Proceeds of Crime Act 1987

Act No. 87 of 1987 as amended

This compilation was prepared on 3 March 2005
taking into account amendments up to Act No. 8 of 2005

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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Contents

Part I—Preliminary 1

1 Short title [*see* Note 1] 1
2 Commencement [*see* Note 1] 1
3 Principal objects 1
4 Interpretation 2
5 Meaning of *conviction* etc. of offence 11
6 Meaning of *absconding* 13
7 Meaning of *public fraud offence* and *serious offence* 14
8 Related offences 15
9 Meaning of *dealing with property* 15
9A Effective control of property 16
10 Appropriate court in relation to indictable offence 16
11 Act to bind Crown 16
12 Act to apply both within and outside Australia 17
13 Application 17
13A Application of the *Criminal Code* 17

Part II—Confiscation 18

Division 1—Application for confiscation order 18

14 Application for confiscation order 18
15 Notice of application 19
16 Amendment of application 20
17 Making of confiscation order where person has absconded 21
18 Procedure on application 21

Division 2—Forfeiture orders 23

19 Forfeiture orders 23
20 Effects of forfeiture order 24
21 Effect of forfeiture order on third parties 27
22 Discharge of forfeiture order on appeal or by quashing of conviction 28

Division 2A—Registered foreign and international forfeiture orders 31

23 Registered foreign and international forfeiture orders 31
23A Effect on third parties of registration of foreign or international forfeiture order 31

Division 3—Pecuniary penalty orders 35

24 Application of Division 35
25 Special provisions in relation to serious offences 35
26 Pecuniary penalty orders 35
27 Assessment of pecuniary penalty 37

ComLaw Authoritative Act C2005C00153

28 Court may lift corporate veil etc. 41
29 Amounts paid in respect of registered foreign pecuniary penalty orders 42

Division 4—Forfeiture in case of serious offence 43

30 Forfeiture of all restrained property if person convicted of serious offence 43
30A Extension of waiting period 46
31 Recovery of property to which section 30 applies 47
32 Effect of quashing of conviction 50

Division 5—Miscellaneous 52

33 Person with interest in forfeited property may buy back the interest 52
34 Buying out other interests in forfeited property 53

Part IIA—Confiscated Assets Special Account 54

34A Confiscated Assets Special Account 54
34B Credits to Confiscated Assets Special Account 54
34C Debits from the Confiscated Assets Special Account 55
34D Debiting balance of distributable funds standing to the credit of Confiscated Assets Special Account 56
34E Determinations by Official Trustee about suspended and distributable funds 56

Part III—Control of property liable to confiscation 57

Division 1—Search powers 57

35 Powers to search for, and seize, tainted property 57
36 Search warrants in relation to tainted property 58
37 Search warrants may be granted by telephone 60
38 Searches in emergencies 62
39 Responsibility for seized property 63
40 Return of seized property 64
41 Issue of search warrants by Territory courts in relation to interstate indictable offences 67
42 Search for and seizure of tainted property in relation to foreign offences 68

Division 2—Restraining orders 72

43 Restraining orders 72
44 Grounds for making restraining order 74
45 Notice of application for restraining order 77
45A Extension of certain restraining orders 77
46 Persons who may appear and adduce evidence 78
47 Notice of restraining orders 78
48 Court may make further orders 78

ComLaw Authoritative Act C2005C00153

48A Order for taxation of legal expenses to be met out of restrained property ... 83
49 Official Trustee to discharge pecuniary penalty ... 84
50 Charge on property subject to restraining order ... 88
51 Registration of restraining orders ... 89
52 Contravention of restraining orders ... 90
54 Protection of Official Trustee from personal liability in certain cases ... 91
55 Costs etc. payable to Official Trustee ... 92
56 Court may revoke restraining orders ... 92
57 When restraining order ceases to be in force ... 93
58 Notice of applications under this Division ... 97
59 Interim restraining order may be made in respect of foreign offence ... 97
60 Registered foreign restraining orders—general ... 99
61 Registered foreign restraining orders—court may direct Official Trustee to take custody and control of property ... 100
62 Registered foreign restraining orders—undertakings ... 101
63 Discharge of certain registered foreign pecuniary penalty orders ... 101
64 Registered foreign restraining orders—charge on property subject to order ... 103
65 Registered foreign restraining orders—time when order ceases to be in force ... 105

Part IV—Information gathering powers 106

Division 1—Production orders 106

66 Production orders ... 106
67 Variation of production orders ... 109
68 Failure to comply with production order ... 110
69 Production orders in relation to foreign offences ... 110

Division 2—Search powers 112

70 Powers to search for, and seize, documents relevant to locating etc. property ... 112
71 Search warrant for location etc. of property ... 112
72 Search warrants in relation to foreign offences ... 115

Division 3—Monitoring orders 117

73 Monitoring orders ... 117
74 Existence and operation of monitoring order not to be disclosed ... 118
75 Monitoring orders in relation to foreign offences ... 120

ComLaw Authoritative Act C2005C00153

Part V—Offences 122

Division 3—Miscellaneous 122

84 Prosecution of offences 122
85 Conduct by directors, servants or agents 122

Part VI—Enforcement of State orders in Territories 124

Division 1—Interstate restraining orders 124

86 Registration of interstate restraining orders 124
87 Effect of registration 124
88 Duration of registration 125
89 Cancellation of registration 125
90 Charge on property subject to registered interstate restraining order 125
91 Powers of Official Trustee in relation to interstate restraining orders 127

Division 2—Interstate forfeiture orders 128

92 Registration of interstate forfeiture orders 128
93 Effect of registration 128
94 Duration of registration 128
95 Cancellation of registration 129

Division 3—Miscellaneous 130

96 Interim registration of facsimile copies 130

Part VII—Miscellaneous 131

96A Organised fraud orders 131
97 Dealings with forfeited property 132
98 State and Territory courts to have jurisdiction 133
99 Standard of proof 134
100 Appeals 134
101 Costs 135
102 Legal assistance 136
102A Indemnification of Official Trustee 136
103 Operation of other laws not affected 137
104 Regulations 137

Notes 139

ComLaw Authoritative Act C2005C00153

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

Part I—Preliminary

1 Short title [*see* Note 1]

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

2 Commencement [*see* Note 1]

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

3 Principal objects

(1) The principal objects of this Act are:

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

(b) to provide for the forfeiture of property used in or in connection with the commission of such offences; and

(c) to enable law enforcement authorities effectively to trace such proceeds, benefits and property.

(2) The objects of this Act include the objects of:

(a) providing for the enforcement in the Territories of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of offences against the laws of the States;

(b) facilitating the enforcement in Australia, pursuant to the Mutual Assistance Act, of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of foreign serious offences; and

(c) assisting foreign countries, pursuant to the Mutual Assistance Act, to trace the proceeds of, benefits derived from and property used in or in connection with the commission of foreign serious offences.

ComLaw Authoritative Act C2005C00153

4 Interpretation

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

ACC means the Australian Crime Commission.

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

(a) a fixed term deposit; and

(b) a safety deposit box.

ADI (authorised deposit-taking 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 person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

AFP member means a member or special member of the Australian Federal Police.

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

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

approved means approved by the Minister in writing for the purposes of the provision in which the term occurs.

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

Bankruptcy Act means the *Bankruptcy Act 1966*.

benefit includes service or advantage.

commencement of the Proceeds of Crime Act 2002 means the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*.

Commissioner means the Commissioner of the Australian Federal Police.

ComLaw Authoritative Act C2005C00153

Confiscated Assets Special Account means the Account continued in existence under section 34A.

confiscation order means a forfeiture order or a pecuniary penalty order.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

corresponding law means a law of a State that is declared by the regulations to be a law that corresponds to this Act.

Crimes Act means the *Crimes Act 1914*.

criminal investigation, in relation to a foreign serious offence, has the same meaning as in the Mutual Assistance Act.

criminal proceeding, in relation to a foreign serious offence, has the same meaning as in the Mutual Assistance Act.

Customs Act means the *Customs Act 1901*.

Customs officer means an officer of Customs within the meaning of the Customs Act.

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

(a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory—a constituent member of the body corporate;

(b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act.

ComLaw Authoritative Act C2005C00153

distributable funds means amounts standing to the credit of the Confiscated Assets Special Account that is:

(a) identified as distributable funds in accordance with the regulations (other than such money as is identified by the Official Trustee under subsection 34E(2) as suspended funds); or

(b) identified by the Official Trustee under subsection 34E(3) as distributable funds.

DPP means the Director of Public Prosecutions.

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

equitable sharing program means an arrangement under which any or all of the following happen:

(a) the Commonwealth shares with a participating State a proportion of any proceeds of any unlawful activity recovered under a Commonwealth law, where, in the opinion of the Attorney-General, that State 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 shares with the Commonwealth any proceeds resulting from a breach of the criminal law of that State where, in the opinion of the appropriate Minister of that State, officers of a law enforcement agency of the Commonwealth 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 recovered under a Commonwealth law where, in the opinion of the Attorney-General, the foreign country has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the unlawful activity.

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.

ComLaw Authoritative Act C2005C00153

facsimile copy means a copy obtained by facsimile transmission.

financial institution means:

(a) an ADI; or

(b) a co-operative housing society; or

(d) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51(xx) of the Constitution.

fixed term deposit means an interest bearing deposit lodged for a fixed period.

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

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

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

foreign serious offence has the same meaning as in the Mutual Assistance Act.

forfeiture order means an order under subsection 19(1).

GBE means a prescribed government business enterprise.

indictable offence means an offence against a law of the Commonwealth, or a law of a Territory, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

interest, in relation to property, means:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent.

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

interstate indictable offence means an offence against a law of a State, being an offence in relation to which an interstate forfeiture

ComLaw Authoritative Act C2005C00153

order or an interstate pecuniary penalty order may be made under a corresponding law of that State.

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

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

law enforcement authority means the Australian Federal Police or the ACC.

magistrate includes a justice of the peace.

magistrate's court means a court of summary jurisdiction constituted by a Stipendiary Magistrate, a Police Magistrate or a Special Magistrate.

Mutual Assistance Act means the *Mutual Assistance in Criminal Matters Act 1987*.

narcotic substance means:

(a) a narcotic substance within the meaning of the Customs Act; or

(b) a substance declared by the regulations to be a substance to which this definition applies.

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

Official Trustee means the Official Trustee in Bankruptcy.

ordinary indictable offence means an indictable offence that is not a serious offence.

pecuniary penalty order means an order under subsection 26(1).

penalty amount, in relation to a pecuniary penalty order against a person, means the amount that the person is liable to pay the Commonwealth under the order.

petition means a petition under the Bankruptcy Act.

police officer means:

ComLaw Authoritative Act C2005C00153

(a) an AFP member; or

(b) a member of the police force of a State or Territory.

premises includes:

(a) a structure, building, aircraft, vehicle or vessel;

(b) a place (whether enclosed or built upon or not); and

(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

prescribed officer means an SES employee or acting SES employee in the Attorney-General's Department.

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

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

(b) in any other case—the time that is 48 hours after the time of the issue of the warrant.

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

proceeds of confiscated assets means the following:

(a) the remainder of the proceeds referred to in paragraph 9A(c) of the *Crimes Act 1914*;

(b) the money referred to in paragraph 208DA(3)(a) of the *Customs Act 1901*;

(c) the remainder of the proceeds referred to in paragraph 208DA(3)(b) of the *Customs Act 1901*;

(d) the amount referred to in subsection 243B(4) of the *Customs Act 1901*;

(e) the remainder of the money referred to in paragraph 243G(6)(a) of the *Customs Act 1901*;

(f) the remainder of the proceeds referred to in paragraph 243G(6)(b) of the *Customs Act 1901*;

(g) the remainder of the money referred to in subparagraph 20(3)(b)(i);

ComLaw Authoritative Act C2005C00153

(h) the remainder of the proceeds referred to in subparagraph 20(3)(b)(ii);
(i) the amount referred to in subsection 26(8);
(j) the remainder of the money referred to in subparagraph 30(4)(b)(i);
(k) the remainder of the proceeds referred to in subparagraph 30(4)(b)(ii);
(l) an amount referred to in subsection 33(1) or (2);
(m) an amount referred to in paragraph 34(f);
(n) the remainder of the money referred to in paragraph 49(6)(a);
(o) the remainder of the proceeds referred to in paragraph 49(6)(b);
(p) the remainder of the money referred to in paragraph 63(4)(a);
(q) the remainder of the proceeds referred to in paragraph 63(4)(b).

production order means an order under section 66.

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

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

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

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

ComLaw Authoritative Act C2005C00153

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

(a) where the person is to be taken to have been convicted of the offence by reason of paragraph 5(1)(a)—the day on which the person was convicted of the offence;

(b) where the person is to be taken to have been convicted of the offence by reason of paragraph 5(1)(b)—the day on which the person was discharged without conviction;

(c) where the person is to be taken to have been convicted of the offence by reason of paragraph 5(1)(c)—the day on which the court took the offence into account in passing sentence for the other offence referred to in that paragraph; or

(d) where the person is to be taken to have been convicted of the offence by reason of paragraph 5(1)(d)—the day on which the person is to be taken to have absconded in connection with the offence.

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

relevant Supreme Court means:

(a) in relation to property seized under a warrant issued under Division 1 of Part III—the Supreme Court of the State or Territory in which an information in respect of the relevant offence has been, or is to be, laid;

(b) in relation to property seized under section 38—the Supreme Court of the State or Territory in which an information in respect of the relevant offence has been laid; or

(c) in relation to a person's conviction of an offence or the charging, or proposed charging, of a person with an offence—the Supreme Court of the State or Territory in which the person has been convicted or has been, or is to be, charged with the offence.

restraining order means an order under subsection 43(2).

State includes the Australian Capital Territory and the Northern Territory.

ComLaw Authoritative Act C2005C00153

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

suspended funds means amounts standing to the credit of the Confiscated Assets Special Account that is:

(a) identified as suspended funds in accordance with the regulations (other than such money as is identified by the Official Trustee under subsection 34E(3) as distributable funds); or

(b) identified by the Official Trustee under subsection 34E(2) as suspended funds.

tainted property, in relation to an offence, means:

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

(b) proceeds of the offence;

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

Territory does not include the Australian Capital Territory or the Northern Territory.

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

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

(a) a summons to require the attendance of the person to answer the information has been issued; or

(b) a warrant for the apprehension of the person has been issued.

(3) A reference in this Act to a benefit derived by a person includes a reference to:

(a) a benefit derived, directly or indirectly, by the person; and

(b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

(3A) For the purposes of this Act, in determining whether a person has derived substantial benefit from the commission of 2 or more

ComLaw Authoritative Act C2005C00153

public fraud offences, have regard to the aggregate of the benefits derived by the person from the commission of those offences.

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

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

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

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

(8) For the purposes of this Act, a person shall not be regarded as a director within the meaning of paragraph (c) of the definition of ***director*** in subsection (1) by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or corporation, as the case may be.

5 Meaning of *conviction* etc. of offence

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

(a) the person is convicted, whether summarily or on indictment, of the offence;

(b) the person is charged with, and found guilty of, the offence but is discharged without conviction;

(c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence; or

(d) the person absconds in connection with the offence.

