



Proceeds of Crime (Miscellaneous Amendments) Act 1987

No. 73 of 1987

**An Act to make amendments of various Acts consequential
upon the enactment of the *Proceeds of Crime Act 1987*, and
for other purposes**

[Assented to 5 June 1987]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Proceeds of Crime (Miscellaneous
Amendments) Act 1987*.

Commencement

2. This Act shall come into operation on the day on which the
Proceeds of Crime Act 1987 comes into operation.

PART II—AMENDMENTS OF THE BANKRUPTCY ACT 1966

Principal Act

3. The *Bankruptcy Act 1966*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

- “‘confiscation order’ has the same meaning as in the *Proceeds of Crime Act 1987*;
- ‘corresponding law’ has the same meaning as in the *Proceeds of Crime Act 1987*;
- ‘forfeiture order’ has the same meaning as in the *Proceeds of Crime Act 1987*;
- ‘interstate confiscation order’ means an interstate forfeiture order or an interstate pecuniary penalty order;
- ‘interstate forfeiture order’ has the same meaning as in the *Proceeds of Crime Act 1987*;
- ‘interstate pecuniary penalty order’ has the same meaning as in the *Proceeds of Crime Act 1987*;
- ‘pecuniary penalty order’ has the same meaning as in the *Proceeds of Crime Act 1987*.”.

Functions of Inspector-General

5. Section 12 of the Principal Act is amended by inserting after subsection (1B) the following subsection:

“(1C) Without limiting the generality of paragraphs (1) (a) and (b), the Inspector-General may make inquiries and investigations under those paragraphs at the request of:

- (a) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for a confiscation order—the Director of Public Prosecutions; or
- (b) if the Inspector-General is satisfied that the request relates to an application, or proposed application, for an interstate confiscation order—a person who is entitled, under a corresponding law, to apply for an order of that kind.”.

Vesting of property upon bankruptcy

6. Section 58 of the Principal Act is amended by omitting from subsection (5A) all the words from and including “under a maintenance agreement” and substituting the following:

“under:

- (a) a maintenance agreement or maintenance order (whether entered into or made, as the case may be, before or after the commencement of this subsection); or
- (b) a pecuniary penalty order or interstate pecuniary penalty order.”.

Stay of legal proceedings

7. Section 60 of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) Notwithstanding paragraph (1) (b), this section does not empower the Court to stay any proceedings under the *Proceeds of Crime Act 1987* or a corresponding law.”.

Debts provable in bankruptcy

8. Section 82 of the Principal Act is amended:

- (a) by omitting from subsection (3) “Penalties” and substituting “Subject to subsection (3A), penalties”; and
- (b) by inserting after subsection (3) the following subsection:

“(3A) An amount payable under a pecuniary penalty order or an interstate pecuniary penalty order is provable in bankruptcy.”.

Right of bankrupt to surplus

9. Section 148 of the Principal Act is amended:

- (a) by omitting “A” and substituting “Subject to subsection (2), a”; and
- (b) by adding at the end the following subsections:

“(2) The Court may make an order directing the Official Trustee not to pay the surplus, or a specified part of the surplus, to the bankrupt if:

- (a) the Director of Public Prosecutions, or a person who is entitled to apply for an interstate confiscation order under a corresponding law, applies to the Court for an order under this subsection; and
- (b) the Court is satisfied that:
 - (i) proceedings are pending under the *Proceeds of Crime Act 1987* or a corresponding law; and
 - (ii) property of the bankrupt may:
 - (A) become subject to a forfeiture order or interstate forfeiture order made in the proceedings; or
 - (B) be required to satisfy a pecuniary penalty order or interstate pecuniary penalty order made in the proceedings.

“(3) The Court may, on application, vary or revoke an order made under subsection (2).”.

Effect of order of discharge

10. Section 153 of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (2) (b); and
- (b) by adding at the end of subsection (2) the following word and paragraph:
 - “; or (d) release the bankrupt from any liability under a pecuniary penalty order or interstate pecuniary penalty order.”.

PART III—AMENDMENTS OF THE CHEQUES AND PAYMENT ORDERS ACT 1986

Principal Act

11. The *Cheques and Payment Orders Act 1986*² is in this Part referred to as the Principal Act.

How paid cheque to be dealt with

12. Section 68 of the Principal Act is amended:

- (a) by inserting in paragraph (3) (a) “relevant” before “cheque” (first occurring);
- (b) by omitting from subsection (3) all the words from and including “as the case requires” and substituting the following:
 - “as the case requires (in subsections (4) and (5) referred to as the ‘relevant financial institution’), shall, subject to subsection (4), retain the cheque, or a copy of the cheque, on behalf of the drawee bank, for the period ending 7 years after the date of the cheque.”;
- (c) by inserting after subsection (3) the following subsections:
 - “(3A) Where a bank obtains possession of a relevant cheque drawn on the bank, the bank:
 - (a) shall, subject to subsection (5), retain the cheque; or
 - (b) shall retain a copy of the cheque;for the period ending 7 years after the date of the cheque.
 - “(3B) Where a bank, pursuant to a request under subsection (4), obtains possession of a copy of a relevant cheque drawn on the bank, the bank shall retain a copy of the cheque for the period ending 7 years after the date of the cheque.”;
- (d) by inserting in subsection (4) “, or a copy of the cheque,” after “while the cheque”;
- (e) by inserting in subsection (4) “on behalf of the drawee bank” after “institution” (first occurring);
- (f) by inserting in subsection (4) “or otherwise” after “subsection (3)”;
- (g) by inserting in subsection (4) “, or the copy,” after “deliver up the cheque”;

(h) by omitting subsection (5) and substituting the following subsection:

“(5) Nothing in this section shall be taken to affect:

- (a) any right that a person (including the drawer) has, against the drawee bank or relevant financial institution, to possession of the cheque; or
- (b) any obligation that the relevant financial institution would have, apart from this section, to retain the cheque.”; and

(j) by adding at the end the following subsections:

“(7) A financial institution that fails to retain a cheque, or a copy of a cheque, as required by subsection (3), (3A) or (3B), is guilty of an offence against this section punishable, upon conviction, by a fine not exceeding \$10,000.

