



Proceeds of Crime Act 2002

Act No. 85 of 2002 as amended

This compilation was prepared on 26 July 2007
taking into account amendments up to Act No. 116 of 2007

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

Chapter 1—Introduction

Part 1-1—Preliminary

1 Short title *[see Note 1]*

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

2 Commencement

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

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

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

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

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

Section 3

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

3 Identifying defined terms

- (1) Many of the terms in this Act are defined in the Dictionary in Chapter 6.
- (2) Most of the terms that are defined in the Dictionary in Chapter 6 are identified by an asterisk appearing at the start of the term: as in “*proceeds”. The footnote with the asterisk contains a signpost to the Dictionary.
- (3) An asterisk usually identifies the first occurrence of a term in a section (if not divided into subsections), subsection or definition. Later occurrences of the term in the same provision are not usually asterisked.
- (4) Terms are not asterisked in headings, notes, examples, explanatory tables, guides, outline provisions or diagrams.
- (5) If a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.
- (6) The following basic terms used throughout the Act are not identified with an asterisk:

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

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

4 Application of the *Criminal Code*

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

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

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

Part 1-2—Objects

5 Principal objects

The principal objects of this Act are:

- (a) to deprive persons of the *proceeds of offences, the *instruments of offences, and *benefits derived from offences, against the laws of the Commonwealth or the *non-governing Territories; and
- (b) to deprive persons of *literary proceeds derived from the commercial exploitation of their notoriety from having committed offences; and
- (c) to punish and deter persons from breaching laws of the Commonwealth or the non-governing Territories; and
- (d) to prevent the reinvestment of proceeds, instruments, benefits and literary proceeds in further criminal activities; and
- (e) to enable law enforcement authorities effectively to trace proceeds, instruments, benefits and literary proceeds; and
- (f) to give effect to Australia's obligations under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and other international agreements relating to proceeds of crime; and
- (g) to provide for confiscation orders and restraining orders made in respect of offences against the laws of the States or the *self-governing Territories to be enforced in the other Territories.

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

Part 1-3—Outline of this Act

6 General

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

- (a) setting out in Chapter 2 processes by which confiscation can occur; and
- (b) setting out in Chapter 3 ways in which Commonwealth law enforcement agencies can obtain information relevant to these processes; and
- (c) setting out in Chapter 4 related administrative matters.

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

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

7 The confiscation scheme (Chapter 2)

Chapter 2 sets out 5 processes relating to confiscation:

- (a) restraining orders prohibiting disposal of or dealing with property (see Part 2-1); and
- (b) forfeiture orders under which property is forfeited to the Commonwealth (see Part 2-2); and
- (c) forfeiture of property to the Commonwealth on conviction of a serious offence (see Part 2-3); and
- (d) pecuniary penalty orders requiring payment of amounts based on benefits derived from committing offences (see Part 2-4); and
- (e) literary proceeds orders requiring payment of amounts based on literary proceeds relating to offences (see Part 2-5).

8 Information gathering (Chapter 3)

Chapter 3 sets out 5 ways to obtain information:

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

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

Section 9

- (b) requiring people, under production orders, to produce property-tracking documents or make them available for inspection (see Part 3-2); and
- (c) requiring financial institutions to provide information and documents relating to accounts and transactions (see Part 3-3); and
- (d) requiring financial institutions, under monitoring orders, to provide information about transactions over particular periods (see Part 3-4); and
- (e) searching for and seizing tainted property or evidential material, either under search warrants or in relation to conveyances (see Part 3-5).

9 Administration (Chapter 4)

Chapter 4 sets out the following administrative matters:

- (a) the powers and duties of the Official Trustee, which largely relate to property that is subject to restraining orders (see Part 4-1);
- (b) the provision of legal assistance (see Part 4-2);
- (c) the Confiscated Assets Account (see Part 4-3);
- (d) charges over restrained property for payment of certain amounts (see Part 4-4);
- (e) enforcement of interstate orders in certain Territories (see Part 4-5).

10 Miscellaneous (Chapter 5)

Chapter 5 deals with miscellaneous matters.