ComLaw Authoritative Act C2005C00153

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

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

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

(c) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(c)—if either of the following events occur:

(i) the person's conviction of the other offence referred to in that paragraph is quashed or set aside;

(ii) the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside; or

(d) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(d)—if, after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.

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

(a) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(a)—the person was convicted of the offence in a court in that State or Territory;

(b) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(b)—the person was discharged without conviction by a court in that State or Territory;

(c) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(c)—the offence was taken into account by a court in that State or Territory in passing sentence on the person for the other offence referred to in that paragraph; or

(d) where the person is to be taken to have been convicted of the offence by reason of paragraph (1)(d)—the information alleging the commission of the offence by the person was laid in that State or Territory.

ComLaw Authoritative Act C2005C00153

(4) For the purposes of this Act, where a person is to be taken to have been convicted of an offence in a particular State or Territory by reason of paragraph (3)(d), the person shall be taken to have been so convicted before the Supreme Court of that State or Territory.

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

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

6 Meaning of *absconding*

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

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

(b) a warrant for the arrest of the person is issued in relation to that information; and

(c) one of the following occurs:

(i) the person dies without the warrant being executed;

(ii) at the end of the period of 6 months commencing on the day on which the warrant is issued:

(A) the person cannot be found; or

(B) the person is, for any other reason, not amenable to justice and, if the person is outside Australia, extradition proceedings are not on foot;

(iii) at the end of the period of 6 months commencing on the day on which the warrant is issued:

(A) the person is, by reason of being outside Australia, not amenable to justice; and

(B) extradition proceedings are on foot;

and subsequently those proceedings terminate without an order for the person's extradition being made.

ComLaw Authoritative Act C2005C00153

7 Meaning of *public fraud offence* and *serious offence*

(1) In this Act:

public fraud offence means any of the following:

(a) an offence against section 134.1, 134.2, 135.1 or 135.4 of the *Criminal Code*;

(b) an offence against repealed section 29D or 86A of the Crimes Act committed after the commencement of this Act;

(c) an offence against section 5, 6, 7 or 8 of the *Crimes (Taxation Offences) Act 1980* committed after the commencement of this Act;

(d) an ancillary offence in relation to an offence covered by paragraph (b) or (c).

serious offence means:

(a) a serious narcotics offence; or

(b) a money laundering offence in relation to the proceeds of a serious narcotics offence; or

(c) an ancillary offence in relation to an offence covered by paragraph (a) or (b); or

(d) an offence that is the subject of a declaration under section 96A.

(1A) Paragraph (d) of the definition of ***serious offence*** in subsection (1) has effect subject to subsections 96A(2), (4) and (6).

(2) In this section:

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

(a) an offence of conspiring to commit the main offence;

(b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the main offence;

(c) an offence of receiving or assisting another person in order to enable the person to escape punishment for, or to dispose of the proceeds of, the main offence; or

(d) an offence of attempting to commit the main offence.

money laundering offence means an offence against section 81.

ComLaw Authoritative Act C2005C00153

possession includes possession for supply.

production includes growing and manufacture.

serious narcotics offence means an offence:

(a) constituted by the production, possession, supply, importation or export of a narcotic substance; and

(b) involving a quantity of the narcotic substance that is equal to or greater than the trafficable quantity applicable to the narcotic substance.

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

(a) if paragraph (b) does not apply—a trafficable quantity of the substance within the meaning of the Customs Act; or

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

(3) To avoid doubt, express references in this section to ancillary offences do not imply that section 11.6 of the *Criminal Code* has no application to a particular provision of this Act.

8 Related offences

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

9 Meaning of *dealing with property*

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

(a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt;

(b) removing the property from Australia; and

(c) receiving or making a gift of the property.

ComLaw Authoritative Act C2005C00153

9A Effective control of property

(1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act 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) Without limiting the generality of any other provision of this Act, in determining:

(a) whether or not property, or an interest in property, is subject to the effective control of a person; or

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

regard may be had to:

(c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(d) a trust that has a relationship to the property; and

(e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in paragraph (c) or trusts of the kind referred to in paragraph (d), and other persons.

10 Appropriate court in relation to indictable offence

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

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

11 Act to bind Crown

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

ComLaw Authoritative Act C2005C00153

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

12 Act to apply both within and outside Australia

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

13 Application

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

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

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

(a) an offence committed, or believed to have been committed, at any time (whether before or after the commencement of this Act); and

(b) a person's conviction at any time of an offence (whether before or after the commencement of this Act).

13A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

ComLaw Authoritative Act C2005C00153

Part II—Confiscation

Division 1—Application for confiscation order

14 Application for confiscation order

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

(a) a forfeiture order against property that is tainted property in respect of the offence;

(b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

(2) The DPP:

(a) is not empowered to make an application after the end of the relevant application period in relation to the conviction; and

(b) is not empowered to make an application after the commencement of the *Proceeds of Crime Act 2002* unless some or all of the property which could be used to satisfy the order is property in respect of which a restraining order is in force.

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

(a) an application has previously been made:

(i) under that subsection;

(ii) under another law of the Commonwealth; or

(iii) under a law of a Territory;

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

(b) the application has been finally determined on the merits;

except with the leave of the court.

(4) The DPP is not empowered to make an application to a court under subsection (1) for a pecuniary penalty order against a person in

ComLaw Authoritative Act C2005C00153

respect of benefits derived by the person from the commission of an offence if:

(a) an application has previously been made:

(i) under that subsection;

(ii) under another law of the Commonwealth; or

(iii) under a law of a Territory;

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

(b) the application has been finally determined on the merits;

except with the leave of the court.

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

(a) the tainted property, or the benefit, to which the new application relates was identified only after the first application was determined;

(b) necessary evidence became available only after the first application was determined; or

(c) the court is otherwise satisfied that it is in the interests of justice to grant the leave.

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

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

15 Notice of application

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

(a) the DPP shall give written notice of the application to the person and to any other person the DPP has reason to believe may have an interest in the property;

(b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and

(c) the court may, at any time before the final determination of the application, direct the DPP to give or publish notice of

ComLaw Authoritative Act C2005C00153

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

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

(a) the DPP shall give the person written notice of the application; and

(b) the person may appear and adduce evidence at the hearing of the application.

16 Amendment of application

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

(a) on application by the DPP; or

(b) with the consent of the DPP.

(2) The court shall not amend the application so as to:

(a) include additional property in an application for a forfeiture order; or

(b) include an additional benefit in an application for a pecuniary penalty order;

unless the court is satisfied that:

(c) the property or benefit was not reasonably capable of identification when the application was originally made; or

(d) necessary evidence became available only after the application was originally made.

(3) Where:

(a) the DPP applies to amend an application for a forfeiture order; and

(b) the amendment would have the effect of including additional property in the application for the forfeiture order;

then:

(c) the DPP shall give written notice of the application to amend to any person who the DPP has reason to believe may have an interest in property to be included in the application for the forteiture order; and

ComLaw Authoritative Act C2005C00153

(d) any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

(4) Where:

(a) the DPP applies to amend an application for a pecuniary penalty order against a person; and

(b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order;

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

17 Making of confiscation order where person has absconded

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

(a) the person has been committed for trial for the offence; or

(b) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

18 Procedure on application

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

(2) Where:

(a) an application is made for a confiscation order in respect of a person's conviction of an offence;

(b) the application is made to the court before which the person was convicted; and

ComLaw Authoritative Act C2005C00153

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

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

(3) Where:

(a) a person is to be taken to have been convicted of an offence by reason of paragraph 5(1)(c); and

(b) an application is made to a court for a confiscation order in respect of the conviction;

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

ComLaw Authoritative Act C2005C00153

Division 2—Forfeiture orders

19 Forfeiture orders

(1) Where:

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

(b) the court is satisfied that the property is tainted property in respect of the offence;

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

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

(3) In considering whether it is appropriate to make a forfeiture order in respect of particular property, the court may have regard to:

(a) any hardship that may reasonably be expected to be caused to any person by the operation of such an order; and

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

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

(5) A court that makes a forfeiture order against property may, if it is satisfied that:

(a) it would not be contrary to the public interest for a person's interest in the property to be transferred to the person; and

(b) there is no other reason why the person's interest in the property should not be transferred to that person;

by order:

(c) declare the nature, extent and value (as at the time when the order is made) of the interest; and

ComLaw Authoritative Act C2005C00153

(d) declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged as provided by section 33.

(6) Where:

(a) the DPP applies for a forfeiture order against particular property in reliance on a person's conviction of an offence; and

(b) evidence is given, at the hearing of the application, that the property was in the person's possession at the time of, or immediately after, the commission of the offence;

then:

(c) if no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offence—the court shall presume that the property was used in, or in connection with, the commission of the offence; or

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

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

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

20 Effects of forfeiture order

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

(2) Where a forfeiture order is made against registrable property:

(a) the property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with;

ComLaw Authoritative Act C2005C00153

(b) the Commonwealth is entitled to be registered as owner of the property; and

(c) the Minister has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(2A) If a forfeiture order has been made against registrable property:

(a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and

(b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (3)(a).

(3) Where a court makes a forfeiture order against property:

(a) the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Commonwealth, before the relevant time; and

(b) if, at the relevant time, the order has not been discharged, then, subject to any direction under subsection (3A), the Official Trustee must, as soon as practicable after the relevant time:

(i) if the property is money—after paying the Official Trustee's remuneration and other costs, charges and expenses of the kind referred to in subsection 55(1) payable to or incurred by it in connection with the restraining order, credit the amount of the remainder of the money to the Confiscated Assets Special Account as required by section 34B; and

(ii) if the property is not money—sell or otherwise dispose of the property and, after paying the Official Trustee's remuneration and other costs, charges and expenses of the kind referred to in subsection 55(1) payable to or incurred by it in connection with the restraining order or the sale or disposition, credit the amount of the

ComLaw Authoritative Act C2005C00153

remainder of those proceeds to the Confiscated Assets Special Account as required by section 34B.

(3A) Where a court makes a forfeiture order against property, the Attorney-General, or a prescribed officer authorised by the Attorney-General for the purposes of this subsection, may, at or after the relevant time but before the property is dealt with under paragraph (3)(b), direct that the property be disposed of, or otherwise dealt with, as specified in the direction.

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

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

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

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

(6) In this section:

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

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

(b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined.

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

(a) the end of the appeal period in relation to the making of the forfeiture order; or

ComLaw Authoritative Act C2005C00153

(b) the end of the appeal period in relation to the person's conviction;

whichever is the later.

21 Effect of forfeiture order on third parties

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

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

(3) A person who:

(a) was given notice of the application for the forfeiture order; or

(b) appeared at the hearing of the application;

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

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

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

(a) the person, for a good reason, did not attend the hearing of the application for the forfeiture order although the person had notice of the application; or

(b) particular evidence proposed to be adduced by the person in connection with the application under subsection (2) was not available to the person at the time of the hearing of the application for the forfeiture order.

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

(a) the applicant was not, in any way, involved in the commission of an offence in respect of which forfeiture of the property is sought, or the forfeiture order against the property was made, as the case requires; and

ComLaw Authoritative Act C2005C00153

(b) if the applicant acquired the interest at the time of or after the commission of such an offence—the applicant acquired the interest:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property;

the court shall make an order:

(c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest; and

(d) either:

(i) if the interest is still vested in the Commonwealth—directing the Commonwealth to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

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

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

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

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

22 Discharge of forfeiture order on appeal or by quashing of conviction

(1) Where:

ComLaw Authoritative Act C2005C00153

(a) a court makes a forfeiture order against property in reliance on a person's conviction of an offence; and

(b) the conviction is subsequently quashed;

the quashing of the conviction discharges the order.

(1A) This section does not apply if the conviction is quashed after the commencement of the *Proceeds of Crime Act 2002*.

Note: Division 6 of Part 2-2 of the *Proceeds of Crime Act 2002* applies in relation to convictions quashed after that commencement: see subitem 21(1) of Schedule 7 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

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

(a) as soon as practicable after the discharge of the order, give written notice of the discharge of the forfeiture order to any person the DPP has reason to believe may have had an interest in the property immediately before the making of the forfeiture order; and

(b) if required to do so by a court—give or publish notice of the discharge of the forfeiture order to a specified person or class of persons in the manner and within the time that the court considers appropriate.

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

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

(a) if the interest is still vested in the Commonwealth—the Minister shall arrange for the interest to be transferred to the person; or

(b) in any other case—there is payable to the person an amount equal to the value of the interest.

ComLaw Authoritative Act C2005C00153

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

ComLaw Authoritative Act C2005C00153

Division 2A—Registered foreign and international forfeiture orders

23 Registered foreign and international forfeiture orders

(1) If:

(a) a foreign forfeiture order is registered in a court in Australia under the Mutual Assistance Act; or

(b) an order is registered in a court in Australia under section 45 of the *International War Crimes Tribunals Act 1995*;

Division 2 applies in relation to the order as if subsections 19(5) and 20(3), (4), (5) and (6) and sections 21 and 22 were omitted.

(2) If:

(a) a foreign forfeiture order against property is registered in a court in Australia under the Mutual Assistance Act; or

(b) an order against property is registered in a court in Australia under section 45 of the *International War Crimes Tribunals Act 1995*;

the property may, subject to section 23A, be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.

23A Effect on third parties of registration of foreign or international forfeiture order

(1) This section applies where, after the commencement of this section, a court in Australia registers under the Mutual Assistance Act a foreign forfeiture order against property.

(1A) This section also applies if a court registers under section 45 of the *International War Crimes Tribunals Act 1995* an order against property.

ComLaw Authoritative Act C2005C00153

(2) On registering the foreign or international forfeiture order, the court shall direct the DPP to give or publish notice of the registration:

(a) to specified persons (other than a person convicted of a foreign or international offence in respect of which the order was made) the court has reason to believe may have an interest in the property; and

(b) in the manner and within the time the court considers appropriate.

(3) A person (other than a person convicted of a foreign or international offence in respect of which the foreign or international forfeiture order was made) who claims an interest in the property may apply to the court for an order under subsection (7).

(4) A person who was given notice of, or appeared at, the hearing held in connection with the making of the foreign or international forfeiture order is not entitled, except with the leave of the court, to apply under subsection (3).

(5) The court may grant leave under subsection (4) if satisfied that there are special grounds for doing so.

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

(a) the person, for a good reason, did not attend the hearing referred to in subsection (4) although the person had notice of the hearing; or

(b) particular evidence that the person proposes to adduce in connection with the proposed application under subsection (3) was not available to the person at the time of the hearing referred to in subsection (4).

(7) If, on an application for an order under this subsection, the court is satisfied that:

(a) the applicant was not, in any way, involved in the commission of a foreign or international offence in respect of which the foreign or international forfeiture order was made; and

ComLaw Authoritative Act C2005C00153

(b) if the applicant acquired his, her or its interest in the property at the time of or after the commission of such an offence—

the applicant acquired the interest:

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property in relation to a foreign or international offence;

the court shall make an order:

(c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and

(d) either:

(i) directing the Commonwealth to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

(8) Subject to subsection (9), an application under subsection (3) shall be made before the end of 6 weeks beginning on the day when the foreign or international forfeiture order is registered in the court.

