion orders).

(2) The *responsible authority may appear and adduce evidence at the hearing of the application.

(3) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

76 When an application can be heard

An application for an *exclusion order must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

Subdivision C—Compensating for proportion of property not derived or realised from commission of any offence

77 Making compensation orders

(1) A court that made a *forfeiture order, or that is hearing, or is to hear, an application for a forfeiture order, must make an order under subsection (2) (a ***compensation order***) if:

(a) a person (the ***applicant***) has applied for a compensation order; and

(b) the court is satisfied that the applicant has an *interest in property specified in the forfeiture order or in the application for the forfeiture order; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) the court is satisfied that a proportion of the value of the applicant's interest was not derived or realised, directly or indirectly, from the commission of any offence; and

(d) the court is satisfied that the applicant's interest is not an instrument of any offence; and

(e) in the case of a court that is hearing or is to hear an application for a forfeiture order—the court makes the forfeiture order.

(2) A *compensation order must:

(a) specify the proportion found by the court under paragraph (1)(c); and

(b) direct the Commonwealth, once the property has vested absolutely in it, to:

(i) if the property has not been disposed of—dispose of the property; and

(ii) pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the *forfeiture order.

78 Application for compensation orders

Before a forfeiture order has been made

(1) A person may apply to a court for a *compensation order if an application for a *forfeiture order that could specify property in which the person claims an *interest has been made to the court, but the forfeiture order is yet to be made.

After a forfeiture order has been made

(2) A person who claims an *interest in property specified in a *forfeiture order may, at any time after the forfeiture order is made,

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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apply to the court that made the forfeiture order for a *compensation order.

(3) However, unless the court gives leave, the person cannot apply under subsection (2) if he or she:

(a) was notified of the application for the *forfeiture order, but did not make an application under subsection (1) before the forfeiture order was made; or

(b) appeared at the hearing of the application for the forfeiture order.

(4) The court may give the person leave to apply under subsection (2) if the court is satisfied that:

(a) if paragraph (3)(a) applies—the person had a good reason for not making an application under subsection (1) before the *forfeiture order was made; or

(b) in either case:

(i) the person now has evidence relevant to the making of the *compensation order that was not available to the person at the time the forfeiture order was made; or

(ii) there are other special grounds for granting the leave.

79 Giving notice of matters relevant to an application

(1) An applicant for a *compensation order must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

Note: The responsible authority in relation to an application for a compensation order is the authority responsible for the forfeiture order or forfeiture application referred to in section 77 (making compensation orders).

(2) The *responsible authority may appear and adduce evidence at the hearing of the application.

(3) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However,

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

79A When an application can be heard

An application for a *compensation order must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 6—The effect on forfeiture orders of acquittals and quashing of convictions

80 Forfeiture order made under section 47 or 49 unaffected by acquittal or quashing of conviction

A *forfeiture order made under section 47 or 49 against a person in relation to an offence is not affected if:

(a) having been charged with the offence, the person is acquitted; or

(b) the person is convicted of the offence and the conviction is subsequently *quashed.

81 Discharge of forfeiture order made under section 48 on quashing of conviction

(1) A *forfeiture order made under section 48 in relation to a person's conviction of an offence is discharged if:

(a) the person's conviction of the offence is subsequently *quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and

(b) the *responsible authority does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.

(2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *forfeiture order:

(a) for 14 days after the conviction is quashed; and

(b) if the *responsible authority makes such an application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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82 Notice of application for confirmation of forfeiture order

(1) The *responsible authority must give written notice of an application for confirmation of the *forfeiture order to:

(a) the person whose conviction was *quashed; and

(b) any person who claims, or prior to the forfeiture claimed, an *interest in property covered by the order; and

(c) any person whom the authority reasonably believes may have had an interest in that property before the forfeiture.

Note: If the authority applies for confirmation of a forfeiture order, it can also apply for an examination order under Part 3-1.

(2) The court hearing the application may, at any time before finally determining the application, direct the *responsible authority to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

83 Procedure on application for confirmation of forfeiture order

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

(2) The court may, in determining the application, have regard to:

(a) the transcript of any proceeding against the person for:

(i) the offence of which the person was convicted; or

(ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;

including any appeals relating to the conviction; and

(b) the evidence given in any such proceeding.

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84 Court may confirm forfeiture order

(1) The court may confirm the *forfeiture order if the court is satisfied that:

(a) it could have made a forfeiture order under section 47 in relation to the offence in relation to which the person's conviction was *quashed if, when the *responsible authority applied for an order under section 48, it had instead applied for an order under section 47; or

(b) it could have made a forfeiture order under section 49 in relation to the offence in relation to which the person's conviction was quashed if, when the authority applied for an order under section 48, it had instead applied for an order under section 49.

(2) For the purposes of paragraphs (1)(a) and (b), the requirement in paragraph 47(1)(b) or 49(1)(b) (as the case requires) is taken to be satisfied.

85 Effect of court's decision on confirmation of forfeiture order

(1) If the court confirms the *forfeiture order under paragraph 84(1)(a), the order is taken not to be affected by the *quashing of the person's conviction of the offence.

(2) If the court confirms the *forfeiture order under paragraph 84(1)(b):

(a) to the extent that the order covers property that is:

(i) in any case—*proceeds of the offence; or

(ii) if the offence is a *serious offence—an *instrument of the offence;

the order is taken not to be affected by the *quashing of the person's conviction of the offence; but

(b) to the extent that the order covers property that is:

(i) in any case—not proceeds of the offence; and

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(ii) if the offence is a serious offence—not an instrument of the offence;

the order is discharged.

(3) If the court decides not to confirm the *forfeiture order, the order is discharged.

86 Official Trustee must not deal with forfeited property before the court decides on confirmation of forfeiture order

During the period:

(a) starting on the day after the person's conviction of the offence was *quashed; and

(b) ending when the court decides whether to confirm the *forfeiture order;

the *Official Trustee must not do any of the things required under section 70 in relation to property covered by the order or amounts received from disposing of such property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 7—Miscellaneous

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

(1) This section applies in relation to particular property if:

(a) a *forfeiture order that covered that property is discharged by a court hearing an appeal against the making of the order; or

(b) a forfeiture order that covered that property is discharged under section 81 or subsection 85(3); or

(c) a forfeiture order that covered the property is discharged under subsection 85(2) in relation to that property.

(2) The *responsible authority must, as soon as practicable, give written notice of the discharge to any person the authority reasonably believes may have had an *interest in that property immediately before the order was made.

(3) The *responsible authority must, if required by a court, give or publish notice of the discharge to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

(4) A notice given under this section must include a statement to the effect that a person claiming to have had an *interest in that property may apply under section 88 for the transfer of the interest, or its value, to the person.

88 Returning property etc. following the discharge of a forfeiture order

(1) The *Official Trustee must arrange for:

(a) if property specified in a *forfeiture order is vested in the Commonwealth—an *interest in the property to be

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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transferred to a person claiming to have had the interest in the property immediately before the order was made; or

(b) if property specified in a forfeiture order is no longer vested in the Commonwealth—an amount equal to the value of the interest in the property to be paid to the person;

if:

(c) the forfeiture order has been discharged in relation to the property:

(i) by a court hearing an appeal against the making of the order; or

(ii) under section 81 or 85; and

(d) the person applies to the Official Trustee, in writing, for the transfer of the interest to the person; and

(e) the person had that interest in the property immediately before the order was made.

(2) If the *Official Trustee must arrange for the property to be transferred, the Official Trustee may also, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to give effect to the transfer.

(3) Without limiting subsection (2), things that may be done or authorised under that subsection include:

(a) executing any instrument; and

(b) applying for registration of an *interest in the property on any appropriate register.

89 Person with interest in forfeited property may buy back the interest

(1) If a court:

(a) makes a *forfeiture order against property; and

(b) makes an order under section 57 in respect of an *interest in the property;

then:

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(c) the payment to the Commonwealth, while the interest is still vested in the Commonwealth, of the amount specified in the order under section 57 as the value of the interest discharges the forfeiture order to the extent to which it relates to the interest; and

(d) the *Official Trustee:

(i) must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Commonwealth; and

(ii) may, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to effect the transfer.

(2) Without limiting subparagraph (1)(d)(ii), things that may be done or authorised under that subparagraph include:

(a) executing any instrument; and

(b) making an application for registration of an *interest in the property on any appropriate register.

90 Buying out other interests in forfeited property

(1) If:

(a) property is forfeited to the Commonwealth under this Part; and

(b) an interest in the property is required to be transferred to a person (the ***relevant person***) under subsection 88(1) or 89(1), or under a direction under paragraph 73(2)(c); and

(c) the relevant person's interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and

(d) the relevant person gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:

(i) the relevant person intends to purchase that other interest from the Commonwealth; and

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(ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that other interest with the Minister and the *Official Trustee; and

(e) no person served with notice under paragraph (d) in relation to that other interest lodges a written objection to the purchase of that other interest with the Minister and the Official Trustee within the period referred to in that paragraph; and

(f) the relevant person pays to the Commonwealth, while that other interest is still vested in the Commonwealth, an amount equal to the value of that other interest;

the Official Trustee must arrange for that other interest to be transferred to the relevant person.

(2) If a person served with notice under paragraph (1)(d) in relation to the other interest mentioned in that paragraph lodges a written objection to the purchase of that other interest with the Minister and the *Official Trustee within the period referred to in that paragraph:

(a) the Minister; or

(b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;

may direct the Official Trustee to transfer that other interest to the person.

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Part 2-3—Forfeiture on conviction of a serious offence

91 Simplified outline of this Part

If a person is convicted of a serious offence, property that is subject to a restraining order relating to the offence is forfeited to the Commonwealth unless the property is excluded from forfeiture.

There are cases in which compensation is payable by the Commonwealth.

There are cases in which forfeited property can be recovered from the Commonwealth.

Note: Property can be forfeited in relation to a serious offence, without a conviction, under a forfeiture order under Part 2-2.

Division 1—Forfeiture on conviction of a serious offence

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

(1) Property is forfeited to the Commonwealth at the end of the period applying under subsection (3) if:

(a) a person is convicted of a *serious offence; and

(b) either:

(i) at the end of that period, the property is covered by a *restraining order under section 17 or 18 against the person that relates to the offence; or

(ii) the property was covered by such a restraining order against the person, but the order was revoked under

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section 44 or the property was excluded from the order under that section; and

(c) the property is not subject to an order under section 94 excluding the property from forfeiture under this Part.

(2) It does not matter whether:

(a) the *restraining order was made before or after the person's conviction of the *serious offence; or

(b) immediately before forfeiture, the property is the *person's property or another person's property.

(3) The period at the end of which the property is forfeited is:

(a) the 6 month period starting on the *conviction day; or

(b) if an *extension order is in force at the end of that period—the extended period relating to that extension order.

(4) This section does not apply if the person is taken to have been convicted of the offence because the person *absconded in connection with the offence.

(5) A *restraining order in relation to a *related offence with which the person has been charged, or is proposed to be charged, is taken, for the purposes of this section, to be a restraining order in relation to the offence of which the person was convicted.

(6) If:

(a) under section 44, a *restraining order that covered particular property is revoked, or particular property is excluded from a restraining order; and

(b) the security referred to in paragraph 44(1)(e), or the undertaking referred to in paragraph 44(2)(e), in connection with the revocation or exclusion is still in force;

the property is taken, for the purposes of this section, to be covered by the restraining order.

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92A Notice of date of forfeiture under this Part, etc.

(1) The *responsible authority for the *restraining order referred to in paragraph 92(1)(b) must, before property is forfeited under this Part, take reasonable steps to give any person who has or claims, or whom the authority reasonably believes may have, an *interest in the property a written notice stating:

(a) the date on which the property will be forfeited under this Part unless it is excluded from forfeiture; and

(b) the effect of section 93 (which deals with *extension orders); and

(c) that the person may be able to apply for an order under one of the following sections in relation to the property:

(i) section 29 (which deals with the exclusion of property from *restraining orders);

(ii) section 94 (which deals with the exclusion of property from forfeiture);

(iii) section 94A (which deals with compensation).

(2) However, the *responsible authority need not give a notice to a person under subsection (1) if the person has made:

(a) an application for an *extension order in relation to the property; and

(b) an application under section 30, 31 or 94 in relation to the property.

93 Making an extension order extending the period before property is forfeited

(1) The court that made the *restraining order referred to in paragraph 92(1)(b) may make an order (an ***extension order***) specifying an extended period for the purposes of subsection 92(3) if:

(a) an application for the order is made within 6 months after the start of the *conviction day for the relevant conviction; and

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(b) the applicant has also applied to the court under:
(i) section 30 or 31 to exclude property from the restraining order; or
(ii) section 94 to exclude the property that is covered by the restraining order from forfeiture under this Part; and
(c) the court is satisfied that the applicant made the application under section 30, 31 or 94 without undue delay, and has since diligently followed up that application.

The extended period specified must end no later than 15 months from the start of the conviction day for the relevant conviction.

(2) The *extension order stops being in force if the application under section 30, 31 or 94 is finally determined before the end of the 6 month period starting on the *conviction day for the relevant conviction.

(3) The extended period ends if the application under section 30, 31 or 94 is finally determined before the end of that period.

(4) If the court makes the *extension order, the *responsible authority must take reasonable steps to give any person who has or claims, or whom the authority reasonably believes may have, an *interest in the property to which the order relates a written notice stating:
(a) the date on which the property will be forfeited under this Part, in accordance with the extension order, unless it is excluded from forfeiture; and
(b) the effect of subsections (2) and (3).

94 Excluding property from forfeiture under this Part

(1) The court that made a *restraining order referred to in paragraph 92(1)(b) must make an order excluding particular property from forfeiture under this Part if:
(a) a person (the ***applicant***) has applied for an order under this section; and

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(b) the court is satisfied that the applicant has an *interest in property covered by the restraining order; and

(d) a person has been convicted of a *serious offence to which the restraining order relates; and

(e) the court is satisfied that the applicant's interest in the property is neither *proceeds of *unlawful activity nor an *instrument of unlawful activity; and

(f) the court is satisfied that the applicant's interest in the property was lawfully acquired.

(2) To avoid doubt, an order under this section cannot be made in relation to property if the property has already been forfeited under this Part.

(3) The person must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

(4) The *responsible authority may appear and adduce evidence at the hearing of the application.

(5) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(6) The application must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

94A Compensating for proportion of property not derived or realised from commission of any offence

(1) The court that made a *restraining order referred to in paragraph 92(1)(b) must make an order that complies with subsection (2) if:

(a) a person (the ***applicant***) has applied for an order under this section; and

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(b) the court is satisfied that the applicant has an *interest in property covered, or that was at any time covered, by the restraining order; and

(c) a person has been convicted of a *serious offence to which the restraining order relates; and

(d) the court is satisfied that a proportion of the value of the applicant's interest was not derived or realised, directly or indirectly, from the commission of any offence; and

(e) the court is satisfied that the applicant's interest is not an *instrument of any offence.

(2) An order under this section must:

(a) specify the proportion found by the court under paragraph (1)(d); and

(b) direct the Commonwealth, once the property has vested absolutely in it, to:

(i) if the property has not been disposed of—dispose of the property; and

(ii) pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the sum of any payments of the kind referred to in paragraph 100(1)(b) in connection with the forfeiture.

(3) A person who claims an *interest in property covered by a *restraining order referred to in paragraph 92(1)(b) may apply to the court that made the restraining order for an order under this section at any time.

(4) However, if the property has already been forfeited under this Part, the person cannot, unless the court gives leave, apply under subsection (3) if he or she:

(a) either:

(i) was given a notice under subsection 92A(1) in relation to the property; or

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(ii) was not given such a notice because of subsection 92A(2); and

(b) did not make the application under subsection (3) before that forfeiture.

(5) The court may give the person leave to apply if the court is satisfied that:

(a) the person had a good reason for not making the application before the forfeiture; or

(b) the person now has evidence relevant to the application that was not available before the forfeiture; or

(c) there are special grounds for granting the leave.

(6) The person must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

(7) The *responsible authority may appear and adduce evidence at the hearing of the application.

(8) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(9) The application must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

95 Court may declare that property has been forfeited under this Part

The court that made the *restraining order referred to in paragraph 92(1)(b) may declare that particular property has been forfeited under this Part if:

(a) the *responsible authority applies to the court for the declaration; and

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(b) the court is satisfied that that property is forfeited under this Part.

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Division 2—Effect of forfeiture on conviction of a serious offence

96 When is property forfeited—general rule

Property forfeited under section 92 vests absolutely in the Commonwealth at the time of the forfeiture.

97 First exception—registrable property

(1) Despite section 96, if property forfeited under section 92 is *registrable property:

(a) that 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; and

(b) the *responsible authority for the *restraining order referred to in paragraph 92(1)(b) has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and

(c) the Commonwealth is entitled to be registered as the owner of that property; and

(d) the *Official Trustee 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 the owner.

(2) Any action by the *responsible authority under paragraph (1)(b) is not a dealing for the purposes of subsection 99(1).

(3) The *Official Trustee's powers under paragraph (1)(d) include executing any instrument required to be executed by a person transferring an *interest in property of that kind.

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98 Second exception—if a joint owner dies

Despite section 96, if:

(a) a person who is convicted of a *serious offence was, immediately before his or her death, the joint owner of property; and

(b) the period that would apply under subsection 92(3) if the property were subject to forfeiture under section 92 in relation to the conviction had not ended before his or her death; and

(c) if that period had ended immediately before his or her death—the property would have been forfeited under section 92;

the property is taken to have vested in the Commonwealth immediately before his or her death.

98A Third exception—property located outside Australia

(1) Despite section 96, if property forfeited under section 92 is property located outside *Australia:

(a) that property vests in equity in the Commonwealth; and

(b) that property only vests in the Commonwealth at law to the extent permitted under the law in force in the place where that property is located; and

(c) the *responsible authority has power, on behalf of the Commonwealth, to do anything necessary or convenient to:

(i) give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; or

(ii) arrange for the enforcement of, or give effect to, the declaration under section 95 that relates to the forfeiture of that property.

Note: The following is an example of action by the responsible authority under subparagraph (1)(c)(ii): arranging for a request under section 32 of the *Mutual Assistance Act in relation to the enforcement of the

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declaration under section 95 of this Act that relates to the forfeiture of that property.

(2) Any action by the *responsible authority under subparagraph (1)(c)(i) is not a dealing for the purposes of subsection 99(1).

(3) Despite section 96 and subsection (1) of this section, if:

(a) property forfeited under section 92 is property located outside *Australia; and

(b) under the law in force in the place where that property is located, that property vests in a person;

that property vests in that person under that law.

(4) Subsection (3) does not affect any equitable interest vested in the Commonwealth by paragraph (1)(a).

99 When can the Commonwealth begin dealing with forfeited property?

(1) The Commonwealth, and persons acting on its behalf, can dispose of, or otherwise deal with, property forfeited under section 92 in relation to a person's conviction of a *serious offence if and only if:

(a) the period applying under subsection (3) has come to an end; and

(b) the conviction has not been *quashed by that time.

(2) However, such disposals and dealings may occur earlier with the leave of the court and in accordance with any directions of the court.

(3) The period at the end of which the Commonwealth, and persons acting on its behalf, can dispose of or otherwise deal with the property is:

(a) if the conviction is one in relation to which neither paragraph 331(1)(b) nor (c) applies, the period ending:

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(i) if the period provided for lodging an appeal against the conviction has ended without such an appeal having been lodged—at the end of that period; or

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

(b) if the person is taken to have been convicted because of paragraph 331(1)(b), the period ending:

(i) if the period provided for lodging an appeal against the finding of the person guilty of the offence has ended without such an appeal having been lodged—at the end of that period; or

(ii) if an appeal against the finding of the person guilty of the offence has been lodged—when the appeal lapses or is finally determined; or

(c) if the person is taken to have been convicted because of paragraph 331(1)(c), the period ending:

(i) if the period provided for lodging an appeal against the person's conviction of the other offence referred to in that paragraph has ended without such an appeal having been lodged—at the end of that period; or

(ii) if an appeal against the person's conviction of the other offence referred to in that paragraph has been lodged—when the appeal lapses or is finally determined.

Controlled property

(4) If property forfeited under section 92 is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the *Official Trustee under that Division.

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100 How must forfeited property be dealt with?

(1) If subsection 99(1) authorises disposal of or dealing with particular property forfeited under section 92, the *Official Trustee must, on the Commonwealth's behalf and as soon as practicable:

(a) dispose of any of the forfeited property that is not money; and

(b) apply:

(i) any amounts received from that disposal; and

(ii) any of the forfeited property that is money;

to payment of its remuneration and other costs, charges and expenses of the kind referred to in subsection 288(1) payable to or incurred by it in connection with the disposal and with the *restraining order that covered the property; and

(ba) apply:

(i) any amounts received from that disposal; and

(ii) any of the forfeited property that is money;

to payment of an *associated GST entity's liability (if any) to pay *GST in connection with the disposal; and

(c) credit the remainder of the money and amounts received to the *Confiscated Assets Account as required by section 296.

(2) However, if the *Official Trustee has not yet begun to deal with property forfeited under section 92, as required by this section:

(a) the Minister; or

(b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;

may direct that the property be disposed of, or otherwise dealt with, as specified in the direction.

(3) Such a direction could be that property is to be disposed of in accordance with the provisions of a specified law.

Note: The quashing of a conviction of an offence relating to the forfeiture will prevent things being done under this section: see section 112.

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101 Minister may give supporting directions

(1) The Minister may give all directions that are necessary or convenient to realise the Commonwealth's *interest in property forfeited under section 92.

(2) This includes, for *registrable property forfeited under section 92, directing 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.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2A—Controlled property

101A Official Trustee may take custody and control of forfeited property

(1) The *Official Trustee may take custody and control of property forfeited to the Commonwealth under section 92.

Note: Part 4-1 sets out the Official Trustee's powers over the property.

(2) If the *Official Trustee decides to take custody and control of property under subsection (1), the court that made the *restraining order referred to in paragraph 92(1)(b) in relation to the property may make either or both of the following orders:

(a) an order determining any question relating to the exercise of powers conferred on the Official Trustee under Division 3 of Part 4-1, or the performance of duties imposed on the Official Trustee under that Division, to the extent that those powers or duties relate to the property;

(b) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property.

(3) The court may only make an order under subsection (2) on the application of:

(a) the *responsible authority; or

(b) the person who, immediately before the property was forfeited under section 92, was the owner of the property covered by that order; or

(c) the *Official Trustee; or

(d) any other person who has the leave of the court.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Recovery of forfeited property

102 Court may make orders relating to transfer of forfeited property etc.

If property is forfeited to the Commonwealth under section 92, the court that made the *restraining order referred to in paragraph 92(1)(b) must, if:

(a) a person who claims an *interest in the property applies under section 104 for an order under this section; and

(b) the court is satisfied that:

(i) the applicant had an interest in the property before the forfeiture of the property; and

(ii) the applicant's interest in the property is neither *proceeds of unlawful activity nor an *instrument of unlawful activity; and

(iii) 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) if the interest is still vested in the Commonwealth—directing the Commonwealth to transfer the interest to the applicant; or

(ii) directing the Commonwealth to pay to the applicant an amount equal to the value declared under paragraph (c).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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103 Court may make orders relating to buying back forfeited property

(1) If property is forfeited to the Commonwealth under section 92, the court that made the *restraining order referred to in paragraph 92(1)(b) may, if:

(a) a person who claims to have had an *interest in the property before the forfeiture has made an application under section 104A for an order under this section; and

(b) the court is satisfied that the person had the interest immediately before the forfeiture; and

(c) the court is satisfied that the person is not a *suspect in relation to the restraining order; and

(d) the court is satisfied that, at the time when the offence mentioned in paragraph 92(1)(a) was committed, the person did not have knowledge of the conduct constituting the offence; and

(e) in a case where the property was *proceeds of an offence or an *instrument of an offence—the court is satisfied that, when the property became proceeds of an offence or an instrument of an offence, the person had no knowledge of the conduct constituting the offence; and

(f) the court is satisfied that, if the interest were to be transferred to the person under section 105:

(i) the amount paid to the Commonwealth under paragraph 105(1)(c) would not be property that is covered by subsection (6); and

(ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 105(1)(c) would be borrowed by the person under a loan—the person's financial circumstances are such that the person will be able to repay the loan, meet the person's eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection (6); and

(g) the court is satisfied that:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) it would not be contrary to the public interest for the interest to be transferred to the person; and

(ii) there is no other reason why the interest should not be transferred to the person;

make an order:

(h) declaring the nature, extent and value (as at the time when the order is made under this subsection) of the interest; and

(i) declaring that the forfeiture ceases to operate in relation to the interest if payment is made under section 105.

Note: Money can be property.

(2) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (1)(f)(ii) was made under an arrangement entered into before or after the application mentioned in paragraph (1)(a) was made.

(3) For the purposes of this section, ***loan*** includes anything that may reasonably be regarded as equivalent to a loan, and ***borrow*** has a corresponding meaning.

(4) For the purposes of this section, each of the following are ***eligible living expenses*** of the person:

(a) the person's reasonable living expenses;

(b) the reasonable living expenses of any of the *dependants of the person;

(c) the reasonable business expenses of the person.

(5) For the purposes of this section, an ***eligible debt*** of the person is a debt incurred in good faith by the person.

(6) This subsection covers any of the following property:

(a) property that is wholly or partly derived or realised by the person, directly or indirectly, from *unlawful activity;

(b) property that is used in, or in connection with, the commission of unlawful activity;

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(c) property that is intended to be used in, or in connection with, the commission of unlawful activity.

104 Applying for an order under section 102

(1) A person who claims an *interest in property that has been forfeited to the Commonwealth under section 92 may, at any time after the forfeiture, apply to the court that made the *restraining order referred to in paragraph 92(1)(b) for an order under section 102.

(2) However, unless the court gives leave, the person cannot make an application for an order under section 102 if he or she:

(a) either:

(i) was given a notice under subsection 92A(1) in relation to the property; or

(ii) was not given such a notice because of subsection 92A(2); and

(b) either:

(i) did not make an application under section 29 or 94 in relation to the property; or

(ii) made such an application and appeared at the hearing of the application.

(3) The court may give the person leave to apply if the court is satisfied that:

(a) if subparagraph (2)(b)(i) applies—the person had a good reason for not making an application under section 29 or 94; or

(b) if subparagraph (2)(b)(ii) applies—the person now has evidence relevant to the person's application under this section that was not available at the time of the hearing; or

(c) in either case—there are other special grounds for granting the leave.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(4) The applicant must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

(5) The *responsible authority may appear and adduce evidence at the hearing of the application.

(6) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(7) The application must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

104A Applying for an order under section 103

(1) A person who claims an *interest in property covered by a *restraining order referred to in paragraph 92(1)(b) may apply to the court that made the restraining order for an order under section 103 at any time.

(2) However, if the property has already been forfeited under section 92, the person cannot, unless the court gives leave, apply under subsection (1) of this section if the person:

(a) either:

(i) was given a notice under subsection 92A(1) in relation to the property; or

(ii) was not given such a notice because of subsection 92A(2); and

(b) did not make the application under subsection (1) of this section before that forfeiture.

(3) The court may give the person leave to apply if the court is satisfied that:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person had a good reason for not making the application before that forfeiture; or

(b) the person now has evidence relevant to the application that was not available before that forfeiture; or

(c) there are special grounds for granting the leave.

(4) However, the court must not hear an application under subsection (1) if:

(a) the *Official Trustee has taken any action in relation to the property under section 100; and

(b) it would not be practicable for the court to make an order in relation to the interest under section 103.

(5) The person must give written notice to the *responsible authority of both the application and the grounds on which the order is sought.

(6) The *responsible authority may appear and adduce evidence at the hearing of the application.

(7) To avoid doubt, the *responsible authority may represent the Commonwealth in proceedings relating to an application under subsection (1).

(8) The *responsible authority must give the applicant notice of any grounds on which it proposes to contest the application. However, the authority need not do so until it has had a reasonable opportunity to conduct *examinations in relation to the application.

(9) The application must not be heard until the *responsible authority has had a reasonable opportunity to conduct *examinations in relation to the application.

105 Person with interest in forfeited property may buy back the interest

(1) If:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) property is forfeited to the Commonwealth under section 92; and

(b) a court makes an order under section 103 in respect of an *interest in the property; and

(c) the amount specified in the order as the value of the interest is paid to the Commonwealth, while the interest is still vested in the Commonwealth;

section 92 ceases to apply in relation to the interest, and the *Official Trustee:

(d) must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Commonwealth; and

(e) may, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to effect the transfer.

(2) Without limiting paragraph (1)(e), things that may be done or authorised under that paragraph include:

(a) executing any instrument; and

(b) applying for registration of an *interest in the property on any appropriate register.

106 Buying out other interests in forfeited property

(1) If:

(a) property is forfeited to the Commonwealth under section 92; and

(b) an interest in the property is required to be transferred to a person (the ***relevant person***) under section 105, or under a direction under subparagraph 102(d)(i); and

(c) the relevant person's interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) the relevant person gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:

(i) the relevant person 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 other interest with the Minister and the *Official Trustee; and

(e) no person served with the notice under paragraph (d) in relation to that other interest lodges a written objection to the purchase of that other interest with the Minister and the Official Trustee within the period referred to in that paragraph; and

(f) the relevant person pays to the Commonwealth, while that other interest is still vested in the Commonwealth, an amount equal to the value of that other interest;

the Official Trustee must arrange for that other interest to be transferred to the relevant person.

(2) If a person served with notice under paragraph (1)(d) in relation to the other interest mentioned in that paragraph lodges a written objection to the purchase of that other interest with the Minister and the *Official Trustee within the period referred to in that paragraph:

(a) the Minister; or

(b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;

may direct the Official Trustee to transfer that other interest to the person.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—The effect on forfeiture of convictions being quashed

107 The effect on forfeiture of convictions being quashed

(1) A forfeiture of property to the Commonwealth under section 92 in relation to a person's conviction of an offence ceases to have effect if:

(a) the person's conviction of the offence is subsequently *quashed; and

(b) the forfeiture does not also relate to the person's conviction of other offences that have not been quashed; and

(c) the *responsible authority does not, within 14 days after the conviction is quashed, apply to the court that made the *restraining order referred to in paragraph 92(1)(b) for the forfeiture to be confirmed.

(2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the forfeiture:

(a) for 14 days after the conviction is quashed; and

(b) if the *responsible authority makes such an application.

108 Notice of application for confirmation of forfeiture

(1) The *responsible authority must give written notice of an application for confirmation of the forfeiture to:

(a) the person whose conviction was *quashed; and

(b) any person who claims, or prior to the forfeiture claimed, an *interest in property covered by the forfeiture; and

(c) any person whom the authority reasonably believes may have had an interest in that property before the forfeiture.

Note: If the authority applies for confirmation of a forfeiture, it can also apply for an examination order under Part 3-1.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The court hearing the application may, at any time before finally determining the application, direct the *responsible authority to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

109 Procedure on application for confirmation of forfeiture

(1) Any person who claims an *interest in property covered by the forfeiture may appear and adduce evidence at the hearing of the application for confirmation of the forfeiture.

(2) The court may, in determining the application, have regard to:

(a) the transcript of any proceeding against the person for:

(i) the offence of which the person was convicted; or

(ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;

including any appeals relating to the conviction; and

(b) the evidence given in any such proceeding.

110 Court may confirm forfeiture

(1) The court may confirm the forfeiture if the court is satisfied that:

(a) it could make a *forfeiture order under section 47 in relation to the offence in relation to which the person's conviction was *quashed if the *responsible authority for the *restraining order referred to in paragraph 92(1)(b) were to apply for an order under that section; or

(b) it could make a forfeiture order under section 49 in relation to the offence in relation to which the person's conviction was quashed if the authority were to apply for an order under that section.

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(2) For the purposes of paragraphs (1)(a) and (b), the requirement in paragraph 47(1)(b) or 49(1)(b) (as the case requires) is taken to be satisfied.

111 Effect of court's decision on confirmation of forfeiture

(1) If the court confirms the forfeiture under paragraph 110(1)(a), the forfeiture is taken not to be affected by the *quashing of the person's conviction of the offence.

(2) If the court confirms the forfeiture under paragraph 110(1)(b):

(a) to the extent that the property covered by the forfeiture is:

(i) in any case—*proceeds of the offence; or

(ii) if the offence is a *serious offence—an *instrument of the offence;

the forfeiture is taken not to be affected by the *quashing of the person's conviction of the offence; but

(b) to the extent that the property covered by the forfeiture is:

(i) in any case—not proceeds of the offence; and

(ii) if the offence is a serious offence—not an instrument of the offence;

the forfeiture ceases to have effect.

(3) If the court decides not to confirm the forfeiture, the forfeiture ceases to have effect.

112 Official Trustee must not deal with forfeited property before the court decides on confirmation of forfeiture

During the period:

(a) starting on the day after the person's conviction of the offence was *quashed; and

(b) ending when the court decides whether to confirm the forfeiture;

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the *Official Trustee must not do any of the things required under section 100 in relation to property covered by the forfeiture or amounts received from disposing of such property.

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

(1) This section applies in relation to particular property if:

(a) the property was forfeited to the Commonwealth under section 92 but the forfeiture ceases to have effect under section 107 or subsection 111(3); or

(b) the property was forfeited to the Commonwealth under section 92 but the forfeiture ceases to have effect in relation to that property under subsection 111(2).

(2) The *responsible authority for the *restraining order referred to in paragraph 92(1)(b) must, as soon as practicable after the forfeiture ceases to have effect, give written notice of the cessation to any person the authority reasonably believes may have had an *interest in that property immediately before the forfeiture.

(3) The *responsible authority must, if required by a court, give or publish notice of the cessation to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

(4) A notice given under this section must include a statement to the effect that a person claiming to have had an *interest in that property may apply under section 114 for the transfer of the interest, or its value, to the person.

114 Returning property etc. following forfeiture ceasing to have effect

(1) The *Official Trustee must arrange for:

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(a) if property forfeited to the Commonwealth under section 92 is vested in the Commonwealth—an *interest in the property to be transferred to a person claiming to have had the interest in the property immediately before the forfeiture; or

(b) if property forfeited to the Commonwealth under section 92 is no longer vested in the Commonwealth—an amount equal to the value of the interest in the property to be paid to the person;

if:

(c) the forfeiture has ceased to have effect under section 107 or 111; and

(d) the person applies to the Official Trustee, in writing, for the transfer of the interest to the person; and

(e) the person had that interest in the property at that time.

(2) If the *Official Trustee must arrange for the property to be transferred, the Official Trustee may also, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to give effect to the transfer.

(3) Without limiting subsection (2), things that may be done or authorised under that subsection include:

(a) executing any instrument; and

(b) applying for registration of an *interest in the property on any appropriate register.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2-4—Pecuniary penalty orders

115 Simplified outline of this Part

If certain offences have been committed, pecuniary penalty orders can be made, ordering payments to the Commonwealth of amounts based on:

(a) the benefits that a person has derived from such an offence; and

(b) (in some cases) the benefits that the person has derived from other unlawful activity.

(It is not always a requirement that a person has been convicted of the offence.)

Division 1—Making pecuniary penalty orders

116 Making pecuniary penalty orders

(1) A court with *proceeds jurisdiction must make an order requiring a person to pay an amount to the Commonwealth if:

(a) a *proceeds of crime authority applies for the order; and

(b) the court is satisfied of either or both of the following:

(i) the person has been convicted of an *indictable offence, and has derived *benefits from the commission of the offence;

(ii) the person has committed a *serious offence.

Note: The conviction for, or reasonable grounds for suspecting commission of, an indictable offence could be used as grounds for a restraining order under Part 2-1 covering all or some of the person's property.

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(3) In determining whether a person has derived a *benefit, the court may treat as property of the person any property that, in the court's opinion, is subject to the person's *effective control.

(4) The court's power to make a *pecuniary penalty order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

Note: There are restrictions on applications pecuniary penalty orders if previous applications for pecuniary penalty orders have already been made: see section 135.

117 Pecuniary penalty orders made in relation to serious offence convictions

(1) A court must not make a *pecuniary penalty order in relation to a person's conviction of a *serious offence until after the end of the period of 6 months commencing on the *conviction day.

(2) However, if the court before which the person was convicted has *proceeds jurisdiction, the court may make a *pecuniary penalty order in relation to the person's conviction when it passes sentence on the person.

Note: Pecuniary penalty orders made under this subsection cannot be enforced within 6 months: see subsection 140(3).

(3) Subsection (1) does not apply if the person is taken to have been convicted of the *serious offence because of paragraph 331(1)(d).