11 Interpreting this Act (Chapter 6)

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

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

Part 1-4—Application

12 Act to bind Crown

- (1) This Act binds the Crown in right of the Commonwealth, each of the States and each of the *self-governing Territories.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

13 Act to apply both within and outside Australia

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

- (a) to acts, matters and things outside *Australia, whether or not in or over a foreign country; and
- (b) to all persons, irrespective of their nationality or citizenship.

14 Application

This Act applies in relation to:

- (a) an offence committed at any time (whether or not any person is convicted of the offence); and
 - (b) a person's conviction of an offence at any time;
- whether the offence or conviction occurred before or after the commencement of this Act.

15 Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

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

Chapter 2—The confiscation scheme

Part 2-1—Restraining orders

16 Simplified outline of this Part

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

Division 1—Making restraining orders

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

When a restraining order must be made

- (1) A court with *proceeds jurisdiction must order that:
 - (a) property must not be disposed of or otherwise dealt with by any person; or
 - (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;if:
 - (c) the *DPP applies for the order; and
 - (d) a person has been convicted of, or has been charged with, an *indictable offence, or it is proposed that he or she be charged with an indictable offence; and
 - (e) any affidavit requirements in subsection (3) for the application have been met; and
 - (f) (unless there are no such requirements) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds.

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

Property that a restraining order may cover

- (2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:
- (a) all or specified property of the *suspect;
 - (aa) all or specified *bankruptcy property of the suspect;
 - (b) all property of the suspect other than specified property;
 - (ba) all bankruptcy property of the suspect other than specified bankruptcy property;
 - (c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect;
 - (d) specified property of another person (whether or not that other person's identity is known) that is *proceeds of the offence or an *instrument of the offence.

Affidavit requirements

- (3) The application for the order must be supported by an affidavit of an *authorised officer stating:
- (a) if the *suspect has not been convicted of an indictable offence—that the authorised officer suspects that the suspect committed the offence; and
 - (b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that:
 - (i) the property is subject to the *effective control of the suspect; or
 - (ii) the property is *proceeds of the offence or an *instrument of the offence.

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

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

Refusal to make a restraining order

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

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

Risk of property being disposed of etc.

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

Later acquisitions of property

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

18 Restraining orders—people suspected of committing serious offences

When a restraining order must be made

- (1) A court with *proceeds jurisdiction must order that:
- (a) property must not be disposed of or otherwise dealt with by any person; or
 - (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;
- if:
- (c) the *DPP applies for the order; and
 - (d) there are reasonable grounds to suspect that:
 - (i) a person has committed a *serious offence; and
 - (ii) if the offence is not a *terrorism offence—the offence was committed within the 6 years preceding the application, or since the application was made; and

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

- (e) any affidavit requirements in subsection (3) for the application have been met; and
- (f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds.

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

Property that a restraining order may cover

- (2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:
 - (a) all or specified property of the *suspect;
 - (aa) all or specified *bankruptcy property of the suspect;
 - (b) all property of the suspect other than specified property;
 - (ba) all bankruptcy property of the suspect other than specified bankruptcy property;
 - (c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect;
 - (d) specified property of another person (whether or not that other person's identity is known) that is:
 - (i) in any case—*proceeds of the offence; or
 - (ii) if the offence to which the order relates is a *terrorism offence—an *instrument of the offence.

Affidavit requirements

- (3) The application for the order must be supported by an affidavit of an *authorised officer stating:
 - (a) that:
 - (i) the authorised officer suspects that the *suspect committed the offence within the 6 years preceding the application, or since the application was made; or
 - (ii) the offence is a *terrorism offence; and

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

Section 19

- (b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that:
- (i) the property is subject to the *effective control of the suspect; or
 - (ii) in any case—the property is *proceeds of the offence; or
 - (iii) if the offence to which the order relates is a terrorism offence—the property is an *instrument of the offence.

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

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

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

Risk of property being disposed of etc.