(9) The court may grant a person leave to apply under subsection (3) outside the period referred to in subsection (8) if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

(10) A person who applies under subsection (3) shall give to the DPP and the Minister notice, as prescribed, of the application.

(11) The DPP shall be a party to proceedings on an application under subsection (3) and the Minister may intervene in such proceedings.

(12) In this section:

foreign or international forfeiture order means:

(a) the foreign forfeiture order mentioned in subsection (1) in relation to which this section applies; or

(b) the order mentioned in subsection (1A) in relation to which this section applies;

ComLaw Authoritative Act C2005C00153

as the case may be.

foreign or international offence means:

(a) a foreign serious offence; or

(b) a Tribunal offence within the meaning of the *International War Crimes Tribunals Act 1995*;

as the case requires.

ComLaw Authoritative Act C2005C00153

Division 3—Pecuniary penalty orders

24 Application of Division

This Division applies to:

(a) property that comes into the possession, or under the control, of a person either within or outside Australia and either before or after the commencement of this Act; and

(b) benefits that are provided to a person either within or outside Australia and either before or after the commencement of this Act.

25 Special provisions in relation to serious offences

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

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

26 Pecuniary penalty orders

(1) Where:

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

(b) the court is satisfied that the person derived benefits from the commission of the offence;

the court may, if it considers it appropriate:

(c) assess, in accordance with section 27, the value of the benefits so derived; and

(d) order the person to pay to the Commonwealth a pecuniary penalty equal to the penalty amount.

ComLaw Authoritative Act C2005C00153

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

(3) Where:

(a) property that is proceeds of the offence has been forfeited, under this Act or another law of the Commonwealth or under a law of a Territory, in relation to the offence; or

(b) a forfeiture order is proposed to be made against property that is proceeds of the offence;

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

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

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

(6) Where:

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

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

(c) an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made;

the DPP may apply to the court for a variation of the pecuniary penalty order to increase the penalty amount by the value of the

ComLaw Authoritative Act C2005C00153

property and the court may, if it considers it appropriate to do so, vary the order accordingly.

(7) Where:

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

(b) in calculating the penalty amount, the court took into account, in accordance with subsection (4), an amount of tax paid by the person; and

(c) an amount is repaid or refunded to the person in respect of that tax;

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

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

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

27 Assessment of pecuniary penalty

(1) In this section:

insolvency trustee means:

(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.

ComLaw Authoritative Act C2005C00153

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

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

(a) the money, or the value of the property other than money, that came into the possession or under the control of:

(i) the defendant; or

(ii) another person at the request or direction of the defendant;

by reason of the commission of the offence or any of the offences;

(b) the value of any other benefit provided to:

(i) the defendant; or

(ii) another person at the request or direction of the defendant;

by reason of the commission of the offence or any of the offences;

(c) if the offence or any of the offences consisted of the doing of an act or thing in relation to a narcotic substance:

(i) the market value, at the time of the offence, of similar or substantially similar narcotic substances; and

(ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing;

(d) the value of the defendant's property:

(i) where the application relates to a single offence—before, during and after the commission of the offence; or

(ii) where the application relates to 2 or more offences—before, during and after the offence period;

(e) the defendant's income and expenditure:

ComLaw Authoritative Act C2005C00153

(i) where the application relates to a single offence—before, during and after the commission of the offence; or

(ii) where the application relates to 2 or more offences—before, during and after the offence period.

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

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

(a) if, at the hearing of the application, evidence is given that the value of the person's property during or after the commission of the offence exceeded the value of the person's property before the commission of the offence, then, for the purposes of subsection 26(1), the court shall, subject to paragraphs (b) and (c) and subsection (7), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the greatest excess;

(b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) does not apply to the excess;

(c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

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

(a) if, at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period exceeded the value of the person's property

ComLaw Authoritative Act C2005C00153

before the offence period, then, for the purposes of subsection 26(1), the court shall, subject to paragraphs (b) and (c) and to subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;

(b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offences, paragraph (a) does not apply to the excess;

(c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offences, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

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

(a) all property of the person at the time the application is made; and

(b) all property of the person at any time:

(i) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or

(ii) within the period of 5 years immediately before the day on which the application is made;

whichever is the shorter;

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

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

(a) this Act;

(b) Division 3 of Part XIII of the Customs Act;

(c) a law of a Territory; or

(d) a law of a State.

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

ComLaw Authoritative Act C2005C00153

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

(9) For the purposes of this section, where property of a person vests in an insolvency trustee, the property shall be taken to continue to be the property of the person.

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

(a) with respect to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or

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

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

28 Court may lift corporate veil etc.

(1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person.

(3) On application by the DPP, a court may, if in its opinion particular property is subject to the effective control of a person against whom the court has made a pecuniary penalty order, make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.

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

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

ComLaw Authoritative Act C2005C00153

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the DPP makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person:

(a) the DPP shall give written notice of the application to the person and to any person who the DPP has reason to believe may have an interest in the property; and

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

29 Amounts paid in respect of registered foreign pecuniary penalty orders

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

ComLaw Authoritative Act C2005C00153

Division 4—Forfeiture in case of serious offence

30 Forfeiture of all restrained property if person convicted of serious offence

(1) If:

(a) a person (in this subsection called the ***defendant***) is convicted of a serious offence (otherwise than by reason of paragraph 5(1)(d));

(b) before the commencement of the *Proceeds of Crime Act 2002*, a restraining order is or was granted in respect of property (whether property of the defendant or of some other person) in reliance on:

(i) the defendant's conviction of that offence; or

(ii) the charging or proposed charging of the defendant with that offence or a related offence;

(c) the restraining order, to the extent to which it relates to the property, is not the subject of a declaration under subsection 48(4); and

(d) the restraining order is in force at the end of:

(i) the period of 6 months starting on the day of the conviction; or

(ii) if an order under section 30A is in force at the end of that period—the end of the extended period;

the property is, under this subsection, forfeited to the Commonwealth at the end of that period, or that extended period, as the case may be.

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

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

(a) the property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with;

ComLaw Authoritative Act C2005C00153

(b) the Commonwealth is entitled to be registered as owner of the property; and

(c) the Minister has power, on behalf of the Commonwealth, to do, or to authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3A) If registrable property has been forfeited to the Commonwealth because of subsection (1):

(a) the DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Commonwealth in the property; and

(b) any such action by or on behalf of the Commonwealth is not a dealing for the purposes of paragraph (4)(a).

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

(a) the property shall not, except with the leave of the court that made the relevant restraining order and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Commonwealth, before the end of the appeal period in respect of the conviction; and

(b) if, at the end of the appeal period in respect of the conviction, the conviction has not been quashed, then, subject to any direction under subsection (4A), the Official Trustee must, as soon as practicable after the end of the appeal period:

(i) if the property is money—after paying the Official Trustee's remuneration and other costs, charges and expenses of the kind referred to in subsection 55(1) payable to or incurred by it in connection with the restraining order, credit the amount of the remainder of the money to the Confiscated Assets Special Account as required by section 34B; and

(ii) if the property is not money—sell or otherwise dispose of the property and, after paying the Official Trustee's remuneration and other costs, charges and expenses of the kind referred to in subsection 55(1) payable to or

ComLaw Authoritative Act C2005C00153

incurred by it in connection with the restraining order or the sale or disposition, credit the amount of the remainder of those proceeds to the Confiscated Assets Special Account as required by section 34B.

(4A) Where property is forfeited under this section because of a person's conviction of a serious offence, the Attorney-General, or a prescribed officer authorised by the Attorney-General for the purposes of this subsection, may, at or after the end of the appeal period in respect of the conviction but before the property is dealt with under paragraph (4)(b), direct that the property be disposed of, or otherwise dealt with, as specified in the direction.

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

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

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

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

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

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

(8A) Where a court makes a restraining order in reliance on:

ComLaw Authoritative Act C2005C00153

(a) a person's conviction of a serious offence; or

(b) the charging or proposed charging of a person with such an offence;

a person may apply to the court for a declaration that property that was subject to the restraining order has been forfeited to the Commonwealth under subsection (1) and the court, if satisfied that the property has been forfeited to the Commonwealth under that subsection, shall make a declaration accordingly.

(9) In this section:

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

(a) if the period provided for the lodging of an appeal against the conviction has ended without such an appeal having been lodged—at the end of that period; or

(b) if an appeal against the conviction has been lodged—when the appeal lapses or is finally determined.

30A Extension of waiting period

(1) If:

(a) a person (the ***defendant***) is convicted of a serious offence; and

(b) a restraining order is or was granted in reliance on:

(i) the defendant's conviction of the offence; or

(ii) the charging or proposed charging of the defendant with the offence or a related offence; and

(c) a person makes a section 48 application in relation to the restraining order;

the person mentioned in paragraph (c) may apply to the court for an order extending the waiting period in relation to the defendant's conviction.

(2) Subsection (1) does not apply if the person is taken to have been convicted of the serious offence because of paragraph 5(1)(d).

(3) An application under this section must be made before the end of the waiting period concerned.

ComLaw Authoritative Act C2005C00153

(4) Subject to subsection (5), the court may, on an application made under this section, extend the waiting period for such further period as the court specifies. The further period must not, however, be longer than 9 months from the end of the waiting period concerned.

(5) The court must not grant an application under this section unless satisfied that the applicant made the section 48 application without undue delay, and has since diligently prosecuted that application.

(6) If the court extends a waiting period, the extended period ends:
   (a) when the period specified by the court ends; or
   (b) when the section 48 application is finally determined;
whichever happens first.

(7) If:
   (a) the court makes an order under this section; and
   (b) the section 48 application is finally determined within the period of 6 months starting on the day of the defendant's conviction;
the order under this section stops being in force on the day the section 48 application is finally determined.

(8) In this section:

section 48 application means an application under subsection 48(2), (3) or (4).

waiting period, in relation to a person's conviction of an offence, means the period of 6 months mentioned in subparagraph 30(1)(d)(i).

31 Recovery of property to which section 30 applies

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

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

ComLaw Authoritative Act C2005C00153

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

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

(a) proceedings on the application for the relevant restraining order; or

(b) the making of the relevant restraining order;

except with the leave of the court.

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

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

(a) if satisfied that:

(i) the applicant was not, in any way, involved in the commission of the relevant serious offence;

(ia) the applicant's interest in the property is not subject to the effective control of the defendant; and

(ii) if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest:

(A) for sufficient consideration; and

(B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or

(b) if satisfied that:

(i) the property was not used in, or in connection with, any unlawful activity and was not derived or realised, directly or indirectly, by any person from any unlawful activity; and

(ii) the applicant's interest in the property was lawfully acquired;

make an order:

ComLaw Authoritative Act C2005C00153

(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) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).

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

(a) it would not be contrary to the public interest for the interest to be transferred to the person; and

(b) there is no other reason why the interest should not be transferred to the person;

by order:

(c) declare the nature, extent and value (as at the time when the order is made) of the interest; and

(d) declare that section 30 shall cease to operate in relation to the interest if payment is made in accordance with section 33.

(7A) A person who makes an application under subsection (1) in respect of property shall give notice to the DPP and the Minister, as prescribed, of the making of the application.

(7B) The DPP shall be a party to any proceedings upon an application under subsection (1) and the Minister may intervene in any such proceedings.

(8) In this section:

defendant, in relation to property forfeited to the Commonwealth under section 30, means the person by virtue of whose conviction the property is forfeited.

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

ComLaw Authoritative Act C2005C00153

32 Effect of quashing of conviction

(1) Where:

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

(b) the conviction is subsequently quashed;

the DPP shall:

(c) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person the DPP has reason to believe may have had an interest in the property immediately before the property was forfeited; and

(d) if required to do so by a court—give or publish notice of the quashing of the conviction to a specified person or class of persons in the manner and within the time that the court considers appropriate.

(1A) This section does not apply if the conviction is quashed after the commencement of the *Proceeds of Crime Act 2002*.

Note: Division 4 of Part 2-3 of the *Proceeds of Crime Act 2002* applies in relation to convictions quashed after that commencement: see subitem 21(2) of Schedule 7 to the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002*.

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

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

(a) if the interest is still vested in the Commonwealth—the Minister shall arrange for the interest to be transferred to the person; or

(b) in any other case—there is payable to the person an amount equal to the value of the interest.

ComLaw Authoritative Act C2005C00153

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

ComLaw Authoritative Act C2005C00153

Division 5—Miscellaneous

33 Person with interest in forfeited property may buy back the interest

(1) Where a court:

(a) makes a forfeiture order against property; and

(b) makes an order under subsection 19(5) in respect of an interest in the property;

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

(2) Where:

(a) property is forfeited to the Commonwealth under section 30;

(b) a court makes an order under subsection 31(7) in respect of an interest in the property; and

(c) there is paid to the Commonwealth, while the interest is still vested in the Commonwealth, the amount specified in the order under subsection 31(7) as the value of the interest;

section 30 ceases to apply in relation to the interest.

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

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

ComLaw Authoritative Act C2005C00153

34 Buying out other interests in forfeited property

Where:

(a) property is forfeited to the Commonwealth under this Part;

(b) an interest in the property is required to be transferred to a person (in this section called the ***purchaser***) under subsection 22(4) or 33(3), or under a direction under subparagraph 21(6)(d)(i), 23A(7)(d)(i) or 31(6)(d)(i);

(c) the purchaser's interest in the property, immediately before the forfeiture took place, was not the only interest in the property;

(d) the purchaser gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that:

(i) the purchaser intends to purchase that other interest from the Commonwealth; and

(ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that interest with the Minister;

(e) the person served with notice under paragraph (d) in relation to that interest does not lodge a written objection to the purchase of that interest with the Minister within the period referred to in that paragraph; and

(f) the person pays to the Commonwealth, while that interest is still vested in the Commonwealth, an amount equal to the value of that interest;

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

ComLaw Authoritative Act C2005C00153

Part IIA—Confiscated Assets Special Account

34A Confiscated Assets Special Account

(1) The Confiscated Assets Account established by Part IIA of this Act is continued in existence as the Confiscated Assets Special Account.

Note: The Confiscated Assets Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

(2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

34B Credits to Confiscated Assets Special Account

(1) There must be credited to the Confiscated Assets Special Account amounts equal to:

(a) proceeds of confiscated assets; 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 (including the proceeds of sale of any property) that is, under a direction referred to in subsection 23(2), directed to be credited to the Confiscated Assets Special Account; and

(e) money deriving from the enforcement of an interstate forfeiture order registered in a Territory, other than money covered by a direction under subsection 20(3A) or 30(4A); and

(f) the Commonwealth's share, under the equitable sharing program, of proceeds resulting from a breach of the criminal law of a State; and

(g) money, other than money referred to in paragraph (b), paid to the Commonwealth by a foreign country in connection with

ComLaw Authoritative Act C2005C00153

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.

(2) Subject to section 34E, all amounts credited to the Confiscated Assets Special Account are to be identified in accordance with the regulations as distributable funds or suspended funds.