“(8) A reference in this section to the date of a cheque is, in the case of a cheque that is undated, a reference to the date of issue of the cheque.

“(9) In this section:

‘copy’, in relation to a cheque, includes a document in which there is recorded the information contained in the cheque;

‘public authority’ means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by a law of the Commonwealth or of a State and includes a body corporate incorporated under a law of the Commonwealth or of a State being a body corporate in which the Commonwealth or a State has a controlling interest;

‘relevant cheque’ means a cheque other than:

- (a) a cheque drawn by a public authority; or
- (b) a cheque whose amount does not exceed \$200 or such higher amount as is specified by the regulations for the purposes of this definition;

‘State’ includes the Northern Territory.”.

How paid payment orders to be dealt with

13. Section 112 of the Principal Act is amended:

(a) by inserting in paragraph (3) (a) “relevant” before “payment order” (first occurring);

(b) by omitting from subsection (3) all the words from and including “as the case requires” and substituting the following:

“as the case requires (in subsections (4) and (5) referred to as the ‘relevant financial institution’), shall, subject to subsection (4), retain the payment order, or a copy of the payment order, on behalf of the drawee non-bank financial institution, for the period ending 7 years after the date of the payment order.”;

(c) by inserting after subsection (3) the following subsections:

“(3A) Where a non-bank financial institution obtains possession of a relevant payment order drawn on the non-bank financial institution, the non-bank financial institution:

- (a) shall, subject to subsection (5), retain the payment order; or
- (b) shall retain a copy of the payment order;

for the period ending 7 years after the date of the payment order.

“(3B) Where a non-bank financial institution, pursuant to a request under subsection (4), obtains possession of a copy of a relevant payment order drawn on the non-bank financial institution, the non-bank financial institution shall retain a copy of the payment order for the period ending 7 years after the date of the payment order;

- (d) by inserting in subsection (4) “, or a copy of the payment order,” after “while the payment order”;
- (e) by inserting in subsection (4) “on behalf of the drawee non-bank financial institution” after “institution” (second occurring);
- (f) by inserting in subsection (4) “or otherwise” after “subsection (3)”;
- (g) by inserting in subsection (4) “, or the copy,” after “deliver up the payment order”;
- (h) by omitting subsection (5) and substituting the following subsection:

“(5) Nothing in this section shall be taken to affect:

- (a) any right that a person (including the drawer) has, as against the drawee non-bank financial institution or the relevant financial institution, to possession of the payment order; or
 - (b) any obligation that the relevant financial institution would have, apart from this section, to retain the payment order.”;
- and

- (j) by adding at the end the following subsections:

“(7) A financial institution that fails to retain a payment order, or a copy of a payment order, as required by subsection (3), (3A) or (3B) is guilty of an offence against this section punishable, upon conviction, by a fine not exceeding \$10,000.

“(8) A reference in this section to the date of a payment order is, in the case of a payment order that is undated, a reference to the date of issue of the payment order.

“(9) In this section:

‘copy’, in relation to a payment order, includes a document in which there is recorded the information contained in the payment order;

‘public authority’ means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by a law of the Commonwealth or of a State and includes a body corporate incorporated under a law of the

Commonwealth or of a State being a body corporate in which the Commonwealth or a State has a controlling interest;
'relevant payment order' means a payment order other than:
 (a) a payment order drawn by a public authority; or
 (b) a payment order whose amount does not exceed \$200 or such higher amount as is specified by the regulations for the purposes of this definition;
'State' includes the Northern Territory."

PART IV—AMENDMENTS OF THE CRIMES ACT 1914

Principal Act

14. The *Crimes Act 1914*³ is in this Part referred to as the Principal Act.

Enforcement of fines etc.

15. Section 18A of the Principal Act is amended by inserting in subsection (2) "(other than pecuniary penalties imposed by pecuniary penalty orders made under the *Proceeds of Crime Act 1987*)" after "pecuniary penalties".

Fabricating evidence

16. Section 36 of the Principal Act is amended by omitting "2" and substituting "5".

Destroying evidence

17. Section 39 of the Principal Act is amended by omitting "2" and substituting "5".

Attempting to pervert justice

18. Section 43 of the Principal Act is amended by omitting "2" and substituting "5".

NOTES

1. No. 33, 1966, as amended. For previous amendments, see No. 121, 1968; No. 40, 1969; No. 122, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; Nos. 91 and 161, 1976; No. 111, 1977; No. 155, 1979; Nos. 12 and 70, 1980; Nos. 74 and 176, 1981; No. 18, 1983; Nos. 10 and 63, 1984; Nos. 21 and 193, 1985; and Nos. 154 and 168, 1986.
2. No. 145, 1986.
3. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos. 33 and 216, 1973; No. 56, 1975; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; and Nos. 76, 102 and 168, 1986.

Proceeds of Crime (Miscellaneous Amendments) No. 73, 1987

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