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

Later acquisitions of property

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

19 Restraining orders—people suspected of committing indictable offences etc.

When a restraining order must be made

- (1) A court with *proceeds jurisdiction must order that:
- (a) property must not be disposed of or otherwise dealt with by any person; or

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

- (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;
- if:
- (c) the *DPP applies for the order; and
 - (d) there are reasonable grounds to suspect that the property is:
 - (i) the *proceeds of a *terrorism offence or any other *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern (whether or not the identity of the person who committed the offence is known); or
 - (ii) an *instrument of a terrorism offence;and, if the offence is not a terrorism offence, that the offence was committed within the 6 years preceding the application, or since the application was made; and
 - (e) the application for the order is supported by an affidavit of an *authorised officer stating that the authorised officer suspects that:
 - (i) in any case—the property is proceeds of the offence; or
 - (ii) if the offence to which the order relates is a terrorism offence—the property is an *instrument of the offence;and including the grounds on which the authorised officer holds the suspicion; and
 - (f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion stated in the affidavit on reasonable grounds.

Property that a restraining order may cover

- (2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is:
 - (a) in any case—*proceeds of the offence; or
 - (b) if the offence to which the order relates is a *terrorism offence—an *instrument of the offence.

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

Refusal to make a restraining order

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

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

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

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

Risk of property being disposed of etc.

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

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

When a restraining order must be made

- (1) A court with *proceeds jurisdiction must order that:
- (a) property must not be disposed of or otherwise dealt with by any person; or
 - (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;
- if:
- (c) the *DPP applies for the order; and
 - (d) there are reasonable grounds to suspect that a person has committed an *indictable offence or a *foreign indictable offence, and that the person has derived *literary proceeds in relation to the offence; and
 - (e) any affidavit requirements in subsection (3) for the application have been met; and

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

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

Property that a restraining order may cover

- (2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:
- (a) all or specified property of the *suspect;
 - (aa) all or specified *bankruptcy property of the suspect;
 - (b) all property of the suspect other than specified property;
 - (ba) all bankruptcy property of the suspect other than specified bankruptcy property;
 - (c) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect.

Affidavit requirements

- (3) The application for the order must be supported by an affidavit of an *authorised officer stating:
- (a) if the *suspect has not been convicted of the offence—that the authorised officer suspects that the suspect committed the offence; and
 - (c) that the authorised officer suspects that the suspect derived *literary proceeds in relation to the offence; and
 - (d) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the suspect—that the authorised officer suspects that the property is subject to the *effective control of the suspect.

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

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

Refusal to make a restraining order

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

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

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

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

Risk of property being disposed of etc.

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

Later acquisitions of property

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

21 Refusal to make an order for failure to give undertaking

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

22 Restraining orders must only relate to one suspect

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

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

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

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

23 Conditions on restraining orders

A *restraining order may be made subject to conditions.

24 Allowance for expenses

- (1) The court may allow any one or more of the following to be met out of property, or a specified part of property, covered by a *restraining order:
- (a) the reasonable living expenses of the person whose property is restrained;
 - (b) the reasonable living expenses of any of the *dependants of that person;
 - (c) the reasonable business expenses of that person;
 - (d) a specified debt incurred in good faith by that person.
- (2) The court may only make an order under subsection (1) if:
- (a) the person whose property is restrained has applied for the order; and
 - (b) the person has notified the *DPP in writing of the application and the grounds for the application; and
 - (c) the person has disclosed all of his or her *interests in property, and his or her liabilities, in a statement on oath that has been filed in the court; and
 - (ca) the court is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with:
 - (i) proceedings under this Act; or
 - (ii) proceedings for an offence against a law of the Commonwealth, a State or a Territory; and

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

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

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

- (1) If:
 - (a) because of the operation of subsection 24(3), property that is covered by a *restraining order is taken, for the purposes of paragraph 24(2)(d), not to be covered by the order; and
 - (b) as a result, and for no other reason, the court refuses an application to make an order under subsection 24(1);the court may:
 - (c) exclude the property from the restraining order; or
 - (d) if the property is the only property covered by the restraining order—revoke the restraining order.
- (2) The court must not exclude the property or revoke the order unless the court is satisfied that the property is needed to meet any one or more of the following:
 - (a) the reasonable living expenses of the person whose property is restrained;
 - (b) the reasonable living expenses of any of the *dependants of that person;
 - (c) the reasonable business expenses of that person;