34C Debits from the Confiscated Assets Special Account

(1) The purposes of the Confiscated Assets Special Account are:

(a) to the extent to which it comprises suspended funds:

(i) making such payments, if any, to States or to foreign countries as the Attorney-General considers are appropriate under the equitable sharing program; and

(ii) making such payments as the Attorney-General considers necessary to satisfy the Commonwealth's obligations in respect of a registered foreign forfeiture order, an order registered under section 45 of the *International War Crimes Tribunals Act 1995* or a registered foreign pecuniary penalty order; and

(iii) making such payments to a State as the Attorney-General considers necessary following a credit to the Account under paragraph 34B(1)(b) of money received from a foreign country; and

(iv) paying the prescribed annual management fee in accordance with the regulations; and

(v) making such payments by way of restitution as are required under subparagraph 21(6)(d)(ii), paragraph 22(4)(b) or subparagraph 31(6)(d)(ii); and

(b) to the extent to which it comprises distributable funds—making payments to a GBE of any proceeds of confiscated assets that relate to a relevant offence that caused financial loss to the GBE.

(2) In this section:

relevant offence means an offence against section 131.1, 132.1, 132.6, 132.8, 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* or a prescribed offence.

ComLaw Authoritative Act C2005C00153

34D Debiting balance of distributable funds standing to the credit of Confiscated Assets Special Account

(1) Once in each financial year the Attorney-General must determine, in accordance with the regulations, the amount of distributable funds not required for meeting payments under paragraph 34C(1)(b).

(2) As soon as practicable after the making of the determination, that amount must be debited from the balance of distributable funds standing to the credit of the Confiscated Assets Special Account.

34E Determinations by Official Trustee about suspended and distributable funds

(1) The Official Trustee may, at such times as it considers appropriate, but must, at least once in every 6 months, determine whether the amount of suspended funds standing to the credit of the Confiscated Assets Special Account:

(a) is likely to be insufficient to meet the payments to be made out of the suspended funds for the purposes of paragraph 34C(1)(a); or

(b) is likely to exceed the amount required to meet those payments.

(2) Where the Official Trustee determines that the amount of suspended funds is likely to be insufficient to meet the payments to be made out of the suspended funds for the purposes of paragraph 34C(1)(a), the Official Trustee must declare that such an amount of the distributable funds as the Official Trustee identifies, being not more than the amount required to meet those payments, is to be identified as suspended funds.

(3) Where the Official Trustee determines that the amount of suspended funds is likely to exceed the amount required to meet those payments, the Official Trustee must declare that such an amount of the suspended funds as the Official Trustee identifies, being not more than the amount of the likely excess, is to be identified as distributable funds.

ComLaw Authoritative Act C2005C00153

Part III—Control of property liable to confiscation

Division 1—Search powers

35 Powers to search for, and seize, tainted property

(1) A police officer may:

(a) search a person for tainted property; and

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

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

(c) with the consent of the person;

(d) under a warrant issued under section 36; or

(e) under section 38.

(2) A police officer may:

(a) enter upon land, or upon or into premises;

(b) search the land or premises for tainted property; and

(c) seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property;

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

(d) with the consent of the occupier of the land or premises;

(e) under a warrant issued under section 36; or

(f) under section 38.

(2A) A police officer is not empowered to do anything under this section after the commencement of the *Proceeds of Crime Act 2002* unless it is done under a warrant issued under section 36 of this Act for which an application was made under that section before that commencement.

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

(a) the clothing that is being worn by the person; and

ComLaw Authoritative Act C2005C00153

(b) any property in, or apparently in, the person's immediate control.

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

36 Search warrants in relation to tainted property

(1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next following 72 hours, tainted property of a particular kind:

(a) on a person;

(b) in the clothing that is being worn by a person; or

(c) otherwise in a person's immediate control;

the police officer may:

(d) lay before a magistrate an information on oath setting out those grounds; and

(e) apply for the issue of a warrant to search the person for tainted property of that kind.

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

(a) to search the person for tainted property of that kind; and

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

(3) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next following 72 hours, upon any land, or upon or in any premises, tainted property of a particular kind, the police officer may:

(a) lay before a magistrate an information on oath setting out those grounds; and

(b) apply for the issue of a warrant to search the land or premises for tainted property of that kind.

ComLaw Authoritative Act C2005C00153

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

(a) to enter upon the land, or upon or into the premises;

(b) to search the land or premises for tainted property of that kind; and

(c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind.

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

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

(a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought;

(b) where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made—the magistrate is satisfied:

(i) that the property is tainted property; and

(ii) that an information will be laid in respect of the relevant offence within 48 hours; and

(c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be included in a warrant issued under this section:

(a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence;

(b) a description of the kind of property authorised to be seized; and

(c) a time, not being later than the prescribed time, upon which the warrant ceases to have effect.

ComLaw Authoritative Act C2005C00153

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

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

(a) property that the police officer believes, on reasonable grounds, to be:

(i) tainted property in relation to the offence, although not of a kind specified in the warrant; or

(ii) tainted property in relation to another indictable offence; or

(b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

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

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

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

37 Search warrants may be granted by telephone

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

(2) Before making the application, the police officer shall prepare an information of a kind referred to in subsection 36(1) or (3), but

ComLaw Authoritative Act C2005C00153

may, if it is necessary to do so, make the application before the information has been sworn.

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

(a) after having considered the terms of the information prepared in accordance with subsection (2); and

(b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

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

(4) Where a magistrate signs a warrant under subsection (3):

(a) the magistrate shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the warrant; and

(b) the police officer shall complete a form of warrant in the terms furnished to the police officer by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.

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

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

(7) A form of warrant duly completed by a police officer in accordance with subsection (4) is, if it is in accordance with the

ComLaw Authoritative Act C2005C00153

terms of the warrant signed by the magistrate, authority for any search, entry or seizure that the warrant so signed authorises.

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

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

38 Searches in emergencies

(1) Where a police officer suspects, on reasonable grounds, that particular property is tainted property, the police officer may:

(a) search a person for the property and, if the property is found in the course of the search, seize the property; or

(b) enter upon land, or upon or into premises, and search for the property and, if the property is found in the course of the search, seize the property.

(2) A police officer shall not exercise a power under subsection (1) unless:

(a) the police officer believes, on reasonable grounds, that it is necessary to exercise the power in order to prevent the concealment, loss or destruction of the property; and

(b) the circumstances are so serious and urgent that they require the immediate exercise of the power without the authority of an order of a court or of a warrant issued under this Act.

(2A) Subsection (1) does not apply in respect of particular property unless an information has been laid in respect of the offence that the police officer believes, on reasonable grounds, to be the offence by reason of the commission of which the property is tainted property.

(2B) If, in the course of searching, in accordance with subsection (1), for tainted property in relation to a particular indictable offence, a police officer finds:

ComLaw Authoritative Act C2005C00153

(a) property that the police officer believes, on reasonable grounds, to be tainted property in relation to another indictable offence; or

(b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

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

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

39 Responsibility for seized property

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

(2) Where:

(a) a police officer seizes property under this Division; and

(b) the officer believes on reasonable grounds that the property will afford evidence as to the commission of an offence that is the subject of a special ACC operation/investigation;

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

(3) In this section:

special ACC operation/investigation has the same meaning as in the *Australian Crime Commission Act 2002*.

ComLaw Authoritative Act C2005C00153

40 Return of seized property

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

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

(a) the person is entitled to possession of the property;

(b) the property is not tainted property in relation to the relevant offence; and

(c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property;

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

(3) Where:

(a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);

(b) at the time when the property was seized, an information had not been laid in respect of a relevant offence; and

(c) at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a relevant offence;

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

(4) Where:

(a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);

(b) either of the following conditions is satisfied:

ComLaw Authoritative Act C2005C00153

(i) before the property was seized, a person had been convicted of a relevant offence or an information had been laid in respect of a relevant offence;

(ii) before the property was seized, an information had not been laid in respect of a relevant offence, but an information was laid in respect of a relevant offence within 48 hours after the time when the property was seized; and

(c) no forfeiture order has been made against the property within the period of 14 days after the property was seized;

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

(5) Where:

(a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);

(b) but for this subsection, the responsible custodian would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and

(c) before the end of that period, a restraining order is made in relation to the property;

the following provisions have effect:

(d) if the restraining order directs the Official Trustee to take custody and control of the property—the responsible custodian shall arrange for the property to be given to the Official Trustee in accordance with the restraining order;

(e) if the court that made the restraining order has made an order under subsection (6) in relation to the property—the responsible custodian shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(6) Where:

(a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);

(b) a restraining order is made in relation to the property; and

ComLaw Authoritative Act C2005C00153

(c) at the time when the restraining order is made, the property is in the possession of the responsible custodian;

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

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

(8) Where:

(a) property has been seized under this Division (otherwise than because it may afford evidence as to the commission of an offence);

(b) an application is made for a restraining order or a forfeiture order in respect of the property;

(c) the application is refused; and

(d) at the time when the application is refused, the property is in the possession of the responsible custodian;

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

(9) Where:

(a) property has been seized under this Division; and

(b) while the property is in the possession of the responsible custodian, a forfeiture order is made in respect of the property;

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

ComLaw Authoritative Act C2005C00153

(10) In this section:

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

(a) if subsection 39(1) applies to the property—the Commissioner; or

(b) if subsection 39(2) applies to the property—to the Chief Executive Officer of the ACC.

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

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

(a) a reference in this Division to an offence included a reference to an interstate indictable offence; and

(b) a reference in this Division to tainted property included a reference to property:

(i) used in, or in connection with, the commission of an interstate indictable offence; or

(ii) derived or realised, directly or indirectly, by any person from the commission of an interstate indictable offence.

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

(a) if:

(i) by the end of the period of 7 days commencing on the day the property was seized, no person has been convicted of or charged with the interstate indictable offence in reliance on the commission of which the warrant was issued and an application for an interstate forfeiture order has not been made in respect of the property;

(ii) a person has been charged with and convicted of the interstate indictable offence but by the end of the period of 6 months commencing on the day on which the person is convicted an application for an interstate forfeiture order has not been made in respect of the property; or

ComLaw Authoritative Act C2005C00153

(iii) a person has been charged with the interstate indictable offence and has been discharged or acquitted;

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

(b) if a court of the State concerned makes an order:

(i) directing that the property be returned to the person from whose possession it was seized; or

(ii) directing that that person be allowed access to the property;

the Commissioner shall take such steps as are necessary to give effect to the order.

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

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

(a) references in this Division to tainted property were references to tainted property in relation to the foreign serious offence;

(b) references to a magistrate were references to a magistrate of the State or Territory specified in the police officer's authorisation under the Mutual Assistance Act; and

(c) subsection 36(5), paragraph 36(6)(b), subsection 36(9) and section 40 were omitted.

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

(a) any property that the police officer believes, on reasonable grounds, to be tainted property in relation to the foreign serious offence, although not of the kind specified in the warrant;

(b) any property that the police officer believes, on reasonable grounds, to be tainted property in relation to another foreign

ComLaw Authoritative Act C2005C00153

serious offence in respect of which a search warrant under section 36 is in force; or

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

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

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

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

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

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

(a) the person is entitled to possession of the property;

(b) the property is not tainted property in relation to the relevant foreign serious offence; and

(c) the person who is believed or alleged to have committed the relevant foreign serious offence has no interest in the property;

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

(5) Where:

(a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence; and

(b) at the end of the period of 30 days after the day on which the property was seized:

(i) neither a foreign restraining order, nor a foreign forfeiture order, in relation to the property has been

ComLaw Authoritative Act C2005C00153

registered in a court in Australia under the Mutual Assistance Act; and

(ii) a restraining order has not been made under this Act in respect of the property in relation to the foreign serious offence;

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

(6) Where:

(a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence;

(b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to the person as soon as practicable after the end of a particular period; and

(c) before the end of that period:

(i) a foreign restraining order in relation to the property is registered in a court in Australia under the Mutual Assistance Act; or

(ii) a restraining order is made under this Act in respect of the property in relation to the foreign serious offence;

the following provisions have effect:

(d) if there is in force, at the end of that period, a direction by a court that the Official Trustee take custody and control of the property—the Commissioner shall arrange for the property to be given to the Official Trustee in accordance with the direction;

(e) if there is in force at the end of that period an order under subsection (7) in relation to the property—the Commissioner shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.

(7) Where:

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

(b) either:

(i) a foreign restraining order in respect of the property has been registered in an Australian court under the Mutual Assistance Act; or

ComLaw Authoritative Act C2005C00153

(ii) a restraining order is made under this Act in respect of the property in relation to the foreign serious offence; and

(c) at the time when the restraining order is registered or made, the property is in the possession of the Commissioner;

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

(8) Where:

(a) property has been seized under a warrant issued under section 36 in respect of a foreign serious offence; and

(b) while the property is in the possession of the Commissioner a foreign forfeiture order in respect of the property is registered in a court in Australia under the Mutual Assistance Act;

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

(9) Where:

(a) a warrant is issued under section 36 in respect of a foreign serious offence; and

(b) property is seized pursuant to the warrant because it may afford evidence as to the commission of a criminal offence;

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

ComLaw Authoritative Act C2005C00153

Division 2—Restraining orders

43 Restraining orders

(1) Where a person (in this section and section 44 called the ***defendant***):

(a) has been convicted of an indictable offence; or

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

the DPP may apply to the relevant Supreme Court for an order under subsection (2) against one or more of the following:

(c) specified property of the defendant;

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

(e) all the property of the defendant (including property acquired after the making of the order) other than specified property;

(f) specified property of a person other than the defendant.

(2) Where the DPP applies to a court for an order under this subsection against property, the court may, subject to section 44, by order:

(a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and

(b) if the court is satisfied that the circumstances so require—direct the Official Trustee to take custody and control of the property, or of such part of the property as is specified in the order.

(2A) The DPP is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

(3) A restraining order against a person's property may be made subject to such conditions as the court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, all or any of the following:

ComLaw Authoritative Act C2005C00153

(a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;

(b) the person's reasonable expenses in defending a criminal charge;

(c) a specified debt incurred by the person in good faith (being a debt to which neither paragraph (a) nor (b) applies).

(4) A court shall not make provision of a kind referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to a restraining order.

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

(6) Where the Official Trustee is given a direction under paragraph (2)(b) in relation to property, the Official Trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this:

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured;

(c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and

(d) if the property consists, wholly or partly, of a business:

(i) employing, or terminating the employment of, persons in the business; and

(ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.

(6A) Where the Official Trustee is given a direction under paragraph (2)(b) in relation to shares in a company, it is entitled:

(a) to exercise the rights attaching to the shares as if it were the registered holder of the shares; and

(b) to do so to the exclusion of the registered holder.

ComLaw Authoritative Act C2005C00153

(6B) Neither of paragraph (6)(c) and subsection (6A) limits the generality of the other.