118 Making of pecuniary penalty order if person has absconded

If, because of paragraph 331(1)(d), a person is taken to have been convicted of an *indictable offence, a court must not make a *pecuniary penalty order in relation to the person's conviction unless:

(a) the court is satisfied, on the balance of probabilities, that the person has *absconded; and

(b) either:

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(i) the person has been committed for trial for the offence; or

(ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

119 Ancillary orders

The court that made a *pecuniary penalty order, or any other court that could have made the pecuniary penalty order, may make orders ancillary to the pecuniary penalty order, either when it makes the pecuniary penalty order or at a later time.

120 Acquittals do not affect pecuniary penalty orders

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *pecuniary penalty order in relation to the offence.

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Division 2—Penalty amounts

Subdivision A—General

121 Determining penalty amounts

(1) The amount that a person is ordered to pay to the Commonwealth under a *pecuniary penalty order (the ***penalty amount***) is the amount the court determines under this Division.

(2) If the offence to which the order relates is not a *serious offence, the *penalty amount is determined by:

(a) assessing under Subdivision B the value of the *benefits the person derived from the commission of the offence; and

(b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under Subdivision C.

(3) If the offence to which the order relates is a *serious offence, the *penalty amount is determined by:

(a) assessing under Subdivision B the value of the *benefits the person derived from:

(i) the commission of that offence; and

(ii) subject to subsection (4), the commission of any other offence that constitutes *unlawful activity; and

(b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under Subdivision C.

Note: Pecuniary penalty orders can be varied under Subdivision D to increase penalty amounts in some cases.

(4) Subparagraph (3)(a)(ii) does not apply in relation to an offence that is not a *terrorism offence unless the offence was committed:

(a) within:

(i) if some or all of the person's property, or property suspected of being subject to the *effective control of

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the person, is covered by a *restraining order—the period of 6 years preceding the application for the restraining order; or

(ii) otherwise—the period of 6 years preceding the application for the *pecuniary penalty order; or

(b) during the period since that application for the restraining order or the pecuniary penalty order was made

Subdivision B—The value of benefits derived from the commission of an offence

122 Evidence the court is to consider

(1) In assessing the value of *benefits that a person has derived from the commission of an offence or offences (the ***illegal activity***), the court is to have 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, because of the illegal activity, came into the possession or under the control of the person or another person;

(b) the value of any other benefit that, because of the illegal activity, was provided to the person or another person;

(c) if any of the illegal activity consisted of doing 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 *person's property before, during and after the illegal activity;

(e) the person's income and expenditure before, during and after the illegal activity.

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(2) 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, 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.

(3) The officer's testimony under subsection (2):

(a) is admissible at the hearing despite any rule of law or practice relating to hearsay evidence; and

(b) is prima facie evidence of the matters testified.

123 Value of benefits derived—non-serious offences

(1) If:

(a) an application is made for a *pecuniary penalty order against a person in relation to an offence or offences (the ***illegal activity***); and

(b) the offence is not a *serious offence, or none of the offences are serious offences; and

(c) at the hearing of the application, evidence is given that the value of the *person's property during or after the illegal activity exceeded the value of the person's property before the illegal activity;

the court is to treat the value of the *benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The amount treated as the value of the *benefits under this section is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to the illegal activity.

124 Value of benefits derived—serious offences

(1) If:

(a) an application is made for a *pecuniary penalty order against a person in relation to an offence or offences (the ***illegal activity***); and

(b) the offence is a *serious offence, or one or more of the offences are serious offences; and

(c) at the hearing of the application, evidence is given that the value of the *person's property during or after:

(i) the illegal activity; or

(ii) any other *unlawful activity that the person has engaged in that constitutes a *terrorism offence; or

(iii) any other unlawful activity that the person has engaged in, within the period referred to in subsection (5), that does not constitute a terrorism offence;

exceeded the value of the person's property before the illegal activity and the other unlawful activity;

the court is to treat the value of the *benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.

(2) The amount treated as the value of the *benefits under subsection (1) is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to:

(a) the illegal activity; or

(b) any other *unlawful activity that the person has engaged in that constitutes a *terrorism offence; or

(c) any other unlawful activity that the person has engaged in, within the period referred to in subsection (5), that does not constitute a terrorism offence;

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(3) If evidence is given, at the hearing of the application, of the person's expenditure during the period referred to in subsection (5), the amount of the expenditure is presumed, unless the contrary is proved, to be the value of a *benefit that, because of the illegal activity, was provided to the person.

(4) Subsection (3) does not apply to expenditure to the extent that it resulted in acquisition of property that is taken into account under subsection (1).

(5) The period for the purposes of subparagraph (1)(c)(iii), paragraph (2)(c) and subsection (3) is:

(a) if some or all of the person's property, or property that is suspected of being subject to the *effective control of the person, is covered by a *restraining order—the period of 6 years preceding the application for the restraining order;

(b) otherwise—the period of 6 years preceding the application for the *pecuniary penalty order;

and includes the period since that application for the restraining order or the pecuniary penalty order was made.

125 Value of benefits may be as at time of assessment

(1) In quantifying the value of a *benefit for the purposes of this Subdivision, the court may treat as the value of the benefit the value that the benefit would have had if derived at the time the court makes its assessment of the value of benefits.

(2) Without limiting subsection (1), the court may have regard to any decline in the purchasing power of money between the time when the *benefit was derived and the time the court makes its assessment.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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126 Matters that do not reduce the value of benefits

In assessing the value of *benefits that a person has derived from the commission of an offence or offences (the ***illegal activity***), none of the following are to be subtracted:

(a) expenses or outgoings the person incurred in relation to the illegal activity;

(b) the value of any benefits that the person derives as *agent for, or otherwise on behalf of, another person (whether or not the other person receives any of the benefits).

127 Benefits already the subject of pecuniary penalty

(1) A *benefit is not to be taken into account for the purposes of this Subdivision if a pecuniary penalty has been imposed in respect of the benefit under:

(a) this Act; or

(b) Division 3 of Part XIII of the *Customs Act 1901*; or

(c) a law of a Territory; or

(d) a law of a State.

(2) To avoid doubt, an amount payable under a *literary proceeds order is a pecuniary penalty for the purposes of this section.

128 Property under a person's effective control

In assessing the value of *benefits that a person has derived, the court may treat as property of the person any property that, in the court's opinion, is subject to the person's *effective control.

129 Effect of property vesting in an insolvency trustee

In assessing the value of *benefits that a person has derived, the *person's property is taken to continue to be the person's property if it vests in any of the following:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

Subdivision C—Reducing penalty amounts

130 Reducing penalty amounts to take account of forfeiture and proposed forfeiture

The *penalty amount under a *pecuniary penalty order against a person is reduced by an amount equal to the value, as at the time of the making of the order, of any property that is *proceeds of the *unlawful activity to which the order relates if:

(a) the property has been forfeited, under this Act or another law of the Commonwealth or under a law of a *non-governing Territory, in relation to the unlawful activity to which the order relates; or

(b) an application has been made for a *forfeiture order that would cover the property.

131 Reducing penalty amounts to take account of tax paid

Tax paid before application for order is made

(1) The court must reduce the *penalty amount under a *pecuniary penalty order against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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before the application for the order is made is attributable to the *benefits to which the order relates.

Tax paid after application for order is made

(1A) The court may, if it considers that it is in the interests of justice to do so, reduce the *penalty amount under a *pecuniary penalty order against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid at or after the time the application for the order is made is attributable to the *benefits to which the order relates.

Tax covered by this section

(2) Tax covered by this section may be tax payable under a law of the Commonwealth, a State, a Territory or a foreign country.

132 Reducing penalty amounts to take account of fines etc.

The court may, if it considers it appropriate to do so, reduce the *penalty amount under a *pecuniary penalty order against a person by an amount equal to the amount payable by the person by way of fine, restitution, compensation or damages in relation to an offence to which the order relates.

Subdivision D—Varying pecuniary penalty orders to increase penalty amounts

133 Varying pecuniary penalty orders to increase penalty amounts

(1) The court may, on the application of the *responsible authority, vary a *pecuniary penalty order against a person by increasing the *penalty amount if one or more of subsections (2), (2A) or (3) apply. The amount of each increase is as specified in the relevant subsection.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The *penalty amount may be increased if:

(a) the penalty amount was reduced under section 130 to take account of a forfeiture of property or a proposed *forfeiture order against property; and

(b) 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 amount of the increase is equal to the value of the property.

(2A) The *penalty amount may be increased if:

(a) the penalty amount was reduced under section 130 to take account of a forfeiture of property or a proposed *forfeiture order against property; and

(b) one of the following orders has been made:

(i) an order under section 73 or 94 excluding an *interest in the property from forfeiture;

(ii) an order under section 77 or 94A (which deal with compensation) directing the Commonwealth to pay an amount to a person in relation to a proportion of an interest in the property that was not derived or realised from the commission of any offence;

(iii) an order under section 102 (which deals with the recovery of property) in relation to an interest in the property.

The amount of the increase is such amount as the court considers appropriate.

(2B) In determining the amount of the increase for the purposes of subsection (2A), the court may have regard to:

(a) if subparagraph (2A)(b)(i) or (iii) applies—the value of the interest, as at the time the order was made; and

(b) if subparagraph (2A)(b)(ii) applies—the amount that the Commonwealth was required to pay; and

(c) any other matter the court considers relevant.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The *penalty amount may be increased if:

(a) the penalty amount was reduced under section 131 to take account of an amount of tax the person paid; and

(b) an amount is repaid or refunded to the person in respect of that tax.

The amount of the increase is equal to the amount repaid or refunded.

(4) The *responsible authority's application may deal with more than one increase to the same *penalty amount.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—How pecuniary penalty orders are obtained

134 Proceeds of crime authority may apply for a pecuniary penalty order

(1) A *proceeds of crime authority may apply for a *pecuniary penalty order.

(2) If the application relates to a person's conviction of a *serious offence, the application must be made before:

(a) the end of the period of 9 months after the *conviction day; or

(b) if an *extension order is in force at the end of that period—the end of the period of 3 months after the end of the extended period relating to that extension order.

(3) If the application relates to a person's conviction of an *indictable offence that is not a *serious offence, the application must be made before the end of the period of 6 months after the *conviction day.

(4) An application may be made in relation to one or more offences.

(5) An application may be made for a *pecuniary penalty order in relation to an offence even if:

(a) a *forfeiture order in relation to the offence, or an application for such a forfeiture order, has been made; or

(b) Part 2-3 (forfeiture on conviction of a serious offence) applies to the offence.

(6) Despite subsections (2) and (3), the court hearing the application may give leave for the application to be made after the time before which an application would otherwise need to be made under those subsections if it is satisfied that it would be in the interests of justice to allow the application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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135 Additional application for a pecuniary penalty order

(1) A *proceeds of crime authority cannot, unless the court gives leave, apply for a *pecuniary penalty order against a person in respect of *benefits the person derived from the commission of an offence if:

(a) an application has previously been made:

(i) under this Division; or

(ii) under another law of the Commonwealth; or

(iii) under a law of a *non-governing Territory;

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

(b) the application has been finally determined on the merits.

(2) The court must not give leave unless it is satisfied that:

(a) the *benefit to which the new application relates was identified only after the first application was determined; or

(b) necessary evidence became available only after the first application was determined; or

(c) it is in the interests of justice to give the leave.

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

136 Notice of application

(1) The *responsible authority must give written notice of the application to a person who would be subject to the *pecuniary penalty order if it were made.

(2) The *responsible authority must include a copy of the application with the notice.

(3) The *responsible authority must give a copy of any affidavit supporting the application to a person who would be subject to the *pecuniary penalty order (if it were made) within a reasonable time before the hearing of the application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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137 Amendment of application

(1) The court hearing the application may amend the application:
  (a) on application by the *responsible authority; or
  (b) with the consent of the authority.

(2) However, the court must not amend the application so as to include an additional *benefit in the application unless the court is satisfied that:
  (a) the benefit was not reasonably capable of identification when the application was originally made; or
  (b) necessary evidence became available only after the application was originally made.

(3) On applying for an amendment to include an additional *benefit in the application, the *responsible authority must give to the person against whom the *pecuniary penalty order would be made a written notice of the application to amend.

138 Procedure on application

(1) The person who would be subject to the *pecuniary penalty order if it were made may appear and adduce evidence at the hearing of the application.

(2) The court may, in determining the application, have regard to:
  (a) the transcript of any proceeding against the person for an offence that constitutes *unlawful activity; and
  (b) the evidence given in any such proceeding.

139 Applications to courts before which persons are convicted

If an application for a *pecuniary penalty 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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) any power in relation to the relevant order may be exercised by the court;

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Enforcement of pecuniary penalty orders

140 Enforcement of pecuniary penalty orders

(1) An amount payable by a person to the Commonwealth under a *pecuniary penalty order is a civil debt due by the person to the Commonwealth.

(2) 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.

(3) However, if the order was made under subsection 117(2) when sentence was being passed on the person for the offence to which the order relates, the order cannot be enforced against the person within the period of 6 months after the order was made.

(4) The debt arising from the order is taken to be a judgment debt.

(5) If a *pecuniary penalty order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

141 Property subject to a person's effective control

(1) If:

(a) a person is subject to a *pecuniary penalty order; and

(b) the *responsible authority applies to the court for an order under this section; and

(c) the court is satisfied that particular property is subject to the *effective control of the person;

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.

(3) A *restraining order may be made in respect of the property as if:
  (a) the property were the *person's property; and
  (b) the person had committed a *serious offence.

(4) If the *responsible authority applies for an order under subsection (1) relating to particular property, the authority must give written notice of the application to:
  (a) the person who is subject to the *pecuniary penalty order; and
  (b) any person whom the authority has reason to believe may have an *interest in the property.

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

142 Charge on property subject to restraining order

(1) If:
  (a) a *pecuniary penalty order is made against a person in relation to an *indictable offence; and
  (b) a *restraining order is, or has been, made against:
    (i) the *person's property; or
    (ii) another person's property in relation to which an order under subsection 141(1) is, or has been, made; and
  (c) the restraining order relates to that 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) The charge ceases to have effect in respect of the property:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) if the *pecuniary penalty order was made in relation to the person's conviction of the *indictable offence and that conviction is *quashed—upon the order being discharged under Division 5; or

(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; or

(c) upon payment to the Commonwealth of the *penalty amount in satisfaction of the pecuniary penalty order; or

(d) upon the sale or other disposition of the property:

(i) under an order under Division 4 of Part 4-1; or

(ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or

(iii) if the restraining order directed the *Official Trustee to take custody and control of the property—by the owner of the property with the consent of the Official Trustee; or

(e) 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) The charge:

(a) is subject to every *encumbrance on the property (other than an encumbrance in which the person referred to paragraph (1)(a) has an *interest) that came into existence before the charge and that would, apart from 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) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

143 Charges may be registered

(1) If:

(a) a charge is created by section 142 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 *Official Trustee or the *responsible authority for the *pecuniary penalty order or *restraining order referred to in that section may cause the charge so created to be registered under the provisions of that law.

(2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph 142(2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

(3) In this section:

registration of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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144 Penalty amounts exceeding the court's jurisdiction

(1) If:

(a) a court makes a *pecuniary penalty order of a particular amount; and

(b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount;

the registrar of the court must issue a certificate containing the particulars specified in the regulations.

(2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the relevant order.

(3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—The effect on pecuniary penalty orders of convictions being quashed

145 Pecuniary penalty order unaffected if not made in relation to a conviction

A *pecuniary penalty order made in relation to an offence but not made in relation to a person's conviction of the offence is not affected if the person is convicted of the offence and the conviction is subsequently *quashed.

146 Discharge of pecuniary penalty order if made in relation to a conviction

(1) Subject to subsections (2) and (3), a *pecuniary penalty order made in relation to a person's conviction of an offence is discharged if:
  (a) the person's conviction of any of the offences to which the order relates is subsequently *quashed; and
  (b) the *responsible authority does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed or varied.

(2) Unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *pecuniary penalty order:
  (a) for 14 days after the conviction is quashed; and
  (b) if the *responsible authority makes such an application.

(2A) To avoid doubt, the *responsible authority may make an application to confirm the order and an application to vary the order, and the court may hear both applications at the same time.

(3) A *pecuniary penalty order made in relation to a person's conviction of an offence is discharged if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person's conviction of the offence is subsequently *quashed; and
(b) the order does not relate to any other offence; and
(c) the offence is not a *serious offence.

147 Notice of application for confirmation or variation of pecuniary penalty order

The *responsible authority must give to the person written notice of an application for confirmation or variation of the *pecuniary penalty order.

Note: If the authority applies for confirmation or variation of a pecuniary penalty order, it can also apply for an examination order under Part 3-1.

148 Procedure on application for confirmation or variation of pecuniary penalty order

(1) The person may appear and adduce evidence at the hearing of the application for confirmation or variation of the order.

(2) The court may, in determining the application, have regard to:
(a) the transcript of any proceeding against the person for:
(i) any of the offences to which the order relates of which the person was convicted; or
(ii) if the person was taken to be convicted of any of those offences because of paragraph 331(1)(c)—the other offence referred to in that paragraph;
including any appeals relating to such a conviction; and
(b) the evidence given in any such proceeding.

149 Court may confirm pecuniary penalty order

The court may confirm the *pecuniary penalty order if the court is satisfied that, when the *responsible authority applied for the order,

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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the court could have made the order without relying on the person's conviction that was *quashed.

149A Court may vary pecuniary penalty order

(1) The court may vary the *pecuniary penalty order by reducing the *penalty amount by an amount worked out under subsection (2) if the court is satisfied that:
  (a) the order relates to more than one offence; and
  (b) when the *responsible authority applied for the order, the court could have made the order in relation to at least one of the offences that has not been *quashed.

(2) The amount is an amount equal to so much of the *penalty amount as the court reasonably believes to be attributable to a person's conviction of an offence:
  (a) to which the *pecuniary penalty order relates; and
  (b) that was *quashed.

(3) In determining the amount by which the *penalty amount should be reduced under subsection (2), the court may have regard to:
  (a) the transcripts and evidence referred to in subsection 148(2); and
  (b) the transcript of, and the evidence given in, any proceedings relating to the application for the *pecuniary penalty order or any application to vary the order; and
  (c) any other matter that the court considers relevant.

150 Effect of court's decision on confirmation or variation of pecuniary penalty order

(1) If the court confirms the *pecuniary penalty order under section 149, or varies the order under section 149A, the order is taken not to be affected by the *quashing of the person's conviction of the offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) If the court decides not to confirm or vary the *pecuniary penalty order, the order is discharged.

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Part 2-5—Literary proceeds orders

151 Simplified outline of this Part

If certain offences have been committed, literary proceeds orders can be made, ordering payments to the Commonwealth of amounts based on the literary proceeds that a person has derived in relation to such an offence. (There is no requirement that a person has been convicted of the offence.)

Division 1—Making literary proceeds orders

152 Making literary proceeds orders

(1) A court with *proceeds jurisdiction may make an order requiring a person to pay an amount to the Commonwealth if:
  (a) a *proceeds of crime authority applies for the order; and
  (b) the court is satisfied that the person has committed an *indictable offence (whether or not the person has been convicted of the offence); and
  (c) the court is satisfied that the person has derived *literary proceeds in relation to the offence.

(2) A court with *proceeds jurisdiction may make an order requiring a person to pay an amount to the Commonwealth if:
  (a) a *proceeds of crime authority applies for the order; and
  (b) the court is satisfied that the person has committed a *foreign indictable offence (whether or not the person has been convicted of the offence); and
  (c) the court is satisfied that the person has derived *literary proceeds in relation to the offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) However, the *literary proceeds must have been derived after the commencement of this Act.

Note: Because of section 14, it does not matter whether the offence to which the order relates was committed before or after the commencement of this Act.

(4) The court's power to make a *literary proceeds order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

153 Meaning of *literary proceeds*

(1) ***Literary proceeds*** are any *benefit that a person derives from the commercial exploitation of:

(a) the person's notoriety resulting, directly or indirectly, from the person committing an *indictable offence or a *foreign indictable offence; or

(b) the notoriety of another person, involved in the commission of that offence, resulting from the first-mentioned person committing that offence.

(2) The commercial exploitation may be by any means, including:

(a) publishing any material in written or electronic form; or

(b) any use of media from which visual images, words or sounds can be produced; or

(c) any live entertainment, representation or interview.

(3) If the offence is an *indictable offence, it does not matter whether the *benefits are derived within or outside *Australia.

(3A) If the offence is a *foreign indictable offence, then a *benefit is not treated as *literary proceeds unless the benefit is derived in *Australia or transferred to Australia.

(4) In determining:

(a) whether a person has derived *literary proceeds; or

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(b) the value of literary proceeds that a person has derived;

the court may treat as property of the person any property that, in the court's opinion:

(c) is subject to the person's *effective control; or

(d) was not received by the person, but was transferred to, or(in the case of money) paid to, another person at the person's direction.

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

In deciding whether to make a *literary proceeds order, the court:

(a) must take into account:

(i) the nature and purpose of the product or activity from which the *literary proceeds were derived; and

(ii) whether supplying the product or carrying out the activity was in the public interest; and

(iii) the social, cultural or educational value of the product or activity; and

(iv) the seriousness of the offence to which the product or activity relates; and

(v) how long ago the offence was committed; and

(b) may take into account such other matters as it thinks fit.

155 Additional literary proceeds orders

More than one *literary proceeds order may be made against a person in relation to the same offence.

156 Ancillary orders

The court that made a *literary proceeds order, or any other court that could have made the literary proceeds order, may make orders ancillary to the literary proceeds order, either when it makes the literary proceeds order or at a later time.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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157 Acquittals do not affect literary proceeds orders

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *literary proceeds order in relation to the offence.

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Division 2—Literary proceeds amounts

158 Determining literary proceeds amounts

(1) The amount that a person is ordered to pay to the Commonwealth under a *literary proceeds order (the ***literary proceeds amount***) is the amount that the court thinks appropriate.

(2) However, the amount:
  (a) must not exceed the amount of the *literary proceeds relating to the offence to which the order relates, less any deductions arising under section 159; and
  (b) may be further reduced under section 160.

(3) In determining the *literary proceeds amount, the court is to have regard to such matters as it thinks fit, including any of the following:
  (a) the amount of the *literary proceeds relating to the offence;
  (b) if the person stood trial for the offence—the evidence adduced in the proceedings for the offence;
  (c) if the person was convicted of the offence—the transcript of the sentencing proceedings.

159 Deductions from literary proceeds amounts

In determining the *literary proceeds amount under a *literary proceeds order against a person, the court must deduct the following:
  (a) any expenses and outgoings that the person incurred in deriving the *literary proceeds;
  (b) the value of any property of the person forfeited under:
    (i) a *forfeiture order; or
    (ii) an *interstate forfeiture order; or
    (iii) a *foreign forfeiture order;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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relating to the offence to which the literary proceeds order relates, to the extent that the property is literary proceeds;

(c) any amount payable by the person under:

(i) a *pecuniary penalty order; or

(ii) an order under section 243B of the *Customs Act 1901*; or

(iii) an *interstate pecuniary penalty order; or

(iv) a *foreign pecuniary penalty order;

relating to the offence to which the literary proceeds order relates, to the extent that the amount is literary proceeds;

(d) the amount of any previous literary proceeds order made against the person in relation to the same exploitation of the person's notoriety resulting from the person committing the offence in question.

160 Reducing literary proceeds amounts to take account of tax paid

(1) The court may reduce the *literary proceeds amount under a *literary proceeds order against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid is attributable to the *literary proceeds to which the order relates.

(2) The tax may be tax payable under a law of the Commonwealth, a State, a Territory or a foreign country.

161 Varying literary proceeds orders to increase literary proceeds amounts

(1) The court may, on the application of the *responsible authority, vary a *literary proceeds order against a person by increasing the *literary proceeds amount if one or more of subsections (2), (3) and (4) apply. The amount of each increase is as specified in the relevant subsection.

(2) The *literary proceeds amount may be increased if:

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(a) the value of property of the person forfeited under a *forfeiture order, an *interstate forfeiture order or a *foreign forfeiture order was deducted from the literary proceeds amount under paragraph 159(b); and

(b) an appeal against the forfeiture, or against the order, is allowed.

The amount of the increase is equal to the value of the property.

(3) The *literary proceeds amount may be increased if:

(a) an amount payable under a *pecuniary penalty order, an order under section 243B of the *Customs Act 1901*, an *interstate pecuniary penalty order or a *foreign pecuniary penalty order was deducted from the *literary proceeds amount under paragraph 159(c); and

(b) an appeal against the amount payable, or against the order, is allowed.

The amount of the increase is equal to the amount that was payable.

(4) The *literary proceeds amount may be increased if:

(a) in determining a *literary proceeds amount, the court took into account, under section 160, an amount of tax paid by the person who is the subject of the order; and

(b) an amount is repaid or refunded to the person in respect of that tax.

The amount of the increase is equal to the amount repaid or refunded.

(5) The *responsible authority's application may deal with more than one increase to the same *literary proceeds amount.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—How literary proceeds orders are obtained

162 Proceeds of crime authority may apply for a literary proceeds order

(1) A *proceeds of crime authority may apply for a *literary proceeds order.

(2) An application may be made in relation to one or more offences.

163 Notice of application

(1) The *responsible authority must give written notice of the application to the person who would be subject to the *literary proceeds order if it were made.

(2) The *responsible authority must include a copy of the application, and any affidavit supporting the application, with the notice.

164 Amendment of application

(1) The court hearing the application may amend the application:
  (a) on application by the *responsible authority; or
  (b) with the consent of the authority.

(2) However, the court must not amend the application so as to include additional *literary proceeds in the application unless the court is satisfied that:
  (a) the literary proceeds were not reasonably capable of identification when the application was originally made; or
  (b) necessary evidence became available only after the application was originally made.

(3) If:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the *responsible authority applies to amend the application for a *literary proceeds order against a person; and

(b) the effect of the amendment would be to include additional *literary proceeds in the application;

the authority must give the person written notice of the application to amend.

165 Procedure on application

The person who would be subject to the *literary proceeds order if it were made may appear and adduce evidence at the hearing of the application.

166 Applications to courts before which persons are convicted

If an application for a *literary proceeds 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 relevant 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.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Enforcement of literary proceeds orders

167 Enforcement of literary proceeds orders

(1) An amount payable by a person to the Commonwealth under a *literary proceeds order is a civil debt due by the person to the Commonwealth.

(2) A *literary proceeds 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.

(3) The debt arising from the order is taken to be a judgment debt.

168 Property subject to a person's effective control

(1) If:

(a) a person is subject to a *literary proceeds order; and

(b) the *responsible authority applies to the court for an order under this section; and

(c) the court is satisfied that particular property is subject to the *effective control of the person;

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

(2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.

(3) A *restraining order may be made in respect of the property as if:

(a) the property were the *person's property; and

(b) the person had committed a *serious offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(4) If the *responsible authority applies for an order under subsection (1) relating to particular property, the authority must give written notice of the application to:

(a) the person who is subject to the *literary proceeds order; and

(b) any person whom the authority reasonably believes may have an *interest in the property.

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

169 Charge on property subject to restraining order

(1) If:

(a) a *literary proceeds order is made against a person in relation to an *indictable offence; and

(b) a *restraining order is, or has been, made against:

(i) the *person's property; or

(ii) another person's property in relation to which an order under subsection 168(1) is, or has been, made; and

(c) the restraining order relates to that 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 *literary proceeds amount.

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

(a) if the *literary proceeds order was made in relation to the person's conviction of the *indictable offence and that conviction is *quashed—upon the order being discharged under Division 5; or

(b) upon the discharge of the literary proceeds order or the *restraining order by a court hearing an appeal against the making of the order; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) upon payment to the Commonwealth of the *literary proceeds amount in satisfaction of the literary proceeds order; or

(d) upon the sale or other disposition of the property:

(i) under an order under Division 4 of Part 4-1; or

(ii) by the owner of the property with the consent of the court that made the literary proceeds order; or

(iii) where the restraining order directed the *Official Trustee to take custody and control of the property—by the owner of the property with the consent of the Official Trustee; or

(e) 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) The charge:

(a) is subject to every *encumbrance on the property (other than an encumbrance in which the person referred to in paragraph (1)(a) has an *interest) that came into existence before the charge and that would, apart from 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) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges created by this section after the commencement of subsection (4) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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170 Charges may be registered

(1) If:

(a) a charge is created by section 169 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 *Official Trustee or the *responsible authority for the *literary proceeds order or *restraining order referred to in that section may cause the charge so created to be registered under the provisions of that law.

Note: A charge is created under section 169 if both a literary proceeds order and a restraining order have been made in relation to an indictable offence (or related offence).

(2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph 169(2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

(3) In this section:

registration of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

171 Literary proceeds amounts exceeding the court's jurisdiction

(1) If:

(a) a court makes a *literary proceeds order; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to the *literary proceeds amount under the order;

the registrar of the court must issue a certificate containing the particulars specified in the regulations.

(2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the *literary proceeds amount.

(3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—The effect on literary proceeds orders of convictions being quashed

172 Literary proceeds order unaffected if not made in relation to a conviction

A *literary proceeds order made in relation to an offence but not made in relation to a person's conviction of the offence is not affected if the person is convicted of the offence and the conviction is subsequently *quashed.

173 Discharge of literary proceeds order if made in relation to a conviction

(1) A *literary proceeds order made in relation to a person's conviction of an offence is discharged if:

(a) the person's conviction of the offence is subsequently *quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and

(b) the *responsible authority does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.

(2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *literary proceeds order:

(a) for 14 days after the conviction is quashed; and

(b) if the *responsible authority makes such an application.

174 Notice of application for confirmation of literary proceeds order

The *responsible authority must give to the person written notice of an application for confirmation of the *literary proceeds order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: If the authority applies for confirmation of a forfeiture order, it can also apply for an examination order under Part 3-1.

175 Procedure on application for confirmation of literary proceeds order

(1) The person may appear and adduce evidence at the hearing of the application for confirmation of the order.

(2) The court may, in determining the application, have regard to:

(a) the transcript of any proceeding against the person for:

(i) the offence of which the person was convicted; or

(ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;

including any appeals relating to the conviction; and

(b) the evidence given in any such proceeding.

176 Court may confirm literary proceeds order

The court may confirm the *literary proceeds order if the court is satisfied that, when the *responsible authority applied for the order, the court could have made the order:

(a) on the ground that the person had committed the offence in relation to which the person's conviction was *quashed; and

(b) without relying on the person's conviction of the offence.

177 Effect of court's decision on confirmation of literary proceeds order

(1) If the court confirms the *literary proceeds order under section 176, the order is taken not to be affected by the *quashing of the person's conviction of the offence.

(2) If the court decides not to confirm the *literary proceeds order, the order is discharged.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 6—Literary proceeds orders covering future literary proceeds

178 Literary proceeds orders can cover future literary proceeds

(1) The court may include in a *literary proceeds order one or more amounts in relation to *benefits that the person who is the subject of the order may derive in the future if the court is satisfied that:

(a) the person will derive the benefits; and

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

(2) However, the court must not include an amount in the order unless the *responsible authority, in its application for the order, requested the inclusion in the order of one or more amounts in relation to *benefits that the person who would be the subject of the order may derive in the future.

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

Note: Division 2 describes how literary proceeds amounts are determined.

179 Enforcement of literary proceeds orders in relation to future literary proceeds

If:

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

(b) the person subsequently derives those benefits;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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immediately the benefits are derived, Division 4 applies to the amount as if it were a *literary proceeds amount under a literary proceeds order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2-6—Unexplained wealth orders

179A Simplified outline of this Part

This Part provides for the making of certain orders relating to unexplained wealth.

A preliminary unexplained wealth order requires a person to attend court for the purpose of enabling the court to decide whether to make an unexplained wealth order against the person.

An unexplained wealth order is an order requiring the person to pay an amount equal to so much of the person's total wealth as the person cannot satisfy the court is not derived or realised, directly or indirectly, from certain offences.

Division 1—Making unexplained wealth orders

179B Making a preliminary unexplained wealth order requiring a person to appear

(1) A court with *proceeds jurisdiction must make an order (a ***preliminary unexplained wealth order***) requiring a person to appear before the court for the purpose of enabling the court to decide whether or not to make an *unexplained wealth order in relation to the person if:

(a) a *proceeds of crime authority applies for an unexplained wealth order in relation to the person; and

(b) the court is satisfied that an *authorised officer has reasonable grounds to suspect that the person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

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(c) any affidavit requirements in subsection (2) for the application have been met.

Effect of restraining orders

(1A) Paragraphs (1)(b) and (c) do not apply if a *restraining order made under section 20A in relation to the person:

(a) is in force; or

(b) has been revoked under section 44.

(1B) If subsection (1A) applies, the court may, in considering making an order under subsection (1), take into account:

(a) an affidavit of an *authorised officer that:

(i) supported the application for the *restraining order made under section 20A; and

(ii) met the requirements of subsection 20A(3); and

(b) any material that an authorised officer or *proceeds of crime authority provided, in the proceedings under section 20A, relating to the requirements of subsection 20A(3); and

(c) any other material that an authorised officer or proceeds of crime authority provides in the proceedings under this section.

This subsection does not limit the court's power to take other material into account.

Affidavit requirements

(2) An application for an *unexplained wealth order in relation to a person must be supported by an affidavit of an *authorised officer that:

(a) states that the authorised officer suspects that the person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

(b) includes the grounds on which the authorised officer holds that suspicion.

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Considering application without notice

(3) The court must make the order under subsection (1) without notice having been given to any person if the *responsible authority requests the court to do so.

Refusal to make preliminary unexplained wealth order

(4) Despite subsection (1), the court may refuse to make the *preliminary unexplained wealth order if the court is satisfied that there are not reasonable grounds to suspect that the person's *total wealth exceeds by $100,000 or more the value of the person's *wealth that was *lawfully acquired.

179C Application to revoke a preliminary unexplained wealth order

(1) If a court makes a *preliminary unexplained wealth order requiring a person to appear before the court, the person may apply to the court to revoke the order.

(2) The application must be made:
  (a) within 28 days after the person is notified of the *preliminary unexplained wealth order; or
  (b) if the person applies to the court, within that period of 28 days, for an extension of the time for applying for revocation—within such longer period, not exceeding 3 months, as the court allows.

(4) However, the *preliminary unexplained wealth order remains in force until the court revokes the order.

(5) The court may revoke the *preliminary unexplained wealth order on application under subsection (1) if satisfied that:
  (a) there are no grounds on which to make the order at the time of considering the application to revoke the order; or
  (b) it is in the public interest to do so; or
  (c) it is otherwise in the interests of justice to do so.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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179CA Notice and procedure on application to revoke preliminary unexplained wealth order

(1) This section applies if a person applies under section 179C for revocation of a *preliminary unexplained wealth order.

(2) The applicant may appear and adduce material at the hearing of the application.

(3) The applicant must give the *responsible authority:
  (a) written notice of the application; and
  (b) a copy of any affidavit supporting the application.

(4) The *responsible authority may appear and adduce additional material at the hearing of the application.

(5) The *responsible authority must give the applicant a copy of any affidavit it proposes to rely on to contest the application.

(6) The notice and copies of affidavits must be given under subsections (3) and (5) within a reasonable time before the hearing of the application.

179D Notice of revocation of a preliminary unexplained wealth order

If a *preliminary unexplained wealth order is revoked under section 179C, the *responsible authority must give written notice of the revocation to the applicant for the revocation.

179E Making an unexplained wealth order

(1) A court with *proceeds jurisdiction must make an order (an ***unexplained wealth order***) requiring a person to pay an amount to the Commonwealth if:
  (a) the court has made a *preliminary unexplained wealth order in relation to the person; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the court is not satisfied that the whole or any part of the person's *wealth was not derived or realised, directly or indirectly, from one or more of the following:

(i) an offence against a law of the Commonwealth;

(ii) a *foreign indictable offence;

(iia) a *relevant offence of a *participating State;

(iii) a *State offence that has a federal aspect;

(iv) a *Territory offence.

(2) The court must specify in the order that the person is liable to pay to the Commonwealth an amount (the person's ***unexplained wealth amount***) equal to the amount that, in the opinion of the court, is the difference between:

(a) the person's *total wealth; and

(b) the sum of the values of the property that the court is satisfied was not derived or realised, directly or indirectly, from one or more of the following:

(i) an offence against a law of the Commonwealth;

(ii) a *foreign indictable offence;

(iia) a *relevant offence of a *participating State;

(iii) a *State offence that has a federal aspect;

(iv) a *Territory offence;

reduced by any amount deducted under section 179J (reducing unexplained wealth amounts to take account of forfeiture, pecuniary penalties etc.).

(3) In proceedings under this section, the burden of proving that a person's *wealth is not derived or realised, directly or indirectly, from one or more of the offences referred to in paragraph (1)(b) lies on the person.

(4) To avoid doubt:

(a) when considering whether to make an order under subsection (1), the court may have regard to information not included in the application; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the court may make an order under subsection (1) in relation to a person even if the person failed to appear as required by the *preliminary unexplained wealth order.