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

- (d) a specified debt incurred in good faith by that person.
- (3) If the court excludes the property from the *restraining order, the *DPP must give written notice of the exclusion to:
- (a) the owner of the property (if the owner is known); and
 - (b) any other person the DPP reasonably believes may have an *interest in the property.
- However, the DPP need not give notice to the applicant for the order under subsection 24(1).
- (4) If the court revokes the *restraining order, the *DPP must give written notice of the revocation to:
- (a) the owner of any property covered by the restraining order (if the owner is known); and
 - (b) any other person the DPP reasonably believes may have an *interest in the property.
- However, the DPP need not give notice to the applicant for the order under subsection 24(1).

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

Division 2—How restraining orders are obtained

25 DPP may apply for a restraining order

The *DPP may apply for a *restraining order.

26 Notice of application

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

The DPP must comply with any such request as soon as practicable.
- (3) The court must not (unless subsection (4) applies) hear the application unless it is satisfied that the owner of the property to which the application relates has received reasonable notice of the application.
- (4) The court must consider the application without notice having been given if the *DPP requests the court to do so.
- (5) The court may, at any time before finally determining the application, direct the *DPP to give or publish notice of the application to a specified person or class of persons. The court may

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

also specify the time and manner in which the notice is to be given or published.

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

27 DPP may choose under which section it applies for a restraining order

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

28 Prejudice to investigations

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

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

Division 3—Excluding property from restraining orders

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

29 Court may exclude property from a restraining order

- (1) The court to which an application for a *restraining order under section 17, 18 or 19 was made may, when the order is made or at a later time, exclude specified property from the order if:
- (a) an application is made under section 30 or 31; and
 - (b) the court is satisfied that the relevant reason under subsection (2) or (3) for excluding the property from the order exists.

Note: Section 31A may prevent the court from hearing the application until the DPP has had a reasonable opportunity to conduct an examination of the applicant.

- (2) The reasons for excluding specified property from a *restraining order are:
- (a) for a restraining order under section 17 if the offence, or any of the offences, to which the order relates is a *serious offence—the property is neither *proceeds nor an *instrument of *unlawful activity; or
 - (b) for a restraining order under section 17 if paragraph (a) does not apply—the property is neither proceeds nor an instrument of the offence, or any offence, to which the order relates; or
 - (c) for a restraining order under section 18—the property is neither:
 - (i) in any case—proceeds of unlawful activity; nor
 - (ii) if an offence to which the order relates is a *terrorism offence—an *instrument of any terrorism offence; or
 - (d) for a restraining order under section 19—the property is neither:
 - (i) in any case—proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; nor

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

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

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

- (3) If the offence, or each offence, to which a *restraining order relates is a *serious offence that is an offence against section 15, 24, 29 or 31 of the *Financial Transaction Reports Act 1988* or section 53, 59, 136, 137, 139, 140, 141, 142 or 143 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, a further reason for excluding property from the order is that each of the following requirements is met:
- (a) there are no reasonable grounds to suspect that the property is *proceeds of the offence, or any of the offences;
 - (b) there is a *suspect in relation to the order, but he or she has not been convicted of, or charged with, the offence, or any of the offences;
 - (c) the conduct in question was not for the purpose of, in preparation for, or in contemplation of, any other *indictable offence, any *State indictable offence or any *foreign indictable offence;
 - (d) the property could not have been covered by a restraining order if none of the offences had been serious offences.
- (4) However, the court must not exclude property from a *restraining order under section 17 or 18 unless it is also satisfied that neither a *pecuniary penalty order nor a *literary proceeds order could be made against:
- (a) the person who owns the property; or
 - (b) if the property is not owned by the *suspect but is under his or her *effective control—the suspect.

30 Application to exclude property from a restraining order after notice of the application for the order

- (1) A person whose property would be covered by a *restraining order may apply to the court to exclude specified property from the

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

restraining order within 14 days after being notified of the application for the order.