(7) Where the DPP applies to a court for an order under subsection (2), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

44 Grounds for making restraining order

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

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

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

(a) the application for the order is supported by an affidavit of a police officer stating that the officer believes that the defendant committed the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

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

(5) Where:

(a) the offence concerned is an ordinary indictable offence; and

(b) the application seeks a restraining order against specified property of the defendant;

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

ComLaw Authoritative Act C2005C00153

(c) the application is supported by an affidavit of a police officer stating that the officer believes that:

(i) the property is tainted property in relation to the offence; or

(ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and

(d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(6) Where:

(a) the offence is an ordinary indictable offence; and

(b) the application seeks a restraining order against:

(i) all the property of the defendant;

(ii) all the property of the defendant other than specified property; or

(iii) specified property of the defendant and all other property of the defendant;

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

(c) the application is supported by an affidavit of a police officer stating that the officer believes that the defendant derived a benefit, directly or indirectly, from the commission of the offence; and

(d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(7) Where the application seeks a restraining order against specified property of a person other than the defendant and the offence concerned is an ordinary indictable offence, the court shall not make a restraining order against the property unless:

(a) the application is supported by an affidavit of a police officer stating that:

(i) the officer believes that the property is tainted property in relation to the offence; or

(ii) the officer believes that:

(A) the property is subject to the effective control of the defendant; and

ComLaw Authoritative Act C2005C00153

(B) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

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

(a) the application is supported by an affidavit of a police officer stating that:

(i) the officer believes that the property is tainted property in relation to the offence; or

(ii) the officer believes that the property is subject to the effective control of the defendant; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

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

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

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

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

ComLaw Authoritative Act C2005C00153

45 Notice of application for restraining order

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

(a) the owner of the property; and

(b) any other person the DPP has reason to believe may have an interest in the property.

(2) If the DPP requests the court to do so, the court shall consider the application without notice having been given in accordance with subsection (1) but, subject to section 45A, a restraining order made by virtue of this subsection shall cease to have effect at the end of such period (not exceeding 14 days) as is specified by the court in the restraining order.

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

45A Extension of certain restraining orders

(1) Subject to subsection (2), the court may, on application made by the DPP before the end of the period mentioned in subsection 45(2), extend the period of operation of a restraining order made in reliance on that subsection.

(2) Section 44 (other than subsection 44(4)) applies, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on subsection 45(2) in the same way as it applies to the making of a restraining order.

(3) The DPP must give written notice of an application under subsection (1) for the extension of the period of operation of a restraining order to:

(a) the owner of the property against which the restraining order was made; and

(b) any other person who the DPP has reason to believe may have an interest in the property.

ComLaw Authoritative Act C2005C00153

(4) The court may, at any time before the final determination of an application for an extension of the period of operation of a restraining order, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

46 Persons who may appear and adduce evidence

(1) Where:

(a) the DPP applies for a restraining order against property; and

(b) notice of the application is given in accordance with subsection 45(1);

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

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

47 Notice of restraining orders

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

(2) Where:

(a) a court makes a restraining order; and

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

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

48 Court may make further orders

(1) Where a court makes a restraining order, the court may, at the time when it makes the restraining order or at any later time, make any

ComLaw Authoritative Act C2005C00153

ancillary orders that the court considers appropriate and, without limiting the generality of this, the court may make any one or more of the following orders:

(a) an order varying the property to which the restraining order relates;

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

(c) an order for the examination on oath before the court or the registrar of the court of any person, including:

(i) a person whose property is the subject of the restraining order (in this section called the ***owner***); or

(ii) a person who is the defendant within the meaning of section 43 in relation to the offence to which the restraining order relates (in this subsection called the ***defendant***);

about the affairs (including the nature and location of any property) of:

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or the defendant or both—that person;

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

(da) an order directing:

(i) the owner; or

(ii) if the owner is not the defendant—the defendant; or

(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the court;

to give to:

(iv) where the restraining order is, or includes, an order made under paragraph 43(2)(b)—the Official Trustee; and

(v) in any other case—the applicant for the ancillary order or such other person as the court directs;

within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or

ComLaw Authoritative Act C2005C00153

dealings with the property, of the owner or the defendant, as the case may be, as the court thinks proper;

(e) where the restraining order directed the Official Trustee to take custody and control of property:

(i) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the restraining order;

(ii) an order determining any question relating to the property to which the restraining order relates, including any question relating to:

(A) the liabilities of the owner; or

(B) the exercise of the powers, or the performance of the duties, of the Official Trustee;

with respect to the property to which the restraining order relates;

(iii) an order directing the owner or another person to do any act or thing necessary or convenient to be done to enable the Official Trustee to take custody and control of the property in accordance with the restraining order.

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

(a) the DPP;

(b) the owner;

(c) where the restraining order directed the Official Trustee to take custody and control of property—the Official Trustee; or

(d) with the leave of the court—any other person.

(2A) An ancillary order made before or after the commencement of this subsection in relation to a restraining order that is in force on or after that commencement does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under paragraph 57(2)(e) or (g).

(3) Where:

(a) a person (in this subsection called the ***defendant***) has been convicted of, or has been charged or is about to be charged with, an offence;

(b) a court, in reliance on the conviction, charging or proposed charging makes a restraining order against property; and

ComLaw Authoritative Act C2005C00153

(c) a person having an interest in the property applies to the court for a variation of the order to exclude the person's interest from the order;

the court shall grant the application if:

(d) where the applicant is not the defendant and the offence is an ordinary indictable offence:

(i) if the restraining order was made against the property by virtue of subparagraph 44(7)(a)(ii)—the court is satisfied that the interest is not tainted property and that:

(A) a pecuniary penalty order cannot be made against the defendant; or

(B) the applicant's interest in the property is not subject to the effective control of the defendant; or

(ii) in any other case—the court is satisfied that the interest is not tainted property;

(e) where the applicant is the defendant and the offence is an ordinary indictable offence—the court is satisfied that:

(i) the interest is not tainted property; and

(ii) a pecuniary penalty order cannot be made against the defendant;

(f) where the applicant is not the defendant, the restraining order was not made by virtue of subsection 44(7A) and the offence is a serious offence—the court is satisfied that:

(i) the applicant was not, in any way, involved in the commission of the offence; and

(ii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest:

(A) for sufficient consideration; and

(B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property;

(fa) where the applicant is not the defendant and the restraining order was made by virtue of subsection 44(7A)—the court is satisfied that:

(i) the applicant was not, in any way, involved in the commission of the offence;

ComLaw Authoritative Act C2005C00153

(ii) the property is not tainted property in relation to the offence; and

(iii) the applicant's interest in the property is not subject to the effective control of the defendant; or

(g) in any case—the court is satisfied that it is in the public interest to do so having regard to all the circumstances, including:

(i) any financial hardship or other consequence of the interest remaining subject to the order;

(ii) the seriousness of the offence; and

(iii) the likelihood that the interest will be:

(A) subject to a forfeiture order;

(B) subject to section 30; or

(C) required to satisfy a pecuniary penalty order.

(4) Where:

(a) a person (in this subsection called the ***defendant***) has been convicted of, or has been charged or is about to be charged with, a serious offence;

(b) a court, in reliance on the conviction, charging or proposed charging, makes a restraining order against property;

(c) the defendant has an interest in the property;

(d) the defendant applies to the court for a declaration under this subsection in relation to the interest; and

(e) the court is satisfied that:

(i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity; and

(ii) the defendant's interest in the property was lawfully acquired;

the court may, by order, declare that the restraining order, to the extent to which it relates to the property, shall be disregarded for the purposes of section 30.

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

ComLaw Authoritative Act C2005C00153

answer to the question might tend to incriminate the person or make the person liable to forfeiture or a penalty.

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

(6A) A person whom an order under paragraph (1)(da) directs to give a statement is not excused from giving the statement, or from setting out particulars in the statement, on the ground that the statement or particulars, as the case may be, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

(6B) Where a person gives a statement under an order made under paragraph (1)(da), neither the statement, nor any information, document or thing obtained as a direct or indirect consequence of the statement, is admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

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

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

48A Order for taxation of legal expenses to be met out of restrained property

(1) Where:

(a) a court makes a restraining order directing the Official Trustee to take custody and control of property; and

ComLaw Authoritative Act C2005C00153

(b) the order makes provision for meeting, out of the property or part of it, a person's reasonable expenses in defending a criminal charge;

the Official Trustee may apply to the court for an order under subsection (3).

(2) The Official Trustee shall give written notice of an application under subsection (1) to the person.

(3) On an application under subsection (1), the court may order that the expenses be taxed as provided in the order or may dismiss the application.

(4) Where the Official Trustee makes an application under subsection (1), it need not, except as ordered by the court after the application is made, take any steps for the purpose of meeting the expenses as provided by the restraining order unless and until:

(a) an order under subsection (3) in relation to the expenses is complied with; or

(b) the application, and any appeal arising out of it, are finally determined, or otherwise disposed of, otherwise than by the making of such an order.

49 Official Trustee to discharge pecuniary penalty

(1) Where:

(a) a pecuniary penalty order is made against a person (in this subsection called the ***defendant***) in reliance on the defendant's conviction of an offence; and

(b) at the time when the pecuniary penalty order is made, property is subject to a restraining order made, in reliance on the defendant's conviction of the offence or a related offence or in reliance on the charging or proposed charging of the defendant with the offence or a related offence, against:

(i) property of the defendant; or

(ii) property of another person in relation to which an order under subsection 28(3) is made;

the court may include in the pecuniary penalty order a direction to the Official Trustee to pay the Commonwealth, in accordance with

ComLaw Authoritative Act C2005C00153

this section, an amount equal to the penalty amount out of that property.

(2) Where:

(a) a pecuniary penalty order is made against a person (in this subsection called the ***defendant***) in reliance on the defendant's conviction of an offence; and

(b) a restraining order is subsequently made against:

(i) property of the defendant; or

(ii) property of another person in relation to which an order under subsection 28(3) is in force;

in reliance on the defendant's conviction of the offence;

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

(2A) If:

(a) a pecuniary penalty order has been made against a person (***the defendant***) in reliance on the defendant's conviction of an offence; and

(b) a restraining order is in force against:

(i) property of the defendant; or

(ii) property of another person in relation to which an order under subsection 28(3) is in force;

the Court may, on application by the DPP, direct the Official Trustee to pay the Commonwealth, in accordance with this section, an amount equal to the penalty amount out of the property.

(3) For the purposes of enabling the Official Trustee to comply with a direction given by a court under subsection (1), (2) or (2A), 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 to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any

ComLaw Authoritative Act C2005C00153

act or thing necessary to give validity and operation to the deed or instrument.

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

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

(a) if the property is money—apply the money in accordance with subsection (6) until the end of the relevant appeal period; and

(b) if the property is not money—sell or otherwise dispose of the property until the end of the relevant appeal period.

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

(a) if the property is money:

(i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 55(1), incurred or payable in connection with the restraining order and payable to the Official Trustee under the regulations; and

(ii) subject to subsection (7), credit the amount of the remainder of the money to the Confiscated Assets Special Account as required by section 34B; and

(b) if the property is not money:

(i) sell or otherwise dispose of the property;

(ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration, of the kind referred to in subsection 55(1), incurred or payable in connection with the restraining order or the sale or disposition and payable to the Official Trustee under the regulations; and

ComLaw Authoritative Act C2005C00153

(iii) subject to subsection (7), credit the amount of the remainder of those proceeds to the Confiscated Assets Special Account as required by section 34B.

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

(a) credit to the Confiscated Assets Special Account as required by section 34B an amount equal to the penalty amount; and

(b) pay the balance to the person whose property was subject to the restraining order.

(8) Where the Official Trustee credits, in accordance with a direction under this section, an amount to the Confiscated Assets Special Account as required by section 34B in satisfaction of a person's liability under a pecuniary penalty order, the person's liability under the pecuniary penalty order shall, to the extent of the payment, be deemed to be discharged.

(9) Where:

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

(b) before or after the restraining order is made, a pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related indictable offence;

the relevant appeal period in respect of the property is:

(c) the appeal period in relation to the person's conviction of the offence; or

(d) the appeal period in relation to the making of the pecuniary penalty order;

whichever ends last.

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

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

ComLaw Authoritative Act C2005C00153

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

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

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

(b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined.

50 Charge on property subject to restraining order

(1) Where:

(a) a pecuniary penalty order is made against a person (in this subsection called the ***defendant***) in reliance on the defendant's conviction of an offence; and

(b) a restraining order is, or has been, made against:

(i) property of the defendant; or

(ii) property of another person in relation to which an order under subsection 28(3) is, or has been, made;

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

then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the penalty amount.

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

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

(b) upon the discharge of the pecuniary penalty order or the restraining order by a court hearing an appeal against the making of the order;

(c) upon payment to the Commonwealth of the penalty amount in satisfaction of the pecuniary penalty order;

ComLaw Authoritative Act C2005C00153

(e) upon the sale or other disposition of the property:
  (i) under an order under section 49;
  (ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or
  (iii) where the restraining order directed the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee; or
(f) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

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

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

51 Registration of restraining orders

Where a restraining order applies to property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions may, on application by the DPP, record on the register kept pursuant to those provisions the particulars of the restraining order and, if those particulars are so recorded, a person

ComLaw Authoritative Act C2005C00153

who subsequently deals with the property shall, for the purposes of section 52, be deemed to have notice of the restraining order at the time of the dealing.

52 Contravention of restraining orders

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

(a) if the person is a natural person—a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years, or both; or

(b) in the case of a body corporate—a fine not exceeding $50,000.

(2) Where:

(a) a restraining order is made against property;

(b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and

(c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

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

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

(a) setting the disposition or dealing aside as from the day on which the disposition or dealing took place; or

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

ComLaw Authoritative Act C2005C00153

54 Protection of Official Trustee from personal liability in certain cases

(1) Where:

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

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

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

the Official Trustee is not personally liable for:

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

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

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

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

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

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

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

ComLaw Authoritative Act C2005C00153

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

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

55 Costs etc. payable to Official Trustee

(1) The regulations may make provision for or in relation to:
   (a) the costs, charges and expenses incurred in connection with; and
   (b) the Official Trustee's remuneration in respect of;

the performance or exercise by the Official Trustee of functions, duties or powers under this Act.

(2) An amount equal to each amount of remuneration that the Official Trustee receives under the regulations shall be paid to the Commonwealth.

56 Court may revoke restraining orders

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

(a) where the order was made in reliance on the person's conviction of an offence or the charging, or proposed

ComLaw Authoritative Act C2005C00153

charging, of the person with an offence—the person gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed upon the person under this Act in respect of the person's conviction of the offence or a related offence; or

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

57 When restraining order ceases to be in force

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

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

(a) a restraining order is made in reliance on a person's conviction of an offence or the charging of a person with an offence; or

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

the following provisions have effect:

(c) if, within the relevant period in relation to the restraining order, the charge is withdrawn and the person is not charged with a related indictable offence by the time the charge is withdrawn, the restraining order ceases to be in force when the charge is withdrawn;

(d) if, within the relevant period in relation to the restraining order, the person is acquitted of the charge and the person is not charged with a related indictable offence by the time of the acquittal, the restraining order ceases to be in force:

(i) in a case where the acquittal occurs after the commencement of the *Proceeds of Crime Act 2002*—at the end of the period of 28 days after the day of the acquittal; or

(ii) otherwise—when the acquittal occurs;

ComLaw Authoritative Act C2005C00153

Note: After the commencement of the *Proceeds of Crime Act 2002*, an application can be made under that Act (but not section 17) for a restraining order in relation to the offence, despite the acquittal.