(5) To avoid doubt, subsection (3) has effect despite section 317.

(6) Despite subsection (1), the court may refuse to make an order under that subsection if the court is satisfied that:

(a) the person's *unexplained wealth amount is less than $100,000; or

(b) it is not in the public interest to make the order.

179EA Refusal to make an order for failure to give undertaking

(1) The court may refuse to make a *preliminary unexplained wealth order or an *unexplained wealth order if the Commonwealth refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the order.

(2) The *responsible authority may give such an undertaking on behalf of the Commonwealth.

179EB Costs

If the court refuses to make a *preliminary unexplained wealth order or an *unexplained wealth order, it may make any order as to costs it considers appropriate, including costs on an indemnity basis.

179F Ancillary orders

(1) A court that makes an *unexplained wealth order, or any other court that could have made the unexplained wealth order, may make orders ancillary to the order, either when the order is made or at a later time.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) A court that makes a *preliminary unexplained wealth order, or any other court that could have made the order, may make orders ancillary to the order, either when the order is made or at a later time.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Unexplained wealth amounts

179G Determining unexplained wealth amounts

Meaning of wealth

(1) The property of a person that, taken together, constitutes the ***wealth*** of a person for the purposes of this Part is:

(a) property owned by the person at any time;

(b) property that has been under the *effective control of the person at any time;

(c) property that the person has disposed of (whether by sale, gift or otherwise) or consumed at any time;

including property owned, effectively controlled, disposed of or consumed before the commencement of this Part.

Meaning of total wealth

(2) The ***total wealth*** of a person is the sum of all of the values of the property that constitutes the person's wealth.

Value of property

(3) The value of any property that has been disposed of or consumed, or that is for any other reason no longer available, is the greater of:

(a) the value of the property at the time it was acquired; and

(b) the value of the property immediately before it was disposed of, consumed or stopped being available.

(4) The value of any other property is the greater of:

(a) the value of the property at the time it was acquired; and

(b) the value of the property on the day that the application for the *unexplained wealth order was made.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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179H Effect of property vesting in an insolvency trustee

In assessing the value of property of a person, property is taken to continue to be the *person's property if it vests in any of the following:

(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement;

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement;

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

179J Reducing unexplained wealth amounts to take account of forfeiture, pecuniary penalties etc.

In determining the *unexplained wealth amount specified in an *unexplained wealth order in relation to a person, the court must deduct an amount equal to the following:

(a) the value, at the time of making the order, of any property of the person forfeited under:

(i) a *forfeiture order; or

(ii) an *interstate forfeiture order; or

(iii) a *foreign forfeiture order;

(b) the sum of any amounts payable by the person under:

(i) a *pecuniary penalty order; or

(ii) a *literary proceeds order; or

(iii) an order under section 243B of the *Customs Act 1901*; or

(iv) an *interstate pecuniary penalty order; or

(v) a *foreign pecuniary penalty order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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179K Varying unexplained wealth orders to increase amounts

(1) The court may, on the application of the *responsible authority, vary an *unexplained wealth order against a person by increasing the *unexplained wealth amount if subsection (2) or (3) applies. The amount of the increase is as specified in subsection (2) or (3).

(2) The *unexplained wealth amount may be increased if:

(a) the value of property of the person forfeited under a *forfeiture order, an *interstate forfeiture order or a *foreign forfeiture order was deducted from the unexplained wealth amount under paragraph 179J(a); and

(b) an appeal against the forfeiture, or against the order, is allowed.

The amount of the increase is equal to the value of the property.

(3) The *unexplained wealth amount may be increased if:

(a) an amount payable under a *pecuniary penalty order, a *literary proceeds order, an order under section 243B of the *Customs Act 1901*, an *interstate pecuniary penalty order or a *foreign pecuniary penalty order was deducted from the *unexplained wealth amount under paragraph 179J(b); and

(b) an appeal against the amount payable, or against the order, is allowed.

The amount of the increase is equal to the amount that was payable.

(4) The *responsible authority's application may deal with more than one increase to the same *unexplained wealth amount.

179L Relieving certain dependants from hardship

(1) The court making an *unexplained wealth order in relation to a person must make another order directing the Commonwealth, once the unexplained wealth order is satisfied, to pay a specified amount to a *dependant of the person if the court is satisfied that:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the unexplained wealth order would cause hardship to the dependant; and
(b) the specified amount would relieve that hardship; and
(c) if the dependant is aged at least 18 years—the dependant had no knowledge of the person's conduct that is the subject of the unexplained wealth order.

(2) The specified amount must not exceed the person's *unexplained wealth amount.

(3) An order under this section may relate to more than one of the person's *dependants.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—How unexplained wealth orders are obtained

179M Proceeds of crime authority may apply for an unexplained wealth order

A *proceeds of crime authority may apply for an *unexplained wealth order.

179N Notice of application

(1) This section sets out the notice requirements if a *proceeds of crime authority has made an application for an *unexplained wealth order.

(2) If a court with *proceeds jurisdiction makes a *preliminary unexplained wealth order in relation to the person, the *responsible authority must, within 7 days of the making of the order:

(a) give written notice of the order to the person who would be subject to the *unexplained wealth order if it were made; and

(b) provide to the person a copy of the application for the unexplained wealth order, and a copy of:

(i) the affidavit referred to in subsection 179B(2); or

(ii) if, because of subsection 179B(1A), there is no such affidavit—the affidavit referred to in paragraph 179B(1B)(a).

(2A) The court may make an order extending the period during which the things referred to in subsection (2) must be done, by a period not exceeding 28 days, if:

(a) the *responsible authority applies for the order before the end of the period (including that period as previously extended); and

(b) the court is satisfied that it is appropriate to do so.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2B) The period referred to in subsection (2) may be extended more than once.

(3) The *responsible authority must also give a copy of any other affidavit supporting the application to the person who would be subject to the *unexplained wealth order if it were made.

(4) The copies must be given under subsection (3) within a reasonable time before the hearing in relation to whether the order is to be made.

179P Additional application for an unexplained wealth order

(1) A *proceeds of crime authority cannot, unless the court gives leave, apply for an *unexplained wealth order against a person if:
  (a) an application has previously been made for an unexplained wealth order in relation to the person; and
  (b) the application has been finally determined on the merits.

(2) The court must not give leave unless it is satisfied that:
  (a) the *wealth to which the new application relates was identified only after the first application was determined; or
  (b) necessary evidence became available only after the first application was determined; or
  (c) it is in the interests of justice to give the leave.

179Q Procedure on application and other notice requirements

(1) The person who would be subject to an *unexplained wealth order if it were made may appear and adduce evidence at the hearing in relation to whether the order is to be made.

(2) The person must give the *responsible authority written notice of any grounds on which he or she proposes to contest the making of the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The *responsible authority may appear and adduce evidence at the hearing in relation to whether an *unexplained wealth order is to be made.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Enforcement of unexplained wealth orders

179R Enforcement of an unexplained wealth order

(1) An amount payable by a person to the Commonwealth under an *unexplained wealth order is a civil debt due by the person to the Commonwealth.

(2) An *unexplained wealth 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.

(3) The debt arising from the order is taken to be a judgment debt.

(4) If an *unexplained wealth order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

179S Property subject to a person's effective control

(1) If:

(a) a person is subject to an *unexplained wealth order; and

(b) the *responsible authority applies to the court for an order under this section; and

(c) the court is satisfied that particular property is subject to the *effective control of the person;

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

(2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The court may, on application by the *responsible authority, make a *restraining order under section 20A in respect of the property as if:

(a) the property were the *person's property; and

(b) the requirements in paragraphs 20A(1)(c) to (g) were satisfied.

(4) If the *responsible authority applies for an order under subsection (1) relating to particular property, the authority must give written notice of the application to:

(a) the person who is subject to the *unexplained wealth order; and

(b) any person whom the authority has reason to believe may have an *interest in the property.

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

179SA Charge on property subject to restraining order

(1) If:

(a) an *unexplained wealth order is made against a person; and

(b) the person is the *suspect in relation to a *restraining order that is or has been made against:

(i) the *person's property; or

(ii) another person's property in relation to which an order under subsection 179S(1) is, or has been, made;

then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the person's *unexplained wealth amount.

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) upon the discharge of the *unexplained wealth order or the *restraining order by a court hearing an appeal against the making of the order; or

(b) upon payment to the Commonwealth of the *unexplained wealth amount in satisfaction of the unexplained wealth order; or

(c) upon the sale or other disposition of the property:

(i) under an order under Division 4 of Part 4-1; or

(ii) by the owner of the property with the consent of the court that made the unexplained wealth order; or

(iii) if the restraining order directed the *Official Trustee to take custody and control of the property—by the owner of the property with the consent of the Official Trustee; or

(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 *responsible authority for the unexplained wealth order or restraining order determining, by writing, that the charge should cease to have effect in respect of the property;

whichever first occurs.

(3) The charge:

(a) is subject to every *encumbrance on the property (other than an encumbrance in which the person referred to in paragraph (1)(a) has an *interest) that came into existence before the charge and that would, apart from 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) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the charge (to the extent, if any, to which that Act applies in relation to the property charged).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

(5) A determination made under paragraph (2)(e) is not a legislative instrument.

179SB Charges may be registered

(1) If:

(a) a charge is created by section 179SA 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 *Official Trustee or the *responsible authority for the *unexplained wealth order or *restraining order referred to in that section may cause the charge so created to be registered under the provisions of that law.

(2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is taken, for the purposes of paragraph 179SA(2)(d), to have notice of the charge at the time of the purchase or acquisition.

(3) In this section:

registration of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data only if regulations are made for the purposes of paragraph 148(c) of that Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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179T Amounts exceeding the court's jurisdiction

(1) If:

(a) a court makes an *unexplained wealth order of a particular amount; and

(b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount;

the registrar of the court must issue a certificate containing the particulars specified in the regulations.

(2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the relevant order.

(3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—Oversight

179U Parliamentary supervision

(1) The operation of this Part and section 20A is subject to the oversight of the Parliamentary Joint Committee on Law Enforcement (the ***Committee***).

Appearing before the Committee

(2) The Committee may require the Australian Crime Commission, the Australian Federal Police, the *DPP or any other federal agency or authority that is the recipient of any material disclosed as the result of the operation of this Part to appear before it from time to time to give evidence.

Report about unexplained wealth investigations and proceedings

(3) The Commissioner of the Australian Federal Police must give the Committee a report in respect of each financial year that contains the following information:

(a) the number of matters investigated in the year, by each *enforcement agency, in respect of which a likely outcome may, or will, be the initiation of proceedings under this Part, and the basis for determining that number;

(b) the number and results of applications in the year for:

(i) *restraining orders under section 20A; and

(ii) *unexplained wealth orders;

(c) any other information of a kind prescribed by the regulations.

(4) The report must be given as soon as practicable after the report under section 67 of the *Australian Federal Police Act 1979* in respect of the financial year is laid before a House of the Parliament in accordance with that section.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) If the Commissioner of the Australian Federal Police requests the *DPP or the Chief Executive Officer (however described) of an *enforcement agency to give the Commissioner information that the Commissioner considers necessary to prepare the report, the DPP or Chief Executive Officer must comply with the request.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Chapter 3—Information gathering

Part 3-1—Examinations

Division 1—Examination orders

180 Examination orders relating to restraining orders

(1) If a *restraining order is in force, the court that made the restraining order, or any other court that could have made the restraining order, may make an order (an ***examination order***) for the *examination of any person, including:

(a) a person whose property is, or a person who has or claims an *interest in property that is, the subject of the restraining order; or

(b) a person who is a *suspect in relation to the restraining order; or

(c) the spouse or *de facto partner of a person referred to in paragraph (a) or (b);

about the *affairs of a person referred to in paragraph (a), (b) or (c).

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

180A Examination orders relating to applications for exclusion from forfeiture

(1) If an application for an order under section 73 or 94 for an *interest in property to be excluded from forfeiture is made, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:

(a) a person who has or claims an interest in the property; or

(b) the spouse or *de facto partner of a person referred to in paragraph (a);

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180B Examination orders relating to applications for compensation

(1) If an application for an order under section 77 or 94A (which deal with compensation) is made in relation to an *interest in property that has been or may be forfeited, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:
(a) a person who has or claims an *interest in the property; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180C Examination orders relating to applications under section 102

(1) If an application for an order under section 102 (which deals with the recovery of property) is made under section 104 in relation to forfeited property, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:
(a) a person who has or claims an *interest in the property; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the application is withdrawn; or
(b) the court makes a decision on the application.

180D Examination orders relating to enforcement of confiscation orders

(1) If a *confiscation order has been made but not satisfied, the court that made the confiscation order may make an order (an ***examination order***) for the *examination of any person including:
(a) a person against whom the confiscation order was made; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when proceedings relating to the enforcement of the *confiscation order are finally determined, withdrawn or otherwise disposed of.

180E Examination orders relating to restraining orders revoked under section 44

(1) If a *restraining order is revoked under section 44 (which deals with giving security to revoke etc. a restraining order), the court that revoked the restraining order may make an order (an ***examination order***) for the *examination of any person including:
(a) a person whose property was, or a person who had an *interest in property that was, the subject of the restraining order; or
(b) the spouse or *de facto partner of a person referred to in paragraph (a);
about the *affairs of a person referred to in paragraph (a) or (b).

(2) The *examination order ceases to have effect when the *restraining order would have ceased to have effect, assuming it had not been revoked under section 44.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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181 Examination orders relating to applications relating to quashing of convictions

(1) If an application relating to the *quashing of a person's conviction of an offence is made, as mentioned in section 81, 107, 146 or 173, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person, including:

(a) the person whose conviction is quashed; or

(b) a person whose property is, or a person who has an *interest in property that is, the subject of the forfeiture, *pecuniary penalty order or *literary proceeds order to which the application relates; or

(c) the spouse or *de facto partner of a person referred to in paragraph (a) or (b);

about the *affairs of a person referred to in paragraph (a), (b) or (c).

(2) The *examination order ceases to have effect:

(a) if the application is withdrawn; or

(b) when the court makes a decision on the application.

181A Examination orders relating to applications under section 57A

(1) If an application for an order under section 57 (which deals with buying back forfeited property) is made under section 57A in relation to property that is the subject of a *forfeiture order, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:

(a) the person who made the application; or

(b) a person who is a *suspect in relation to the forfeiture order; or

(c) in a case where the property was covered by a *restraining order when the forfeiture order was made—a person who is a suspect in relation to the restraining order; or

(d) the spouse or *de facto partner of a person referred to in paragraph (a), (b) or (c);

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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about the *affairs of a person referred to in paragraph (a), (b), (c) or (d).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

181B Examination orders relating to applications under section 104A

(1) If an application for an order under section 103 (which deals with buying back forfeited property) is made under section 104A in relation to property, the court to which the application is made may make an order (an ***examination order***) for the *examination of any person including:
(a) the person who made the application; or
(b) a person who is a *suspect in relation to the *restraining order mentioned in section 103; or
(c) the spouse or *de facto partner of a person referred to in paragraph (a) or (b);
about the *affairs of a person referred to in paragraph (a), (b) or (c).

(2) The *examination order ceases to have effect when:
(a) the application is withdrawn; or
(b) the court makes a decision on the application.

182 Applications for examination orders

(1) An *examination order can only be made on application by the *responsible authority for the *principal order, or the application for a principal order, in relation to which the examination order is sought.

(2) The court must consider an application for an *examination order without notice having been given to any person if the *responsible authority requests the court to do so.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Examination notices

183 Examination notices

(1) An *approved examiner may, on application by the *responsible authority, give to a person who is the subject of an *examination order a written notice (an ***examination notice***) for the *examination of the person.

(2) However, the *approved examiner must not give the *examination notice if:

(a) an application has been made under section 42 for the *restraining order to which the notice relates to be revoked; and

(b) the court to which the application is made orders that *examinations are not to proceed.

(3) The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) does not prevent the *approved examiner giving the *examination notice.

Approved examiners

(4) An ***approved examiner*** is a person who holds an appointment under this section.

(5) The Minister may appoint as an *approved examiner:

(a) a person who holds an office, or is included in a class of people, specified in the regulations; or

(b) a person who:

(i) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and

(ii) has been so enrolled for at least 5 years; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(iii) has indicated to the Minister that the person is willing to be appointed.

(6) An *approved examiner may resign his or her appointment by giving the Minister a written resignation. The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

(7) The Minister may revoke an appointment of an *approved examiner.

184 Additional examination notices

A person who is the subject of an *examination order may be given more than one *examination notice.

185 Form and content of examination notices

(1) The *examination notice:
(a) must be in the prescribed form; and
(b) must require the person to attend the *examination; and
(c) must specify the time and place of the examination; and
(d) must specify such further information as the regulations require.

(2) The *examination notice may require the person to produce at the *examination the documents specified in the notice.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Conducting examinations

186 Time and place of examination

(1) The *examination of a person must be conducted:

(a) at the time and place specified in the *examination notice; or

(b) at such other time and place as the *approved examiner decides on the request of a person referred to in paragraph 188(3)(b), (c) or (d).

(2) However, the *approved examiner must:

(a) give the person a written notice withdrawing the *examination notice; and

(b) if the *examination of the person has started (but not finished)—stop the examination;

if, after the examination notice is given:

(c) an application has been made under section 42 for the *restraining order to which the notice relates to be revoked; and

(d) the court to which the application is made orders that examinations are not to proceed.

(3) This section does not prevent the *approved examiner giving the person a further *examination notice if the application for revocation of the *restraining order is unsuccessful.

(4) The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) does not prevent the *examination of a person.

187 Requirements made of person examined

(1) The person may be examined on oath or affirmation by:

(a) the *approved examiner; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the *responsible authority.

(2) The *approved examiner may, for that purpose:

(a) require the person either to take an oath or to make an affirmation; and

(b) administer an oath or affirmation to the person.

(3) The oath or affirmation to be taken or made by the person for the purposes of the *examination is an oath or affirmation that the statements that the person will make will be true.

(4) The *examination must not relate to a person's *affairs:

(a) if the *examination relates to a *restraining order and the person is no longer a person whose affairs can, under section 180, be subject to the examination; or

(aa) if the examination relates to an application for exclusion from forfeiture and the person is no longer a person whose affairs can, under section 180A, be subject to the examination; or

(ab) if the examination relates to an application for an order under section 77 or 94A and the person is no longer a person whose affairs can, under section 180B, be subject to the examination; or

(ac) if the examination relates to an application for an order under section 102 and the person is no longer a person whose affairs can, under section 180C, be subject to the examination; or

(ad) if the examination relates to a *confiscation order that has not been satisfied and the person is no longer a person whose affairs can, under section 180D, be subject to the examination; or

(ae) if the examination relates to a *restraining order that has been revoked and the person is no longer a person whose affairs can, under section 180E, be subject to the examination; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the examination relates to the *quashing of a conviction for an offence and the person is no longer a person whose affairs can, under section 181, be subject to the examination; or

(c) if the examination relates to an application for an order under section 57 and the person is no longer a person whose affairs can, under section 181A, be subject to the examination; or

(d) if the examination relates to an application for an order under section 103 and the person is no longer a person whose affairs can, under section 181B, be subject to the examination.

(5) The *approved examiner may require the person to answer a question that:

(a) is put to the person at the *examination; and

(b) is relevant to the *affairs of a person whose affairs can, under section 180, 180A, 180B, 180C, 180D, 180E, 181, 181A or 181B, be subject to the examination.

188 Examination to take place in private

(1) The *examination is to take place in private.

(2) The *approved examiner may give directions about who may be present during the *examination, or during a part of it.

(3) These people are entitled to be present at the *examination:

(a) the *approved examiner;

(b) the person being examined, and the person's *lawyer;

(c) the *responsible authority;

(d) any person who is entitled to be present because of a direction under subsection (2).

189 Role of the examinee's lawyer

(1) The *lawyer of the person being examined may, at such times during the *examination as the *approved examiner determines:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) address the approved examiner; and
(b) examine the person;

about matters about which the approved examiner, or the *responsible authority, has examined the person.

(2) The *approved examiner may require a *lawyer who, in the approved examiner's opinion, is trying to obstruct the *examination by exercising rights under subsection (1), to stop addressing the approved examiner, or stop his or her examination, as the case requires.

190 Examination by video link or telephone

(1) The *approved examiner may, on the request of a person referred to in paragraph 188(3)(b), (c) or (d), direct that a person be examined by video link if:
(a) the facilities required by subsection (2) are available or can reasonably be made available; and
(b) the approved examiner is satisfied that attendance of the person at the place of the *examination would cause unreasonable expense or inconvenience; and
(c) the approved examiner is satisfied that it is consistent with the interests of justice that the person be examined by video link.

(2) The person can be examined under the direction only if the place where the person is to attend for the purposes of the *examination is equipped with video facilities that enable the people referred to in subsection 188(3) to see and hear the person be examined.

(3) An oath or affirmation to be sworn or made by a person who is to be examined under such a direction may be administered either:
(a) by means of video link, in as nearly as practicable the same way as if the person were to be examined at the place of the *examination; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) on behalf of the *approved examiner, by a person authorised by the approved examiner, at the place where the person to be examined attends for the purposes of the examination.

(4) The *approved examiner may, on the request of a person referred to in paragraph 188(3)(b), (c) or (d), direct that a person be examined by telephone if:

(a) the approved examiner is satisfied that attendance of the person at the place of the *examination would cause unreasonable expense or inconvenience; and

(b) the approved examiner is satisfied that it is consistent with the interests of justice that the person be examined by telephone.

191 Record of examination

(1) The *approved examiner:

(a) may cause a record to be made of statements made at the *examination; and

(b) must make such a record if the person being examined, or the *responsible authority, so requests; and

(c) if the record is not a written record—must cause the record to be reduced to writing if the person being examined, or the authority, so requests.

(2) If a record made under subsection (1) is in writing or is reduced to writing:

(a) the *approved examiner may require the person being examined to read it, or to have it read to him or her, and may require him or her to sign it; and

(b) if the person being examined requests in writing that the approved examiner give to the person a copy of the written record—the approved examiner must comply with the request without charge.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The *approved examiner may, in complying with the request under paragraph (2)(b), impose on the person being examined such conditions (if any) as the approved examiner reasonably considers to be necessary to prevent improper disclosure of the record.

(4) The fact that a person being *examined signs a record as required under paragraph (2)(a) does not of itself constitute an acknowledgment that the record is accurate.

192 Questions of law

The *approved examiner may:

(a) on his or her own initiative; or

(b) at the request of the person being examined, or the *responsible authority;

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

193 Approved examiner may restrict publication of certain material

(1) The *approved examiner may:

(a) on his or her own initiative; or

(b) at the request of the person being examined, or the *responsible authority;

give directions preventing or restricting disclosure to the public of matters contained in answers given or documents produced in the course of the *examination.

(2) In deciding whether or not to give a direction, the *approved examiner is to have regard to:

(a) whether:

(i) an answer that has been or may be given; or

(ii) a document that has been or may be produced; or

(iii) a matter that has arisen or may arise;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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during the *examination is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against a law of the Commonwealth or a State or Territory; and

(b) any unfair prejudice to a person's reputation that would be likely to be caused unless the approved examiner gives the direction; and

(c) whether giving the direction is in the public interest; and

(d) any other relevant matter.

194 Protection of approved examiner etc.

(1) The *approved examiner has, in the performance of his or her duties as an approved examiner, the same protection and immunity as a Justice of the High Court.

(2) A *lawyer appearing at the *examination:

(a) on behalf of the person being examined; or

(b) as or on behalf of the *responsible authority;

has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, the person being *examined:

(a) has the same protection; and

(b) in addition to the penalties provided by this Act, is subject to the same liabilities;

as a witness in proceedings in the High Court.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Offences

Note: In addition to the offences in this Division, there are other offences that may be relevant to examinations, such as sections 137.1 (false or misleading information) and 137.2 (false or misleading documents) of the *Criminal Code*.

195 Failing to attend an examination

A person commits an offence if the person:

(a) is required by an *examination notice to attend an *examination; and

(b) refuses or fails to attend the examination at the time and place specified in the notice.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

196 Offences relating to appearance at an examination

(1) A person attending an *examination to answer questions or produce documents must not:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the *approved examiner requires the person to answer; or

(c) refuse or fail to produce at the examination a document specified in the *examination notice that required the person's attendance; or

(d) leave the examination before being excused by the approved examiner.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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197 Privileged information

(1) Paragraph 196(1)(b) or (c) does not apply if, under:

(a) a law of the Commonwealth; or

(b) a law of the State or Territory in which the *examination takes place;

the person could not, in proceedings before a court, be compelled to answer the question or produce the document.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) However, paragraph 196(1)(b) or (c) applies if the only reason or reasons why the person could not be so compelled are one or more of the following:

(a) answering the question or producing the document would tend to incriminate the person or to expose the person to a penalty;

(b) the answer would be privileged from being disclosed, or the document would be privileged from being produced, in legal proceedings on the ground of *legal professional privilege;

(ba) the answer would be privileged from being disclosed, or the document would be privileged from being produced, in legal proceedings on the ground of *professional confidential relationship privilege;

(c) the answer or document would, under a law of the Commonwealth, a State or a Territory relating to the law of evidence, be inadmissible in legal proceedings for a reason other than because:

(i) the answer would be privileged from being disclosed; or

(ii) the document would be privileged from being produced.

(3) To avoid doubt, the following are not reasons why a person cannot, in proceedings before a court, be compelled to answer a question or produce a document:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person is contractually obliged not to disclose information, and answering the question or producing the document would disclose that information;
(b) the person is obliged under a law of a foreign country not to disclose information, and answering the question or producing the document would disclose that information.

197A Giving false or misleading answers or documents

A person commits an offence if:
(a) the person is attending an *examination; and
(b) the person gives an answer or produces a document in the examination; and
(c) the answer or document:
(i) is false or misleading; or
(ii) omits any matter or thing without which it is misleading.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

198 Admissibility of answers and documents

An answer given or document produced in an *examination is not admissible in evidence in civil or criminal proceedings against the person who gave the answer or produced the document except:
(a) in criminal proceedings for giving false or misleading information; or
(b) in proceedings on an application under this Act; or
(c) in proceedings ancillary to an application under this Act; or
(d) in proceedings for enforcement of a *confiscation order; or
(e) in the case of a document—in civil proceedings for or in respect of a right or liability it confers or imposes; or
(f) in proceedings for an offence against this Part.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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199 Unauthorised presence at an examination

A person commits an offence if the person:

(a) is present at an *examination; and

(b) is not entitled under subsection 188(3) to be present.

Penalty: 30 penalty units.

200 Breaching conditions on which records of statements are provided

A person commits an offence if the person breaches a condition imposed under subsection 191(3) relating to a record given to the person under that subsection.

Penalty: 30 penalty units.

201 Breaching directions preventing or restricting publication

(1) A person commits an offence if:

(a) the person publishes a matter contained in answers given or documents produced in the course of an *examination; and

(b) the publication is in contravention of a direction given under section 193 by the *approved examiner who conducted the examination.

Penalty: 30 penalty units.

(2) This section does not apply to disclosure of a matter:

(a) to obtain legal advice or legal representation in relation to the order; or

(b) for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3-2—Production orders

202 Making production orders

(1) A magistrate may make an order (a ***production order***) requiring a person to:

(a) produce one or more *property-tracking documents to an *authorised officer; or

(b) make one or more property-tracking documents available to an authorised officer for inspection.

(2) However:

(a) the magistrate must not make a *production order unless the magistrate is satisfied by information on oath that the person is reasonably suspected of having possession or control of such documents; and

(b) a production order cannot require documents that are not:

(i) in the possession or under the control of a body corporate; or

(ii) used or intended to be used in the carrying on of a business;

to be produced or made available to an *authorised officer; and

(c) a production order cannot require any accounting records used in the ordinary business of a *financial institution (including ledgers, day-books, cash-books and account books) to be produced to an *authorised officer.

(3) The *production order can only be made on application by an *authorised officer of an *enforcement agency.

(4) The *authorised officer need not give notice of the application to any person.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) Each of the following is a ***property-tracking document***:

(a) a document relevant to identifying, locating or quantifying property of any person:

(i) who has been convicted of, charged with, or whom it is proposed to charge with, an *indictable offence; or

(ii) whom there are reasonable grounds to suspect of having engaged in conduct constituting a *serious offence;

(b) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;

(c) a document relevant to identifying, locating or quantifying:

(i) *proceeds of an indictable offence, or an *instrument of an indictable offence, of which a person has been convicted or with which a person has been charged or is proposed to be charged; or

(ii) proceeds of a serious offence, or an instrument of a serious offence, that a person is reasonably suspected of having committed;

(ca) a document relevant to identifying, locating or quantifying property suspected of being:

(i) proceeds of an indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(ii) an instrument of a serious offence;

whether or not the identity of the person who committed the offence is known;

(d) a document relevant to identifying or locating any document necessary for the transfer of property referred to in paragraph (c) or (ca);

(e) a document relevant to identifying, locating or quantifying *literary proceeds in relation to an indictable offence or a *foreign indictable offence of which a person has been convicted or which a person is reasonably suspected of having committed;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ea) a document relevant to identifying, locating or quantifying property that constitutes part of a person's *wealth, if it is reasonable to suspect that the person's *total wealth exceeds the value of the person's wealth that was *lawfully acquired;

(eb) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;

(ec) a document relevant to determining whether, in a case where a person has made an application under section 57A for an order under section 57 in relation to an *interest in property:

(i) the amount paid to the Commonwealth under paragraph 89(1)(c) would not be property that is covered by subsection 57(6); and

(ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 89(1)(c) would be borrowed by the person under a loan—the person's financial circumstances are such that the person will be able to repay the loan, meet the person's eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection 57(6); and

(ed) a document relevant to determining whether, in a case where a person has made an application under section 104A for an order under section 103 in relation to an interest in property:

(i) the amount paid to the Commonwealth under paragraph 105(1)(c) would not be property that is covered by subsection 103(6); and

(ii) if the whole or a part of the amount paid to the Commonwealth under paragraph 105(1)(c) would be borrowed by the person under a loan—the person's financial circumstances are such that the person will be able to repay the loan, meet the person's eligible living expenses and meet any eligible debts of the person, using property that is not covered by subsection 103(6); and

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(f) a document that would assist in the reading or interpretation of a document referred to in paragraph (a), (b), (c), (ca), (d), (e), (ea), (eb), (ec) or (ed).

(6) It is sufficient for the purposes of subparagraph (5)(c)(ii) or paragraph (5)(ca) that the document is relevant to identifying, locating or quantifying *proceeds of some offence or other of a kind referred to in that provision. It does not need to be relevant to identifying, locating or quantifying proceeds of a particular offence.

(7) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (5)(ec)(ii) was made under an arrangement entered into before or after the making of the application mentioned in paragraph (5)(ec).

(8) For the purposes of this section, it is immaterial whether the loan mentioned in subparagraph (5)(ed)(ii) was made under an arrangement entered into before or after the making of the application mentioned in paragraph (5)(ed).

(9) For the purposes of this section, ***loan*** includes anything that may reasonably be regarded as equivalent to a loan, and ***borrow*** has a corresponding meaning.

(10) For the purposes of this section, each of the following are ***eligible living expenses*** of a person:

(a) the person's reasonable living expenses;

(b) the reasonable living expenses of any of the *dependants of the person;

(c) the reasonable business expenses of the person.

(11) For the purposes of this section, an ***eligible debt*** of a person is a debt incurred in good faith by the person.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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203 Contents of production orders

(1) A *production order must:

(a) specify the nature of the documents required; and

(b) specify the place at which the person must produce the documents or make the documents available; and

(c) specify the time at which, or the times between which, this must be done; and

(ca) specify the form and manner in which those documents are to be produced; and

(d) specify the name of the *authorised officer who, unless he or she inserts the name of another authorised officer in the order, is to be responsible for giving the order to the person; and

(e) if the order specifies that information about the order must not be disclosed—set out the effect of section 210 (disclosing existence or nature of production orders); and

(f) set out the effect of section 211 (failing to comply with an order).

(2) The time or times specified under paragraph (1)(c) must be:

(a) at least 14 days after the day on which the *production order is made; or

(b) if the magistrate who makes the production order is satisfied that it is appropriate, having regard to the matters specified in subsection (3), to specify an earlier time—at least 3 days after the day on which the production order is made.

(3) The matters to which the magistrate must have regard for the purposes of deciding whether an earlier time is appropriate under paragraph (2)(b) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the person required by the *production order to produce documents or make documents available.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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204 Powers under production orders

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

205 Retaining produced documents

(1) The *authorised officer may also retain a document produced under a *production order for as long as is necessary for the purposes of this Act.

(2) The person to whom a *production order is given may require the *authorised officer to:

(a) certify in writing a copy of the document retained to be a true copy and give the person the copy; or

(b) allow the person to do one or more of the following:

(i) inspect the document;

(ii) take extracts from the document;

(iii) make copies of the document.

206 Privilege against self-incrimination etc. does not apply

(1) A person is not excused from producing a document or making a document available under a *production order on the ground that:

(a) to do so would tend to incriminate the person or expose the person to a penalty; or

(b) producing the document or making it available would breach an obligation (whether imposed by an enactment or otherwise) of the person not to disclose the existence or contents of the document; or

(c) producing the document or making it available would disclose information that is the subject of *legal professional privilege.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) However, in the case of a natural person, the document is not admissible in evidence in a *criminal proceeding against the person, except in proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

207 Varying production orders

(1) A person who is required to produce a document to an *authorised officer under a *production order may apply to:

(a) the magistrate who made the order; or

(b) if that magistrate is unavailable—any other magistrate;

to vary the order so that it instead requires the person to make the document available for inspection.

(2) The magistrate may vary the *production order if satisfied that the document is essential to the person's business activities.

208 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *production order relating to one or more documents that are located in:

(a) that State or Territory; or

(b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the order appropriate; or

(c) a *non-governing Territory.

209 Making false statements in applications

A person is guilty of an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the statement:
(i) is false or misleading; or
(ii) omits any matter or thing without which the statement is misleading; and
(c) the statement is made in, or in connection with, an application for a *production order.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

210 Disclosing existence or nature of production orders

(1) A person commits an offence if:
(a) the person is given a *production order; and
(b) the order specifies that information about the order must not be disclosed; and
(c) the person discloses the existence or nature of the order to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) A person commits an offence if:
(a) the person is given a *production order; and
(b) the order specifies that information about the order must not be disclosed; and
(c) the person discloses information to another person; and
(d) that other person could infer the existence or nature of the order from that information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(3) Subsections (1) and (2) do not apply if:
(a) the person discloses the information to an employee, *agent or other person in order to obtain a document that is required by the order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the disclosure is made to obtain legal advice or legal representation in relation to the order; or

(c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

211 Failing to comply with a production order

(1) A person commits an offence if:

(a) the person is given a *production order in relation to a *property-tracking document; and

(b) the person fails to comply with the order; and

(c) the person has not been notified of sufficient compliance under subsection (2).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(2) A person is notified of sufficient compliance under this subsection if:

(a) the person gives an *authorised officer a statutory declaration stating that the person does not have possession or control of the document; and

(b) the officer notifies the person in writing that the statutory declaration is sufficient compliance with the *production order.

(3) It is a defence to an offence against subsection (1) if:

(a) the person fails to comply with the *production order only because the person does not produce one or more documents specified in the order within the time specified in the order; and

(b) the person took all reasonable steps to produce the document or documents within that time; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) the person produces the document or documents as soon as practicable after that time.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

212 Destroying etc. a document subject to a production order

A person commits an offence if:

(a) the person destroys, defaces or otherwise interferes with a *property-tracking document; and

(b) a *production order is in force requiring the document to be produced or made available.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3-3—Notices to financial institutions

213 Giving notices to financial institutions

(1) An officer specified in subsection (3) may give a written notice to a *financial institution requiring the institution to provide to an *authorised officer any information or documents relevant to any one or more of the following:

(a) determining whether an *account is or was held by a specified person with the financial institution;

(b) determining whether a particular person is or was a signatory to an account;

(c) if a person holds an account with the institution, the current balance of the account;

(d) details of transactions on an account over a specified period of up to 6 months;

(e) details of any related accounts (including names of those who hold or held those accounts);

(ea) determining whether a *stored value card was issued to a specified person by a financial institution;

(eb) details of transactions made using such a card over a specified period of up to 6 months;

(f) a transaction conducted by the financial institution on behalf of a specified person.

(2) The officer must not issue the notice unless the officer reasonably believes that giving the notice is required:

(a) to determine whether to take any action under this Act; or

(b) in relation to proceedings under this Act.

(3) The officers who may give a notice to a *financial institution are:

(a) the Commissioner of the Australian Federal Police; or

(b) a Deputy Commissioner of the Australian Federal Police; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979*) who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this section; or

(ca) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

(d) the Chief Executive Officer of the Australian Crime Commission; or

(e) an examiner (within the meaning of the *Australian Crime Commission Act 2002*); or

(f) the Commissioner of Taxation; or

(g) the *Comptroller-General of Customs; or

(h) the Chairperson of the Australian Securities and Investments Commission.

214 Contents of notices to financial institutions

(1) The notice must:

(a) state that the officer giving the notice believes that the notice is required:

(i) to determine whether to take any action under this Act; or

(ii) in relation to proceedings under this Act;

(as the case requires); and

(b) specify the name of the *financial institution; and

(c) specify the kind of information or documents required to be provided; and

(d) specify the form and manner in which that information or those documents are to be provided, having regard to the record-keeping capabilities of the financial institution (to the extent known to the officer); and

(e) specify that the information or documents must be provided no later than:

(i) 14 days after the giving of the notice; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) if the officer giving the notice believes that it is appropriate, having regard to the matters specified in subsection (2), to specify an earlier day that is at least 3 days after the giving of the notice—that earlier day; and

(f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 217 (disclosing existence or nature of a notice); and

(g) set out the effect of section 218 (failing to comply with a notice).

(2) The matters to which the officer giving the notice must have regard in deciding whether to specify an earlier day under subparagraph (1)(e)(ii) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the *financial institution required by the notice to provide the information or documents.

215 Protection from suits etc. for those complying with notices

(1) No action, suit or proceeding lies against:

(a) a *financial institution; or

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

in relation to any action taken by the institution or person under a notice under section 213 or in the mistaken belief that action was required under the notice.

(2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a notice under section 213 is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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216 Making false statements in notices

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, a notice under section 213.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

217 Disclosing existence or nature of notice

A person commits an offence if:

(a) the person is given a notice under section 213; and

(b) the notice specifies that information about the notice must not be disclosed; and

(c) the person discloses the existence or nature of the notice.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

218 Failing to comply with a notice

(1) A person commits an offence if:

(a) the person is given a notice under section 213; and

(b) the person fails to comply with the notice:

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(2) It is a defence to an offence against subsection (1) if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person fails to comply with the notice only because the person does not provide the information or a document within the period specified in the notice; and

(b) the person took all reasonable steps to provide the information or document within that period; and

(c) the person provides the information or document as soon as practicable after the end of that period.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3-4—Monitoring orders

219 Making monitoring orders

(1) A judge of a court of a State or Territory that has jurisdiction to deal with criminal matters on indictment may make an order (a ***monitoring order***) that a *financial institution provide information about transactions:

(a) conducted during a particular period through an *account held by a particular person with the institution; or

(b) made using a *stored value card issued to a particular person by a financial institution.

(2) The judge must not make a *monitoring order unless the judge is satisfied that there are reasonable grounds for suspecting that:

(a) the person who holds the *account or to whom the *stored value card was issued:

(i) has committed, or is about to commit, a *serious offence; or

(ii) was involved in the commission, or is about to be involved in the commission, of a serious offence; or

(iii) has *benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence; or

(b) the account or card is being used to commit an offence against Part 10.2 of the *Criminal Code* (money laundering).

(3) It does not matter, for the purposes of paragraph (2)(b), whether the person holding the account or to whom the card was issued commits or is involved in the offence against Part 10.2 of the *Criminal Code*.

(4) The *monitoring order can only be made on application by an *authorised officer of an *enforcement agency.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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220 Contents of monitoring orders

(1) A *monitoring order must:

(a) specify the name or names:

(i) in which the *account is believed to be held; or

(ii) of the person to whom the *stored value card was issued; and

(b) specify the kind of information that the *financial institution is required to provide; and

(c) specify the period during which the transactions must have occurred; and

(d) specify to which *enforcement agency the information is to be provided; and

(e) specify the form and manner in which the information is to be given; and

(f) if the order specifies that information about the order must not be disclosed—set out the effect of section 223 (disclosing existence or operation of an order); and

(g) set out the effect of section 224 (failing to comply with an order).

(2) The period mentioned in paragraph (1)(c) must:

(a) begin no earlier than the day on which notice of the *monitoring order is given to the *financial institution; and

(b) end no later than 3 months after the date of the order.

221 Protection from suits etc. for those complying with orders

(1) No action, suit or proceeding lies against:

(a) a *financial institution; or

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

(2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a *monitoring order is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

222 Making false statements in applications

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, an application for a *monitoring order.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

223 Disclosing existence or operation of monitoring order

(1) A person commits an offence if:

(a) the person discloses the existence or the operation of a *monitoring order to another person; and

(b) the disclosure is not to a person specified in subsection (4); and

(c) the disclosure is not for a purpose specified in subsection (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person commits an offence if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person discloses information to another person; and
(b) the other person could infer the existence or operation of a *monitoring order from that information; and
(c) the disclosure is not to a person specified in subsection (4); and
(d) the disclosure is not for a purpose specified in subsection (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) A person commits an offence if:
(a) the person receives information relating to a *monitoring order in accordance with subsection (4); and
(b) the person ceases to be a person to whom information could be disclosed in accordance with subsection (4); and
(c) the person makes a record of, or discloses, the existence or the operation of the order.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(4) A person may disclose the existence or the operation of a *monitoring order to the following persons for the following purposes:
(a) the head of the *enforcement agency specified under paragraph 220(1)(d) or an *authorised officer of that agency:
(i) for the purpose of performing that person's duties; or
(ii) for the purpose of, or for purposes connected with, legal proceedings; or
(iii) for purposes arising in the course of proceedings before a court;
(b) the Chief Executive Officer of *AUSTRAC, or a member of the staff of AUSTRAC who is authorised by the Chief Executive Officer of AUSTRAC as a person who may be advised of the existence of a monitoring order:
(i) for the purpose of performing that person's duties; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) for the purpose of, or for purposes connected with, legal proceedings; or

(iii) for purposes arising in the course of proceedings before a court;

(c) an *officer or *agent of the *financial institution for the purpose of ensuring that the order is complied with;

(d) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the order;

(e) a person who is or forms part of an authority with one or more functions under this Act for the purpose of facilitating the authority's performance of its functions under this Act;

(f) a person who is or forms part of an authority of the Commonwealth, or of a State, Territory or foreign country, that has a function of investigating or prosecuting crimes against a law of the Commonwealth, State, Territory or country for the purpose of assisting in the prevention, investigation or prosecution of a crime against that law;

(g) a person in the Australian Taxation Office for the purpose of protecting public revenue.

(5) For the purposes of paragraph (4)(a), the head of the *enforcement agency, that is the *Immigration and Border Protection Department, is the *Comptroller-General of Customs.

224 Failing to comply with monitoring order

A person commits an offence if:

(a) the person is given a *monitoring order; and

(b) the person fails to comply with the order.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3-5—Search and seizure

Division 1—Search warrants

Subdivision A—Issuing search warrants

225 Issuing a search warrant

(1) A magistrate may issue a warrant to search *premises if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is at the premises, or will be within the next 72 hours, *tainted property or *evidential material.

(2) If an application for a *search warrant is made under section 229 (applying for warrants by telephone or other electronic means), this section applies as if subsection (1) referred to 48 hours rather than 72 hours.

(3) The *search warrant can only be issued on application by an *authorised officer of an *enforcement agency.

226 Additional contents of the information

(1) If the person applying for a warrant to search *premises suspects that it will be necessary to use firearms in executing the warrant, the person must state that suspicion, and the grounds for that suspicion, in the information.

(2) A person applying for a warrant to search *premises who has previously applied for a warrant relating to the same premises, must include particulars of the application and its outcome in the information.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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227 Contents of warrants

(1) A *search warrant must state:

(a) the nature of the property in respect of which action has been or could be taken under this Act; and

(b) the nature of that action; and

(c) a description of the *premises to which the warrant relates; and

(d) the kinds of *tainted property or *evidential material that is to be searched for under the warrant; and

(e) the name of the *authorised officer who is responsible for executing the warrant, unless he or she inserts the name of another authorised officer in the warrant; and

(f) the time at which the warrant expires (see subsection (2)); and

(g) whether the warrant may be executed at any time or only during particular hours; and

(h) that the warrant authorises the seizure of other things found at the premises in the course of the search that the *executing officer or a *person assisting believes on reasonable grounds to be:

(i) tainted property to which the warrant relates; or

(ii) evidential material in relation to property to which the warrant relates; or

(iii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence;

if he or she believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(ha) that the warrant authorises the seizure of other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be *things relevant to unexplained wealth proceedings; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) whether the warrant authorises an *ordinary search or a *frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or a person assisting reasonably suspects that the person has any tainted property or evidential material in his or her possession.

(2) The time stated in the *search warrant under paragraph (1)(f) as the time at which the warrant expires must be a time that is not later than:

(a) if the application for the warrant is made under section 229 (telephone warrants)—48 hours after the warrant is issued; or

(b) otherwise, a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

(3) Paragraph (1)(f) does not prevent the issue of successive *search warrants in relation to the same *premises.

228 The things that are authorised by a search warrant

(1) A *search warrant authorises the *executing officer or a *person assisting:

(a) to enter the *premises and, if the premises are a *conveyance, to enter the conveyance, wherever it is; and

(b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and

(c) to search the premises for the kinds of *tainted property or *evidential material specified in the warrant, and to seize things of that kind found at the premises; and

(d) to seize other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be:

(i) tainted property to which the warrant relates; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) evidential material in relation to property to which the warrant relates; or

(iii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence;

if he or she believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and

(da) to seize other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be *things relevant to unexplained wealth proceedings; and

(e) if the warrant so allows—to conduct an *ordinary search or a *frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any tainted property or evidential material in his or her possession.

(2) A *search warrant authorises the *executing officer to make things seized under the warrant available to officers of other *enforcement agencies if it is necessary to do so for the purpose of:

(a) investigating or prosecuting an offence to which the things relate; or

(b) recovering *proceeds of an offence or an *instrument of an offence.

Subdivision B—Applying for search warrants by telephone or other electronic means

229 Applying for search warrants by telephone or other electronic means

(1) An *authorised officer may apply to a magistrate for a *search warrant by telephone, fax or other electronic means:

(a) in an urgent case; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) An application under subsection (1):
(a) must include all information that would be required in an ordinary application for a *search warrant; and
(b) if necessary, may be made before the information is sworn.

(3) The magistrate may require:
(a) communication by voice to the extent that it is practicable in the circumstances; and
(b) any further information.

230 Issuing warrants by telephone etc.

(1) The magistrate may complete and sign the same form of *search warrant that would be issued under section 225 if satisfied that:
(a) a search warrant in the terms of the application should be issued urgently; or
(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) If the magistrate issues the *search warrant, he or she must inform the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(3) The applicant must then:
(a) complete a form of *search warrant in terms substantially corresponding to those given by the magistrate; and
(b) state on the form:
(i) the name of the magistrate; and
(ii) the day on which the warrant was signed; and
(iii) the time at which the warrant was signed.

(4) The applicant must give the magistrate:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the form of *search warrant completed by the applicant; and
(b) if the information was unsworn under paragraph 229(2)(b)—the sworn information;

by the end of the day after whichever first occurs:

(c) the warrant expires; or
(d) the warrant is executed.

(5) The magistrate must attach the form of *search warrant completed by the magistrate to the documents provided under subsection (4).

231 Unsigned telephone warrants in court proceedings

If:

(a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a *search warrant issued under this Subdivision was duly authorised; and
(b) the form of search warrant signed by the magistrate is not produced in evidence;

the court must assume that the exercise of the power was not duly authorised unless the contrary is proved.

232 Offence for stating incorrect names in telephone warrants

A person commits an offence if:

(a) the person states a name of a magistrate in a document; and
(b) the document purports to be a form of *search warrant under section 230; and
(c) the name is not the name of the magistrate that issued the warrant.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

233 Offence for unauthorised form of warrant

A person commits an offence if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person states a matter in a form of *search warrant under section 230; and

(b) the matter departs in a material particular from the form authorised by the magistrate.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

234 Offence for execution etc. of unauthorised form of warrant

A person commits an offence if:

(a) the person executes a document or presents a document to a person; and

(b) the document purports to be a form of *search warrant under section 230; and

(c) the document:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms authorised by the magistrate under that section.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

235 Offence for giving unexecuted form of warrant

A person commits an offence if:

(a) the person gives a magistrate a form of *search warrant under section 230; and

(b) the document is not the form of *search warrant that the person executed.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Subdivision C—Executing search warrants

236 Warrants that must be executed only during particular hours

A *search warrant that states that it may be executed only during particular hours must not be executed outside those hours.

237 Restrictions on personal searches

(1) A *search warrant cannot authorise a *strip search or a search of a person's body cavities.

(2) If a *search warrant authorises an *ordinary search or a *frisk search of a person:

(a) a different search from the one authorised must not be done under the warrant; and

(b) the search must, if practicable, be conducted by a person of the same sex as the person being searched.

(3) A person who is not an *authorised officer but who has been authorised by the relevant *executing officer to assist in executing a *search warrant must not take part in searching a person.

238 Availability of assistance and use of force in executing a warrant

Executing officers

(1) In executing a *search warrant, an *executing officer may obtain such assistance and use such force against persons and things as is necessary and reasonable in the circumstances.

Authorised officers

(2) In executing a *search warrant, an *authorised officer who is assisting in executing the warrant may use such force against persons and things as is necessary and reasonable in the circumstances.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Persons who are not authorised officers

(3) In executing a *search warrant, a person who is not an *authorised officer but who has been authorised to assist in executing the warrant may use such force against things as is necessary and reasonable in the circumstances.

239 Announcement before entry

(1) An *executing officer must, before any person enters *premises under a *search warrant:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or another person who apparently represents the occupier, is present at the premises—identify himself or herself to that person.

(2) The *executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the *premises is required to ensure:

(a) the safety of a person (including an *authorised officer); or

(b) that the effective execution of the warrant is not frustrated.

240 Details of warrant to be given to occupier etc.

(1) If the occupier of the *premises, or another person who apparently represents the occupier, is present at premises when a *search warrant is being executed, the *executing officer or a *person assisting must make available to the person:

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) If a person is searched under a *search warrant, the *executing officer or a *person assisting must show the person a copy of the warrant.

(3) The copy of the warrant need not include the signature of the magistrate or the seal of the relevant court.

241 Occupier entitled to be present during search

(1) If an occupier of *premises, or another person who apparently represents the occupier, is present at the premises while a *search warrant is being executed, the occupier or person has the right to observe the search being conducted.

(2) However, the right ceases if:
  (a) the person impedes the search; or
  (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the *premises being searched at the same time.

242 Specific powers available to officers executing the warrant

(1) In executing a *search warrant, the *executing officer or a *person assisting may take photographs (including video recordings) of the *premises or of things at the premises:
  (a) for a purpose incidental to the execution of the warrant; or
  (b) if the occupier of the premises consents in writing.

(2) The *executing officer and a *person assisting may complete the execution of a *search warrant, provided that the warrant is still in force, after all of them temporarily leave the *premises:
  (a) for not more than one hour; or

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(b) for a longer period if the occupier of the premises consents in writing.

(3) The execution of a *search warrant may be completed if:
(a) the execution is stopped by an order of a court; and
(b) the order is later revoked or reversed on appeal; and
(c) the warrant is still in force.

243 Use of equipment to examine or process things

(1) The *executing officer or *person assisting may bring to the *premises any equipment reasonably necessary to examine or process a thing found at the premises in order to determine whether it may be seized under the *search warrant in question.

(2) The *executing officer or a *person assisting may operate equipment already at the *premises to carry out such an examination or processing if he or she believes on reasonable grounds that:
(a) the equipment is suitable for this purpose; and
(b) the examination or processing can be carried out without damaging the equipment or thing.

244 Moving things to another place for examination or processing

(1) A thing found at the *premises may be moved to another place for examination or processing in order to determine whether it may be seized under a *search warrant if:
(a) both of the following apply:
(i) there are reasonable grounds to believe that the thing contains or constitutes *tainted property or *evidential material;
(ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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processing the thing at another place and the availability of expert assistance; or

(b) the occupier of the premises consents in writing.

(2) The thing may be moved to another place for examination or processing for no longer than 72 hours.

(3) An *executing officer may apply to a magistrate for an extension of that time if the officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

(4) The *executing officer must give notice of the application to the occupier of *premises, and the occupier is entitled to be heard in relation to the application.

(5) If a thing is moved to another place under subsection (1), the *executing officer must, if it is practicable to do so:

(a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

245 Use of electronic equipment at premises

(1) The *executing officer or a *person assisting may operate electronic equipment at the *premises to access *data (including data not held at the premises) if he or she believes on reasonable grounds that:

(a) the data might constitute *evidential material; and

(b) the equipment can be operated without damaging it.

Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 246.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) If the *executing officer or *person assisting believes that any *data accessed by operating the electronic equipment might constitute *evidential material, he or she may:

(a) copy the data to a disk, tape or other similar device brought to the *premises; or

(b) if the occupier of the premises agrees in writing—copy the data to a disk, tape or other similar device at the premises;

and take the device from the premises.

(3) The *executing officer or a *person assisting may do the following things if he or she finds that any *evidential material is accessible using the equipment:

(a) seize the equipment and any disk, tape or other similar device;

(b) if the material can, by using facilities at the *premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.

(4) An *authorised officer may seize equipment under paragraph (3)(a) only if:

(a) it is not practicable to copy the *data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (3)(b); or

(b) possession of the equipment by the occupier could constitute an offence.

246 Person with knowledge of a computer or a computer system to assist access etc.

(1) An *executing officer may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable or necessary to allow the officer to do one or more of the following:

(a) access *data held in or accessible from a computer that is on the *premises;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) copy the data to a *data storage device;
(c) convert the data into documentary form.

(2) The magistrate may make an order if satisfied that:
(a) there are reasonable grounds for suspecting that *evidential material is accessible from the computer; and
(b) the specified person is:
(i) reasonably suspected of possessing, or having under his or her control, *tainted property or evidential material; or
(ii) the owner or lessee of the computer; or
(iii) an employee of the owner or lessee of the computer; and
(c) the specified person has knowledge of:
(i) the computer or a computer network of which the computer forms a part; or
(ii) measures applied to protect *data held in or accessible from the computer.

(3) A person commits an offence if the person fails to comply with the order.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

247 Securing electronic equipment

(1) If the *executing officer or a *person assisting believes on reasonable grounds that:
(a) *evidential material may be accessible by operating electronic equipment at the *premises; and
(b) expert assistance is required to operate the equipment; and
(c) if he or she does not take action, the material may be destroyed, altered or otherwise interfered with;
he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The *executing officer or a *person assisting must give notice to the occupier of the *premises of:

(a) his or her intention to secure equipment; and

(b) the fact that the equipment may be secured for up to 24 hours.

(3) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever happens first.

(4) If the *executing officer or a *person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate to extend the period.

(5) The *executing officer or a *person assisting must notify the occupier of the *premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(6) The provisions of this Division relating to the issue of *search warrants apply, with such modifications as are necessary, to the issuing of an extension.

248 Compensation for damage to electronic equipment

(1) This section applies if:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 243 or 245; or

(b) the *data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;

because:

(c) insufficient care was exercised in selecting the person who was to operate the equipment; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the *data or programs, such reasonable compensation for the damage or corruption as they agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the *premises and his or her employees and *agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1), damage to *data includes damage by erasure of data or addition of other data.

249 Copies of seized things to be provided

(1) The occupier of the *premises, or another person who apparently represents the occupier and who is present when a *search warrant is executed, may request an *authorised officer who seizes:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

to give the occupier or other person a copy of the thing or the information.

(2) The officer must do so as soon as practicable after the seizure.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) However, the officer is not required to do so if:

(a) the thing was seized under subsection 245(2) or paragraph 245(3)(b) (use of electronic equipment at premises); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

250 Providing documents after execution of a search warrant

If:

(a) documents were on, or accessible from, the *premises of a *financial institution at the time when a *search warrant relating to those premises was executed; and

(b) those documents were not able to be located at that time; and

(c) the financial institution provides them to the *executing officer as soon as practicable after the execution of the warrant;

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Stopping and searching conveyances

251 Searches without warrant in emergency situations

(1) This section applies if an *authorised officer suspects, on reasonable grounds, that:

(a) a thing constituting *tainted property or *evidential material is in or on a *conveyance; and

(b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and

(c) it is necessary to exercise the power without the authority of a *search warrant because the circumstances are serious and urgent.

(2) The officer may:

(a) stop and detain the *conveyance; and

(b) search the conveyance and any container in or on the conveyance, for the thing; and

(c) seize the thing if he or she finds it there.

(3) If, in the course of searching for the thing, the officer finds another thing constituting *tainted property or *evidential material, the officer may seize that thing if he or she suspects, on reasonable grounds, that:

(a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and

(b) it is necessary to seize it without the authority of a *search warrant because the circumstances are serious and urgent.

(4) The officer must exercise his or her powers subject to section 252.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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252 How an authorised officer exercises a power under section 251

When an *authorised officer exercises a power under section 251 in relation to a *conveyance, he or she:

(a) may use such assistance as is necessary; and

(b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and

(c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and

(d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:

(i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or

(ii) it is not possible to give that person such an opportunity.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Dealing with things seized

Subdivision A—General requirements

253 Receipts for things seized under warrant

(1) The *executing officer or a *person assisting must provide a receipt for:

(a) a thing seized under a warrant; or

(b) a thing moved under subsection 244(1) (moving things to another place for examination or processing); or

(c) a thing seized under section 251 (searches without warrant in emergency situations).

(2) One receipt may cover 2 or more things.

254 Responsibility for things seized

(1) If a thing is seized under a *search warrant or under section 251, the *responsible custodian of the thing must:

(a) arrange for the thing to be kept until it is dealt with in accordance with another provision of this Act; and

(b) ensure that all reasonable steps are taken to preserve the thing while it is so kept.

(2) The ***responsible custodian*** of a thing that is seized under a *search warrant or under section 251 is the head of the *enforcement agency of the *authorised officer who is responsible for executing the warrant, or who seized the thing under section 251.

(3) For the purposes of this section, the head of the *enforcement agency, that is the *Immigration and Border Protection Department, is the *Comptroller-General of Customs.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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255 Effect of obtaining forfeiture orders

If:

(a) a thing is seized under a *search warrant or under section 251; and

(b) while the thing is in the possession of the responsible custodian, a *forfeiture order is made covering the thing;

the *responsible custodian must deal with the thing as required by the order.

Subdivision B—Things seized as evidence

256 Returning seized things

(1) If:

(a) a thing is seized under a *search warrant or under section 251; and

(b) it is seized on the ground that a person believes on reasonable grounds that it is:

(i) *evidential material; or

(ii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence; or

(iii) a *thing relevant to unexplained wealth proceedings; and

(c) either:

(i) the reason for the thing's seizure no longer exists or it is decided that the thing is not to be used in evidence; or

(ii) if the thing was seized under section 251—the period of 60 days after the thing's seizure ends;

the *authorised officer responsible for executing the warrant, or who seized the thing under section 251, must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

(a) in a subparagraph (1)(c)(ii) case:

(i) proceedings in respect of which the thing might afford evidence have been instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(ii) there is an order in force under section 258 (retaining things for a further period); or

(b) in any case—the authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory) to retain, destroy or dispose of the thing; or

(c) in any case—the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

257 Authorised officer may apply for a thing to be retained for a further period

(1) This section applies if an *authorised officer has seized a thing under this Part and proceedings in respect of which the thing might afford evidence have not commenced before the end of:

(a) 60 days after the seizure; or

(b) a period previously specified in an order of a magistrate under this section.

(2) The *authorised officer may apply to a magistrate for an order that the officer may retain the thing for a further period.

(3) Before making the application, the *authorised officer must:

(a) take reasonable steps to discover whose interests would be affected by the retention of the thing; and

(b) if it is practicable to do so, notify each person whom the officer believes to be such a person of the proposed application.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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258 Magistrate may order that the thing be retained

(1) The magistrate may order that the *authorised officer who made an application under section 257 may retain the thing if the magistrate is satisfied that it is necessary for the officer to do so for the purpose of initiating or conducting proceedings under this Act.

(2) The order must specify the period for which the officer may retain the thing.

Subdivision C—Things seized on other grounds

259 Return of seized property to third parties

(1) A person who claims an *interest in a thing that has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property may apply to a court for an order that the thing be returned to the person.

(2) The court must be:

(a) if the thing was seized under a *search warrant—a court of the State or Territory in which the warrant was issued that has *proceeds jurisdiction; or

(b) if the thing was seized under section 251—a court of the State or Territory in which the thing was seized that has proceeds jurisdiction.

(3) The court must order the *responsible custodian of the thing to return the thing to the applicant if the court is satisfied that:

(a) the applicant is entitled to possession of the thing; and

(b) the thing is not *tainted property in relation to the relevant offence; and

(c) the person in respect of whose suspected commission of, or conviction for, an offence the thing was seized has no *interest in the thing.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(4) If the court makes such an order, the *responsible custodian of the thing must arrange for the thing to be returned to the applicant.

260 Return of seized property if applications are not made for restraining orders or forfeiture orders

(1) If:

(a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and

(b) at the time when the thing was seized, an application had not been made for a *restraining order or a *forfeiture order that would cover the thing; and

(c) such an application is not made during the period of 14 days after the day on which the thing was seized;

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

(2) However, this section does not apply to a thing to which section 261 applies.

261 Effect of obtaining restraining orders

(1) If:

(a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and

(b) but for this subsection, the *responsible custodian of the thing would be required to arrange for the thing to be returned to a person as soon as practicable after the end of a particular period; and

(c) before the end of that period, a *restraining order is made covering the thing;

then:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) if the restraining order directs the *Official Trustee to take custody and control of the thing—the responsible custodian must arrange for the thing to be given to the Official Trustee in accordance with the restraining order; or

(e) if the court that made the restraining order has made an order under subsection (3) in relation to the thing—the responsible custodian must arrange for the thing to be kept until it is dealt with in accordance with another provision of this Act.

(2) If:

(a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and

(b) a *restraining order is made in relation to the thing; and

(c) at the time when the restraining order is made, the thing is in the possession of the responsible custodian;

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

(3) The court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, make an order that the responsible custodian may retain the property for so long as the property is required as evidence as to the commission of that offence.

(4) A witness who is giving evidence relating to an application for an order under subsection (2) is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

262 Effect of refusing applications for restraining orders or forfeiture orders

If:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and

(b) an application is made for a *restraining order or a *forfeiture order that would cover the thing; and

(c) the application is refused; and

(d) at the time when the application is refused, the thing is in the possession of the *responsible custodian;

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—General

263 Application of Part

This Part is not intended to limit or exclude the operation of another law of the Commonwealth, a State or a Territory relating to:

(a) the search of persons or *premises; or

(b) the stopping, detaining or searching of *conveyances; or

(c) the seizure of things.

264 Law relating to legal professional privilege not affected

This Part does not affect the law relating to *legal professional privilege.

265 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *search warrant in:

(a) that State or Territory; or

(b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or

(c) a *non-governing Territory.

266 Offence for making false statements in applications

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

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(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, an application for a *search warrant.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3-6—Disclosure of information

266A Disclosure

(1) This section applies if a person obtains information:

(a) as a direct result of:

(i) the person being given a sworn statement under an order made under paragraph 39(1)(ca), (d) or (da); or

(ii) the exercise of a power (by the person or someone else), or performance (by the person or someone else) of a function, under Part 3-1, 3-2, 3-3, 3-4 or 3-5; or

(iii) the exercise of a power (by the person or someone else), or performance (by the person or someone else) of a function, under Division 2 of Part 4-1; or

(b) as a result of a disclosure, or a series of disclosures, under this section or clause 18 of Schedule 1.

(2) The person may disclose the information to an authority described in an item of the following table for a purpose described in that item if:

(a) the person believes on reasonable grounds that the disclosure will serve that purpose; and

(b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

Recipients and purposes of disclosure

Item	Authority to which disclosure may be made	Purpose for which disclosure may be made
1	Authority with one or more functions under this Act	Facilitating the authority's performance of its functions under this Act
2	Authority of the Commonwealth, or	Assisting in the prevention,

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Recipients and purposes of disclosure		
Item	**Authority to which disclosure may be made**	**Purpose for which disclosure may be made**
	of a State or Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory	investigation or prosecution of an offence against that law that is punishable on conviction by imprisonment for at least 3 years or for life
2A	Authority of a foreign country that has a function of investigating or prosecuting offences against a law of the country	Assisting in the prevention, investigation or prosecution of an offence against that law constituted by conduct that, if it occurred in Australia, would constitute an offence against a law of the Commonwealth, or of a State or Territory, punishable on conviction by imprisonment for at least 3 years or for life
2B	Authority of a State, or a *self-governing Territory, that has a function under a *corresponding law of the State or Territory	Any one or more of the following purposes: (a) engaging in proceedings under that *corresponding law; (b) engaging in proceedings for the forfeiture of things under a law of that State or Territory; (c) deciding whether to institute proceedings of a kind referred to in paragraph (a) or (b)
2C	Authority of a foreign country that has one or more of the following functions: (a) investigating or prosecuting offences against a law of the country; (b) identifying, locating, tracing, investigating or confiscating	Assisting in identification, location, tracing, investigation or confiscation of *proceeds or *instruments of crime, if the identification, location, tracing, investigation or confiscation could take place under this Act, or under a *corresponding law of a State or a *self-governing Territory,

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Recipients and purposes of disclosure

Item	Authority to which disclosure may be made	Purpose for which disclosure may be made
	*proceeds or *instruments of crime under a law of the country	if the proceeds or instruments related to an offence against a law of the Commonwealth, State or Territory
2D	Authority of the Commonwealth, or of a State or Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory	Assisting in the prevention, investigation or prosecution of: (a) an offence against this Act that involves non-compliance with an obligation or requirement; or (b) an offence against section 15G, 197A, 209, 216, 222 or 266 of this Act; or (c) an offence against clause 8 or 15 of Schedule 1 to this Act; or (d) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or (e) an offence that involves non-compliance with an order of a court made under this Act
2E	*Mutual Assistance Department	Either or both of the following purposes: (a) facilitating the Mutual Assistance Department's performance of its functions in relation to the *Extradition Act 1988*, the *International Criminal Court Act 2002*, the *International War Crimes Tribunals Act 1995* or the *Mutual Assistance Act; (b) a purpose that is ancillary or incidental to the performance by the Mutual Assistance

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Recipients and purposes of disclosure		
Item	**Authority to which disclosure may be made**	**Purpose for which disclosure may be made**
		Department of any of the functions covered by paragraph (a)
2F	Authority of a foreign country with functions corresponding to the functions of the Mutual Assistance Department that are covered by item 2E	Either or both of the following purposes: (a) assisting in the prevention, investigation or prosecution of an offence against a law of the country constituted by conduct that, if it occurred in Australia, would constitute an offence against a law of the Commonwealth, or of a State or Territory, punishable on conviction by imprisonment for at least 3 years or for life; (b) assisting in the identification, location, tracing, investigation or confiscation of *proceeds or *instruments of crime, if the identification, location, tracing, investigation or confiscation could take place under this Act, or under a *corresponding law of a State or a *self-governing Territory, if the proceeds or instruments related to an offence against a law of the Commonwealth, a State or a Territory
3	Australian Taxation Office	Protecting public revenue
4	The *International Criminal Court	Enabling or assisting the International Criminal Court to perform any of its functions

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Recipients and purposes of disclosure		
Item	**Authority to which disclosure may be made**	**Purpose for which disclosure may be made**
5	An *International War Crimes Tribunal	Enabling or assisting the International War Crimes Tribunal to perform any of its functions
6	Professional disciplinary body	Enabling or assisting the body to perform any of the body's functions

Note: This section is not intended to alter the procedures applicable to the disclosure of information to foreign countries (for example, procedures under the *Mutual Assistance in Criminal Matters Act 1987*). If this section applies to information, this section gives authorisation for the disclosure of the information in accordance with those procedures.

(2A) To avoid doubt, this section does not prevent the person from disclosing or using the information:

(a) for the purpose for which the information was obtained; or

(b) for purposes directly or indirectly connected with, or incidental to, the purpose for which the information was obtained; or

(c) if the person obtained the information as a result of a disclosure, or a series of disclosures, under this section or clause 18 of Schedule 1:

(i) for the purpose for which the information was obtained as a result of that disclosure or any of the disclosures in that series; or

(ii) for purposes directly or indirectly connected with, or incidental to, the purpose for which the information was obtained as a result of that disclosure or any of the disclosures in that series.

Limits on use of information disclosed

(3) In civil or *criminal proceedings against a person who gave an answer or produced a document in an *examination, none of the

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following that is disclosed under this section is admissible in evidence against the person:

(a) the answer or document;

(b) information contained in the answer or document.

(4) Subsection (3) does not apply in:

(a) *criminal proceedings for giving false or misleading information; or

(b) proceedings on an application under this Act; or

(c) proceedings ancillary to an application under this Act; or

(d) proceedings for enforcement of a *confiscation order; or

(e) civil proceedings for or in respect of a right or liability the document confers or imposes; or

(f) proceedings for an offence against Part 3-1.

Note: Subsections (3) and (4) reflect section 198.

(5) In a *criminal proceeding against a person who produced or made available a document under a *production order, none of the following that is disclosed under this section is admissible in evidence against the person:

(a) the document;

(b) information contained in the document.

(6) Subsection (5) does not apply in a proceeding under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

Note: Subsections (5) and (6) reflect subsection 206(2).

(6A) Subsection (5) does not apply in proceedings for an offence against Part 3-2.

(7) To avoid doubt, this section does not affect the admissibility in evidence of any information, document or thing obtained as an indirect consequence of a disclosure under this section.

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Relationship with subsection 228(2)

(8) To avoid doubt:

(a) this section does not limit subsection 228(2) (about a *search warrant authorising the *executing officer to make things seized under the warrant available to officers of other *enforcement agencies); and

(b) subsection 228(2) does not limit this section.

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Chapter 4—Administration

Part 4-1—Powers and duties of the Official Trustee

Division 1—Preliminary

267 Property to which the Official Trustee's powers and duties under this Part apply

(1) The powers conferred on the *Official Trustee under this Part may be exercised, and the duties imposed on the Official Trustee under this Part are to be performed, in relation to property if a court orders the Official Trustee to take custody and control of the property under section 38.

(2) This property is ***controlled property***.

(3) However, powers conferred on the *Official Trustee under Division 4 may be exercised, and the duties imposed on the Official Trustee under Division 4 are to be performed, in relation to any property that is the subject of a *restraining order, whether or not the property is *controlled property.

267AA Additional property to which the Official Trustee's powers under Division 2 apply

(1) The powers conferred on the *Official Trustee under Division 2 may be exercised in relation to:
  (a) property that is the subject of a *forfeiture order; or
  (b) property forfeited under section 92; or
  (c) property that is subject to a direction under section 282 or 282A.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) Without limiting the definition of ***controlled property*** in section 267, for the purposes of Division 2, that property is ***controlled property***.

267AB Additional property to which the Official Trustee's powers under Division 3 apply

(1) The powers conferred on the *Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to:

(a) property that is the subject of a *forfeiture order; or

(b) property forfeited under section 92; or

(c) property that is subject to a direction under section 282 or 282A.

(2) If property is the subject of a *forfeiture order, the powers conferred on the *Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property:

(a) during the period:

(i) beginning when the forfeiture order was made; and

(ii) ending at the later of the times set out in subsection 69(1); or

(b) during the period mentioned in section 86.

(3) If property is forfeited under section 92, the powers conferred on the *Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property during the period:

(a) beginning when the property was forfeited; and

(b) ending at the end of the period mentioned in subsection 99(1).

(4) If property is subject to a direction under section 282 or 282A, the powers conferred on the *Official Trustee under Division 3 may be

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exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to the property during the appeal period under section 285.

(5) Without limiting the definition of ***controlled property*** in section 267, for the purposes of Division 3 and sections 289 and 290, property covered by subsection (1), (2), (3), or (4) of this section is ***controlled property***.

267A Additional property to which the Official Trustee's powers and duties under Division 3 apply

(1) The powers conferred on the *Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to property that, under paragraph 278(2)(d), may be disposed of to pay, under Part 4-2, a *legal aid commission's costs.

(2) Without limiting the definition of ***controlled property*** in section 267, for the purposes of Division 3 this property is ***controlled property***.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Obtaining information about controlled property

268 Access to books

(1) The *Official Trustee, or another person authorised in writing by the Official Trustee to exercise powers under this section, may, for the purpose of:

(a) ensuring that all the *controlled property is under the Official Trustee's custody and control; or

(b) ensuring the effective exercise of the Official Trustee's powers or the performance of the Official Trustee's duties, under this Part in relation to the controlled property;

require:

(c) the *suspect in relation to the *restraining order covering the controlled property; or

(d) any other person entitled to, or claiming an *interest in, the controlled property;

to produce specified *books in accordance with this section.