(e) if:

(i) a court makes a confiscation order that is a pecuniary penalty order in reliance on the person's conviction of the offence or a related indictable offence;

(ii) the pecuniary penalty order is satisfied or otherwise ceases to be in force; and

(iii) when the order is satisfied or otherwise ceases to be in force:

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

(B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

the restraining order ceases to be in force, upon the pecuniary penalty order being satisfied or otherwise ceasing to be in force, to the extent that the property to which the restraining order relates is the same as the property that is sold or otherwise disposed of to satisfy the pecuniary penalty order and pay the costs, charges, expenses and remuneration referred to in subsection 49(6);

(f) if:

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

(ii) when the court refuses the application:

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

(B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

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

ComLaw Authoritative Act C2005C00153

(g) if some or all of the property subject to the restraining order is forfeited under section 19 or 30, the restraining order, to the extent to which it relates to that property, ceases to be in force when that property is forfeited;

(h) if, within the relevant period in relation to the restraining order, an application is made to a court under subsection (3) for an extension of the period of operation of the restraining order and the court refuses the application after the end of the relevant period, the restraining order ceases to be in force when the court refuses the application;

(j) subject to a preceding paragraph, if, within the relevant period in relation to the restraining order, an application is made to a court under subsection (3) for an extension of the period of operation of the restraining order and that application is granted, the restraining order ceases to be in force at such time, or on the occurrence of such event, as is specified in an order of the court made under that subsection; or

(k) in any other case, the restraining order ceases to be in force at the end of the relevant period in relation to the restraining order.

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

(a) that a forfeiture order may still be made in respect of the property or part of the property;

(aa) that the property or part of the property may still become forfeited under subsection 30(1); or

(b) where the property is:

(i) property of the person; or

(ii) property of another person:

(A) against which the restraining order was made by virtue of subparagraph 44(7)(a)(ii) or (7A)(a)(ii); or

ComLaw Authoritative Act C2005C00153

(B) in relation to which an order under subsection 28(3) has been, or is likely to be, made;

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

the court may:

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

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

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

(5) Where:

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

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

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

(6) A reference in this section to the relevant period in relation to a restraining order is a reference to the period beginning on the day when the order was made and ending:

(a) if an order has, or orders have, been made under subsection (3) extending the restraining order's period of operation—at such time, or on the occurrence of such event, as is specified in the order, or the last of the orders, so made;

(b) if paragraph (a) does not apply but an order has, or orders have, been made by virtue of paragraph 48(1)(a), (b) or (e) in relation to the restraining order—at the end of 6 months after

ComLaw Authoritative Act C2005C00153

the day when the order, or the last of the orders, was so made; or

(c) in any other case—at the end of 6 months after the day when the restraining order was made.

(7) In this section:

extend includes further extend.

58 Notice of applications under this Division

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

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

(a) the DPP; and

(b) where the order directed the Official Trustee to take control of property—the Official Trustee.

59 Interim restraining order may be made in respect of foreign offence

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

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

(b) the reference in subsection 43(1) to the relevant Supreme Court were a reference to the court specified in the DPP's authorisation under the Mutual Assistance Act; and

(c) a reference in this Division to a person charged or about to be charged with an indictable offence were a reference to a person against whom a criminal proceeding in respect of a

ComLaw Authoritative Act C2005C00153

foreign serious offence has commenced, or is reasonably believed to be about to commence, in a foreign country; and

(d) the reference in paragraph 43(3)(b) to a person's reasonable expenses in defending a criminal charge included a reference to the person's reasonable expenses in being represented in a criminal proceeding in a foreign country; and

(da) a reference in subsection 44(4) to the proposed charging of a person with an offence were a reference to the proposed commencement of a criminal proceeding in a foreign country against a person in respect of a foreign serious offence; and

(e) a reference in this Division to a serious offence were a reference to the foreign serious offence; and

(f) subsections 44(2), (5) and (6) and 48(3) and (4) and sections 49, 50, 56 and 57 were omitted.

(2) Where:

(a) a person (in this subsection referred to as the ***defendant***) has been alleged, in a criminal proceeding in a foreign country, to have committed a serious foreign offence;

(b) a court makes a restraining order under section 43 against property in respect of the offence; and

(c) a person having an interest in the property applies to the court under section 48 for an order varying the restraining order to exclude the person's interest from the restraining order;

the court shall grant the application:

(d) where the applicant is not the defendant—if the court is satisfied that:

(i) the applicant was not, in any way, involved in the commission of the offence; and

(ii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest:

(A) for sufficient consideration; and

(B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or

(e) in any case—if the court is satisfied that it is in the public interest to do so having regard to any financial hardship or

ComLaw Authoritative Act C2005C00153

other consequence of the interest remaining subject to the order.

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

(4) A court that makes a restraining order in respect of a foreign serious offence may, on application made by the DPP before the end of the period referred to in subsection (3), extend the period of operation of the restraining order.

(5) Where:

(a) a restraining order against property is made in respect of a foreign serious offence; and

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

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

60 Registered foreign restraining orders—general

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

(a) sections 48, 49, 50, 56, 57 and 58 were omitted;

(b) a reference in this Division to a restraining order directing the Official Trustee to take custody and control of property were a reference to an order under section 61;

(c) a reference in this Division to an order under subsection 49(1), (2) or (2A) were a reference to an order under subsection 63 (1);

(d) a reference in this Division to an order under section 49 were a reference to an order under section 63; and

(e) the reference in section 55 to a restraining order were a reference to an order under section 61.

ComLaw Authoritative Act C2005C00153

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

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

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

(a) the owner of the property; and

(b) any other person the DPP has reason to believe may have an interest in the property.

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

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

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

(a) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the order under subsection (1);

(b) an order determining any question relating to that property, including any question relating to the liabilities of the respondent and the exercise of the powers, or the performance of the duties, of the Official Trustee with respect to that property;

(c) an order directing the respondent to furnish to the Official Trustee, within a period specified in the order under this subsection, a statement, verified by the oath of the

ComLaw Authoritative Act C2005C00153

respondent, setting out such particulars of the property of the respondent as the court thinks proper.

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

(a) becoming a party to any civil proceedings affecting the property;

(b) ensuring that the property is insured; and

(c) if the property consists, in whole or in part, of a business—employing, or terminating the employment of, persons in the business.

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

62 Registered foreign restraining orders—undertakings

Where:

(a) a foreign restraining order against property is registered in a court in Australia under the Mutual Assistance Act; or

(b) a court makes an order under section 61 in respect of property;

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

63 Discharge of certain registered foreign pecuniary penalty orders

(1) Where:

(a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence;

(b) the foreign restraining order is registered in a court in Australia under the Mutual Assistance Act;

ComLaw Authoritative Act C2005C00153

(c) a foreign pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related foreign serious offence;

(d) the foreign pecuniary penalty order has been or is registered in a court in Australia under the Mutual Assistance Act; and

(e) an order has been or is made under section 61 directing the Official Trustee to take control of the property;

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

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

(a) direct the Official Trustee to sell or otherwise dispose of such of the property that is under the control of the Official Trustee as the court specifies; and

(b) appoint an officer of the court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, or interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.

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

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

(a) if the property is money:

(i) apply the money in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the order under section 61 in respect of the property; and

(ii) subject to subsection (5), credit the amount of the remainder of the money to the Confiscated Assets Special Account as required by section 34B; and

ComLaw Authoritative Act C2005C00153

(b) if the property is not money:

(i) sell or otherwise dispose of the property;

(ii) apply the proceeds of the sale or disposition in payment of the costs payable to the Official Trustee in accordance with section 55 in respect of the order under section 61 in respect of the property (including expenses incurred in connection with the sale or disposition of any of the property to which the order under section 61 relates); and

(iii) subject to subsection (5), credit the amount of the remainder of those proceeds to the Confiscated Assets Special Account as required by section 34B.

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

(a) credit to the Confiscated Assets Special Account as required by section 34B an amount equal to the penalty amount; and

(b) pay the balance to the person whose property was subject to the order under section 61.

(6) Where the Official Trustee credits, in accordance with an order under subsection (1), an amount to the Confiscated Assets Special Account as required by section 34B in satisfaction of a person's liability under a foreign pecuniary penalty, the person's liability under the foreign pecuniary penalty order shall, to the extent of the payment, be deemed to be discharged.

64 Registered foreign restraining orders—charge on property subject to order

(1) Where:

(a) a foreign restraining order is made against property of a person in reliance on the person's conviction, or alleged commission, of a foreign serious offence;

(b) the foreign restraining order is registered in a court in Australia under the Mutual Assistance Act;

(c) a foreign pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related foreign serious offence; and

ComLaw Authoritative Act C2005C00153

(d) the foreign pecuniary penalty order has been or is registered in a court in Australia under the Mutual Assistance Act;

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

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

(a) upon payment to the Commonwealth of the penalty amount in satisfaction of the foreign pecuniary penalty order;

(b) upon the person becoming a bankrupt;

(c) upon the sale or other disposition of the property:

(i) under an order under section 63;

(ii) by the owner of the property with the consent of the court in which the foreign pecuniary penalty order is registered; or

(iii) where an order under section 61 directed the Official Trustee to take control of the property—by the owner of the property with the consent of the Official Trustee;

(d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge; or

(e) upon the cancellation of the registration of the relevant foreign restraining order, or the cancellation of the registration of the relevant foreign pecuniary penalty order, in accordance with the Mutual Assistance Act;

whichever first occurs.

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

(a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;

(b) has priority over all other encumbrances; and

(c) subject to subsection (2), is not affected by any change of ownership of the property.

(4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Commonwealth or of a State or Territory provide for the

ComLaw Authoritative Act C2005C00153

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

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

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

ComLaw Authoritative Act C2005C00153

Part IV—Information gathering powers

Division 1—Production orders

66 Production orders

(1) Where:

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

(b) a police officer has reasonable grounds for suspecting that:

(i) a person has committed an indictable offence; and

(ii) a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence;

the police officer may:

(c) lay before a Judge of the Supreme Court of:

(i) the State or Territory in which the person was convicted of the offence or in which the offence is believed to have been committed; or

(ii) a State or Territory in which the document is, or some or all of the documents are, believed to be located;

an information on oath setting out those grounds; and

(d) apply to the Judge for an order under subsection (4) against the person suspected of having possession or control of the document or documents.

(1A) A police officer is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

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

ComLaw Authoritative Act C2005C00153

(a) if the offence is an ordinary indictable offence:
  (i) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
  (ii) property specified in the information is subject to the effective control of the person; or
(b) if the offence is a serious offence—property specified in the information is subject to the effective control of the person;

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

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in subsection 9A(2).

(4) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (5) and (6), make an order that the person:
(a) produce to a police officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
(b) make available to a police officer, for inspection, any documents of that kind that are in the person's possession or control.

(5) An order under paragraph (4)(a) shall not be made in respect of the books of an ADI.

(6) A Judge shall not make an order under this section unless:
(a) the informant or some other person has given the Judge, either orally or by affidavit, such information (if any) as the Judge requires concerning the grounds on which the order is sought; and
(b) the Judge is satisfied that there are reasonable grounds for making the order.

ComLaw Authoritative Act C2005C00153

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

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

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

(a) inspect the document;

(b) take extracts from the document;

(c) make copies of the document;

(d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

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

(a) inspect the document;

(b) take extracts from the document;

(c) make copies of the document.

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

(a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; and

(b) unless the person has received a copy of the document under paragraph (a)—permit the person to do any one or more of the following:

(i) inspect the document;

(ii) take extracts from the document;

(iii) make copies of the document.

ComLaw Authoritative Act C2005C00153

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

(a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or

(b) the production or making available of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

(13) Where a person produces or makes available a document pursuant to an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against subsection 68(1).

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

(15) In this section:

books of an ADI means any accounting records used in the ordinary business of an ADI, including ledgers, day-books, cash-books and account books.

67 Variation of production orders

Where a Judge of a Supreme Court makes a production order requiring a person to produce a document to a police officer, the person may apply to the Judge or another Judge of that Court for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, he or she may vary the production order so that it requires the person to make the document available to a police officer for inspection.

ComLaw Authoritative Act C2005C00153

68 Failure to comply with production order

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

(a) contravenes the order; or

(b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without:

(i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and

(ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(1A) Paragraph (1)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

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

(a) if the offender is a natural person—a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years, or both; or

(b) if the offender is a body corporate—a fine not exceeding $50,000.

69 Production orders in relation to foreign offences

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

ComLaw Authoritative Act C2005C00153

(a) a reference in this Division to an indictable offence were a reference to the foreign serious offence; and

(b) paragraph 66(1)(c) referred to the court specified in the police officer's authorisation under the Mutual Assistance Act.

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

ComLaw Authoritative Act C2005C00153

Division 2—Search powers

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

(1) A police officer may:

(a) enter upon land, or upon or into premises;

(b) search the land or premises for any property-tracking document in relation to an indictable offence; and

(c) seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document in relation to an indictable offence;

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

(d) with the consent of the occupier of the land or premises; or

(e) under a warrant issued under section 71.

(2) A police officer is not empowered to do anything under this section after the commencement of the *Proceeds of Crime Act 2002* unless it is done under a search warrant issued under section 71 of this Act for which an application was made under that section before that commencement.

71 Search warrant for location etc. of property

(1) Where:

(a) a person has been convicted of an indictable offence and a police officer has reasonable grounds for suspecting that there is, or may be within the next following 72 hours, upon any land, or upon or in any premises, in a State or Territory a property-tracking document in relation to the offence; or

(b) a police officer has reasonable grounds for suspecting that:

(i) a person has committed an indictable offence; and

(ii) there is, or may be within the next following 72 hours, upon any land, or upon or in any premises, in a State or Territory a property-tracking document in relation to the offence;

the police officer may:

ComLaw Authoritative Act C2005C00153

(c) lay before a Judge of the Supreme Court of:

(i) the State or Territory in which the person was convicted of the offence or in which the offence is believed to have been committed; or

(ii) the State or Territory referred to in paragraph (a) or (b);

an information on oath setting out those grounds; and

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

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

(a) if the offence is an ordinary indictable offence:

(i) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(ii) property specified in the information is subject to the effective control of the person; or

(b) if the offence is a serious offence—property specified in the information is subject to the effective control of the person;

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

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in subsection 9A(2).

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

(a) to enter upon the land or upon or into the premises;

(b) to search the land or premises for documents of the kind referred to in subsection (1); and

ComLaw Authoritative Act C2005C00153

(c) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a document of that kind.

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

(a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document;

(b) a production order has been given in respect of the document and has not been complied with;

(c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; or

(d) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person.

(6) A Judge shall not issue a search warrant under this section unless:

(a) the informant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the search warrant is sought; and

(b) the Judge is satisfied that there are reasonable grounds for issuing the search warrant.

(7) There shall be stated in a search warrant issued under this section:

(a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the indictable offence that has been or is believed to have been committed;

(b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;

(c) a description of the kind of documents authorised to be seized; and

(d) a date, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

ComLaw Authoritative Act C2005C00153

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

(a) any document that the police officer believes, on reasonable grounds, to be:

(i) a property-tracking document in relation to the offence, although not of a kind specified in the warrant; or

(ii) a property-tracking document in relation to another indictable offence; or

(b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

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

72 Search warrants in relation to foreign offences

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

(a) a reference in this Division to an indictable offence were a reference to the foreign serious offence;

(b) paragraph 71(1)(c) referred to the court specified in the police officer's authorisation under the Mutual Assistance Act; and

(c) subsection 71(8) were omitted.

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

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

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

ComLaw Authoritative Act C2005C00153

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

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

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

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

ComLaw Authoritative Act C2005C00153

Division 3—Monitoring orders

73 Monitoring orders

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

(1A) A police officer is not empowered to make an application under this section after the commencement of the *Proceeds of Crime Act 2002*.

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

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

(4) A Judge shall not make a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought:

(a) has committed, or is about to commit, an indictable offence that is a serious offence;

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

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

(d) both:

(i) has committed, or is about to commit, 3 or more public fraud offences; and

ComLaw Authoritative Act C2005C00153

(ii) has derived, or is about to derive, substantial benefit from the commission of any or all of those offences.

(5) A monitoring order shall specify:

(a) the name or names in which the account is believed to be held;

(b) the class of information that the institution is required to give; and

(c) the law enforcement authority to which the information is to be given, and the manner in which the information is to be given.

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

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

(a) contravenes the order; or

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

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

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

(a) the making of a fixed term deposit; and

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

74 Existence and operation of monitoring order not to be disclosed

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

(a) if the order specifies the Australian Federal Police as the law enforcement authority to which information is to be given—the Commissioner or an AFP member; or

ComLaw Authoritative Act C2005C00153

(b) if the order specifies the ACC as the law enforcement authority to which information is to be given—the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of the staff of the ACC (within the meaning of that Act); or

(c) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or

(d) a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

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

(a) while he or she is such a person—disclose the existence or operation of the order except to another person of a kind referred to in paragraph (1)(a), (b), (c) or (d) for the purposes of:

(i) if the disclosure is made by the Commissioner, an AFP member, or the Chief Executive Officer of the ACC, an examiner (within the meaning of the *Australian Crime Commission Act 2002*) or a member of the staff of the ACC (within the meaning of that Act)—the performance of that person's duties;

(ii) if the disclosure is made by an officer or agent of the institution—ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the disclosure is made by a barrister or solicitor—giving legal advice or making representations in relation to the order; or

(b) when he or she is no longer such a person—make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Nothing in subsection (2) prevents the disclosure by a person of a kind referred to in paragraph (1)(a) or (b) of the existence or operation of a monitoring order:

ComLaw Authoritative Act C2005C00153

(a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a court.

(4) A person of a kind referred to in paragraph (1)(a) or (b) shall not be required to disclose to any court the existence or operation of a monitoring order.

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

(a) if the person is a natural person—a fine not exceeding $20,000 or imprisonment for a period not exceeding 10 years, or both; or

(b) if the person is a body corporate—a fine not exceeding $100,000.

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

75 Monitoring orders in relation to foreign offences

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

(a) a reference in this Division to an indictable offence that is a serious offence were a reference to the foreign serious offence; and

(b) a reference in this Division to the Supreme Court of a State or Territory were a reference to the court specified in the police officer's authorisation under the Mutual Assistance Act.

(2) Where a law enforcement authority is given information pursuant to a monitoring order made in relation to a foreign serious offence, the authority shall, as soon as practicable after receiving the

ComLaw Authoritative Act C2005C00153

information, pass the information on to the Attorney-General or to an officer of the Attorney-General's Department specified by the Attorney-General by written notice to the authority.

ComLaw Authoritative Act C2005C00153

Part V—Offences

Division 3—Miscellaneous

84 Prosecution of offences

(1) An offence against section 52, 68, 73, 74, 81, 82 or 97 is an indictable offence.

(2) Notwithstanding that the offences referred to in subsection (1) are indictable offences, a court of summary jurisdiction may hear and determine proceedings in respect of an offence against section 52, 68, 73, 74, 82 or 97 if the court is satisfied that it is appropriate to do so and the defendant and prosecutor consent.

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

(a) if the offence is against section 73—a fine not exceeding $10,000; or

(b) if the offence is against section 52, 68, 74, 82 or 97:

(i) if the offender is a natural person—a fine not exceeding $2,000 or imprisonment for a period not exceeding 12 months, or both; or

(ii) if the offender is a body corporate—a fine not exceeding $10,000.

85 Conduct by directors, servants or agents

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

ComLaw Authoritative Act C2005C00153

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate, unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

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

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

(a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or

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

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

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

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

ComLaw Authoritative Act C2005C00153

Part VI—Enforcement of State orders in Territories

Division 1—Interstate restraining orders

86 Registration of interstate restraining orders

(1) If an interstate restraining order made before the commencement of the *Proceeds of Crime Act 2002* expressly applies to:

(a) specified property in a Territory;

(b) all property in a Territory of a specified person; or

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

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

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

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

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

87 Effect of registration

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

ComLaw Authoritative Act C2005C00153

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

88 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 State in which it was made; or

(b) the registration is cancelled under section 89.

89 Cancellation of registration

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

(a) registration was improperly obtained; or

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

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

90 Charge on property subject to registered interstate restraining order

(1) If:

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

(b) an interstate pecuniary penalty order is made against the person in reliance on the person's conviction of that offence or a related interstate indictable offence;

ComLaw Authoritative Act C2005C00153

(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 order.

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

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

(b) upon the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order;

(c) upon payment of the amount due under the interstate pecuniary penalty order;

(e) upon the sale or other disposition of the property:

(i) under an order made by a court under the corresponding law of the State in which the interstate pecuniary penalty order was made;

(ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or

(iii) where the interstate restraining order directed a person to take control of the property—by the owner of the property with the consent of that person; or

(f) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

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

(a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;

ComLaw Authoritative Act C2005C00153

(b) has priority over all other encumbrances; and

(c) subject to subsection (2), is not affected by any change of ownership of the property.

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

91 Powers of Official Trustee in relation to interstate restraining orders

Where:

(a) an interstate restraining order is registered in the Supreme Court of a Territory under this Division; and

(b) the restraining order directs a State official to take control of property;

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

ComLaw Authoritative Act C2005C00153

Division 2—Interstate forfeiture orders

92 Registration of interstate forfeiture orders

(1) If an interstate forfeiture order made before the commencement of the *Proceeds of Crime Act 2002* expressly applies to property in a Territory, a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by the person on whose application the order was made or by an appropriate officer.

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

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

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

93 Effect of registration

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

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

94 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 State in which it was made; or

ComLaw Authoritative Act C2005C00153

(b) the registration is cancelled under section 95.

95 Cancellation of registration

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

(a) registration was improperly obtained; or

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

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

ComLaw Authoritative Act C2005C00153

Division 3—Miscellaneous

96 Interim registration of facsimile copies

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

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

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

ComLaw Authoritative Act C2005C00153

Part VII—Miscellaneous

96A Organised fraud orders

Convictions of public fraud offences

(1) If:

(a) a person has, at the same sitting, been convicted by a court of 3 or more public fraud offences; and

(b) the DPP applies to the court for an order under this subsection in relation to each of those offences; and

(c) the court is satisfied that the person has derived substantial benefit from the commission of any or all of those offences;

the court must, by order, declare each of those offences to be a serious offence.

(2) A declaration under subsection (1) only has effect in relation to the convictions concerned.

Charges and proposed charges of public fraud offences

(3) If:

(a) a person has been charged with 3 or more public fraud offences; and

(b) the DPP applies to the relevant Supreme Court for an order under this subsection in relation to each of those offences; and

(c) the application for the order is supported by an affidavit of a police officer stating that the officer believes that the person has derived substantial benefit from the commission of any or all of those offences; and

(d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief;

the court must, by order, declare each of those offences to be a serious offence.

ComLaw Authoritative Act C2005C00153

(4) A declaration under subsection (3) only has effect in relation to the charges concerned.

(5) If:

(a) a person is about to be charged with 3 or more public fraud offences; and

(b) the DPP applies to the relevant Supreme Court for an order under this subsection in relation to each of those offences; and

(c) the application for the order is supported by an affidavit of a police officer stating that the officer believes that the person has derived substantial benefit from the commission of any or all of those offences; and

(d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief;

the court must, by order, declare each of those offences to be a serious offence.

(6) A declaration under subsection (5) only has effect in relation to the proposed charges concerned.

(7) If:

(a) a restraining order is granted in reliance on the charging, or proposed charging, of a person with an ordinary indictable offence; and

(b) the person is subsequently convicted of the offence; and

(c) a court makes an order under subsection (1) in relation to the offence;

this Act has effect as if the restraining order had been granted in reliance on the charging, or proposed charging, of the person with a serious offence.

97 Dealings with forfeited property

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

ComLaw Authoritative Act C2005C00153

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

(a) where the offender is a natural person—a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years, or both; or

(b) if the offender is a body corporate—a fine not exceeding $50,000.

98 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) Subject to this section, the jurisdiction vested in a court by virtue of subsection (1) is not limited by any limits to which any other jurisdiction of the court may be subject.

(3) A court cannot make a forfeiture order in respect of property if the court does not have jurisdiction with respect to the recovery of property of that kind.

(3A) A court may make a forfeiture order in respect of property even though, apart from this section, the court does not have jurisdiction with respect to property whose value equals the value of that property.

(4) A reference in subsection (3) to a court having jurisdiction with respect to the recovery of property includes a reference to the court having jurisdiction, under a corresponding law, to make an interstate forfeiture order in respect of property.

(5) Where:

(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 prescribed particulars.

(5A) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the

ComLaw Authoritative Act C2005C00153

recovery of debts of an amount equal to the amount of the pecuniary penalty order.

(5B) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

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

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

(a) the application may be dealt with by the court; and

(b) any power in relation to the confiscation order may be exercised by the court;

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

99 Standard of proof

Subject to section 17, any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

100 Appeals

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

(a) in the case of a person convicted of the offence in reliance on which the order was made—in the same manner as if the order were, or were part of, a sentence imposed on the person in respect of the offence; or

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

(2) A person against whom a pecuniary penalty order is made may appeal against that order in the same manner as if it were, or were

ComLaw Authoritative Act C2005C00153

part of, a sentence imposed on the person in respect of the offence in reliance on which the order was made.

(3) Where a court:

(a) makes a pecuniary penalty order; and

(b) makes an order under subsection 28(3) declaring that particular property is available to satisfy the order;

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

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

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

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

101 Costs

(1) Where:

(a) a person brings, or appears at, proceedings under this Act before a court in order:

(i) to prevent a forfeiture order or restraining order from being made against property of the person; or

(ii) to have property of the person excluded from a forfeiture order or restraining order;

(b) the person is successful in those proceedings; and

(c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made;

ComLaw Authoritative Act C2005C00153

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.

102 Legal assistance

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

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

(b) to have property of the person excluded from a forfeiture order or restraining order;

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

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

(a) it would involve hardship to the applicant to refuse the application; and

(b) it is reasonable, in all the circumstances, that the application should be granted;

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

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

102A Indemnification of Official Trustee

(1) The Commonwealth is, by force of this subsection, liable to 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.

ComLaw Authoritative Act C2005C00153

(2) Nothing in subsection (1) affects:

(a) any right that the Official Trustee has, apart from that subsection, 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.

(3) Where the Commonwealth makes a payment in accordance with the indemnity referred to in subsection (1), the Commonwealth has the same right of reimbursement in respect of the payment (including reimbursement under another indemnity given to the Official Trustee) as the Official Trustee would have if the Official Trustee had made the payment.

103 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 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.

104 Regulations

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

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ComLaw Authoritative Act C2005C00153

Notes to the *Proceeds of Crime Act 1987*

Note 1

The *Proceeds of Crime Act 1987* as shown in this compilation comprises Act No. 87, 1987 amended as indicated in the Tables below.

The *Proceeds of Crime Act 1987* is affected by section 45 of the *CSL Sale Act 1993*.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Proceeds of Crime Act 1987	87, 1987	5 June 1987	5 June 1987	
Crimes Legislation Amendment Act 1987	120, 1987	16 Dec 1987	Ss. 34–46 and 48–50: Royal Assent *(a)* S. 47: 1 Jan 1990 (*see Gazette* 1989, No. S359) *(a)*	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part XVI (ss. 48–69): *(b)*	S. 62(2)
Crimes Legislation Amendment Act 1991	28, 1991	4 Mar 1991	Ss. 57, 59: Royal Assent *(c)* S. 58: 4 Mar 1992 *(c)*	S. 58(2)–(4)
Proceeds of Crime Legislation Amendment Act 1991	120, 1991	27 June 1991	Ss. 1 and 2: Royal Assent Remainder: 27 Dec 1991 (*see* s. 2(3))	—
Crimes Legislation Amendment Act (No. 2) 1991	123, 1991	23 Aug 1991	Ss. 5–34 and 38–50: 20 Sept 1991 Ss. 35–37: 6 Dec 1991 (*see Gazette* 1991, No. S330) S. 51: 23 Feb 1992 (*see* s. 2(5)) Remainder: Royal Assent	Ss. 41(2), 42(2), (3), 43(2), 47, 48(2) and 49(2)

ComLaw Authoritative Act C2005C00153

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Crimes Legislation Amendment Act 1992	164, 1992	11 Dec 1992	Part 1 (ss. 1, 2) and Parts 3–11 (ss. 18–53): 8 Jan 1993 Remainder: 1 Feb 1993 (*see Gazette* 1993, No. GN1)	—
Service and Execution of Process (Transitional Provisions and Consequential Amendments) Act 1992	166, 1992	11 Dec 1992	10 Apr 1993: (*see* s. 2 and *Gazette* 1993, No. GN13)	—
Banking (State Bank of South Australia and Other Matters) Act 1994	69, 1994	9 June 1994	Ss. 66–68: Royal Assent *(d)*	S. 66
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	S. 31 *(e)*	—
International War Crimes Tribunals (Consequential Amendments) Act 1995	19, 1995	29 Mar 1995	S. 3: 28 Aug 1995 (*see Gazette* 1995, No. S323) Remainder: Royal Assent	—
Mutual Assistance in Criminal Matters Legislation Amendment Act 1996	40, 1996	9 Oct 1996	Ss. 1–3: Royal Assent Remainder: 1 Mar 1997 (*see Gazette* 1997, No. S50)	—
Proceeds of Crime Amendment Act 1997	8, 1997	5 Mar 1997	5 Mar 1997	—
Crimes and Other Legislation Amendment Act 1997	20, 1997	7 Apr 1997	Schedule 1 (items 21–23, 27): 28 Aug 1995 *(f)* Schedule 1 (items 24–26, 28): Royal Assent *(f)*	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items1098–1112): 1 Jan 1998 (*see Gazette* 1997, No. GN49) *(g)*	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (items 134–148): 1 July 1998 (*see Gazette* 1998, No. S316) *(h)*	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Schedule 7 (items 129–132: 1 July 1999 (*see Gazette* 1999, No. S283) *(i)*	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])

ComLaw Authoritative Act C2005C00153

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (item 748): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(j)*	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [*see* Table A]
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 41: *(k)*	S. 4(1) and (2) [*see* Table A]
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	Schedules 1–7, 9–12: 12 Oct 2001 (*see Gazette* 2001, No. S428) Schedule 8: 13 Oct 2001 (*see Gazette* 2001, No. S428) Remainder: Royal Assent	—
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (*see* s. 2(1) and *Gazette* 2002, No. GN44)	Sch. 7 (items 14–16) [*see* Table A]
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 107–115 and 226): 1 Jan 2003	Sch. 2 (item 226) [*see* Table A]
Bankruptcy Legislation Amendment Act 2004	80, 2004	23 June 2004	Schedule 1 (items 199, 212, 213, 215): 1 Dec 2004 (*see Gazette* 2004, No. GN34)	Sch. 1 (items 212, 213, 215) [*see* Table A]
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 284–308, 496): Royal Assent	S. 4 and Sch. 1 (item 496) [*see* Table A]

ComLaw Authoritative Act C2005C00153

Act Notes

(a) The *Proceeds of Crime Act 1987* was amended by sections 34–50 only of the *Crimes Legislation Amendment Act 1987*, subsections 2(1) and (2) of which provide as follows:

(1) Sections 11, 14, 16, 17, 18, 47, 70, 71, 72, 73, 74 and 75 and paragraph 69(b) shall come into operation on a day or days to be fixed by Proclamation.