(2) The requirement must be by written notice.

(3) The requirement must be to produce the *books:

(a) to a specified person; and

(b) at a specified place, and within a specified period or at a specified time on a specified day, being a place, and a period or a time and day, that are reasonable in the circumstances.

(4) The *books must be:

(a) in the possession of the person of whom the requirement is made; and

(b) in the opinion of the *Official Trustee or other person making the requirement, relevant for the purpose for which they are required.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) If the *books are so produced, the *Official Trustee or other person making the requirement, or the specified person:

(a) may make copies of, or take extracts from, the books; and

(b) may require:

(i) the person required under this section to produce the books; or

(ii) any other person who was a party to the compilation of the books;

to explain to the best of his or her knowledge and belief any matter about the compilation of the books or to which the books relate.

(6) If the *books are not so produced, the *Official Trustee or other person making the requirement, or the specified person, may require the person required under this section to produce the books to state, to the best of his or her knowledge or belief:

(a) where the books may be found; and

(b) who last had possession, custody or control of the books and where that person may be found.

(7) The production of *books under this section does not prejudice a lien that a person has on the books.

269 Suspect to assist Official Trustee

The *suspect in relation to the *restraining order covering the *controlled property must, unless excused by the *Official Trustee or prevented by illness or other sufficient cause:

(a) give to the Official Trustee such *books (including books of an associated entity (within the meaning of the *Bankruptcy Act 1966*) of the person) that:

(i) are in the person's possession; and

(ii) relate to any of the person's *affairs;

as the Official Trustee requires; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) attend the Official Trustee whenever the Official Trustee reasonably requires; and

(c) give to the Official Trustee such information about any of the person's conduct and examinable affairs as the Official Trustee requires; and

(d) give to the Official Trustee such assistance as the Official Trustee reasonably requires, in connection with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part in relation to the controlled property.

270 Power to obtain information and evidence

(1) The *Official Trustee, by written notice given to any person, may require the person to do any or all of the following things:

(a) to:

(i) give the Official Trustee such information as the Official Trustee requires for the purposes of the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and

(ii) do so within the period, and in the manner, specified in the notice;

(b) to:

(i) attend before the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, at the time and place specified in the notice; and

(ii) give evidence relating to any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part;

(c) to:

(i) give evidence by video link to the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, if the evidence relates to

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any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and

(ii) commence doing so at the time specified in the notice;

(d) to:

(i) give evidence by telephone to the Official Trustee, or a person authorised in writing by the Official Trustee for the purposes of this paragraph, if the evidence relates to any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and

(ii) commence doing so at the time specified in the notice;

(e) to:

(i) produce all *books in the possession of the person notified relating to any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and

(ii) do so within the period, and in the manner, specified in the notice.

(2) In the case of a requirement under paragraph (1)(b), (c) or (d), the *Official Trustee or a person authorised under the paragraph concerned:

(a) may require the evidence to be given on oath or affirmation, and either orally or in writing; and

(b) for that purpose, may administer an oath or affirmation.

(3) An oath or affirmation to be sworn or made by a person who is to give evidence by video link may be administered:

(a) by means of video link, in as nearly as practicable the same way as if the person were to give evidence in the presence of the *Official Trustee or the person authorised under paragraph (1)(c), as the case may be; or

(b) as follows:

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(i) on behalf of the Official Trustee or the person authorised under paragraph (1)(c), as the case may be;
(ii) by a person authorised by the Official Trustee or the person authorised under paragraph (1)(c), as the case may be;
(iii) at the place where the person is present for the purposes of giving evidence.

(4) An oath or affirmation to be sworn or made by a person who is to give evidence by telephone may be administered:
(a) by telephone, in as nearly as practicable the same way as if the person were to give evidence in the presence of the *Official Trustee or the person authorised under paragraph (1)(d), as the case may be; or
(b) as follows:
(i) on behalf of the Official Trustee or the person authorised under paragraph (1)(d), as the case may be;
(ii) by a person authorised by the Official Trustee or the person authorised under paragraph (1)(d), as the case may be;
(iii) at the place where the person is present for the purposes of giving evidence.

271 Privilege against self-incrimination

(1) A person is not excused from giving information or producing a document under this Part on the ground that to do so would tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of a natural person:
(a) the information given; or
(b) the giving of the document;
is not admissible in evidence in *criminal proceedings against the natural person, except:

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(c) proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code 1995* (false and misleading information and documents) in relation to giving the information or document; or

(d) proceedings for an offence against this Division.

272 Offences relating to exercise of powers under section 268 or 269

(1) A person commits an offence if the person refuses or fails to comply with a requirement under section 268 or 269.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) A person commits an offence if the person obstructs or hinders a person in the exercise of a power under section 268 or 269.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

273 Failure to provide information

A person commits an offence if the person refuses or fails to comply with a notice given to the person under paragraph 270(1)(a).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

274 Failure of person to attend

A person commits an offence if:

(a) the person is required by a notice under paragraph 270(1)(b) to attend before the *Official Trustee or a person authorised under that paragraph; and

(b) the person:

(i) fails to attend as required by the notice; or

(ii) fails to appear and report from day to day, without being excused or released from further attendance by the

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Official Trustee or person authorised under that paragraph, as the case may be.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

275 Refusal to be sworn or give evidence etc.

(1) A person commits an offence if:
  (a) the person attends before the *Official Trustee, or a person authorised under paragraph 270(1)(b), as required by a notice under that paragraph; and
  (b) the person refuses or fails:
    (i) to be sworn or to make an affirmation; or
    (ii) to answer a question that the person is required to answer by the Official Trustee or a person authorised under that paragraph, as the case may be.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) A person commits an offence if:
  (a) the person is required by a notice under paragraph 270(1)(c) to give evidence by video link; and
  (b) the person refuses or fails:
    (i) to be sworn or to make an affirmation; or
    (ii) to answer a question that the person is required to answer by the *Official Trustee or a person authorised under that paragraph, as the case may be.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(3) A person commits an offence if:
  (a) the person is required by a notice under paragraph 270(1)(d) to give evidence by telephone; and
  (b) the person refuses or fails:
    (i) to be sworn or to make an affirmation; or

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(ii) to answer a question that the person is required to answer by the *Official Trustee or a person authorised under that paragraph, as the case may be.

Penalty for contravention of this subsection: Imprisonment for 6 months or 30 penalty units, or both.

275A Failure to produce a book

A person commits an offence if:

(a) the person is required by a notice under paragraph 270(1)(e) to produce a *book; and

(b) the person refuses or fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Dealings relating to controlled property

276 Preserving controlled property

The *Official Trustee may do anything that is reasonably necessary for the purpose of preserving the *controlled property, including the following:

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured;

(c) realising or otherwise dealing with any of the property that is securities or investments;

(d) if any of the property is a business:

(i) employing, or terminating the employment of, persons in the business; or

(ii) doing anything necessary or convenient to carry on the business on a sound commercial basis.

277 Rights attaching to shares

The *Official Trustee may exercise the rights attaching to any of the *controlled property that is shares as if the Official Trustee were the registered holder of the shares, to the exclusion of the registered holder.

278 Destroying or disposing of property

(1) The *Official Trustee may destroy the *controlled property if:

(a) it is in the public interest to do so; or

(b) it is required for the health or safety of the public.

(2) The *Official Trustee may dispose of the *controlled property, by sale or other means:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) with the written agreement of all parties with an *interest in the property; or

(b) if the property is likely to lose value in the opinion of the Official Trustee; or

(c) if, in the Official Trustee's opinion, the cost of controlling the property until the Official Trustee finally deals with it is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with; or

(d) if, in the opinion of the Official Trustee, the disposal of the property or part of the property is necessary to pay, under Part 4-2, a *legal aid commission's costs.

279 Notice of proposed destruction or disposal etc.

(1) The *Official Trustee must give written notice of the proposed destruction or disposal to:

(a) if the *controlled property is covered by a *forfeiture order:

(i) the person who was the owner of the property immediately before the forfeiture order was made; and

(ii) any other person whom the *Official Trustee has reason to believe may have had an *interest in the property immediately before the forfeiture order was made; or

(b) if the controlled property is forfeited under section 92:

(i) the person who was the owner of the property immediately before the forfeiture; and

(ii) any other person whom the Official Trustee has reason to believe may have had an interest in the property immediately before the forfeiture; or

(c) in any other case:

(i) the owner of the controlled property; and

(ii) any other person whom the Official Trustee has reason to believe may have an interest in the controlled property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) A person who has been so notified may object in writing to the *Official Trustee within 14 days of receiving the notice.

(3) However, the person may object to the disposal of the *controlled property for the reason set out in paragraph 278(2)(d) only if:
  (a) the value of the controlled property exceeds the total amount of the money payable to the *legal aid commission in question; and
  (b) the person and the *Official Trustee have failed to agree on which item or items of, or which portion of, the controlled property should be disposed of.

(4) An objection to which subsection (3) applies must:
  (a) relate only to which item or items of, or which portion of, the *controlled property should be disposed of; and
  (b) specify the item or items of, or the portion of, the controlled property that the person does not object to the *Official Trustee disposing of.

Pre-disposal agreement

(5) Subsection (1) does not require written notice of the proposed disposal of the *controlled property to be given to a person who has agreed in writing to the disposal of the controlled property.

(6) If:
  (a) a person has agreed to the disposal of the *controlled property; and
  (b) the *Official Trustee disposes of the property;

the Official Trustee must:
  (c) give the person written notice of the disposal of the property; and
  (d) do so as soon as practicable after the disposal of the property.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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280 Procedure if person objects to proposed destruction or disposal

(1) If the *Official Trustee wishes to continue with a proposed destruction or disposal that has been objected to, the Official Trustee must apply to the court that made the *restraining order covering the *controlled property for an order that the Official Trustee may destroy or dispose of the property.

(2) The court must make an order to destroy the *controlled property if:
  (a) it is in the public interest to do so; or
  (b) it is required for the health or safety of the public.

(3) The court may take into account any matters it sees fit in determining whether it is in the public interest to destroy the *controlled property, including:
  (a) the use to which the property would be put if it were sold; and
  (b) whether the cost of restoring the property to a saleable condition would exceed its realisable value; and
  (c) whether the cost of sale would exceed its realisable value; and
  (d) whether the sale of the property would otherwise be legal.

(4) The court may make an order to dispose of the *controlled property if, in the court's opinion:
  (a) the property is likely to lose value; or
  (b) the cost of controlling the property until it is finally dealt with by the *Official Trustee is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with.

(4A) The court must make an order to dispose of the *controlled property, or a specified item or items of or a specified portion of the property, if in the court's opinion the disposal is necessary to pay, under Part 4-2, a *legal aid commission's costs.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

281 Proceeds from sale of property

(1) Amounts realised from any sale of the *controlled property under section 278:
  (a) if the property was covered by a *restraining order—are taken to be covered by the restraining order; or
  (b) if the property was covered by a *forfeiture order—are taken to be covered by the forfeiture order; or
  (c) if the property was forfeited under section 92—are taken to be forfeited under that section; or
  (d) if the property was subject to a charge under section 142—are taken to be subject to the charge; or
  (e) if the property was subject to a charge under section 169—are taken to be subject to the charge; or
  (f) if the property was subject to a charge under section 179SA—are taken to be subject to the charge.

(2) If the *controlled property:
  (a) was covered by a *restraining order or *forfeiture order; and
  (b) was so covered on the basis that the property was *proceeds of an offence, or an *instrument of an offence, to which the restraining order or forfeiture order relates;

amounts realised from any sale of the property under section 278 continue to be proceeds of that offence or an instrument of that offence.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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281A Official Trustee does not acquire any additional proprietary interests in controlled property

To avoid doubt, the *Official Trustee does not acquire any additional proprietary interests in *controlled property when:

(a) exercising powers conferred by this Division; or

(b) performing duties imposed by this Division.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Discharging pecuniary penalty orders and literary proceeds orders

282 Direction by a court to the Official Trustee in relation to certain restraining orders

(1) A court may, if subsection (2), (3) or (4) applies, direct the *Official Trustee to pay the Commonwealth, out of property that is subject to a *restraining order, an amount equal to:

(a) the *penalty amount under a *pecuniary penalty order; or

(b) the *literary proceeds amount under a *literary proceeds order.

(2) The court that makes the *pecuniary penalty order or *literary proceeds order may include such a direction in the order if:

(a) the order is made against a person in relation to one or more offences; and

(b) the *restraining order has already been made against that person in relation to that offence or one or more of those offences, or in relation to one or more *related offences.

(3) The court that makes the *restraining order may include such a direction in the order if:

(a) the *pecuniary penalty order or *literary proceeds order has been made against a person in relation to one or more offences; and

(b) the restraining order is subsequently made:

(i) against that person in relation to that offence or one or more of those offences; or

(ii) against property of another person in relation to which an order is in force under subsection 141(1) in relation to the pecuniary penalty order, or under subsection 168(1) in relation to the literary proceeds order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(4) The court that made the *pecuniary penalty order, the *literary proceeds order or the *restraining order may, on application by the *responsible authority for the relevant order, make the direction if:

(a) the pecuniary penalty order or literary proceeds order has been made against a person in relation to one or more offences; and

(b) the restraining order has been made:

(i) against that person in relation to that offence or one or more of those offences; or

(ii) against property of another person in relation to which an order is in force under subsection 141(1) in relation to the pecuniary penalty order, or under subsection 168(1) in relation to the literary proceeds order.

282A Direction by a court to the Official Trustee in relation to unexplained wealth orders

(1) A court may, if subsection (2), (3) or (4) applies, direct the *Official Trustee to pay the Commonwealth, out of property that is subject to a *restraining order under section 20A, an amount equal to the *unexplained wealth amount made under an *unexplained wealth order in relation to a person.

(2) The court that makes the *unexplained wealth order may include such a direction in the order if the *restraining order:

(a) has already been made against the person; and

(b) relates to property that constitutes part of the person's *total wealth.

(3) The court that makes the *restraining order may include such a direction in the order if:

(a) the *unexplained wealth order has been made against the person; and

(b) the restraining order is subsequently made:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) against the person under section 20A; or

(ii) against property of another person in relation to which an order is in force under section 179S in relation to the unexplained wealth order.

(4) The court that made the *unexplained wealth order or the *restraining order may, on application by the *responsible authority for the relevant order, make the direction if:

(a) the unexplained wealth order has been made against the person; and

(b) the restraining order has been made:

(i) against the person under section 20A; or

(ii) against property of another person in relation to which an order is in force under section 179S in relation to the unexplained wealth order.

283 Court may include further directions etc.

(1) For the purposes of enabling the *Official Trustee to comply with a direction given by a court under section 282 or 282A, 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 subject to the *restraining order as the court specifies; and

(b) appoint an officer of the court or any other person:

(i) to execute any deed or instrument in the name of a person who owns or has an *interest in the property; and

(ii) to do any act or thing necessary to give validity and operation to the deed or instrument.

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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284 Official Trustee to carry out directions

(1) If the *Official Trustee is given a direction under section 282 or 282A in relation to property, the Official Trustee must, as soon as practicable after the end of the appeal period under section 285:

(a) to the extent that the property is not money—sell or otherwise dispose of the property; and

(b) apply:

(i) to the extent that the property is money—that money; and

(ii) the amounts received from the sale or disposition of the other property;

in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 288(1), incurred or payable in connection with the *restraining order and payable to the Official Trustee under the regulations; and

(c) credit the remainder of the money and amounts received to the *Confiscated Assets Account as required by section 296.

(2) However, if the remainder referred to in paragraph (1)(c) exceeds the *penalty amount, *literary proceeds amount or *unexplained wealth amount (as the case requires), the *Official Trustee must:

(a) credit to the *Confiscated Assets Account as required by section 296 an amount equal to the penalty amount, literary proceeds amount or unexplained wealth amount; and

(b) pay the balance to the person whose property was subject to the *restraining order.

285 Official Trustee not to carry out directions during appeal periods

(1) If the *Official Trustee is given a direction under section 282 or 282A in relation to property, the Official Trustee must not:

(a) if the property is money—apply the money under section 284 until the end of the appeal period under this section; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the property is not money—sell or otherwise dispose of the property until the end of that period.

(2) The appeal period under this section is the period ending:

(a) if the period provided for lodging an appeal against the *pecuniary penalty order, *literary proceeds order or *unexplained wealth order to which the direction relates has ended without such an appeal having been lodged—at the end of that period; or

(b) if an appeal against the pecuniary penalty order, literary proceeds order or unexplained wealth order has been lodged—when the appeal lapses or is finally determined.

(3) However, if the person is convicted of the offence, or any of the offences, to which the *pecuniary penalty order or *literary proceeds order relates, the appeal period is:

(a) the period ending:

(i) if the period provided for lodging an appeal against the conviction or convictions to which the direction relates has ended without such an appeal having been lodged—at the end of that period; or

(ii) if an appeal against the conviction or convictions has been lodged—when the appeal lapses or is finally determined; or

(b) the appeal period under subsection (2);

whichever ends last.

(4) For the purposes of subsection (3):

(a) if the person is to be taken to have been convicted of an offence because of paragraph 331(1)(b)—references in that subsection to lodging of an appeal against the conviction are references to lodging of an appeal against the finding that the person is guilty of the offence; and

(b) if the person is to be taken to have been convicted of an offence because of paragraph 331(1)(c)—references in that subsection to lodging of an appeal against the conviction are

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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references to lodging of an appeal against the person's conviction of the other offence referred to in that paragraph.

Controlled property

(5) If the property to which a direction under section 282 or 282A relates is controlled property for the purposes of Division 3 of Part 4-1, this section does not prevent or limit the exercise of powers or performance of duties by the *Official Trustee under that Division.

286 Discharge of pecuniary penalty orders and literary proceeds orders by credits to the Confiscated Assets Account

(1) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under a *pecuniary penalty order, the person's liability under the pecuniary penalty order is, to the extent of the credit, discharged.

(2) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under a *literary proceeds order, the person's liability under the literary proceeds order is, to the extent of the credit, discharged.

(3) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under an *unexplained wealth order, the person's liability under the unexplained wealth order is, to the extent of the credit, discharged.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 5—Miscellaneous

287 Money not to be paid into the Common Investment Fund

Money that is in the custody or control of the *Official Trustee because of a *restraining order must not be paid into the Common Investment Fund under section 20B of the *Bankruptcy Act 1966* (despite anything in that Act).

288 Official Trustee's costs etc.

(1) The regulations may make provision relating to:
  (a) the costs, charges and expenses incurred in connection with the *Official Trustee's exercise of powers and performance of functions or duties under this Act, under Part VI of the *Mutual Assistance Act or under section 208DA or Division 3 of Part XIII of the *Customs Act 1901*; and
  (b) the Official Trustee's remuneration in respect of those activities.

(2) An amount equal to each amount of remuneration that the *Official Trustee receives under the regulations is to be paid to the Commonwealth.

289 Income generated from controlled property

(1) The *Official Trustee may apply any income generated from *controlled property to the payment of amounts payable to the Official Trustee, in relation to the property, under regulations made for the purposes of section 288.

Note: See also section 267AB, which extends the meaning of ***controlled property*** for the purposes of this section.

(2) However, if the *controlled property is returned to its owner as a result of a restraining order ceasing to be in force or as a result of

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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the controlled property ceasing to be subject to forfeiture under this Act, the *Official Trustee must arrange for an amount to be paid to the owner that is equal to the difference between:

(a) the sum of all the amounts applied under this section in relation to the property; and

(b) the sum of all the amounts of expenditure by the *Official Trustee that were necessary for maintaining the property or generating the income from property.

(3) This section does not affect other ways in which the *Official Trustee may recover amounts payable to the Official Trustee under regulations made for the purposes of section 288.

290 Official Trustee is not personally liable

(1) The *Official Trustee is not personally liable for:

(a) any loss or damage, sustained by a person claiming an *interest in all or part of the *controlled property, arising from the Official Trustee taking custody and control of the property; or

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

unless the court is satisfied that the Official Trustee is guilty of negligence in respect of taking custody and control of the property.

Note: See also section 267AB, which extends the meaning of ***controlled property*** for the purposes of this section.

(2) The *Official Trustee is not personally liable for:

(a) any rates, land tax or municipal or statutory charges imposed under a law of the Commonwealth, a State or a Territory in respect of the *controlled property, except out of any rents or profits that the Official Trustee receives from the property; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if, in taking custody and control of the property, the Official Trustee carries on a business—any payment in respect of long service leave or extended leave:

(i) for which the person who carried on the business before the Official Trustee was liable; or

(ii) to which an employee of the Official Trustee in its capacity as custodian and controller of the business, or a legal representative of such an employee, becomes entitled after the *restraining order covering the property was made; and

(c) any other expenses in respect of the property.

291 Indemnification of Official Trustee

(1) The Commonwealth must indemnify the *Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Act.

(2) The Commonwealth has the same right of reimbursement in respect of a payment made under this indemnity as the *Official Trustee would have if the Official Trustee had made the payment.

(3) This same right of reimbursement includes reimbursement under another indemnity given to the *Official Trustee.

(4) Nothing in subsection (1) affects:

(a) any other right the *Official Trustee has to be indemnified in respect of any personal liability referred to in that subsection; or

(b) any other indemnity given to the Official Trustee in respect of any such personal liability.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 4-2—Legal assistance

293 Payments to legal aid commissions for representing suspects and other persons

(1) This section applies if:

(a) a *legal aid commission incurred (before, on or after the commencement of this subsection) legal costs for:

(i) representing a person whose property was, at the time of the representation, covered by a *restraining order in proceedings under this Act; or

(ii) representing a person, who was a *suspect at the time of the representation and whose property was at that time covered by a restraining order, in proceedings for defending any criminal charge against the person; and

(b) the commission has given (before, on or after the commencement of this subsection) the *Official Trustee a bill for the costs; and

(c) the Official Trustee is satisfied that the bill is true and correct.

(2) The *Official Trustee must pay the legal costs (according to the bill) to the *legal aid commission out of the *Confiscated Assets Account, subject to subsection (2A).

(2A) If the *Official Trustee is satisfied that:

(a) the balance of the *Confiscated Assets Account is insufficient to pay the legal costs; and

(b) property of the person is covered by the *restraining order;

the Official Trustee must pay the legal costs (according to the bill) to the *legal aid commission out of that property covered by the order, to the extent possible.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) If the *Official Trustee pays an amount to the *legal aid commission under this section and property of the person is covered by a *restraining order, the person must pay the Commonwealth an amount equal to the lesser of the following (or either of them if they are the same):

(a) the amount paid to the legal aid commission;

(b) the value of the person's property covered by the restraining order.

(4) The person's obligation to pay the amount is discharged if there is forfeited to the Commonwealth under this Act:

(a) all of the property that is covered by the *restraining order; or

(b) some of the property that is so covered, being property of a value that equals or exceeds the amount.

294 Disclosure of information to legal aid commissions

The *responsible authority for the *restraining order referred to in section 293 or the *Official Trustee may, for the purpose of a *legal aid commission determining whether a person should receive legal assistance under this Part, disclose to the commission information obtained under this Act that is relevant to making that determination.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 4-3—Confiscated Assets Account

Division 1—Establishment, crediting and payments out of the Account

295 Establishment of Account

(1) There is hereby established the Confiscated Assets Account.

(2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

296 Credits to the Account

(1) There must be credited to the *Confiscated Assets Account amounts equal to:

(a) *proceeds of confiscated assets; and

(aa) input tax credits:

(i) to which the *Official Trustee is entitled; and

(ii) that are in connection with disposals under section 70 or 100; and

(b) money paid to the Commonwealth by a foreign country, within the meaning of the *Mutual Assistance Act, under a treaty or arrangement providing for mutual assistance in criminal matters; and

(c) money paid to the Commonwealth under a *foreign pecuniary penalty order registered under section 34 of the Mutual Assistance Act; and

(d) money deriving from the enforcement of an *interstate forfeiture order registered in a *non-governing Territory, other than money covered by a direction under subsection 70(2) or 100(2); and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) amounts paid to the Commonwealth by a State or *self-governing Territory under the *equitable sharing program; and

(ea) amounts paid to the Commonwealth by a State or self-governing Territory under the *national cooperative scheme on unexplained wealth; and

(f) money, other than money referred to in paragraph (b), paid to the Commonwealth by a foreign country in connection with assistance provided by the Commonwealth in relation to the recovery by that country of the proceeds of *unlawful activity or the investigation or prosecution of unlawful activity; and

(g) money paid to the Commonwealth under subsection 293(3), and any amounts recovered by the Commonwealth as a result of executing a charge created under section 302A; and

(gb) money (other than a penalty) that is paid by a person to the Commonwealth (directly or indirectly) under, or in connection with, a *foreign deferred prosecution agreement, and that represents any or all of the following:

(i) the whole or a part of *benefits the person derived from alleged *unlawful activity;

(ii) the whole or a part of property that is wholly or partly derived or realised by the person, directly or indirectly, from alleged unlawful activity;

(iii) the whole or a part of property that is used in, or in connection with, the commission of alleged unlawful activity;

(iv) the whole or a part of property that is intended to be used in, or in connection with, the commission of alleged unlawful activity; and

(h) the remainder of the money referred to in paragraph 35G(1)(b) of the *Mutual Assistance Act; and

(i) the remainder of the proceeds referred to in paragraph 35G(2)(c) of the Mutual Assistance Act; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(j) the remainder of the proceeds referred to in paragraph 9A(c) of the *Crimes Act 1914*; and

(k) the money referred to in paragraph 208DA(3)(a) of the *Customs Act 1901*; and

(l) the remainder of the proceeds referred to in subparagraph 208DA(3)(b)(iii) of the *Customs Act 1901*; and

(m) the amount referred to in subsection 243B(4) of the *Customs Act 1901*; and

(n) the remainder of the money referred to in paragraph 243G(6)(a) of the *Customs Act 1901*; and

(o) the remainder of the proceeds referred to in subparagraph 243G(6)(b)(iii) of the *Customs Act 1901*.

(3) The following are ***proceeds of confiscated assets***:

(a) the remainder of the money and amounts referred to in paragraph 70(1)(c);

(b) the amount referred to in paragraph 89(1)(c) or 90(1)(f);

(c) the remainder of the money and amounts referred to in paragraph 100(1)(c);

(d) the amount referred to in paragraph 105(1)(c) or 106(1)(f);

(e) the amount referred to in subsection 140(1), to the extent it has been paid to the Commonwealth;

(f) the amount referred to in subsection 167(1), to the extent it has been paid to the Commonwealth;

(fa) the amount referred to in subsection 179R(1), to the extent it has been paid to the Commonwealth;

(g) the remainder of the money and amounts referred to in paragraph 284(1)(c);

(h) the amount referred to in paragraph 284(2)(a);

(i) amounts paid to the Commonwealth in settlement of proceedings connected with this Act.

(4) The ***equitable sharing program*** is an arrangement under which any or all of the following happen:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the Commonwealth shares with a participating State or *self-governing Territory a proportion of any *proceeds of any *unlawful activity (other than *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement)) recovered under a Commonwealth law, if, in the Minister's opinion, that State or Territory has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the relevant unlawful activity;

(b) each participating State or Territory shares with the Commonwealth any proceeds resulting from a breach of the criminal law of that State or Territory if, in the opinion of the appropriate Minister of that State or Territory, officers of an *enforcement agency have made a significant contribution to the recovery of those proceeds;

(c) the Commonwealth shares with a foreign country a proportion of any proceeds of any unlawful activity (other than proceeds of confiscated assets that are shareable (within the meaning of the NCSUW agreement)) recovered under a Commonwealth law if, in the Minister's opinion, the foreign country has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the unlawful activity.

297 Payments out of the Account

The following are purposes of the *Confiscated Assets Account:

(a) making any payments by way of financial assistance to the States or *self-governing Territories that the Minister considers are appropriate under the *equitable sharing program;

(aa) making any payments to foreign countries that the Minister considers are appropriate under the equitable sharing program;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ab) making any payments by way of financial assistance to the States or self-governing Territories in accordance with the *national cooperative scheme on unexplained wealth;

(ac) making any payments to foreign countries in accordance with the national cooperative scheme on unexplained wealth;

(b) making any payments under a program approved by the Minister under section 298;

(ba) transferring amounts to the *COAG Reform Fund in accordance with section 298E for the purposes of making grants to the States and Territories under section 298A;

(c) making any payments that the Minister administering the *Mutual Assistance in Criminal Matters Act 1987* considers necessary to satisfy the Commonwealth's obligations in respect of:

(i) a registered *foreign forfeiture order; or

(ii) an order registered under section 45 of the *International War Crimes Tribunals Act 1995*; or

(iii) a registered *foreign pecuniary penalty order;

(d) making any payments to a State or to a self-governing Territory that the Minister administering the *Mutual Assistance in Criminal Matters Act 1987* considers necessary following a crediting to the Account under paragraph 296(1)(b) of money received from a foreign country;

(e) paying the *Official Trustee amounts that were payable to the Official Trustee under regulations made for the purposes of paragraph 288(1)(a) or (b);

(ea) paying the Official Trustee amounts that were payable to the Official Trustee under regulations made for the purposes of subsection 9B(1) of the *Crimes Act 1914*;

(f) paying the annual management fee for the Official Trustee as specified in the regulations;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(faa) making any payments in discharge of an *associated GST entity's liability to pay *GST in connection with a disposal under section 70 or 100;

(fa) making any payments the Commonwealth is directed to make by an order under paragraph 55(2)(a), section 72, paragraph 73(2)(d), section 77 or 94A, subparagraph 102(d)(ii) or section 179L;

(g) making any payments under an arrangement under paragraph 88(1)(b) or subsection 289(2);

(ga) making any payments in relation to the conduct of an *examination, so long as the payments have been approved by the *responsible authority for the *principal order, or application for a principal order, in relation to which the examination was conducted;

(h) making any payments to a *legal aid commission under Part 4-2.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—The national cooperative scheme on unexplained wealth

297A The scheme

(1) The ***national cooperative scheme on unexplained wealth*** is a scheme under which any or all of the following happen:

(a) the Commonwealth shares with a foreign country, in accordance with section 297B, any *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement);

(b) the Commonwealth shares with a State or *self-governing Territory, in accordance with section 297C, any proceeds of confiscated assets that are shareable (within the meaning of the NCSUW agreement);

(c) a *participating State, *cooperating State or self-governing Territory shares with the Commonwealth, in accordance with a law of the State or Territory, any corresponding proceeds of the State or Territory (within the meaning of the NCSUW agreement) that are shareable (within the meaning of that agreement);

(d) a *non-participating State (other than a cooperating State) shares with the Commonwealth any corresponding proceeds of the State (within the meaning of the NCSUW agreement) that are shareable (within the meaning of that agreement).

(2) The ***NCSUW agreement*** is the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth, as in force from time to time.

297B Sharing with foreign countries

(1) This section sets out the process under the *national cooperative scheme on unexplained wealth for sharing with a foreign country

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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*proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement).

(2) If the Minister decides that:
  (a) a foreign country has made a contribution in relation to the recovery of the proceeds; and
  (b) it is appropriate that a specified amount of the proceeds be payable to the country;

then the specified amount is payable to the country under the *national cooperative scheme on unexplained wealth.

(3) However, the specified amount must not exceed the amount of the proceeds, reduced by any amounts for the making of payments referred to in paragraphs 297(fa), (ga) and (h) in relation to the proceeds.

297C Sharing with States and Territories

What this section is about

(1) This section sets out the process under the *national cooperative scheme on unexplained wealth for sharing with a State or *self-governing Territory *proceeds of confiscated assets that are shareable (within the meaning of the *NCSUW agreement).

Amount of proceeds to be shared

(2) The proceeds are to be reduced by:
  (a) any amount of the proceeds that is payable to a foreign country under subsection 297B(2); and
  (b) any amounts for the making of payments referred to in paragraphs 297(fa), (ga) and (h) in relation to the proceeds.

The resulting amount is the ***net amount***.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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The subcommittee of the Cooperating Jurisdiction Committee

(3) The Cooperating Jurisdiction Committee established under the *NCSUW agreement must establish a subcommittee for the purposes of deciding matters under this section in relation to the net amount.

(4) The subcommittee must consist of the following members of the Cooperating Jurisdiction Committee:
  (a) the Commonwealth;
  (b) if, in the decision-making period referred to in subsection (9), the Cooperating Jurisdiction Committee makes a unanimous decision that one or more *participating States, *cooperating States or *self-governing Territories made a contribution (within the meaning of the *NCSUW agreement) in relation to the recovery of the proceeds—each of those States and Territories.

Non-participating States' share

(5) If, in the decision-making period referred to in subsection (9), the subcommittee makes a unanimous decision that:
  (a) a *non-participating State (other than a *cooperating State) made a contribution (within the meaning of the *NCSUW agreement) in relation to the recovery of the proceeds; and
  (b) it is appropriate that a specified proportion of the net amount be payable to that State;

then the specified proportion of the net amount is payable to that State under the *national cooperative scheme on unexplained wealth.

Participating States', cooperating States' and Territories' share

(6) If the subcommittee includes one or more *participating States, *cooperating States or *self-governing Territories, then:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) any part of the net amount that remains after an application of subsection (5) is to be divided into equal proportions between the Commonwealth and each of those States or Territories; and

(b) the resulting proportion for each of those States or Territories is payable to the State or Territory under the *national cooperative scheme on unexplained wealth.

(7) However, if, in the decision-making period referred to in subsection (9), the subcommittee makes a unanimous decision that:

(a) it is inappropriate for the sharing arrangements referred to in subsection (6) to apply; and

(b) it is appropriate that a specified proportion, of any part of the net amount that remains after any application of subsection (5), be payable to each of those States or Territories;

then:

(c) the sharing arrangements referred to in subsection (6) do not apply; and

(d) the specified proportion for each of those States or Territories, of any part of the net amount that remains after any application of subsection (5), is payable to the State or Territory under the *national cooperative scheme on unexplained wealth.

Making of decisions

(8) Decisions may be made under this section in relation to an amount before the amount becomes *proceeds of confiscated assets or the net amount.

Note: For example, if an unexplained wealth order is made that requires a person to pay to the Commonwealth an amount, the Cooperating Jurisdiction Committee may establish a subcommittee, and the subcommittee may make decisions under this section about the sharing of that amount, before the amount becomes proceeds of confiscated assets (which it will become when it is paid to the Commonwealth) or the net amount.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Decision-making period

(9) For the purposes of subsections (4), (5) and (7), the decision-making period is:

(a) the period specified in the *NCSUW agreement as being the decision-making period for the purposes of the *national cooperative scheme on unexplained wealth; or

(b) if paragraph (a) does not apply—the period prescribed by the regulations as being the decision-making period for the purposes of that scheme.

(10) The *NCSUW agreement and the regulations may specify that the decision-making period starts or ends at a time before an amount becomes *proceeds of confiscated assets.

Note: For example, the NCSUW agreement or regulations may provide that, for proceeds of confiscated assets that are an amount that has been paid to the Commonwealth under an unexplained wealth order (see section 179R), the decision-making period starts when the order is made (which is before the time the amount becomes proceeds of confiscated assets under paragraph 296(3)(fa)).

Payment period

(11) If an amount is payable to a *participating State, *cooperating State or *self-governing Territory under this section, then the Minister must cause the amount to be paid to the State or Territory in the period that is:

(a) the period specified in the *NCSUW agreement as being the payment period for the purposes of the *national cooperative scheme on unexplained wealth; or

(b) if paragraph (a) does not apply—the period prescribed by the regulations as being the payment period for the purposes of that scheme.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Programs for expenditure on crime prevention etc.

298 Programs for expenditure on law enforcement, drug treatment etc.

(1) The Minister may, in writing, approve a program for the expenditure of money standing to the credit of the *Confiscated Assets Account.

(2) The expenditure is to be approved for one or more of the following purposes:

(a) crime prevention measures;

(b) law enforcement measures;

(c) measures relating to treatment of drug addiction;

(d) diversionary measures relating to illegal use of drugs.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 4—Grants to the States and Territories for crime prevention etc.

298A Grants to the States and Territories for crime prevention etc.

(1) The Minister may, on behalf of the Commonwealth, make a grant of financial assistance to a State or Territory for one or more of the following purposes:
  (a) crime prevention measures;
  (b) law enforcement measures;
  (c) measures relating to treatment of drug addiction;
  (d) diversionary measures relating to illegal use of drugs.

(2) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses.

(3) Subsection (2) does not limit subsection (1).

298B Terms and conditions of grants

Scope

(1) This section applies to a grant of financial assistance made under section 298A.

Terms and conditions

(2) The terms and conditions on which that financial assistance is granted must be set out in a written agreement between the Commonwealth and the grant recipient.

(3) The grant recipient must comply with the terms and conditions.

(4) Without limiting subsection (2), the terms and conditions must provide for the circumstances in which the grant recipient must repay amounts to the Commonwealth.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

(5) An agreement under subsection (2) is to be entered into by the Minister on behalf of the Commonwealth.

298C Minister has powers etc. of the Commonwealth

(1) The Minister, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as the grantor of a grant made under section 298A.

(2) Without limiting subsection (1):
  (a) a section 298A grant is to be paid by the Minister on behalf of the Commonwealth; and
  (b) an amount payable to the Commonwealth by way of the repayment of the whole or a part of a section 298A grant is to be paid to the Minister on behalf of the Commonwealth; and
  (c) the Minister may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a section 298A grant.

298D Conferral of powers on the Minister

The Minister may exercise a power conferred on the Minister by an agreement under section 298B.

298E Channelling State/Territory grants through the COAG Reform Fund

(1) If the Minister decides that a grant of financial assistance should be made to a State or Territory under section 298A, the Minister must, by writing, direct that, as soon as practicable, a specified amount (which must equal the amount of the grant) is to be:
  (a) debited from the *Confiscated Assets Account; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) credited to the *COAG Reform Fund.

(2) The direction must be expressed to be given in order to enable the amount to be debited from the *COAG Reform Fund for the purpose of making the grant.

(3) Two or more directions under subsection (1) may be set out in the same document.

(4) A direction under subsection (1) is not a legislative instrument.

(5) The Minister must give a copy of a direction under subsection (1) to the Treasurer.

298F Debits from the COAG Reform Fund

If an amount has been credited under paragraph 298E(1)(b) to the *COAG Reform Fund for a purpose in relation to a grant of financial assistance to a State or Territory, the Treasurer must:

(a) ensure that the COAG Reform Fund is debited for the purposes of making the grant; and

(b) do so as soon as practicable after the amount has been credited.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 4-4—Charges over restrained property to secure certain amounts payable to the Commonwealth

302A Charges to secure amounts payable under subsection 293(3)

If:

(a) a person whose property is covered by a *restraining order is liable to pay an amount to the Commonwealth under subsection 293(3); and

(b) either:

(i) the court revokes the restraining order; or

(ii) the order ceases to be in force under section 45;

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

302B When the charge ceases to have effect

A charge created under section 302A ceases to have effect on a *person's property on the earliest of the following events:

(a) the amount owing under subsection 293(3) is paid to the Commonwealth;

(b) there is forfeited to the Commonwealth under this Act:

(i) all of the property that is covered by the charge; or

(ii) some of the property that is so covered, being property of a value that equals or exceeds the amount owing under subsection 293(3);

(c) the person sells or disposes of the property with the consent of the *Official Trustee.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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302C Priority of charge

(1) If a charge is created under section 302A in favour of the Commonwealth, the Commonwealth's charge:

(a) is subject to every *encumbrance on the property (other than an encumbrance in which the person who is liable to pay the amount owing under subsection 293(3) has an *interest) that came into existence before it and that would otherwise have priority; and

(b) has priority over all other encumbrances; and

(c) subject to section 302B, is not affected by any change of ownership of the property.

(2) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the Commonwealth's charge (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the Commonwealth's charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to Commonwealth charges created by section 302A after the commencement of subsection (2) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 4-5—Enforcement of interstate orders in certain Territories

Division 1—Interstate restraining orders

303 Registration of interstate restraining orders

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

(a) specified property in a *non-governing Territory; or

(b) all property in such a Territory of a specified person; or

(c) all property (other than specified property) in such 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:

(d) the person on whose application the order was made; or

(e) 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. 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 is to be effected in accordance with the rules of the Supreme Court of the Territory.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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304 Effect of registration

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

(2) This Act (other than sections 33, 42 to 45A, 142, 169 and 179SA, Division 5 of Part 2-1, Part 2-3 and Division 4 of Part 4-1) applies in relation to an *interstate restraining order registered in the Supreme Court of a Territory under this Division as it applies in relation to a *restraining order.

305 Duration of registration

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

(a) the court in which it is registered receives notice that it has ceased to be in force in the jurisdiction in which it was made; or

(b) the registration is cancelled under section 306.

306 Cancellation of registration

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

(a) the registration was improperly obtained; or

(b) particulars of any amendments made to:

(i) the interstate restraining order; or

(ii) 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 under this Division may be cancelled by the

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Supreme Court to the extent that the order is not capable of enforcement in the Territory.

307 Charge on property subject to registered interstate restraining order

(1) If:

(a) an *interstate restraining order is made against property in relation to a person's conviction of an *interstate indictable offence or in relation to the charging, or proposed charging, of a person with an interstate indictable offence; and

(b) an *interstate pecuniary penalty order is made against the person in relation to the person's conviction of that offence or an interstate indictable offence that is a *related offence; and

(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 1992*;

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 penalty order.

(2) If 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 relation to which the interstate pecuniary penalty order was made; or

(b) upon the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) upon payment of the amount due under the interstate pecuniary penalty order; or

(d) upon the sale or other disposition of the property:

(i) under an order made by a court under the *corresponding law of the State or Territory in which the interstate pecuniary penalty order was made; or

(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

(e) 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 (other than an encumbrance in which the person convicted of the offence has an *interest) that came into existence before the charge and that would, apart from 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.

(3A) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created by subsection (1) (to the extent, if any, to which that Act applies in relation to the property charged).

Note 1: The effect of this subsection is that the priority between the charge and a security interest in the property to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to charges created by subsection (1) after the commencement of subsection (3A) (which is at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

(4) If:

(a) a charge is created by subsection (1) 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:

then:

(c) the *Official Trustee or a *proceeds of crime authority may cause the charge so created to be registered under the provisions of that law; and

(d) if the charge is so registered—a person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph (2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

(5) In this section:

registration of a charge on a particular kind of personal property within the meaning of the *Personal Property Securities Act 2009* includes the registration of data in relation to that kind of property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

308 Powers of Official Trustee in relation to interstate restraining orders

If:

(a) an *interstate restraining order is registered in the Supreme Court of a Territory under this Division; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) the interstate restraining order directs an official of a State or a *self-governing Territory to take control of property;

the *Official Trustee may, with the agreement of the official, exercise the same powers in relation to the property that the official would have been able to exercise if the property were located in that State or self-governing Territory.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Interstate forfeiture orders

309 Registration of interstate forfeiture orders

(1) If an *interstate forfeiture order expressly applies to property in a *non-governing Territory, a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by:

(a) the person on whose application the order was made; or

(b) 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. 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 is to be effected in accordance with the rules of the Supreme Court of the Territory.

310 Effect of registration

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

(2) This Act (other than Divisions 5 and 6 of Part 2-2 and section 322) applies to an *interstate forfeiture order registered in the Supreme Court of a Territory under this Division as it applies to a *forfeiture order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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311 Duration of registration

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

(a) the order ceases to be in force in the jurisdiction in which it was made; or

(b) the registration is cancelled under section 312.

312 Cancellation of registration

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

(a) the registration was improperly obtained; or

(b) particulars of any amendments made to:

(i) the interstate forfeiture order; or

(ii) 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 under this Division may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the Territory.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Miscellaneous

313 Interim registration of faxed copies

(1) A faxed copy of a sealed copy of:

(a) an *interstate restraining order; or

(b) an *interstate forfeiture order; or

(c) any amendments made to such an order;

is, for the purposes of this Act, taken to be the same as the sealed copy if the faxed copy is itself certified in accordance with the rules of the Supreme Court.

(2) Registration effected by means of a faxed 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 faxed copy has been filed in the Supreme Court by that time.

(3) Filing of the sealed copy before the end of the period referred to in subsection (2) has effect, as if it were registration of the sealed copy, from the day of registration of the faxed copy.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Chapter 5—Miscellaneous

314 State and Territory courts to have jurisdiction

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

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

(4) The jurisdiction of a court with respect to matters arising under this Act is not excluded or limited merely because the proceedings relate to, or may otherwise concern, property located outside *Australia.

315 Proceedings are civil, not criminal

(1) Proceedings on an application for a *restraining order or a *confiscation order are not criminal proceedings.

(2) Except in relation to an offence under this Act:

(a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and

(b) the rules of evidence applicable in civil proceedings apply, and those applicable only in criminal proceedings do not apply, to proceedings under this Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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315A Court may hear multiple applications at same time

(1) A court may hear and determine 2 or more applications under this Act at the same time.

(2) However, if:

(a) a *proceeds of crime authority applies for a *forfeiture order relating to particular property; and

(b) a person applies for an order (the ***exclusion order***) under section 29 or 29A to exclude a specified *interest in that property from a *restraining order; and

(c) the application for the exclusion order has not been withdrawn;

the court may only hear the application for the forfeiture order after the application for the exclusion order has been determined.

315B Transfer of responsibility for principal orders and applications

Transfer

(1) A *proceeds of crime authority (the ***transferor authority***) may, with the consent of the other proceeds of crime authority (the ***transferee authority***), transfer to the other authority responsibility for:

(a) an application for a *principal order (if the order has not been made); or

(b) a principal order.

Note 1: The proceeds of crime authority is the Commissioner of the Australian Federal Police, or the DPP (see the definition of ***proceeds of crime authority*** in section 338). Either authority may start and conduct proceedings under this Act.

Note 2: The proceeds of crime authority that applies for a principal order under this Act, or to which responsibility is transferred under this section, is referred to in this Act as the ***responsible authority*** (see the definition in section 338).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Note 3: The principal orders under this Act are restraining orders, forfeiture orders, pecuniary penalty orders, literary proceeds orders and unexplained wealth orders (see the definitions of ***principal order*** and the individual orders in section 338).

(2) The transferee authority must give a written notice of transfer of responsibility for an application for a *principal order, or for a principal order, to:

(a) in the case of a transfer of responsibility for an application for a principal order:

(i) the court before which proceedings on the application are being heard (or are to be heard); and

(ii) each party (if any) to those proceedings; and

(iii) any court in which proceedings related to the application are being heard, or are to be heard, if the transferee authority considers it appropriate; and

(iv) any person to whom notice of the application has been given; and

(v) the Federal Circuit and Family Court of Australia (Division 1), if an application has been made to that court by a *proceeds of crime authority for a stay of proceedings because of the application for the principal order, or that court has given notice to a proceeds of crime authority of a stay having been granted; or

(b) in the case of a transfer of responsibility for a principal order:

(i) the court that made the order; and

(ii) each party (if any) to the proceedings in that court on the application for the order; and

(iii) any court in which proceedings related to the order are being heard, or are to be heard, if the transferee authority considers it appropriate; and

(iv) any person to whom notice of the order, or of the application for the order, has been given; and

(v) the Federal Circuit and Family Court of Australia (Division 1), if an application has been made to that

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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court by a proceeds of crime authority for a stay of proceedings because of the order or the application for the order, or that court has given notice to a proceeds of crime authority of a stay having been granted.

Note: Notice is not required to be given in the circumstances mentioned in subsection (4).

(3) It is sufficient compliance with a requirement under subsection (2) to give a person (other than a court) a notice of transfer if the transferee authority takes reasonable steps to give the notice to the person.

(4) The transferee authority for an application for a *restraining order or a *forfeiture order is not required to give any notice of the transfer (other than to the court before which proceedings on the application are being heard):

(a) in the case of an application for a restraining order:

(i) if the court has been requested under subsection 26(4) to consider the application without notice having been given to the person; or

(ii) during a period ordered by the court under subsection 33(3) (delay in giving notice to protect integrity of an investigation or prosecution); or

(b) in the case of an application for a forfeiture order—if the court has, under section 63 (person has absconded), dispensed with the requirement to give notice to the person under subsections 61(1) and 62(3).

Day of effect

(5) A transfer takes effect on the day the following court receives the notice of transfer given under subsection (2):

(a) in the case of a transfer of responsibility for an application for a *principal order—the court before which proceedings on the application are being heard (or are to be heard);

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(b) in the case of a transfer of responsibility for a principal order—the court that made the order.

Effects of transfer—proceedings etc.

(6) On and after the day of effect of a transfer of responsibility for an application for a *principal order, or a principal order:

(a) the transferee authority replaces the transferor authority as a party to any applications or proceedings (***related applications or proceedings***) under this or any other Act in relation to, or arising out of, the application or order, or to which the application or order is relevant; and

(b) the transferee authority may (subject to this Act and any other Act) initiate, conduct or respond to any related applications or proceedings; and

(c) the transferee authority is responsible for any functions, powers and duties under this Act, or any other Act, to be performed or exercised by a *responsible authority in relation to all of the following:

(i) the application or the order;

(ii) any related applications or proceedings;

(iii) any order (including a principal order, or another principal order) arising out of related applications or proceedings.

Effects of transfer—as between transferee and transferor authorities

(7) On and after the day of effect of the transfer, the following paragraphs have effect in relation to the application or order and any related applications or proceedings:

(a) the functions, powers and duties of the transferor authority are extinguished (subject to subsection (8));

(b) the transferee authority is bound by the actions of the transferor authority while it was the *responsible authority;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) without limiting paragraph (b), the transferee authority is:

(i) bound by any undertakings with respect to the payment of damages or costs, or both, entered into by the transferor authority while it was the responsible authority; and

(ii) liable for any damages or costs awarded by any court against the transferor authority on or after that day, whether or not the damages or costs result from any action (or failure to act) of the transferor authority while it was the responsible authority.

(8) However, the transferor authority continues to be liable on and after the day of effect of the transfer for any damages or costs that had been awarded against the authority, while it was the *responsible authority, in relation to the application or order and any related applications or proceedings.

315C Official Trustee may bring proceedings on behalf of the Commonwealth

The *Official Trustee may bring proceedings on behalf of the Commonwealth if, in the Official Trustee's opinion, doing so will facilitate the performance of a function or duty, or the exercise of a power, of the Official Trustee under this Act.

316 Consent orders

(1) A court may make an order in a proceeding under Chapter 2 with the consent of:

(a) the applicant in the proceeding; and

(b) everyone whom the court has reason to believe would be affected by the order.

(2) The order may be made:

(a) without consideration of the matters that the court would otherwise consider in the proceeding; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the order is an order under section 47 (forfeiture orders relating to conduct constituting serious offences) or 49 (forfeiture orders relating to property suspected of proceeds of indictable offences etc.)—before the end of the period of 6 months referred to in paragraph 47(1)(b) or 49(1)(b) (as the case requires).

317 Onus and standard of proof

(1) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

(2) Subject to sections 52 and 118, 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.

318 Proof of certain matters

(1) A certificate of conviction of an offence, that is a certificate of a kind referred to in section 178 (Convictions, acquittals and other judicial proceedings) of the *Evidence Act 1995*:

(a) is admissible in any civil proceedings under this Act; and

(b) is evidence of the commission of the offence by the person to whom it relates.

(2) In any proceedings:

(a) on an application for an order under this Act; or

(b) ancillary to such an application; or

(c) for the enforcement of an order made under this Act;

the transcript of any *examination is evidence of the answers given by a person to a question put to the person in the course of the examination.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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318A Admissibility in proceedings of statements made at examination by absent witness

Scope

(1) This section applies if direct evidence by a person (the ***absent witness***) of a matter would be admissible in a proceeding before a court:

(a) on an application for an order under this Act; or

(b) ancillary to such an application; or

(c) for the enforcement of an order made under this Act.

Admissibility of statements made at examination

(2) A statement that the absent witness made at an *examination of the absent witness and that tends to establish the matter is admissible in the proceeding as evidence of the matter:

(a) if it appears to the court that:

(i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or

(ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or

(iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or

(b) if it does not so appear to the court—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

Rules that apply if statement admitted

(3) The rules in subsections (4) to (6) apply if evidence of a statement is admitted under subsection (2).

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(4) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
   (a) how long after the matters to which it related occurred the statement was made; and
   (b) any reason the absent witness may have had for concealing or misrepresenting a material matter; and
   (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.

(5) If the absent witness is not called as a witness in the proceeding:
   (a) evidence that would, if the absent witness had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
   (b) evidence is admissible to show that the statement is inconsistent with another statement that the absent witness has made at any time.

(6) However, evidence of a matter is not admissible under this section if, had the absent witness been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

318B Objection to admission of statements made at examination

Adducing party to give notice

(1) A party (the ***adducing party***) to a proceeding referred to in subsection 318A(1) may, not less than 14 days before the first day of the hearing of the proceeding, give another party to the proceeding written notice that the adducing party:
   (a) will apply to have admitted in evidence in the proceeding specified statements made at an *examination; and
   (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The notice must set out, or be accompanied by a written record of, the specified statements.

Other party may object to admission of specified statements

(3) The other party may, within 14 days after a notice is given under subsection (1), give the adducing party a written notice (an ***objection notice***):

(a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and

(b) specifying, in relation to each of those statements, the grounds of objection.

(4) The period referred to in subsection (3) may be extended by the court before which the proceeding is to be heard or by agreement between the parties concerned.

Effect of giving objection notice

(5) On receiving an objection notice, the adducing party must give to the court a copy of:

(a) the notice under subsection (1) and any record under subsection (2); and

(b) the objection notice.

(6) If subsection (5) is complied with, the court may either:

(a) determine the objections as a preliminary point before the hearing of the proceeding begins; or

(b) defer determination of the objections until the hearing.

Effect of not giving objection notice

(7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or

(b) the court gives the other party leave to object to the statement being so admitted.

319 Stay of proceedings

(1) A court may stay proceedings (the ***POCA proceedings***) under this Act that are not criminal proceedings if the court considers that it is in the interests of justice to do so.

(2) The court must not stay the POCA proceedings on any or all of the following grounds:

(a) on the ground that criminal proceedings have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against the person subject to the POCA proceedings;

(b) on the ground that criminal proceedings have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against another person in respect of matters relating to the subject matter of the POCA proceedings;

(c) on the ground that:

(i) a person may consider it necessary to give evidence, or to call evidence from another person, in the POCA proceedings; and

(ii) the evidence is or may be relevant (to whatever extent) to a matter that is, or may be, at issue in criminal proceedings that have been, are proposed to be or may be instituted or commenced (whether or not under this Act) against the person or any other person;

(d) on the ground that POCA proceedings in relation to another person have been, are to be or may be stayed.

(3) Paragraph (2)(a) applies even if the circumstances pertaining to the POCA proceedings are or may be the same as, or substantially

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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similar to, the circumstances pertaining to the criminal proceedings.

(4) Paragraph (2)(b) applies even if the subject matter of the POCA proceedings is the same as, or substantially similar to, the matter at issue in the criminal proceedings.

(5) Paragraph (2)(d) applies even if the staying of the POCA proceedings would avoid a multiplicity of POCA proceedings.

(6) In considering whether a stay of the POCA proceedings is in the interests of justice, the court must have regard to the following matters:

(a) that the POCA proceedings, and any criminal proceedings of a kind referred to in paragraph (2)(a) or (b), should proceed as expeditiously as possible;

(b) the cost and inconvenience to the Commonwealth of retaining property to which the POCA proceeding relates and being unable to expeditiously realise its proceeds;

(c) the risk of a *proceeds of crime authority suffering any prejudice (whether general or specific) in relation to the conduct of the POCA proceedings if the proceedings were stayed;

(d) whether any prejudice that a person (other than a proceeds of crime authority) would suffer if the POCA proceedings were not stayed may be addressed by the court by means other than a stay of the proceedings;

(e) any orders (other than an order for the stay of the POCA proceedings) that the court could make to address any prejudice that a person (other than a proceeds of crime authority) would suffer if the proceedings were not stayed.

Note: Examples of orders the court could make to address any prejudice that a person (other than a proceeds of crime authority) would suffer if the POCA proceedings were not stayed include an order under section 319A (closed court) or an order prohibiting the disclosure of information.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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319A Closed court

A court may order that proceedings under this Act (other than criminal proceedings) be heard, in whole or in part, in closed court if the court considers that the order is necessary to prevent interference with the administration of criminal justice.

320 Effect of the confiscation scheme on sentencing

A court passing sentence on a person in respect of the person's conviction of an *indictable offence:

(a) may have regard to any cooperation by the person in resolving any action taken against the person under this Act; and

(b) must not have regard to any *forfeiture order that relates to the offence, to the extent that the order forfeits *proceeds of the offence; and

(c) must have regard to the forfeiture order to the extent that the order forfeits any other property; and

(d) must not have regard to any *pecuniary penalty order, or any *literary proceeds order, that relates to the offence.

321 Deferral of sentencing pending determination of confiscation order

If:

(a) an application is made for a *confiscation order in respect of a person's conviction of an *indictable offence; and

(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.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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322 Appeals

(1) A person:

(a) against whom a *confiscation order is made; or

(b) who has an *interest in property against which a *forfeiture order is made; or

(c) who has an interest in property that is declared in an order under section 141, 168 or 179S to satisfy a *pecuniary penalty order, a *literary proceeds order or an *unexplained wealth order;

may appeal against the confiscation order, forfeiture order or order under section 141, 168 or 179S (the ***targeted order***) in the manner set out in this section.

(2) If:

(a) the *confiscation order; or

(b) the *forfeiture order; or

(c) the *pecuniary penalty order or *literary proceeds order to which the order under section 141 or 168 relates;

(the ***primary order***) was made in relation to a conviction of an offence, the person may appeal against the targeted order in the same manner as if the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.

(3) In any other case, the person may appeal against the targeted order in the same manner as if:

(a) the person had been convicted of the offence to which the primary order relates; and

(b) the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.

(4) However, despite subsection (2) or (3), if the primary order related to a *foreign indictable offence, the person may appeal against the targeted order in the same manner as if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person had been convicted of the offence in the State or Territory in which the targeted order was made; and

(b) the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.

(4A) Despite subsections (2) and (3), in the case of an *unexplained wealth order, or an order under section 179S that relates to an unexplained wealth order, the person may appeal against the targeted order in the same manner as if:

(a) the person had been convicted of one of the following:

(i) an offence against a law of the Commonwealth;

(ii) a *foreign indictable offence;

(iia) a *relevant offence of a *participating State;

(iii) a *State offence that has a federal aspect;

(iv) a *Territory offence; and

(b) the targeted order were, or were part of, the sentence imposed on the person in respect of the offence.

(5) The *responsible authority for the targeted order:

(a) has the same right of appeal against a targeted order as the person referred to in subsection (1) has under this section; and

(b) may appeal against a refusal by a court to make a targeted order in the same manner as if such an order were made and the authority were appealing against that order.

(6) On an appeal against a targeted order, the order may be confirmed, discharged or varied.

(7) This section does not affect any other right of appeal.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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323 Costs

(1) If:

(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; and

(b) the person is successful in those proceedings; and

(c) the court is satisfied that the person was not involved in any way in the commission of the 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.

324 Powers conferred on judicial officers in their personal capacity

(1) A power:

(a) that is conferred by this Act on a State or Territory judge or on a magistrate; and

(b) that is neither judicial nor incidental to a judicial function or power;

is conferred on that person in a personal capacity and not as a court or a member of a court.

Note: ***Magistrate*** is defined in section 16C of the *Acts Interpretation Act 1901*.

(2) The State or Territory judge, or the magistrate, need not accept the power conferred.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) A State or Territory judge, or magistrate, exercising a conferred power has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the judge or magistrate is a member.

325 Effect of a person's death

(1) Any notice authorised or required to be given to a person under this Act is, if the person has died, sufficiently given if given to the person's legal personal representative.

(2) A reference in this Act to a person's *interest in property or a thing is, if the person has died, a reference to an interest in the property or thing that the person had immediately before his or her death.

(3) An order can be applied for and made under this Act:

(a) in respect of a person's *interest in property or a thing even if the person has died, and

(b) on the basis of the activities of a person who has died.

326 Operation of other laws not affected

Nothing in this Act limits or restricts:

(a) the operation of any other law of the Commonwealth or of a *non-governing 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.

327 Review of operation of Act

(1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as practicable after the third anniversary of the commencement of this Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(2) The persons who undertake such a review must give the Minister a written report of the review.

(3) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(4) However, this section does not apply if a committee of one or both Houses of the Parliament has reviewed the operation of this Act, or started such a review, before the third anniversary of the commencement of this Act.

327A Review

(1) The Minister must cause an independent review to be undertaken of:

(a) the *national unexplained wealth provisions; and

(b) any other matter that the *NCSUW agreement specifies is to be reviewed under this section.

(2) The review must be undertaken as soon as practicable after the fourth anniversary of the commencement of the *Unexplained Wealth Legislation Amendment Act 2018*.

(3) Before the review is undertaken, the Minister must consult the appropriate Ministers of the *participating States, *cooperating States and *self-governing Territories about the terms of the review and the appointment of the persons who are to undertake the review.

(4) The persons who undertake the review must:

(a) consult the appropriate Ministers of the *participating States, *cooperating States and *self-governing Territories for the purposes of undertaking the review; and

(b) give a written report of the review to the Minister and the Ministers referred to in paragraph (a).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

328 Regulations

The Governor-General may make regulations 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.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Chapter 6—Interpreting this Act

Part 6-1—Meaning of some important concepts

Division 1—Proceeds and instrument of an offence

329 Meaning of *proceeds* and *instrument*

(1) Property is ***proceeds*** of an offence if:

(a) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or

(b) it is partly derived or realised, whether directly or indirectly, from the commission of the offence;

whether the property is situated within or outside *Australia.

(2) Property is an ***instrument*** of an offence if:

(a) the property is used in, or in connection with, the commission of an offence; or

(b) the property is intended to be used in, or in connection with, the commission of an offence;

whether the property is situated within or outside *Australia.

(3) Property can be proceeds of an offence or an instrument of an offence even if no person has been convicted of the offence.

(4) ***Proceeds*** or an ***instrument*** of an *unlawful activity means proceeds or an instrument of the offence constituted by the act or omission that constitutes the unlawful activity.

330 When property becomes, remains and ceases to be proceeds or an instrument

(1) Property becomes ***proceeds*** of an offence if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the property is wholly or partly derived or realised from a disposal or other dealing with *proceeds of the offence; or

(b) the property is wholly or partly acquired using proceeds of the offence; or

(c) an *encumbrance or a security on, or a liability incurred to acquire, retain, maintain or make *improvements to, the property is wholly or partly discharged using proceeds of the offence; or

(d) the costs of retaining, maintaining or making improvements to the property are wholly or partly met using proceeds of the offence; or

(e) the property is improved using proceeds of the offence;

including because of one or more previous applications of this section.

(2) Property becomes an ***instrument*** of an offence if:

(a) the property is wholly or partly derived or realised from the disposal or other dealing with an *instrument of the offence; or

(b) the property is wholly or partly acquired using an instrument of the offence; or

(c) an *encumbrance or a security on, or a liability incurred to acquire, retain, maintain or make *improvements to, the property is wholly or partly discharged using an instrument of the offence; or

(d) the costs of retaining, maintaining or making improvements to the property are wholly or partly met using an instrument of the offence; or

(e) the property is improved using an instrument of the offence;

including because of one or more previous applications of this section.

(3) Property remains ***proceeds*** of an offence or an ***instrument*** of an offence even if:

(a) it is credited to an *account; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) it is disposed of or otherwise dealt with.

(4) Property only ceases to be ***proceeds*** of an offence or an ***instrument*** of an offence:

(a) if it is acquired by a third party for *sufficient consideration without the third party knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was proceeds of an offence or an instrument of an offence (as the case requires); or

(b) if the property vests in a person from the distribution of the estate of a deceased person, having been previously vested in a person from the distribution of the estate of another deceased person while the property was still proceeds of an offence or an instrument of an offence (as the case requires); or

(ba) if the property has been distributed in accordance with:

(i) an order in proceedings under the *Family Law Act 1975* with respect to the property of the parties to a marriage or either of them; or

(ia) an order in proceedings under the *Family Law Act 1975* with respect to the property of the parties to a de facto relationship (within the meaning of that Act) or either of them; or

(ii) a financial agreement, or Part VIIIAB financial agreement, within the meaning of that Act;

and 6 years have elapsed since that distribution; or

(c) if the property is acquired by a person as payment for reasonable legal expenses incurred in connection with an application under this Act or defending a criminal *charge; or

(d) if a *forfeiture order in respect of the property is satisfied; or

(e) if the property is forfeited, confiscated or otherwise disposed of under a *corresponding law (whether or not because of an order made under that law); or

(f) if the property is otherwise sold or disposed of under this Act; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(g) in any other circumstances specified in the regulations.

(5) However, if:

(a) a person once owned property that was *proceeds of an offence or an *instrument of an offence; and

(b) the person ceased to be the owner of the property and (at that time or a later time) the property stopped being proceeds of an offence or an instrument of the offence under subsection (4) (other than under paragraph (4)(d)); and

(c) the person acquires the property again;

then the property becomes ***proceeds*** of an offence or an ***instrument*** of the offence again (as the case requires).

(5A) Paragraph (4)(ba) does not apply if, despite the distribution referred to in that paragraph, the property is still subject to the *effective control of a person who:

(a) has been convicted of; or

(b) has been charged with, or who is proposed to be charged with; or

(c) has committed, or is suspected of having committed;

the offence in question.

(6) Property becomes, remains or ceases to be ***proceeds*** of an *unlawful activity, or an ***instrument*** of an unlawful activity, if the property becomes, remains or ceases to be proceeds of the offence, or an instrument of the offence, constituted by the act or omission that constitutes the unlawful activity.

(7) Paragraphs (1)(a) to (e) and (2)(a) to (e) do not limit each other.

(8) This section does not limit section 329.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Convicted and related concepts

331 Meaning of *convicted* of an offence

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

(a) the person is convicted, whether summarily or on indictment, of the offence; or

(b) the person is charged with, and found guilty of, the offence but is discharged without conviction; or

(c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence; or

(d) the person *absconds in connection with the offence.

(2) Such a person is taken to have been convicted of the offence in the following State or Territory:

(a) if paragraph (1)(a) applies—the State or Territory in which the person was convicted;

(b) if paragraph (1)(b) applies—the State or Territory in which the person was discharged without conviction;

(c) if paragraph (1)(c) applies—the State or Territory in which the court took the offence into account in passing sentence on the person for the other offence;

(d) if paragraph (1)(d) applies—the State or Territory in which the information was laid alleging the person's commission of the offence.

(3) If paragraph (2)(d) applies to a person:

(a) the person is taken to have been convicted of the offence before the Supreme Court of that State or Territory; and

(b) the person is taken to have committed the offence.

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

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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332 Meaning of *quashing* a conviction of an offence

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

(a) if the person is taken to have been convicted of the offence because of paragraph 331(1)(a)—the conviction is quashed or set aside; or

(b) if the person is taken to have been convicted of the offence because of paragraph 331(1)(b)—the finding of guilt is quashed or set aside; or

(c) if the person is taken to have been convicted of the offence because of paragraph 331(1)(c)—either of the following events occur:

(i) the person's conviction of the other offence referred to in that paragraph is quashed or set aside;

(ii) the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside; or

(d) if the person is taken to have been convicted of the offence because of paragraph 331(1)(d)—after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.

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

333 Meaning of *conviction day*

For the purposes of this Act, the ***conviction day***, in relation to a person's conviction of an *indictable offence, is:

(a) if the person is taken to have been convicted of the offence because of paragraph 331(1)(a)—the day on which a court passes sentence for the offence; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the person is taken to have been convicted of the offence because of paragraph 331(1)(b)—the day on which the person was discharged without conviction; or

(c) if the person is taken to have been convicted of the offence because of paragraph 331(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) if the person is taken to have been convicted of the offence because of paragraph 331(1)(d)—the day on which the person is taken to have *absconded in connection with the offence.

334 Meaning of *abscond*

(1) For the purposes of this Act, a person is taken to ***abscond*** in connection with an offence if and only if:

(a) an information is laid alleging the person committed the offence; and

(b) a warrant for the person's arrest is issued in relation to that information; and

(c) subsection (2) applies to the person and the warrant.

(2) This subsection applies to a person and a warrant if either of the following occurs:

(a) at the end of the period of 6 months commencing on the day on which the warrant is issued:

(i) the person cannot be found; or

(ii) the person is, for any other reason, not amenable to justice and, if the person is outside *Australia, extradition proceedings are not on foot;

(b) at the end of the period of 6 months commencing on the day on which the warrant is issued:

(i) the person is, because he or she is outside Australia, not amenable to justice; and

(ii) extradition proceedings are on foot;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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and subsequently those proceedings terminate without an order for the person's extradition being made.

(3) Extradition proceedings taking place in a jurisdiction in relation to a person are not taken, for the purposes of subsection (2), to be on foot unless the person is in custody, or is on bail, in that jurisdiction.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 3—Other concepts

335 Proceeds jurisdiction

(1) Whether a court has ***proceeds jurisdiction*** for an order, other than a *preliminary unexplained wealth order or an *unexplained wealth order, depends on the circumstances of the offence or offences to which the order would relate.

General rules

(2) If all or part of the conduct constituting an offence to which the order would relate:

(a) occurred in a particular State or Territory; or

(b) is reasonably suspected of having occurred in that State or Territory;

the courts that have ***proceeds jurisdiction*** for the order are those with jurisdiction to deal with criminal matters on indictment in that State or Territory.

(3) If all of the conduct constituting an offence to which the order would relate:

(a) occurred outside *Australia; or

(b) is reasonably suspected of having occurred outside *Australia;

the courts that have ***proceeds jurisdiction*** for the order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

Offender not identified

(4) If:

(a) the order would, if made, be:

(i) a *restraining order under section 19 that relates to an offence committed by a person whose identity is not

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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known and that is not based on a finding as to the commission of a particular offence; or

(ii) a *forfeiture order under section 49 that is not based on a finding that a particular person committed any offence and that is not based on a finding as to the commission of a particular offence; and

(b) the property to which the order would relate is located in a particular State or Territory;

despite subsections (2) and (3), the courts that have ***proceeds jurisdiction*** for the order are those with jurisdiction to deal with criminal matters on indictment in that State or Territory.

(5) If:

(a) the order would, if made, be:

(i) a *restraining order under section 19 that relates to an offence committed by a person whose identity is not known and that is not based on a finding as to the commission of a particular offence; or

(ii) a *forfeiture order under section 49 that is not based on a finding that a particular person committed any offence and that is not based on a finding as to the commission of a particular offence; and

(b) the property to which the order would relate is located outside *Australia;

despite subsections (2) and (3), the courts that have ***proceeds jurisdiction*** for the order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

Magistrates may have proceeds jurisdiction in some cases

(6) If:

(a) the order would, if made, be one of the following orders relating to an offence of which a person has been convicted:

(i) a *restraining order under section 17;

(ii) a *forfeiture order under section 48;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(iii) a *pecuniary penalty order under subparagraph 116(1)(b)(i); and

(b) the person was convicted before a magistrate (the ***convicting magistrate***);

a magistrate of the same court as the convicting magistrate has ***proceeds jurisdiction*** for the order. However, this does not prevent other courts having proceeds jurisdiction for the order under subsection (2) or (3) (whichever is applicable).

Note: Although this Act is only concerned with indictable offences, these offences can often be tried summarily. For example, see section 4J of the *Crimes Act 1914*.

Proceeds jurisdiction of Federal Court of Australia

(7) If the Federal Court of Australia has jurisdiction to try a person (whether on indictment or summarily) for an *indictable offence, the Court has ***proceeds jurisdiction*** for an order if the order would, if made, be an order made on the basis of:

(a) a proposal that the person be charged with the offence; or

(b) the person having been charged with the offence; or

(c) the person's conviction of the offence.

(8) Subsection (7):

(a) has effect despite subsections (2) and (3); and

(b) does not prevent other courts having *proceeds jurisdiction for the order under another subsection of this section.

Preliminary unexplained wealth orders and unexplained wealth orders

(9) The courts that have ***proceeds jurisdiction*** for a *preliminary unexplained wealth order or an *unexplained wealth order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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336 Meaning of *derived*

A reference to a person having ***derived*** *proceeds, a *benefit, *literary proceeds or *wealth includes a reference to:

(a) the person; or

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

having derived the proceeds, benefit, literary proceeds or wealth directly or indirectly.

336A Meaning of property or wealth being *lawfully acquired*

For the purposes of this Act, property or *wealth is ***lawfully acquired*** only if:

(a) the property or wealth was lawfully acquired; and

(b) the consideration given for the property or wealth was lawfully acquired; and

(c) the property or wealth is not *proceeds or an *instrument of an offence.

337 Meaning of *effective control*

(1) Property may be subject to the ***effective control*** of a person whether or not the person has:

(a) a legal or equitable estate or *interest in the property; or

(b) a right, power or privilege in connection with the property.

(2) Property that is held on trust for the ultimate *benefit of a person is taken to be under the ***effective control*** of the person.

(4) If property is initially owned by a person and, within 6 years either before or after an application for a *restraining order or a *confiscation order is made, disposed of to another person without *sufficient consideration, then the property is taken still to be under the effective control of the first person.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(4A) In determining whether or not property is subject to the ***effective control*** of a person, the effect of any order made in relation to the property under this Act is to be disregarded.