(2) Parts II, VI, VII, VIII (other than section 47) and IX and Schedule 4 shall come into operation on the day on which this Act receives the Royal Assent.

(b) The *Proceeds of Crime Act 1987* was amended by Part XVI (sections 48–69) only of the *Law and Justice Legislation Amendment Act 1988*, subsections 2(3) and (9) of which provide as follows:

(3) Parts VIII, IX and XVI (except the provisions referred to in subsection (9)) commence on the twenty-eighth day after the day on which this Act receives the Royal Assent.

(9) Sections 20, 47, 51, 52, 53, 57, 62 and 65 commence on a day or days to be fixed by Proclamation.

In pursuance of subsection 2(3) sections 48–50, 54–56, 58–61, 63, 64 and 66–69 commenced on 11 January 1989.

In pursuance of subsection 2(9) sections 47, 51–53, 57, 62 and 65 commenced on 5 September 1989 (*see Gazette* 1989, No. S296).

(c) The *Proceeds of Crime Act 1987* was amended by sections 57–59 only of the *Crimes Legislation Amendment Act 1991*, subsections 2(1), (4) and (5) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(4) Subject to subsection (5), section 58 commences on a day to be fixed by Proclamation.

(5) If section 58 does not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(d) The *Proceeds of Crime Act 1987* was amended by sections 66–68 only of the *Banking (State Bank of South Australia and Other Matters) Act 1994*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(e) The *Proceeds of Crime Act 1987* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsections 2(1) and (4) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(4) The amendments made by this Act to the *Australian Federal Police Act 1979*, the *Crimes (Aviation) Act 1991* (other than the amendment made to Schedule 5 to that Act), the *Crimes (Hostages) Act 1989*, the *Crimes (Internationally Protected Persons) Act 1976*, the *Crimes (Overseas) Act 1964*, the *Crimes (Superannuation Benefits) Act 1989*, the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, the *Customs Act 1901*, the *Director of Public Prosecutions Act 1983*, the *Extradition Act 1988*, the *Financial Transaction Reports Act 1988* and to sections 23 and 59 of the *Proceeds of Crime Act 1987* commence on the 28th day after the day on which this Act receives the Royal Assent.

(f) The *Proceeds of Crime Act 1987* was amended by Schedule 1 (items 21–28) only of the *Crimes and Other Legislation Amendment Act 1997*, section 2 of which provides as follows:

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Items 21, 22, 23 and 27 of Schedule 1 are taken to have commenced on 28 August 1995, immediately after the commencement of the Schedule to the *International War Crimes Tribunals (Consequential Amendments) Act 1995*.

ComLaw Authoritative Act C2005C00153

Act Notes

(g) The *Proceeds of Crime Act 1987* was amended by Schedule 2 (items1098–1112) only of the *Audit (Transitional and Miscellaneous*) *Amendment Act 1997,* subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

(h) The *Proceeds of Crime Act 1987* was amended by Schedule 1 (items 134–148) only of the *Financial Sector Reform (Consequential Amendments) Act 1998,* subsection 2(2) of which provides as follows:

(2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

(i) The *Proceeds of Crime Act 1987* was amended by Schedule 7 (items 129–132) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provides as follows:

(2) The following provisions commence on the transfer date:

(e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).

(16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

(j) The *Proceeds of Crime Act 1987* was amended by Schedule 1 (item 748) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(k) The *Proceeds of Crime Act 1987* was amended by Schedule 41 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

(1) Subject to this section, this Act commences at the later of the following times:

(a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 commenced on 24 May 2001.

ComLaw Authoritative Act C2005C00153

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 4	am. No. 120, 1987; Nos. 28 and 120, 1991; No. 164, 1992; No. 182, 1994; Nos. 8 and 152, 1997; No. 48, 1998; Nos. 44 and 146, 1999; No. 137, 2000; Nos. 86 and 125, 2002; No. 8, 2005
Heading to s. 7	am. No. 137, 2000
S. 7	am. No. 137, 2000
S. 9A	ad. No. 120, 1988
S. 13A	ad. No. 24, 2001
Part II	
Division 1	
S. 14	am. No. 86, 2002
S. 18	am. No. 123, 1991
Division 2	
S. 20	am. No. 120, 1991; No. 164, 1992; No. 152, 1997; No. 8, 2005
S. 21	am. No. 120 1988; No. 120, 1991
S. 22	am. No. 86, 2002
Division 2A	
Heading to Div. 2A of Part II	ad. No. 120, 1988 rs. No. 19, 1995
S. 23	am. No. 120, 1988; No. 182, 1994 rs. No. 19, 1995 am. No. 20, 1997
Heading to s. 23A	am. No. 19, 1995
S. 23A	ad. No. 120, 1988 am. No. 19, 1995; No. 20, 1997
Division 3	
S. 27	am. No. 120, 1988; No. 123, 1991; No. 80, 2004
S. 28	am. No. 120, 1988
Division 4	
S. 30	am. No. 120, 1987; Nos. 120 and 123, 1991; No. 164, 1992; Nos. 20 and 152, 1997; No. 86, 2002; No. 8, 2005
S. 30A	ad. No. 20, 1997
S. 31	am. No. 120, 1987; No. 120, 1988; No. 120, 1991
S. 32	am. No. 86, 2002
Division 5	
S. 34	am. No. 120, 1988
Part IIA	
Heading to Part IIA	rs. No. 152, 1997; No. 8, 2005
Part IIA	ad. No. 120, 1991

ComLaw Authoritative Act C2005C00153

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 34A	ad. No. 120, 1991 rs. No. 152, 1997; No. 8, 2005
Heading to s. 34B	am. No. 152, 1997 rs. No. 8, 2005
S. 34B	ad. No. 120, 1991 am. No. 8, 1997; No. 152, 1997; No. 8, 2005
Heading to s. 34C	am. No. 152, 1997 rs. No. 8, 2005
S. 34C	ad. No. 120, 1991 am. No. 19, 1995; Nos. 8, 20 and 152, 1997; No. 137, 2000; No. 8, 2005
Heading to s. 34D	rs. No. 8, 2005
S. 34D	ad. No. 120, 1991 rs. No. 8, 1997 am. No. 8, 2005
S. 34E	ad. No. 120, 1991 am. No. 152, 1997; No. 8, 2005
Part III	
Division 1	
S. 35	am. No. 86, 2002
S. 36	am. No. 120, 1987
S. 38	am. No. 120, 1987
S. 39	am. No. 135, 2001; No. 125, 2002
S. 40	am. No. 120, 1987; No. 135, 2001; No. 125, 2002
Division 2	
S. 43	am. No. 120, 1987; No. 120, 1988; No. 123, 1991; No. 86, 2002
S. 44	am. No. 120, 1987; No. 120, 1988
S. 45	am. No. 120, 1987; No. 123, 1991
S. 45A	ad. No. 123, 1991
S. 48	am. No. 120, 1987; No. 120, 1988; No. 123, 1991; No. 164, 1992
S. 48A	ad. No. 120, 1988
S. 49	am. No. 120, 1988; No. 120, 1991; No. 164, 1992; No. 152, 1997; No. 8, 2005
S. 50	am. No. 28, 1991; No. 86, 2002
S. 51	am. No. 120, 1988
S. 52	am. No. 24, 2001
S. 53	am. No. 120, 1987; No. 120, 1988; No. 120, 1991; No. 164, 1992 rep. No. 86, 2002
S. 55	rs. No. 120, 1988 am. No. 8, 2005
S. 57	am. No. 120, 1988; No. 123, 1991; No. 86, 2002
S. 59	am. No. 182, 1994; No. 40, 1996; No. 86, 2002
S. 60	am. No. 164, 1992

ComLaw Authoritative Act C2005C00153

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 63	am. No. 120, 1991; No. 152, 1997; No. 8, 2005
Part IV	
Division 1	
S. 66	am. No. 120, 1987; No. 120, 1988; No. 123, 1991; No. 48, 1998; No. 86, 2002
S. 67	rs. No. 120, 1987
S. 68	am. No. 24, 2001
Division 2	
S. 70	am. No. 86, 2002
S. 71	am. No. 120, 1987; No. 120, 1988
Division 3	
S. 73	am. No. 120, 1987; No. 137, 2000; No. 24, 2001; No. 86, 2002
S. 74	am. No. 120, 1987; No. 125, 2002
Div. 4 of Part IV	rep. No. 86, 2002
S. 76	rep. No. 86, 2002
Ss. 77, 78	am. No. 24, 2001 rep. No. 86, 2002
Heading to s. 78A	rs. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78A(2)	am. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78A(4)	am. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78A(5)	am. No. 48, 1998 rep. No. 86, 2002
S. 78A	ad. No. 69, 1994 am. No. 48, 1998; No. 24, 2001 rep. No. 86, 2002
Heading to s. 78B	rs. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78B(2)	am. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78B(3)	am. No. 48, 1998 rep. No. 86, 2002
Subhead to s. 78B(4)	am. No. 48, 1998 rep. No. 86, 2002
S. 78B	ad. No. 69, 1994; am. No. 48, 1998 rep. No. 86, 2002
Ss. 79, 80	rep. No. 120, 1987
Part V	
Div. 1 of Part V	rep. No. 86, 2002
Ss. 81, 82	rep. No. 86, 2002
Div. 2 of Part V	rep. No. 137, 2000
S. 83	rep. No. 137, 2000

ComLaw Authoritative Act C2005C00153

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3	
S. 84	am. No. 120, 1987; No. 137, 2000
S. 85	am. No. 120, 1988; No. 20, 1997
Part VI	
Division 1	
S. 86	am. No. 86, 2002
S. 88	am. No. 120, 1987
S. 90	am. No. 166, 1992; No. 86, 2002
Division 2	
S. 92	am. No. 86, 2002
Part VII	
S. 96A	ad. No. 137, 2000
S. 98	am. No. 123, 1991
S. 102A	ad. No. 120, 1987

ComLaw Authoritative Act C2005C00153

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

(1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:

(a) an offence committed before the commencement of this item; or

(b) proceedings for an offence alleged to have been committed before the commencement of this item; or

(c) any matter connected with, or arising out of, such proceedings;

as if the amendment or repeal had not been made.

(2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

(a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and

(b) any or all of those other provisions are repealed by this Schedule; and

(c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

ComLaw Authoritative Act C2005C00153

Table A

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

(1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002 (No. 86, 2002)

Schedule 7

14 Effect on existing applications and orders

The amendments made by this Part of this Schedule do not affect:

(a) applications made under the *Proceeds of Crime Act 1987* before the commencement of the *Proceeds of Crime Act 2002*; or

(b) orders made, or warrants or search warrants issued, under the *Proceeds of Crime Act 1987* before or after that commencement.

15 Use of property etc. for purposes of the *Proceeds of Crime Act 2002*

To avoid doubt, the fact that property, documents or information have:

(a) been seized or otherwise obtained under the *Proceeds of Crime Act 1987*; or

(b) been obtained as a direct or indirect result of action taken under that Act;

does not prevent the property, documents or information being used for the purposes of the *Proceeds of Crime Act 2002*.

ComLaw Authoritative Act C2005C00153

16 Obligations of financial institutions

Despite the repeal of Division 4 of Part IV of the *Proceeds of Crime Act 1987* by Schedule 3 to this Act:

(a) that Division continues to apply in relation to any document in relation to which it applied immediately before the commencement of sections 3 to 338 of the *Proceeds of Crime Act 2002*; and

(b) Part VIA of the *Financial Transaction Reports Act 1988* does not apply to any such document.

Australian Crime Commission Establishment Act 2002 (No. 125, 2002)

Schedule 2

226 Transitional regulations

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.

(2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Bankruptcy Legislation Amendment Act 2004 (No. 80, 2004)

Schedule 1

212 Transitional—pre-commencement deeds and compositions

(1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a ***pre-commencement deed***.

(2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of

ComLaw Authoritative Act C2005C00153

Table A

creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a ***pre-commencement composition***.

(3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:

(a) the *Bankruptcy Act 1966* and regulations under that Act; and

(b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

(c) a pre-commencement deed; and

(d) a pre-commencement composition; and

(e) any matter connected with, or arising out of:

(i) a pre-commencement deed; or

(ii) a pre-commencement composition;

as if those repeals had not happened and those amendments had not been made.

213 Transitional—pre-commencement authorities

(1) For the purposes of this item, if:

(a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and

(b) as at the commencement of this item, none of the following had happened:

(i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;

(ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;

(iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;

the authority is a ***pre-commencement authority***.

(2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:

(a) the *Bankruptcy Act 1966* and regulations under that Act; and

(b) the Acts amended by Part 2 of this Schedule;

continue to apply, in relation to:

ComLaw Authoritative Act C2005C00153

(c) a pre-commencement authority; and

(d) the control of the debtor's property following a pre-commencement authority becoming effective; and

(e) a meeting of the debtor's creditors called under a pre-commencement authority; and

(f) whichever of the following is applicable:

(i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;

(ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;

(iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and

(g) any other matter connected with, or arising out of:

(i) a pre-commencement authority; or

(ii) a deed of assignment mentioned in subparagraph (f)(i); or

(iii) a deed of arrangement mentioned in subparagraph (f)(ii); or

(iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

215 Transitional—regulations

(1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.

(2) The Governor-General may make regulations for the purposes of subitem (1).

ComLaw Authoritative Act C2005C00153

Table A

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

(1) If:

(a) a decision or action is taken or another thing is made, given or done; and

(b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister's determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

ComLaw Authoritative Act C2005C00153