(5) In determining whether or not property is subject to the effective control of a person, regard may be had to:

(a) shareholdings in, debentures over or *directorships of a company that has an *interest (whether direct or indirect) in the property; and

(b) a trust that has a relationship to the property; and

(c) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

(6) For the purposes of this section, family relationships are taken to include the following (without limitation):

(a) relationships between *de facto partners;

(b) relationships of child and parent that arise if someone is the child of a person because of the definition of ***child*** in section 338;

(c) relationships traced through relationships mentioned in paragraphs (a) and (b).

(7) To avoid doubt, property may be subject to the ***effective control*** of more than one person.

337A Meaning of *foreign indictable offence*

(1) If:

(a) an application (the ***current application***) is made for a *freezing order, *production order, *search warrant, *restraining order or *confiscation order in relation to conduct that constituted an offence against a law of a foreign country; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) if the conduct had occurred in Australia at the testing time referred to in subsection (2), the conduct would have constituted an offence against a law of the Commonwealth, a State or a Territory punishable by at least 12 months imprisonment;

then, for the purposes of the current application, the conduct is treated as having constituted a ***foreign indictable offence*** at all relevant times.

Example: X commits an offence against a law of a foreign country at a time when the conduct is not an offence against Australian law. X then derives literary proceeds in relation to the offence and transfers the proceeds to Australia. After the proceeds are transferred, a new Commonwealth offence is created that applies to the type of conduct concerned. An application is then made for a literary proceeds order. For the purposes of the proceedings for that order, the original conduct is treated as having constituted a foreign indictable offence at all relevant times and accordingly an order can be made in respect of those proceeds.

(2) The ***testing time*** for the current application is:

(a) if the current application is an application for a *freezing order, *production order, *search warrant or *restraining order—the time when the current application was made; or

(b) if the current application is an application for a *confiscation order (other than a *literary proceeds order) in relation to a restraining order—the time when the application for the restraining order was made; or

(c) if:

(i) the current application is an application for a literary proceeds order; and

(ii) an earlier restraining order has been made in respect of the same offence;

the time when the application was made for that earlier restraining order; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) if the current application is an application for a literary proceeds order but paragraph (c) does not apply—the time when the current application was made.

337B Definition of *serious offence*—valuation rules

In determining the value of a transaction or transactions for the purposes of paragraph (ea), (eb) or (ec) of the definition of ***serious offence*** in section 338 of this Act, apply the following provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006:*

(a) the definition of ***value*** in section 5;

(b) section 18;

(c) section 19.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 6-2—Dictionary

338 Dictionary

In this Act, unless the contrary intention appears:

abscond has the meaning given by section 334.

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

(a) a facility or arrangement for:
  (i) a *fixed term deposit; or
  (ii) a safety deposit box; and
(b) a credit card account; and
(c) a loan account (other than a credit card account); and
(d) an account held in the form of units in:
  (i) a cash management trust; or
  (ii) a trust of a kind prescribed by the regulations; and
(e) a closed account.

To avoid doubt, it is immaterial whether:

(f) an account has a nil balance; or
(g) any transactions have been allowed in relation to an account.

adoption Act has the meaning given by subsection 14C(11).

advantage includes financial advantage.

Note: See also the definition of ***financial advantage***.

affairs of a person includes, but is not limited to:

(a) the nature and location of property of the person or property in which the person has an interest; and

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(b) any activities of the person that are, or may be, relevant to whether or not the person has engaged in unlawful activity of a kind relevant to the making of an order under this Act.

AFP member means a member, or special member, (within the meaning of the *Australian Federal Police Act 1979*) of the Australian Federal Police.

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

amendment reference has the meaning given by subsection 14C(4).

appropriate officer means the *DPP or a person included in a class of persons declared by the regulations to be within this definition.

approved examiner has the meaning given by subsection 183(4).

associated GST entity means an entity (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*) that has entered into an arrangement with the *Official Trustee under section 153-50 of that Act.

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

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

authorised officer means:

(a) any of the following, if authorised by the Commissioner of the Australian Federal Police:
  (i) an *AFP member;
  (ii) an AFP employee within the meaning of the *Australian Federal Police Act 1979*;

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(iii) an employee of an authority of a State or Territory, or an authority of the Commonwealth, within the meaning of the *Australian Federal Police Act 1979*, while he or she is assisting the Australian Federal Police in the performance of its functions under an agreement under section 69D of that Act; or

(aa) any of the following:

(i) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*);

(ii) an Assistant Integrity Commissioner (within the meaning of that Act);

(iii) a staff member of ACLEI (within the meaning of that Act) who is authorised in writing by the Integrity Commissioner for the purposes of this paragraph; or

(b) any of the following:

(i) the Chief Executive Officer of the Australian Crime Commission;

(ii) an examiner (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission;

(iii) a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission; or

(c) a person who is an APS employee in the *Immigration and Border Protection Department and who is authorised by the *Comptroller-General of Customs; or

(d) a member, or staff member, (within the meaning of the *Australian Securities and Investments Commission Act 2001*) of the Australian Securities and Investments Commission who is authorised by the Chairperson of the Australian Securities and Investments Commission; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(e) a member, officer or employee of any other agency specified in the regulations who is authorised by the head of that agency.

authorised State/Territory officer has the meaning given in subclause 1(2) of Schedule 1.

bankruptcy court means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

bankruptcy property of a person means property that:

(a) is vested in another person under subsection 58(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:
  (i) property of the person; or
  (ii) subject to the *effective control of the person; or

(b) is vested in another person under subsection 249(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:
  (i) property of the person's estate; or
  (ii) subject to the effective control of the executors of the person's estate.

benefit includes service or advantage.

Note: See also the definition of ***advantage***.

books includes any account, deed, paper, writing or document and any record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise.

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

(a) a summons to require the attendance of the person to answer the information has been issued; or

(b) a warrant for the arrest of the person has been issued.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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child: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

COAG Reform Fund means the COAG Reform Fund established by section 5 of the *COAG Reform Fund Act 2008*.

compensation order means an order made under subsection 77(1).

Comptroller-General of Customs means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

Confiscated Assets Account means the account established under section 295.

confiscation order means a *forfeiture order, a *pecuniary penalty order, a *literary proceeds order or an *unexplained wealth order.

controlled property has the meaning given by section 267.

Note 1: Section 267A alters the meaning of this term for the purposes of Division 3 of Part 4-1.

Note 2: Section 267AA alters the meaning of this term for the purposes of Division 2 of Part 4-1.

Note 3: Section 267AB alters the meaning of this term for the purposes of Division 3 of Part 4-1 and sections 289 and 290.

conveyance includes an aircraft, vehicle or vessel.

convicted has the meaning given by section 331.

conviction day has the meaning given by section 333.

cooperating State has the meaning given by subsections 14F(1), (2) and (3).

corresponding law means a law of a State or of a *self-governing Territory that is declared by the regulations to be a law that corresponds to this Act.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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criminal proceeding, in relation to a *foreign serious offence, has the same meaning as in the *Mutual Assistance Act.

Customs officer means an officer of Customs within the meaning of the *Customs Act 1901*.

data includes:

(a) information in any form; or

(b) any program (or part of a program).

data held in a computer includes:

(a) *data held in any removable *data storage device for the time being held in a computer; or

(b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, *data for use by a computer.

deal: dealing with a person's property includes:

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from *Australia; and

(c) receiving or making a gift of the property; and

(d) if the property is covered by a *restraining order—engaging in a transaction that has the direct or indirect effect of reducing the value of the person's interest in the property.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

dependant: each of the following is a dependant of a person:

(a) the person's spouse or *de facto partner;

(b) the person's *child, or member of the person's household, who depends on the person for support.

derived has the meaning given by section 336.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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director, in relation to a *financial institution or a corporation, means:

(a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory—a constituent member of the body corporate; and

(b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act, other than when those directors only do so:

(i) in the proper performance of the functions attaching to the person's professional capacity; or

(ii) in their business relationship with the person.

DPP means the Director of Public Prosecutions.

effective control has a meaning affected by section 337.

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

enforcement agency means:

(a) an agency mentioned in paragraphs (a) to (d) of the definition of *authorised officer; or

(b) an agency specified in the regulations to be a law enforcement, revenue or regulatory agency for the purposes of this Act.

entitled, in relation to an *input tax credit, includes notionally entitled to the input tax credit.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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equitable sharing program has the meaning given by subsection 296(4).

evidential material means evidence relating to:

(a) property in respect of which action has been or could be taken under this Act; or

(b) *benefits derived from the commission of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(c) *literary proceeds.

examination means an examination under Part 3-1.

examination notice means a notice given under section 183.

examination order means an order made under section 180, 180A, 180B, 180C, 180D, 180E, 181, 181A or 181B that is in force.

exclusion order means an order made under subsection 73(1).

executing officer, in relation to a warrant, means:

(a) the *authorised officer named in the warrant by the magistrate as being responsible for executing the warrant; or

(b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the first authorised officer; or

(c) another authorised officer whose name has been written in the warrant by the officer last named in the warrant.

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.

express amendment has the meaning given by subsection 14C(11).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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extension order means an order made under section 93.

financial advantage includes the avoidance, deferral or reduction of a debt, loss or liability.

financial institution means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory; or

(d) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution; or

(e) a body corporate that is a financial corporation within the meaning of paragraph 51(xx) of the Constitution; or

(f) a body corporate that, if it had been incorporated in *Australia, would be a financial corporation within the meaning of paragraph 51(xx) of the Constitution; or

(g) a trading corporation (within the meaning of paragraph 51(xx) of the Constitution) that carries on a business of operating a casino; or

(h) a trading corporation (within the meaning of paragraph 51(xx) of the Constitution) that is a *totalisator agency board.

fixed term deposit means an interest bearing deposit lodged for a fixed period.

foreign deferred prosecution agreement means an agreement that:

(a) is between a person and a competent authority of a foreign country; and

(b) provides for the indefinite deferral of the prosecution of the person for an offence against a law of the foreign country, so long as the conditions set out in the agreement are met.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

foreign indictable offence has the meaning given by section 337A.

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 made under Division 1 of Part 2-2 that is in force.

freezing order means an order under section 15B, with any variations under section 15Q.

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Immigration and Border Protection Department means the Department administered by the Minister administering Part XII of the *Customs Act 1901*.

improvements to property or *wealth includes additions to, altering, repairing, restoring, structuring, restructuring, or any other change to the whole or part of the property or *wealth (whether or not it results in an increase in value of the property or wealth).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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indictable offence means an offence against a law of the Commonwealth, or a *non-governing Territory, that may be dealt with as an indictable offence (even if it may also be dealt with as a summary offence in some circumstances).

indictable offence of Commonwealth concern means an offence against a law of a State or a *self-governing Territory:

(a) that may be dealt on indictment (even if it may also be dealt with as a summary offence in some circumstances); and

(b) the *proceeds of which were (or were attempted to have been) dealt with in contravention of a law of the Commonwealth on:

(i) importation of goods into, or exportation of goods from, *Australia; or

(ii) a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(v) of the Constitution; or

(iii) a transaction in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).

information gathering:

(a) in relation to the *amendment reference of a State—has the meaning given by section 14E; and

(b) otherwise—has its ordinary meaning.

input tax credit has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

instrument has the meaning given by sections 329 and 330.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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

(a) a legal or equitable estate or interest in the property or thing; or

(b) a right, power or privilege in connection with the property or thing;

whether present or future and whether vested or contingent.

Note: For references to an ***interest*** in property of a person who has died, see subsection 325(2).

International Criminal Court has the same meaning as in the *Criminal Code*.

International War Crimes Tribunal means a Tribunal (within the meaning of the *International War Crimes Tribunals Act 1995*).

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 or a *self-governing Territory, 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 or Territory.

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.

lawfully acquired has a meaning affected by section 336A.

lawyer means a duly qualified legal practitioner.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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legal aid commission means an authority established by or under a law of a State or a *self-governing Territory for the purpose of providing legal assistance.

legal professional privilege includes privilege under Division 1 of Part 3.10 of the *Evidence Act 1995*.

liability to pay GST includes notional liability to pay GST.

literary proceeds has the meaning given by section 153.

literary proceeds amount has the meaning given by subsection 158(1).

literary proceeds order means an order made under section 152 that is in force.

main machinery and transitional provisions has the meaning given by paragraph 14B(5)(a).

main unexplained wealth provisions has the meaning given by subsection 14B(3).

monitoring order means an order made under section 219 that is in force.

Mutual Assistance Act means the *Mutual Assistance in Criminal Matters Act 1987*.

Mutual Assistance Department means the Department administered by the Minister who administers the Mutual Assistance Act.

narcotic substance means:

(a) a narcotic substance within the meaning of the *Customs Act 1901*; or

(b) a substance specified in the regulations for the purposes of this definition.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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national cooperative scheme on unexplained wealth has the meaning given by subsection 297A(1).

national unexplained wealth provisions has the meaning given by subsection 14B(2).

NCSUW agreement has the meaning given by subsection 297A(2).

non-governing Territory means a Territory that is not a *self-governing Territory.

non-participating State means a State that is not a *participating State.

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

Official Trustee means the Official Trustee in Bankruptcy.

ordinary search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and

(b) an examination of those items.

parent: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

participating jurisdiction information gathering provisions has the meaning given by subsection 14B(4).

participating State has the meaning given by subsections 14C(1), (7), (8), (9) and (10).

pecuniary penalty order means an order made under section 116 that is in force.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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penalty amount has the meaning given by subsection 121(1).

person assisting, in relation to a *search warrant, means:

(a) a person who is an *authorised officer and who is assisting in executing the warrant; or

(b) a person who is not an authorised officer and who has been authorised by the relevant *executing officer to assist in executing the warrant.

person's property: a person's property includes property in respect of which the person has the beneficial interest.

petition means a petition under the *Bankruptcy Act 1966*.

police officer means:

(a) an *AFP member; or

(b) a member of the police force of a State or Territory.

post-amended version 1 of this Act has the meaning given by subsection 14C(5).

post-amended version 2 of this Act has the meaning given by subsection 14C(6).

pre-amended version of this Act has the meaning given by subsection 14C(11).

preliminary unexplained wealth order, in relation to a person, means an order under section 179B requiring the person to appear before a court.

premises includes:

(a) any land; and

(b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not); and

(c) any part of such a structure, building, aircraft, vehicle, vessel or place.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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principal order means any of the following orders:

(a) a *restraining order;
(b) a *forfeiture order;
(c) a *pecuniary penalty order;
(d) a *literary proceeds order;
(e) an *unexplained wealth order.

proceeds has the meaning given by sections 329 and 330.

proceeds jurisdiction has the meaning given by section 335.

proceeds of confiscated assets has the meaning given by subsection 296(3).

proceeds of crime authority means:

(a) the Commissioner of the Australian Federal Police; or
(b) the *DPP.

Note 1: Section 69C of the *Australian Federal Police Act 1979* provides for the delegation of the functions, powers and duties of the Commissioner of the Australian Federal Police under this Act.

Note 2: Section 31 of the *Director of Public Prosecutions Act 1983* provides for the delegation of the functions of the DPP.

Note 3: If an application for a principal order, or a principal order, has already been made, the proceeds of crime authority responsible for the application or the order is referred to as the ***responsible authority*** (see the definition in this section).

production order means an order made under subsection 202(1), or subclause 1(1) of Schedule 1, that is in force.

professional confidential relationship privilege means privilege under Division 1A of Part 3.10 of the *Evidence Act 1995* (NSW) or a similar law of a State or Territory.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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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 has the meaning given in subsection 202(5).

quashed has the meaning given by section 332.

referral Act has the meaning given by subsection 14C(11).

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.

registration authority, in relation to property of a particular kind, means:

(a) an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of that kind; or

(b) the Registrar of Personal Property Securities, if the *Personal Property Securities Act 2009* provides for the registration of data in relation to that kind of personal property for the purposes of paragraph 148(c) of that Act.

Note: The *Personal Property Securities Act 2009* provides for the registration of such data if regulations are made for the purposes of paragraph 148(c) of that Act.

related offence: an offence is a ***related offence*** in relation to another offence if the physical elements of the 2 offences are:

(a) substantially the same acts or omissions; or

(b) acts or omissions in a single series.

relevant law 1 has the meaning given by subsection 14C(11).

relevant law 2 has the meaning given by subsection 14C(11).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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relevant offence of a *participating State means an offence of a kind that is specified by the *referral Act or *adoption Act of the State.

responsible authority, in relation to an application for a *principal order, or a principal order, or to an application, proceedings, function, order, power or duty related to, or arising out of, such an application or order, means:

(a) in the case of an application for a principal order:
  (i) the *proceeds of crime authority that made the application; or
  (ii) if responsibility for the application has been transferred under section 315B—the proceeds of crime authority to which responsibility has been transferred (or has been latest transferred) under that section; or

(b) in the case of a principal order:
  (i) the proceeds of crime authority that made the application for the order; or
  (ii) if responsibility for that application, or the order, has been transferred under section 315B—the proceeds of crime authority to which responsibility has been transferred (or has been latest transferred) under that section.

Note 1: The proceeds of crime authority is the Commissioner of the Australian Federal Police, or the DPP (see the definition of ***proceeds of crime authority*** in this section). Either authority may start and conduct proceedings under this Act.

Note 2: Section 315B provides that responsibility for an application for a principal order, or for a principal order, may be transferred between the 2 proceeds of crime authorities.

responsible custodian has the meaning given by subsection 254(2).

restraining order means an order under section 17, 18, 19, 20 or 20A that is in force.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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search warrant means a warrant issued under section 225 that is in force.

self-governing Territory means:

(a) the Australian Capital Territory; or

(b) the Northern Territory.

senior Departmental officer means an SES employee or acting SES employee in the Department.

serious offence means:

(a) an *indictable offence punishable by imprisonment for 3 or more years, involving:

(i) unlawful conduct relating to a *narcotic substance; or

(ia) unlawful conduct constituted by or relating to a breach of Part 9.1 of the *Criminal Code* (serious drug offences); or

(ii) unlawful conduct constituted by or relating to a breach of section 81 of the *Proceeds of Crime Act 1987* or Part 10.2 of the *Criminal Code* (money-laundering); or

(iii) unlawful conduct by a person that causes, or is intended to cause, a *benefit to the value of at least $10,000 for that person or another person; or

(iv) unlawful conduct by a person that causes, or is intended to cause, a loss to the Commonwealth or another person of at least $10,000; or

(aa) unlawful conduct by a person that consists of an indictable offence (the ***3 year offence***) punishable by imprisonment for 3 or more years and one or more other indictable offences that, taken together with the 3 year offence, constitute a series of offences:

(i) that are founded on the same facts or are of a similar character; and

(ii) that cause, or are intended to cause, a benefit to the value of at least $10,000 for that person or another

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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person, or a loss to the Commonwealth or another person of at least $10,000; or

(b) an offence against any of the following provisions of the *Migration Act 1958*:

(i) section 233A (offence of people smuggling);

(ii) section 233B (people smuggling involving danger of death or serious harm etc.);

(iii) section 233C (people smuggling at least 5 people);

(iv) section 233D (supporting the offence of people smuggling);

(v) subsection 233E(1) or (2) (concealing non-citizens etc.);

(vi) section 234A (false documents etc. relating to at least 5 non-citizens);

(c) an offence against any of the following provisions of the *Financial Transaction Reports Act 1988* involving a transaction of at least $50,000 in value:

(i) section 15 (reports about transfers of currency into or out of Australia); or

(ii) section 29 (false or misleading information); or

(d) an offence against section 24 (opening accounts etc. in false names) of the *Financial Transaction Reports Act 1988* if transactions on the relevant account total at least $50,000 in value during any 6 month period; or

(e) an offence against section 31 (conducting transactions to avoid reporting requirements) of the *Financial Transaction Reports Act 1988* if transactions in breach of that section by the person committing the offence total at least $50,000 in value during any 6 month period; or

(ea) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* involving a transaction of at least $50,000 in value:

(i) section 53 (reports about movements of physical currency into or out of Australia);

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(ii) section 59 (reports about movements of bearer negotiable instruments into or out of Australia);

(iii) section 136 (false or misleading information);

(iv) section 137 (false or misleading documents); or

(eb) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

(i) section 139 (providing a designated service using a false customer name or customer anonymity);

(ii) section 140 (receiving a designated service using a false customer name or customer anonymity);

(iii) section 141 (non-disclosure of other name by which customer is commonly known);

if:

(iv) the customer concerned had an account in relation to the provision of the designated service concerned; and

(v) transactions on the account total at least $50,000 in value during any 6 month period beginning after the commencement of Part 12 of that Act; or

(ec) an offence against either of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

(i) section 142 (conducting transactions so as to avoid reporting requirements relating to threshold transactions);

(ii) section 143 (conducting transfers so as to avoid reporting requirements relating to cross-border movements of physical currency);

if transactions in breach of that section by the person committing the offence total at least $50,000 in value during any 6 month period; or

(ed) an offence against either of the following sections of the *Competition and Consumer Act 2010*:

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(i) section 44ZZRF (making a contract etc. containing a cartel provision);

(ii) section 44ZZRG (giving effect to a cartel provision); or

(f) a *terrorism offence; or

(g) an offence against section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code* or former section 5, 7, 7A or 86 of the *Crimes Act 1914* (extensions of criminal responsibility) in relation to an offence referred to in this definition; or

(ga) an offence against section 195, 196 or 197A that relates to an *examination of a person who is the subject of an *examination order under section 180, if the person committing the offence:

(i) is covered by paragraph 180(1)(a) or (b); or

(ii) is or was a party to proceedings relating to the *restraining order mentioned in section 180; or

(gb) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180A, if the person committing the offence:

(i) is covered by paragraph 180A(1)(a); or

(ii) is or was a party to proceedings relating to the relevant application mentioned in section 180A; or

(gc) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180B, if the person committing the offence:

(i) is covered by paragraph 180B(1)(a); or

(ii) is or was a party to proceedings relating to the relevant application mentioned in section 180B; or

(gd) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180C, if the person committing the offence:

(i) is covered by paragraph 180C(1)(a); or

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(ii) is or was a party to proceedings relating to the application mentioned in section 180C; or

(ge) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180D, if the person committing the offence:

(i) is covered by paragraph 180D(1)(a); or

(ii) is or was a party to proceedings relating to the *confiscation order mentioned in section 180D; or

(gf) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 180E, if the person committing the offence:

(i) is covered by paragraph 180E(1)(a); or

(ii) is or was a party to proceedings relating to the revocation mentioned in section 180E; or

(gg) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 181, if the person committing the offence:

(i) is covered by paragraph 181(1)(a) or (b); or

(ii) is or was a party to proceedings relating to the relevant application mentioned in section 181; or

(gh) an offence against section 195, 196 or 197A that relates to an *examination of a person who is the subject of an *examination order under section 181A, if the person committing the offence:

(i) is covered by paragraph 181A(1)(a), (b) or (c); or

(ii) is or was a party to proceedings relating to the application mentioned in section 181A; or

(gi) an offence against section 195, 196 or 197A that relates to an examination of a person who is the subject of an examination order under section 181B, if the person committing the offence:

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(i) is covered by paragraph 181B(1)(a) or (b); or
(ii) is or was a party to proceedings relating to the application mentioned in section 181B; or

(h) an indictable offence specified in the regulations.

special confiscation law has the meaning given by subsection 14L(2).

State indictable offence means an offence against a law of a State or a *self-governing Territory that may be dealt with on indictment (even if it may also be dealt with as a summary offence in some circumstances).

State offence that has a federal aspect has the same meaning as in the *Crimes Act 1914*.

Note: Section 3AA of the *Crimes Act 1914* sets out when a State offence has a federal aspect.

stored value card means a portable device that is capable of storing monetary value in a form other than physical currency, or as otherwise prescribed by the regulations.

strip search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove all of his or her garments; and
(b) an examination of the person's body (but not of the person's body cavities) and of those garments.

sufficient consideration: an acquisition or disposal of property is for sufficient consideration if it is for a consideration that is sufficient and that reflects the value of the property, having regard solely to commercial considerations.

suspect means:

(a) in relation to a *restraining order (other than a restraining order made under section 20A) or a *confiscation order (other than an *unexplained wealth order)—the person who:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(i) has been convicted of; or
(ii) has been *charged with, or is proposed to be charged with; or
(iii) if the order is a restraining order—is suspected of having committed; or
(iv) if the order is a confiscation order—committed;
the offence or offences to which the order relates; or

(b) in relation to a restraining order made under section 20A or an unexplained wealth order—the person whose *total wealth is suspected of exceeding the value of *wealth that was *lawfully acquired.

tainted property means:

(a) *proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(b) an *instrument of an indictable offence.

Territory offence means an offence against a law of a *self-governing Territory.

terrorism offence has the same meaning as in the *Crimes Act 1914*.

text reference 1 has the meaning given by subsection 14C(2).

text reference 2 has the meaning given by subsection 14C(3).

thing relevant to unexplained wealth proceedings means a thing (including a thing in electronic form) as to which there are reasonable grounds for suspecting that it may be relevant for the purposes of initiating or conducting proceedings under section 20A or Part 2-6.

totalisator agency board means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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total wealth, of a person, has the meaning given by subsection 179G(2).

unexplained wealth:

(a) in relation to the *amendment reference of a State—has the meaning given by section 14D; and

(b) otherwise—has its ordinary meaning.

unexplained wealth amount, of a person, has the meaning given by subsection 179E(2).

unexplained wealth legislation of a State or *self-governing Territory means a law of the State or Territory that is prescribed by the regulations.

unexplained wealth machinery and transitional provisions has the meaning given by subsection 14B(5).

unexplained wealth order means an order made under subsection 179E(1) that is in force.

unlawful activity means an act or omission that constitutes:

(a) an offence against a law of the Commonwealth; or

(b) an offence against a law of a State or Territory; or

(c) an offence against a law of a foreign country.

wealth, of a person, has the meaning given by subsection 179G(1).

working day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place concerned.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Schedule 1—Information gathering by participating States and self-governing Territories

Note: See section 14M.

Part 1—Production orders

1 Making production orders

(1) A magistrate may make an order (a ***production order***) requiring a person to:

(a) produce one or more documents referred to in subclause (6) to an *authorised State/Territory officer of a *participating State or *self-governing Territory; or

(b) make one or more documents referred to in subclause (6) available to an authorised State/Territory officer of a participating State or self-governing Territory for inspection.

(2) An ***authorised State/Territory officer*** of a *participating State or *self-governing Territory means:

(a) a person who may apply for, or make an affidavit in support of, a restraining order under a *special confiscation law of the State or Territory; or

(b) if New South Wales is a participating State—the Commissioner and Assistant Commissioners of the New South Wales Crimes Commission; or

(c) for a self-governing Territory—a person of a kind prescribed by the regulations in relation to the Territory.

(3) However:

(a) the magistrate must not make a *production order unless the magistrate is satisfied by information on oath that the person

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is reasonably suspected of having possession or control of such documents; and

(b) a production order cannot require documents that are not:

(i) in the possession or under the control of a body corporate; or

(ii) used or intended to be used in the carrying on of a business;

to be produced or made available to an *authorised State/Territory officer of the *participating State or *self-governing Territory concerned; and

(c) a production order cannot require any accounting records used in the ordinary business of a *financial institution (including ledgers, day-books, cash-books and account books) to be produced to an authorised State/Territory officer of the participating State or self-governing Territory concerned.

(4) The *production order can only be made on application by an *authorised State/Territory officer of a *participating State or *self-governing Territory.

(5) The *authorised State/Territory officer need not give notice of the application to any person.

(6) Each of the following is a document that may be the subject of a *production order:

(a) a document relevant to identifying, locating or quantifying property of a person for the purposes of:

(i) determining whether to take any action in relation to the person under the *unexplained wealth legislation of the *participating State or *self-governing Territory concerned; or

(ii) proceedings in relation to the person under the unexplained wealth legislation of the participating State or self-governing Territory concerned;

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(b) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;
(c) a document that would assist in the reading or interpretation of a document referred to in paragraph (a) or (b).

2 Contents of production orders

(1) A *production order must:
(a) specify the nature of the documents required; and
(b) specify the place at which the person must produce the documents or make the documents available; and
(c) specify the time at which, or the times between which, this must be done; and
(d) specify the form and manner in which those documents are to be produced; and
(e) specify the name of the *authorised State/Territory officer of the State or Territory who, unless he or she inserts the name of another authorised State/Territory officer of the State or Territory in the order, is to be responsible for giving the order to the person; and
(f) if the order specifies that information about the order must not be disclosed—set out the effect of clause 9 (disclosing existence or nature of production orders); and
(g) set out the effect of clause 10 (failing to comply with an order).

(2) The time or times specified under paragraph (1)(c) must be:
(a) at least 14 days after the day on which the *production order is made; or
(b) if the magistrate who makes the production order is satisfied that it is appropriate, having regard to the matters specified in subclause (3), to specify an earlier time—at least 3 days after the day on which the production order is made.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The matters to which the magistrate must have regard for the purposes of deciding whether an earlier time is appropriate under paragraph (2)(b) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the person required by the *production order to produce documents or make documents available.

3 Powers under production orders

The *authorised State/Territory officer may inspect, take extracts from, or make copies of, a document produced or made available under a *production order.

4 Retaining produced documents

(1) The *authorised State/Territory officer may also retain a document produced under a *production order for as long as is necessary for the purposes of the *unexplained wealth legislation of the *participating State or *self-governing Territory concerned.

(2) The person to whom a *production order is given may require the *authorised State/Territory officer to:

(a) certify in writing a copy of the document retained to be a true copy and give the person the copy; or

(b) allow the person to do one or more of the following:

(i) inspect the document;

(ii) take extracts from the document;

(iii) make copies of the document.

5 Privilege against self-incrimination etc. does not apply

(1) A person is not excused from producing a document or making a document available under a *production order on the ground that producing the document or making it available:

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(a) would tend to incriminate the person or expose the person to a penalty; or

(b) would breach an obligation (whether imposed by an enactment or otherwise) of the person not to disclose the existence or contents of the document; or

(c) would disclose information that is the subject of *legal professional privilege.

(2) However, in the case of a natural person, the document is not admissible in evidence in a *criminal proceeding against the person, except in proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

6 Varying production orders

(1) A person who is required to produce a document to an *authorised State/Territory officer under a *production order may apply to:

(a) the magistrate who made the order; or

(b) if that magistrate is unavailable—any other magistrate;

to vary the order so that it instead requires the person to make the document available for inspection.

(2) The magistrate may vary the *production order if satisfied that the document is essential to the person's business activities.

7 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *production order relating to one or more documents that are located in:

(a) that State or Territory; or

(b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the order appropriate; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(c) a *non-governing Territory.

8 Making false statements in applications

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, an application for a *production order.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

9 Disclosing existence or nature of production orders

(1) A person commits an offence if:

(a) the person is given a *production order; and

(b) the order specifies that information about the order must not be disclosed; and

(c) the person discloses the existence or nature of the order to another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

(2) A person commits an offence if:

(a) the person is given a *production order; and

(b) the order specifies that information about the order must not be disclosed; and

(c) the person discloses information to another person; and

(d) that other person could infer the existence or nature of the order from that information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) Subclauses (1) and (2) do not apply if:

(a) the person discloses the information to an employee, *agent or other person in order to obtain a document that is required by the *production order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or

(b) the disclosure is made to obtain legal advice or legal representation in relation to the order; or

(c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subclause (3): see subsection 13.3(3) of the *Criminal Code*.

10 Failing to comply with production orders

(1) A person commits an offence if:

(a) the person is given a *production order; and

(b) the person fails to comply with the order; and

(c) the person has not been notified of sufficient compliance under subclause (2).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(2) A person is notified of sufficient compliance under this subclause if:

(a) the person gives an *authorised State/Territory officer of the *participating State or *self-governing Territory concerned a statutory declaration stating that the person does not have possession or control of the document specified in the *production order; and

(b) the officer notifies the person in writing that the statutory declaration is sufficient compliance with the order.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) It is a defence to an offence against subclause (1) if:

(a) the person fails to comply with the *production order only because the person does not produce the document specified in the order within the time specified in the order; and

(b) the person took all reasonable steps to produce the document within that time; and

(c) the person produces the document as soon as practicable after that time.

Note: A defendant bears an evidential burden in relation to the matters in subclause (3) (see subsection 13.3(3) of the *Criminal Code*).

11 Destroying etc. documents subject to production orders

A person commits an offence if:

(a) the person destroys, defaces or otherwise interferes with a document; and

(b) a *production order is in force requiring the document to be produced or made available.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2—Notices to financial institutions

12 Giving notices to financial institutions

(1) An official specified in subclause (3) of a *participating State or *self-governing Territory may give a written notice to a *financial institution requiring the institution to provide to an *authorised State/Territory officer of the participating State or the Territory any information or documents relevant to any one or more of the following:

(a) determining whether an *account is or was held by a specified person with the financial institution;

(b) determining whether a particular person is or was a signatory to an account;

(c) if a person holds an account with the institution, the current balance of the account;

(d) details of transactions on an account over a specified period of up to 6 months;

(e) details of any related accounts (including names of those who hold or held those accounts);

(f) determining whether a *stored value card was issued to a specified person by a financial institution;

(g) details of transactions made using such a card over a specified period of up to 6 months;

(h) a transaction conducted by the financial institution on behalf of a specified person.

(2) The official must not issue the notice unless the official reasonably believes that giving the notice is required:

(a) to determine whether to take any action under the *unexplained wealth legislation of the State or Territory; or

(b) in relation to proceedings under the unexplained wealth legislation of the State or Territory.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(3) The officials of a *participating State or *self-governing Territory who may give a notice to a *financial institution are:

(a) the Commissioner or head (however described) of the police force or police service of the State or Territory; or

(b) the Director of Public Prosecutions, or a person performing a similar function, appointed under a law of the State or Territory; or

(c) if New South Wales is a participating State—the Commissioner and Assistant Commissioners of the New South Wales Crimes Commission; or

(d) for a self-governing Territory—a person of a kind prescribed by the regulations in relation to the Territory.

13 Contents of notices to financial institutions

(1) The notice must:

(a) state that the official giving the notice believes that the notice is required:

(i) to determine whether to take any action under the *unexplained wealth legislation of the State or Territory; or

(ii) in relation to proceedings under the unexplained wealth legislation of the State or Territory; and

(b) specify the name of the *financial institution; and

(c) specify the kind of information or documents required to be provided; and

(d) specify the form and manner in which that information or those documents are to be provided, having regard to the record-keeping capabilities of the financial institution (to the extent known to the official); and

(e) specify that the information or documents must be provided no later than:

(i) 14 days after the giving of the notice; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(ii) if the official giving the notice believes that it is appropriate, having regard to the matters specified in subclause (2), to specify an earlier day that is at least 3 days after the giving of the notice—that earlier day; and

(f) if the notice specifies that information about the notice must not be disclosed—set out the effect of clause 16 (disclosing existence or nature of a notice); and

(g) set out the effect of clause 17 (failing to comply with a notice).

(2) The matters to which the official giving the notice must have regard in deciding whether to specify an earlier day under subparagraph (1)(e)(ii) are:

(a) the urgency of the situation; and

(b) any hardship that may be caused to the *financial institution required by the notice to provide the information or documents.

14 Protection from suits etc. for those complying with notices

(1) No action, suit or proceeding lies against:

(a) a *financial institution; or

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

in relation to any action taken by the institution or person under a notice under clause 12 or in the mistaken belief that action was required under the notice.

(2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a notice under clause 12 is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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15 Making false statements in notices

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, a notice under clause 12.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

16 Disclosing existence or nature of notices

A person commits an offence if:

(a) the person is given a notice under clause 12; and

(b) the notice specifies that information about the notice must not be disclosed; and

(c) the person discloses the existence or nature of the notice.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

17 Failing to comply with notices

(1) A person commits an offence if:

(a) the person is given a notice under clause 12; and

(b) the person fails to comply with the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

(2) It is a defence to an offence against subclause (1) if:

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(a) the person fails to comply with the notice only because the person does not provide the information or a document within the period specified in the notice; and

(b) the person took all reasonable steps to provide the information or document within that period; and

(c) the person provides the information or document as soon as practicable after the end of that period.

Note: A defendant bears an evidential burden in relation to the matters in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 3—Disclosure of information

18 Disclosure

(1) This clause applies if a person obtains information:

(a) as a direct result of the exercise of a power (by the person or someone else), or performance (by the person) of a function, under Part 1 or 2; or

(b) as a result of a disclosure, or a series of disclosures, under this clause.

(2) The person may disclose the information to an authority described in an item of the following table for a purpose described in that item if:

(a) the person believes on reasonable grounds that the disclosure will serve that purpose; and

(b) a court has not made an order prohibiting the disclosure of the information to the authority for that purpose.

Recipients and purposes of disclosure

Item	Authority to which disclosure may be made	Purpose for which disclosure may be made
1	Authority of a State or *self-governing Territory that has a function under a *corresponding law of the State or Territory	Any one or more of the following purposes: (a) engaging in proceedings under that corresponding law; (b) engaging in proceedings for the forfeiture of things under a law of that State or Territory; (c) deciding whether to institute proceedings of a kind referred to in paragraph (a) or (b)
2	Authority of the Commonwealth	Facilitating the authority's

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Clause 18

Recipients and purposes of disclosure		
Item	**Authority to which disclosure may be made**	**Purpose for which disclosure may be made**
	with one or more functions under this Act	performance of its functions under this Act
3	Authority of the Commonwealth, or of a State or *self-governing Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory	Assisting in the prevention, investigation or prosecution of an offence against that law that is punishable on conviction by imprisonment for at least 3 years or for life
4	Australian Taxation Office	Protecting public revenue

(3) In a *criminal proceeding against a person who produced or made available a document under a *production order, none of the following that is disclosed under this clause is admissible in evidence against the person:

(a) the document;

(b) information contained in the document.

(4) Subclause (3) does not apply in a proceeding under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

Note: Subclauses (3) and (4) reflect subclause 5(2).

(5) To avoid doubt:

(a) this clause does not prohibit the disclosure under section 266A of any information disclosed under this clause; and

(b) this clause does not affect the admissibility in evidence of any information, document or thing obtained as an indirect consequence of a disclosure under this clause.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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19 Parliamentary supervision of the operation of this Schedule

(1) The operation of this Schedule is subject to the oversight of the Parliamentary Joint Committee on Law Enforcement.

(2) The Committee may require an authority of a *participating State or *self-governing Territory that is the recipient of any information disclosed as the result of the operation of this Schedule to appear before it from time to time to give evidence.

20 Reports about the operation of this Schedule

(1) The Commissioner or head (however described) of a police force or police service of a *participating State or *self-governing Territory must give the Minister a written report in respect of each financial year that contains the following information:

(a) the number and results of applications for *production orders under clause 1 in the year by an *authorised State/Territory officer of the State or Territory;

(b) the number of notices to *financial institutions issued under clause 12 in the year by an official specified in subclause 12(3) of the State or Territory;

(c) any other information of a kind prescribed by the regulations.

(2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Schedule 2—Transitional, application and saving provisions relating to the national cooperative scheme on unexplained wealth

Note: See section 14N.

Part 1—General

Division 1—Termination of State reference or adoption

1 Effect of termination on things that happened beforehand etc.

(1) This clause applies if a *participating State ceases to be a participating State because it has terminated its reference or adoption as described in subsection 14C(8) or (9).

(2) The termination does not:

(a) revive anything not in force or existing at the time at which the termination takes effect; or

(b) affect the previous operation of the *national unexplained wealth provisions before the termination; or

(c) affect any proceedings instituted under or in relation to the national unexplained wealth provisions before the termination; or

(d) affect any order made under or in relation to the national unexplained wealth provisions before the termination; or

(e) affect any thing done under or in relation to the national unexplained wealth provisions before the termination; or

(f) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the national unexplained wealth provisions before the termination; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(g) affect any penalty, forfeiture or punishment incurred under or in relation to the national unexplained wealth provisions before the termination; or

(h) affect any investigation, action, proceedings or remedy in relation to any matter referred to in paragraph (c), (d), (e), (f) or (g).

Paragraphs (a) to (h) do not limit each other.

(3) Without limiting subclause (2) but subject to subclause (4):

(a) any proceedings instituted under or in relation to the *national unexplained wealth provisions before the termination continue after the termination as if the termination had not occurred; and

(b) any order made under or in relation to the national unexplained wealth provisions before the termination continues in force after the termination as if the termination had not occurred; and

(c) any proceedings or remedy in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be instituted, continued, obtained or enforced after the termination as if the termination had not occurred; and

(d) any investigation in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be continued after the termination as if the termination had not occurred; and

(e) any action in relation to any proceedings, order, remedy or investigation referred to in a paragraph of this subclause may be taken after the termination as if the termination had not occurred.

Paragraphs (a) to (e) of this subclause do not limit each other.

(4) This Act, as in force immediately before the termination, continues to apply after the termination in relation to any matter referred to in paragraphs (2)(c) to (h) or (3)(a) to (e) as if the termination had not occurred.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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2 Effect of termination on the sharing of certain proceeds of confiscated assets

(1) If:

(a) a State ceases to be a *participating State because it has terminated its reference or adoption as described in subsection 14C(8) or (9); and

(b) the State has not terminated:

(i) if the State referred *text reference 2—that referral; or

(ii) if the State adopted *post-amended version 2 of this Act—that adoption; and

(c) *proceeds of confiscated assets are credited to the *Confiscated Assets Account after the termination; and

(d) the amount credited as referred to in paragraph (c) is the amount of an *unexplained wealth order to the extent it has been paid to the Commonwealth (see paragraph 296(3)(fa)); and

(e) the unexplained wealth order relates to a *relevant offence of the State;

then Division 2 of Part 4-3 applies in relation to the sharing of those proceeds as if the State were a participating State.

Note: Division 2 of Part 4-3 is about sharing proceeds of confiscated assets under the national cooperative scheme.

(2) Subclause (1) does not apply if the State is a *cooperating State.

Note: If the State is a cooperating State, it will be treated in the same way as a participating State for all proceeds of confiscated assets (and not just proceeds that are amounts payable under unexplained wealth orders).

3 Effect of termination—regulations

(1) The regulations may make provision in relation to circumstances that arise because a State ceases to be a *participating State.

(2) Subclause (1) and clauses 1 and 2 do not limit each other.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Division 2—Ceasing to be a relevant offence of a State

4 Effect of cessation on things that happen beforehand etc.

(1) This clause applies if an offence against a law of a *participating State ceases to be a *relevant offence of that State.

(2) The cessation does not:

(a) revive anything not in force or existing at the time at which the cessation takes effect; or

(b) affect the previous operation of the *national unexplained wealth provisions before the cessation; or

(c) affect any proceedings instituted under or in relation to the national unexplained wealth provisions before the cessation; or

(d) affect any order made under or in relation to the national unexplained wealth provisions before the cessation; or

(e) affect any thing done under or in relation to the national unexplained wealth provisions before the cessation; or

(f) affect any right, privilege, obligation or liability acquired, accrued or incurred under or in relation to the national unexplained wealth provisions before the cessation; or

(g) affect any penalty, forfeiture or punishment incurred under or in relation to the national unexplained wealth provisions before the cessation; or

(h) affect any investigation, proceedings or remedy in relation to any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in paragraph (f) or (g).

Paragraphs (a) to (h) do not limit each other.

(3) Without limiting subclause (2) but subject to subclause (4):

(a) any proceedings instituted under or in relation to the *national unexplained wealth provisions before the cessation

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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continue after the cessation as if the cessation had not occurred; and

(b) any order made under or in relation to the national unexplained wealth provisions before the cessation continues in force after the cessation as if the cessation had not occurred; and

(c) any proceedings or remedy in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be instituted, continued, obtained or enforced after the cessation as if the cessation had not occurred; and

(d) any investigation in relation to a matter referred to in paragraph (2)(c), (d), (f) or (g) may be continued after the cessation as if the cessation had not occurred; and

(e) any action in relation to any proceedings, order, remedy or investigation referred to in a paragraph of this subclause may be taken after the cessation as if the cessation had not occurred.

Paragraphs (a) to (e) of this subclause do not limit each other.

(4) This Act, as in force immediately before the cessation, continues to apply after the termination in relation to any matter referred to in paragraphs (2)(a) to (h) or (3)(a) to (e) as if the cessation had not occurred.

5 Effect of cessation—regulations

(1) The regulations may make provision in relation to circumstances that arise because an offence against a law of a *participating State ceases to be a *relevant offence of that State.

(2) Subclause (1) and clause 4 do not limit each other.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Part 2—Unexplained Wealth Legislation Amendment Act 2018

6 Definitions

In this Part:

amending Act means the *Unexplained Wealth Legislation Amendment Act 2018*.

commencement means the commencement of the amending Act.

7 Amendments made by Schedule 2 to the amending Act

The amendments made by Schedule 2 to the amending Act (which is about extending the *main unexplained wealth provisions to certain offences against the laws of *participating States) apply to an application made after commencement for an order in relation to an offence against a law of a participating State, whether or not:

(a) the offence is committed, or is suspected of having been committed, before or after commencement; or

(b) the application relates to property or wealth that is acquired before or after commencement; or

(c) the application relates to property or wealth that is derived or realised, directly or indirectly, before or after commencement; or

(d) the application relates to property or wealth that becomes subject to the *effective control of a person before or after commencement.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Clause 8

8 Amendments made by Schedule 4 to the amending Act

(1) Part 1 of Schedule 1, as inserted by Schedule 4 to the amending Act, applies in relation to *production orders applied for after commencement in relation to a document, whether or not:

(a) the document is created before or after commencement; or

(b) the document relates to property that is acquired before or after commencement; or

(c) the document relates to property that is derived or realised, directly or indirectly, before or after commencement; or

(d) the document relates to property that becomes subject to the *effective control of a person before or after commencement; or

(e) the document relates to the transfer of property before or after commencement; or

(f) the document is relevant for the purposes of:

(i) determining whether to take action under the *unexplained wealth legislation of a *participating State or *self-governing Territory in relation to a matter occurring before or after commencement; or

(ii) proceedings under the unexplained wealth legislation of a participating State or self-governing Territory instituted before or after commencement.

(2) Part 2 of Schedule 1, as inserted by Schedule 4 to the amending Act, applies in relation to notices to *financial institutions given after commencement in relation to information or a document, whether or not:

(a) the information is obtained or the document is created before or after commencement; or

(b) the information or document relates to property that is acquired before or after commencement; or

(c) the information or document relates to property that is derived or realised, directly or indirectly, before or after commencement; or

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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(d) the information or document relates to property that becomes subject to the *effective control of a person before or after commencement; or

(e) the information or document relates to an *account held by a person before or after commencement; or

(f) the information or document relates to a *stored value card issued before or after commencement; or

(g) the information or document relates to a transaction conducted by a financial institution on behalf of a person before or after commencement; or

(h) the information or document is relevant for the purposes of:

(i) determining whether to take action under the *unexplained wealth legislation of a *participating State or *self-governing Territory in relation to a matter occurring before or after commencement; or

(ii) proceedings under the unexplained wealth legislation of a participating State or self-governing Territory instituted before or after commencement.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Proceeds of Crime Act 2002	85, 2002	11 Oct 2002	s. 3–338: 1 Jan 2003 (s 2(1) item 2 and gaz 2002, No. GN44) Remainder: 11 Oct 2002 (s 2(1) item 1)	
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (items 116, 117): 1 Jan 2003 (s 2(1) item 4)	—
Crimes Legislation Enhancement Act 2003	41, 2003	3 June 2003	Sch 2 (items 16A–16E): 1 Jan 2003 (s 2(1) item 10A)	—
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Sch 1 (items 200, 212, 213, 215): 1 Dec 2004 (s 2(1) item 2 and gaz 2004, No. GN34)	Sch 1 (items 212, 213, 215)
Anti-terrorism Act 2004	104, 2004	30 June 2004	s 4 and Sch 1 (items 21–27): 1 July 2004 (s 2)	s 4(1)
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4 and Sch 1 (items 309–312, 496): 22 Feb 2005 (s 2(1) items 2, 10)	s 4 and Sch 1 (item 496)
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005	129, 2005	8 Nov 2005	Sch 1 (items 67, 75, 76): 6 Dec 2005 (s 2(1) item 2) Sch 3: 8 Nov 2005 (s 2(1) item 4)	Sch 1 (items 75, 76) and Sch 3 (Item 11)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005	136, 2005	15 Nov 2005	Sch 1 (items 26–28): 16 Nov 2005 (s 2)	Sch 1 (item 28)
Anti-Terrorism Act (No. 2) 2005	144, 2005	14 Dec 2005	Sch 9 (items 22, 23): never commenced (s 2(1) item 19)	—
as amended by				
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Sch 1 (item 11): 14 Dec 2005 (s 2(1) item 3)	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Sch 1: (items 54, 55): 30 Dec 2006 (s 2(1) item 2)	—
Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006	170, 2006	12 Dec 2006	Sch 1 (items 153–157): 13 Dec 2006 (s 2(1) item 24)	—
Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007	57, 2007	15 Apr 2007	Sch 2 (items 11–19): 16 Apr 2007 (s 2(1) item 10)	Sch 2 (item 19)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Evidence Amendment (Journalists' Privilege) Act 2007	116, 2007	28 June 2007	Sch 1 (items 8, 9): 26 July 2007 (s 2(1) item 2)	—
Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008	115, 2008	21 Nov 2008	Sch 2 (items 42, 43): 1 Mar 2009 (s 2(1) item 5) Sch 4 (item 2): 1 Jan 2003 (s 2(1) item 8)	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws–General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 2 (items 65–72): 10 Dec 2008 (s 2(1) item 11)	Sch 2 (item 72)
Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009	59, 2009	26 June 2009	Sch 1 (item 1): 24 July 2009 (s 2(1) item 2)	—
Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009	106, 2009	6 Nov 2009	Sch 1 (item 111): 4 Dec 2009 (s 2(1) item 2)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010	3, 2010	19 Feb 2010	Sch 1 (items 1–42): 19 Feb 2010 (s 2(1) item 2) Sch 2 (items 1–8, 11–67, 72–107): 20 Feb 2010 (s 2(1) items 3, 5) Sch 2 (items 68–71): 19 May 2010 (s 2(1) item 4)	Sch 2 (items 8, 15, 18, 29, 31, 35, 42, 48, 50, 52, 54, 60, 63, 71, 107)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Sch 2 (item 154): 1 Jan 2012 (s 2(1) item 3)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 1 (items 1–209, 212, 213, 215, 217–221) and Sch 10 (item 24): 20 Feb 2010 (s 2(1) items 2, 4, 6, 13) Sch 1 (items 214, 216): 19 May 2010 (s 2(1) items 3, 5)	Sch 1 (items 19, 35, 65, 67, 77, 81, 94, 98, 102, 104, 107, 113, 128, 140, 146, 158, 161, 164, 166, 168, 175, 178, 181, 184, 187, 192, 197, 205, 209, 219, 221)
as amended by				
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 2 (item 2): 20 Feb 2010 (s 2(1) item 4)	—
Anti-People Smuggling and Other Measures Act 2010	50, 2010	31 May 2010	Sch 1 (item 13): 1 June 2010 (s 2)	—
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Sch 3 (items 18–21, 24–28): 30 Jan 2012 (s 2(1) items 15, 17) Sch 3 (items 22, 23): never commenced (s 2(1) item 16)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 86): 1 Jan 2011 (s 2(1) items 3, 5)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Security Legislation Amendment Act 2010	127, 2010	24 Nov 2010	Sch 10 (item 10): 25 Nov 2010 (s 2(1) item 16)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 96–99): 22 Mar 2011 (s 2(1) item 2)	—
Crimes Legislation Amendment Act (No. 2) 2011	174, 2011	5 Dec 2011	Sch 2 (items 3–139): 1 Jan 2012 (s 2(1) item 3) Sch 2 (items 243–249): 6 Dec 2011 (s 2(1) item 6)	Sch 2 (items 139, 246, 249)
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Sch 6 (items 4–11): 5 Apr 2012 (s 2(1) items 11–13)	Sch 6 (item 11)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 104, 105): 22 Sept 2012 (s 2(1) item 2)	—
Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013	6, 2013	7 Mar 2013	Sch 2 (item 14) and Sch 3 (item 1): 8 Mar 2013 (s 2)	Sch 3 (item 1)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 11 (item 74) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (item 136): 1 Dec 2014 (s 2(1) item 2)	—
Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Act 2015	6, 2015	25 Feb 2015	26 Feb 2015 (s 2)	Sch 1 (item 34)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 143–146), Sch 6 (items 175–181 and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 6 (item 181) and Sch 9

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 176, 177): 18 June 2015 (s 2(1) item 2) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3)	Sch 1 (items 184–203)
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (item 67): 14 Oct 2015 (s 2(1) item 2)	—
Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015	153, 2015	26 Nov 2015	Sch 13 and Sch 14 (items 1–4, 11–13): 27 Nov 2015 (s 2(1) item 2)	Sch 14 (items 2, 4, 12)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 234–246): 10 Mar 2016 (s 2(1) item 6)	—
Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Act 2016	15, 2016	29 Feb 2016	Sch 1: 1 Mar 2015 (s 2(1) item 2)	Sch 1 (item 5)
Law Enforcement Legislation Amendment (State Bodies and Other Measures) Act 2016	86, 2016	30 Nov 2016	Sch 3: 1 Dec 2016 (s 2(1) item 5)	Sch 3 (item 2)
Proceeds of Crime Amendment (Proceeds and Other Matters) Act 2018	21, 2018	28 Mar 2018	29 Mar 2018 (s 2(1) item 1)	Sch 1 (item 14)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 164–166, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
Unexplained Wealth Legislation Amendment Act 2018	126, 2018	3 Oct 2018	Sch 1–5 and 7: 10 Dec 2018 (s 2(1) item 2)	Sch 3 (item 10)
Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020	112, 2020	8 Dec 2020	Sch 3 (item 69): awaiting commencement (s 2(1) item 1)	—
Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020	133, 2020	17 Dec 2020	Sch 1 (items 119–121): awaiting commencement (s 2(1) item 3)	—
Crimes Legislation Amendment (Economic Disruption) Act 2021	3, 2021	16 Feb 2021	Sch 3–6 and Sch 7 (items 4–66): 17 Feb 2021 (s 2(1) items 4, 5) Sch 7 (items 67, 68): awaiting commencement (s 2(1) item 6)	Sch 3 (items 14, 15), Sch 4 (item 4), Sch 5 (item 6), Sch 6 (item 20) and Sch 7 (items 60–66)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 704): 1 Sept 2021 (s 2(1) item 5)	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1-2	
s 5	am No 3, 2010; No 6, 2015; No 21, 2018
Part 1-3	
s 6	ad No 136, 2005
s 7	am No 3, 2010
s 8	am No 3, 2010
s 9	am No 3, 2021
Part 1-4	
Division 1	
Division 1 heading	ad No 126, 2018
s 14A	ad No 126, 2018
Division 2	
Division 2	ad No 126, 2018
Subdivision A	
s 14B	ad No 126, 2018
s 14C	ad No 126, 2018
s 14D	ad No 126, 2018
s 14E	ad No 126, 2018
s 14F	ad No 126, 2018
Subdivision B	
s 14G	ad No 126, 2018
s 14H	ad No 126, 2018
s 14J	ad No 126, 2018
s 14K	ad No 126, 2018
Subdivision C	
s 14L	ad No 126, 2018

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision D	
Subdivision D	ad No 126, 2018
s 14M	ad No 126, 2018
s 14N	ad No 126, 2018
s 15	rep No 126, 2018
Chapter 2	
Part 2-1A	
Part 2-1A	ad No 3, 2010
s 15A	ad No 3, 2010
Division 1	
s 15B	ad No 3, 2010
	am No 24, 2012; No 41, 2015
Division 2	
s 15C	ad No 3, 2010
	am No 24, 2012; No 41, 2015
s 15D	ad No 3, 2010
	am No 24, 2012; No 41, 2015
s 15E	ad No 3, 2010
s 15F	ad No 3, 2010
s 15FA	ad No 24, 2012
s 15G	ad No 3, 2010
s 15H	ad No 3, 2010
Division 3	
s 15J	ad No 3, 2010
s 15K	ad No 3, 2010
s 15L	ad No 3, 2010
s 15M	ad No 3, 2010
Division 4	
s 15N	ad No 3, 2010
s 15P	ad No 3, 2010
	am No 24, 2012; No 41, 2015

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Provision affected	How affected
Division 5	
s 15Q	ad No 3, 2010
	am No 174, 2011
Division 6	
s 15R	ad No 3, 2010
s 15S	ad No 3, 2010
Part 2-1	
Division 1	
s 17	am No 129, 2005; No 174, 2011
s 18	am No 129, 2005; No 3, 2010; No 174, 2011
s 19	am No 3, 2010; No 4, 2010; No 174, 2011
s 20	am No 104, 2004; No 129, 2005; No 174, 2011
s 20A	ad No 3, 2010
	am No 174, 2011; No 6, 2015; No 21, 2018; No 126, 2018
s 21	am No 174, 2011
s 24	am No 174, 2011
s 24A	am No 174, 2011
Division 2	
s 25	am No 174, 2011
s 26	am No 174, 2011
s 27	am No 174, 2011
s 28A	ad No 24, 2012
Division 3	
s 29	am No 170, 2006; No 3, 2010; No 4, 2010; No 174, 2011; No 133, 2020
s 29A	ad No 3, 2010
	am No 4, 2010; No 174, 2011
s 30	am No 4, 2010; No 174, 2011
s 31	am No 4, 2010; No 174, 2011
s 32	am No 4, 2010; No 174, 2011
Division 4	
s 33	am No 174, 2011

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Provision affected	How affected
s 34	am No 174, 2011
s 35	am No 3, 2010; No 174, 2011
s 36	am No 174, 2011
s 37	am No 3, 2010; No 4, 2016
Division 5	
s 39	am No 3, 2010; No 4, 2010; No 174, 2011
s 39A	ad No 4, 2010
s 39B	ad No 4, 2010
s 40	am No 3, 2010; No 4, 2010; No 4, 2016
Division 6	
s 42	am No 3, 2010; No 174, 2011
s 43	am No 174, 2011
s 44	am No 174, 2011
s 45	am No 3, 2010; No 4, 2010; No 6, 2015
s 45A	ad No 3, 2010
	am No 6, 2015
Part 2-2	
s 46	am No 174, 2011
Division 1	
s 47	am No 3, 2010; No 174, 2011
s 48	am No 174, 2011
s 49	am No 3, 2010; No 4, 2010; No 174, 2011
s 50	am No 174, 2011
s 53	rep No 3, 2021
Division 2	
s 54	am No 174, 2011; No 6, 2015
s 55	am No 4, 2010
s 57	rs No 3, 2021
s 57A	ad No 3, 2021
Division 3	
s 59	am No 174, 2011

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Provision affected	How affected
s 60	am No 174, 2011
s 61	am No 174, 2011
s 62	am No 174, 2011
s 63	am No 174, 2011
s 64	am No 4, 2010
Division 4	
s 67	am No 174, 2011
s 68	am No 174, 2011
s 68A	ad No 3, 2021
s 69	am No 3, 2021
s 70	am No 3, 2021
s 71	am No 3, 2010; No 4, 2016
Division 4A	
Division 4A	ad No 3, 2021
s 71A	ad No 3, 2021
Division 5	
Subdivision B	
s 73	am No 3, 2010; No 4, 2010
s 74	am No 4, 2010
s 75	am No 4, 2010; No 174, 2011
s 76	am No 4, 2010; No 174, 2011
Subdivision C	
Subdivision C heading	rs No 4, 2010
s 77	am No 4, 2010
s 78	rs No 4, 2010
s 79	am No 4, 2010; No 174, 2011
s 79A	ad No 4, 2010
	am No 174, 2011
Division 6	
s 81	am No 174, 2011
s 82	am No 174, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s 84	am No 3, 2010; No 4, 2010; No 174, 2011
s 85	am No 3, 2010; No 4, 2010
Division 7	
s 87	am No 174, 2011
s 88	am No 3, 2021
s 89	am No 3, 2021
s 90	rs No 3, 2021
Part 2-3	
s 91	am No 4, 2010
Division 1	
s 92	am No 4, 2010
s 92A	ad No 4, 2010
	am No 174, 2011
s 93	am No 4, 2010; No 174, 2011
s 94	am No 4, 2010; No 174, 2011
s 94A	ad No 4, 2010
	am No 174, 2011
s 95	am No 174, 2011
Division 2	
s 97	am No 174, 2011
s 98A	ad No 3, 2021
s 99	am No 3, 2021
s 100	am No 3, 2021
Division 2A	
Division 2A	ad No 3, 2021
s 101A	ad No 3, 2021
Division 3	
s 102	am No 4, 2010
s 103	rs No 3, 2021
s 104	rs No 4, 2010
	am No 174, 2011; No 3, 2021

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Provision affected	How affected
s 104A	ad No 3, 2021
s 105	am No 3, 2021
s 106	am No 4, 2010
	rs No 3, 2021
Division 4	
s 107	am No 174, 2011
s 108	am No 174, 2011
s 110	am Nos 3 and 4, 2010; No 174, 2011
s 111	am Nos 3 and 4, 2010
s 113	am No 174, 2011
s 114	am No 3, 2021
Part 2-4	
Division 1	
s 116	am No 3, 2010; No 174, 2011
Division 2	
Subdivision A	
s 121	am No 4, 2010
Subdivision B	
s 122	am No 4, 2010
s 124	am No 4, 2010
s 129	am No 80, 2004
Subdivision C	
s 130	am No 4, 2010
s 131	am No 174, 2011
Subdivision D	
s 133	am No 4, 2010; No 174, 2011
Division 3	
s 134	am No 4, 2010; No 174, 2011
s 135	am No 174, 2011
s 136	am No 4, 2010; No 174, 2011
s 137	am No 174, 2011

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Provision affected	How affected
s 138	am No 4, 2010
Division 4	
s 141	am No 174, 2011
s 142	am No 4, 2010; No 96, 2010
s 143	am No 96, 2010; No 174, 2011
Division 5	
s 146	am No 4, 2010; No 174, 2011
s 147	am No 4, 2010; No 174, 2011
s 148	am No 4, 2010
s 149	rs No 3, 2010
	am No 174, 2011
s 149A	ad No 4, 2010
	am No 174, 2011
s 150	am No 4, 2010
Part 2-5	
Division 1	
s 152	am No 104, 2004; No 174, 2011
s 153	am No 104, 2004
Division 2	
s 161	am No 174, 2011
Division 3	
s 162	am No 174, 2011
s 163	am No 174, 2011
s 164	am No 174, 2011
Division 4	
s 168	am No 174, 2011
s 169	am No 4, 2010; No 96, 2010
s 170	am No 96, 2010; No 174, 2011
Division 5	
s 173	am No 174, 2011
s 174	am No 174, 2011

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Provision affected	How affected
s 176	am No 174, 2011
Division 6	
s 178	am No 174, 2011
Part 2-6	
Part 2-6	ad No 3, 2010
s 179A	ad No 3, 2010
	am No 21, 2018
Division 1	
s 179B	ad No 3, 2010
	am No 174, 2011; No 6, 2015
s 179C	ad No 3, 2010
s 179CA	ad No 3, 2010
	am No 174, 2011
s 179D	ad No 3, 2010
	am No 174, 2011
s 179E	ad No 3, 2010
	am No 6, 2015; No 21, 2018; No 126, 2018
s 179EA	ad No 3, 2010
	am No 174, 2011
s 179EB	ad No 3, 2010
s 179F	ad No 3, 2010
Division 2	
s 179G	ad No 3, 2010
s 179H	ad No 3, 2010
s 179J	ad No 3, 2010
s 179K	ad No 3, 2010
	am No 174, 2011
s 179L	ad No 3, 2010
Division 3	
s 179M	ad No 3, 2010
	am No 174, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s 179N	ad No 3, 2010
	am No 174, 2011; No 6, 2015
s 179P	ad No 3, 2010
	am No 174, 2011
s 179Q	ad No 3, 2010
	am No 174, 2011
Division 4	
s 179R	ad No 3, 2010
s 179S	ad No 3, 2010
	am No 174, 2011; No 6, 2015
s 179SA	ad No 3, 2010
s 179SB	rs No 6, 2015
	rs No 6, 2015
s 179T	ad No 3, 2010
Division 5	
s 179U	ad No 3, 2010
	am No 127, 2010; No 6, 2015
Chapter 3	
Part 3-1	
Division 1	
s 180	am No 144, 2008; No 4, 2010
s 180A	ad No 4, 2010
s 180B	ad No 4, 2010
s 180C	ad No 4, 2010
s 180D	ad No 4, 2010
s 180E	ad No 4, 2010
s 181	am No 144, 2008; No 4, 2010
s 181A	ad No 3, 2021
s 181B	ad No 3, 2021
s 182	am No 4, 2010; No 174, 2011

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Provision affected	How affected
Division 2	
s 183	am No 174, 2011; No 153, 2015
Division 3	
s 187	am No 4, 2010; No 174, 2011; No 3, 2021
s 188	am No 174, 2011
s 189	am No 174, 2011
s 191	am No 174, 2011
s 192	am No 174, 2011
s 193	am No 174, 2011
s 194	am No 174, 2011
Division 4	
s 195	am No 3, 2010; No 4, 2010; No 4, 2016; No 3, 2021
s 196	am No 3, 2010; No 4, 2010; No 3, 2021
s 197	am No 116, 2007
s 197A	ad No 4, 2010
	am No 3, 2021
s 198	am No 3, 2021
s 199	am No 3, 2010; No 4, 2016
s 200	am No 3, 2010; No 4, 2016
s 201	am No 3, 2010; No 4, 2016
Part 3-2	
s 202	am No 3, 2010; No 4, 2010; No 174, 2011; No 136, 2012; No 3, 2021
s 203	am No 4, 2010
s 209	am No 3, 2010
s 210	am No 3, 2010; No 4, 2016
s 211	am No 3, 2010; No 4, 2010; No 153, 2015; No 4, 2016; No 3, 2021
s 212	am No 3, 2010; No 4, 2016
Part 3-3	
s 213	am No 125, 2002; No 86, 2006; No 4, 2010; No 41, 2015
s 214	am No 4, 2010
s 216	am No 3, 2010; No 4, 2016

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Endnote 4—Amendment history

Provision affected	How affected
s 217	am No 3, 2010; No 4, 2016
s 218	am No 3, 2010; No 4, 2010; No 153, 2015; No 4, 2016; No 3, 2021
Part 3-4	
s 219	am No 4, 2010
s 220	am No 4, 2010
s 222	am No 3, 2010; No 4, 2016
s 223	am No 170, 2006; No 3, 2010; No 41, 2015; No 4, 2016
s 224	am No 3, 2010; No 4, 2016
Part 3-5	
Division 1	
Subdivision A	
s 227	am No 6, 2015
s 228	am No 6, 2015
Subdivision B	
s 232	am No 3, 2010; No 4, 2016
s 233	am No 3, 2010; No 4, 2016
s 234	am No 3, 2010; No 4, 2016
s 235	am No 3, 2010; No 4, 2016
Subdivision C	
s 246	am No 3, 2010; No 4, 2016
Division 3	
Subdivision A	
s 254	am No 41, 2015
Subdivision B	
s 256	am No 6, 2015
Division 4	
s 266	am No 3, 2010; No 4, 2016
Part 3-6	
Part 3-6	ad No 3, 2010
s 266A	ad No 3, 2010
	am No 4, 2010; No 6, 2015; No 15, 2016; No 126, 2018; No 3, 2021

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Provision affected	How affected
Chapter 4	
Part 4-1	
Division 1	
s 267AA	ad No 3, 2021
s 267AB	ad No 3, 2021
s 267A	ad No 41, 2003
Division 2	
s 269	am No 4, 2010
s 270	am No 3, 2021
s 271	am No 3, 2021
s 272	am No 3, 2010; No 4, 2016
s 273	am No 3, 2010; No 4, 2016
s 274	am No 3, 2010; No 4, 2016
s 275	am No 3, 2010; No 4, 2016; No 3, 2021
s 275A	ad No 3, 2021
Division 3	
s 278	am No 41, 2003; No 3, 2021
s 279	am No 41, 2003; No 3, 2021
s 280	am No 41, 2003
s 281	am No 3, 2021
s 281A	ad No 3, 2021
Division 4	
s 282	am No 3, 2010; No 174, 2011
s 282A	ad No 3, 2010
	am No 174, 2011
s 283	am No 3, 2010
s 284	am No 3, 2010
s 285	am No 3, 2010; No 3, 2021
s 286	am No 3, 2010
Division 5	
s 288	am No 8, 2005; No 3, 2021

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Provision affected	How affected
s 289	am No 3, 2021
s 290	am No 3, 2021
Part 4-2	
s 292	am No 3, 2010
s 293	am No 3, 2010
s 294	am No 174, 2011
Part 4-3	
Division 1	
Division 1 heading	ad No 126, 2018
s 295	am No 62, 2014
s 296	am No 3, 2010; No 4, 2010; No 126, 2018; No 3, 2021 (Sch 7 item 67)
s 297	am No 8, 2005; No 136, 2005; No 4, 2010; No 174, 2011; No 31, 2018; No 126, 2018; No 3, 2021
Division 2	
Division 2	ad No 126, 2018
s 297A	ad No 126, 2018
s 297B	ad No 126, 2018
s 297C	ad No 126, 2018
Division 3	
Division 3 heading	ad No 126, 2018
s 298	am No 4, 2010
s 299	am No 8, 2005; No 57, 2007
	rep No 4, 2010
Division 4	
Division 4	ad No 3, 2021
s 298A	ad No 3, 2021
s 298B	ad No 3, 2021
s 298C	ad No 3, 2021
s 298D	ad No 3, 2021
s 298E	ad No 3, 2021
s 298F	ad No 3, 2021

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Provision affected	How affected
Part 4-4	
Part 4-4 heading	rs No 4, 2010
Division 1	rep No 3, 2010
s 300	rep No 3, 2010
s 301	rep No 3, 2010
s 302	am No 4, 2010
	rep No 3, 2010
Division 2 heading	rep No 4, 2010
s 302C	am No 4, 2010; No 96, 2010
Part 4-5	
Division 1	
s 304	am No 6, 2015
s 307	am No 4, 2010; No 96, 2010; No 174, 2011
Chapter 5	
s 314	am No 3, 2021
s 315A	ad No 4, 2010
	am No 15, 2016
s 315B	ad No 174, 2011
	am No 13, 2021
s 315C	ad No 153, 2015
s 316	am No 4, 2010
s 318A	ad No 4, 2010
s 318B	ad No 4, 2010
s 319	rs No 15, 2016
s 319A	ad No 15, 2016
s 322	am No 3, 2010; No 174, 2011; No 126, 2018
s 327A	ad No 126, 2018
Chapter 6	
Part 6-1	
Division 1	
s 330	am No 115, 2008; No 153, 2015; No 21, 2018; No 112, 2020

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Provision affected	How affected
Division 2	
s 333	am No 4, 2010; No 5, 2011
Division 3	
s 335	am No 106, 2009; No 3, 2010; No 4, 2010; No 5, 2011
s 336	am No 3, 2010
s 336A	ad No 3, 2010
	am No 86, 2016; No 21, 2018
s 337	am No 144, 2008; No 4, 2010
s 337A	ad No 104, 2004
	am No 3, 2010; No 4, 2010
s 337B	ad No 170, 2006
Part 6-2	
s 338	am No 125, 2002; No 41, 2003; No 104, 2004; No 129, 2005; No 86, 2006; No 170, 2006; No 116, 2007; No 144, 2008; No 59, 2009; No 3, 2010; No 4, 2010 (as am by No 5, 2011); No 50, 2010; No 96, 2010; No 103, 2010; No 5, 2011; No 174, 2011; No 24, 2012; No 136, 2012; No 6, 2013; No 116, 2014; No 6, 2015; No 41, 2015; No 59, 2015; No 132, 2015; No 153, 2015; No 21, 2018; No 31, 2018; No 126, 2018; No 133, 2020; No 3, 2021 (Sch 7 item 68)
	ed C50
Schedule 1	
Schedule 1	ad No 126, 2018
Part 1	
c 1	ad No 126, 2018
c 2	ad No 126, 2018
c 3	ad No 126, 2018
c 4	ad No 126, 2018
c 5	ad No 126, 2018
c 6	ad No 126, 2018
c 7	ad No 126, 2018
c 8	ad No 126, 2018
c 9	ad No 126, 2018

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Provision affected	How affected
c 10	ad No 126, 2018
c 11	ad No 126, 2018
Part 2	
c 12	ad No 126, 2018
c 13	ad No 126, 2018
c 14	ad No 126, 2018
c 15	ad No 126, 2018
c 16	ad No 126, 2018
c 17	ad No 126, 2018
Part 3	
c 18	ad No 126, 2018
c 19	ad No 126, 2018
c 20	ad No 126, 2018
Schedule 2	
Schedule 2	ad No 126, 2018
Part 1	
Division 1	
c 1	ad No 126, 2018
c 2	ad No 126, 2018
c 3	ad No 126, 2018
Division 2	
c 4	ad No 126, 2018
c 5	ad No 126, 2018
Part 2	
c 6	ad No 126, 2018
c 7	ad No 126, 2018
c 8	ad No 126, 2018

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