- (2) The person must give written notice to the *DPP of both the application and the grounds on which the exclusion is sought.
- (3) The *DPP may appear and adduce evidence at the hearing of the application.
- (4) The *DPP must give the person notice of any grounds on which it proposes to contest the application.

31 Application to exclude property from a restraining order after notice of the order

- (1) A person may apply to the court to exclude specified property from the *restraining order at any time after being notified of the order.
- (2) However, unless the court gives leave, the person cannot apply if he or she:
 - (a) was notified of the application for the *restraining order, but did not appear at the hearing of that application; or
 - (b) appeared at the hearing of that application.
- (3) The court may give the person leave to apply if the court is satisfied that:
 - (a) if paragraph (2)(a) applies—the person had a good reason for not appearing; or
 - (b) if paragraph (2)(b) applies—the person now has evidence relevant to the person’s application that was not available to the person at the time of the hearing; or
 - (c) in either case—there are other special grounds for granting the leave.
- (4) The person must give written notice to the *DPP of both the application and the grounds on which the exclusion is sought.
- (5) The *DPP may appear and adduce evidence at the hearing of the application.
- (6) The *DPP must give the person notice of any grounds on which it proposes to contest the application.

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

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

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

- (a) the restraining order is in force; and
- (b) the *DPP has not been given a reasonable opportunity to conduct an *examination of the applicant.

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

Division 4—Giving effect to restraining orders

33 Notice of a restraining order

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

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

- (2) The *DPP must include a copy of the application and any affidavit supporting the application with the notice (if those documents have not already been given to the person).
- (3) However, the court may order that:
 - (a) all or part of the application or affidavit is not to be given to the person; or
 - (b) the *DPP delay giving the notice (and the documents included with the notice) for a specified period;if the DPP requests the court to do so and the court considers that this is appropriate in order to protect the integrity of any investigation or prosecution.
- (4) If the court orders the *DPP to delay giving the notice (and the documents included with the notice) for a specified period, the DPP must give the notice as soon as practicable after the end of that period.

34 Registering restraining orders

- (1) A *registration authority that keeps a register of property of a particular kind may record in the register particulars of a *restraining order covering property of that kind.
- (2) The *registration authority can only do so on the application of the *DPP.
- (3) Each person who subsequently deals with the property:

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

- (a) is taken not to be acting in good faith for the purposes of section 36; and
- (b) is taken to have notice of the *restraining order for the purposes of section 37.

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

- (1) If the *DPP has previously applied to a *registration authority under section 34 for the recording in a register of particulars of a *restraining order covering particular property, the DPP must notify the registration authority if:
 - (a) the property is no longer covered by the order because it is excluded from the order under section 29 or because the property covered by the order is varied under section 39; or
 - (b) a condition to which a restraining order is subject is varied under section 39.
- (2) The notice must be given within a reasonable time after the order under section 39 is made.

36 Court may set aside a disposition contravening a restraining order

- (1) The *DPP may apply to the court to set aside a disposition or dealing with property that contravenes a *restraining order if that disposition or dealing was:
 - (a) not for *sufficient consideration; or
 - (b) not in favour of a person who acted in good faith.
- (2) The *DPP must give, to each party to the disposition or dealing, written notice of both the application and the grounds on which it seeks the setting aside of the disposition or dealing.
- (3) The court may:
 - (a) set aside the disposition or dealing from the day it occurred; or
 - (b) set aside the disposition or dealing from the day on which the order is made and declare the rights of any persons who acquired *interests in the property on or after the day of the

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

disposition or dealing and before the day on which the order is made.

37 Contravening restraining orders

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

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

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

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

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

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

Division 5—Further orders

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

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

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

39 Ancillary orders

- (1) The court that made a *restraining order, or any other court that could have made the restraining order, may make any ancillary orders that the court considers appropriate and, without limiting the generality of this, the court may make any one or more of the following orders:
 - (a) an order varying the property covered by the *restraining order;
 - (b) an order varying a condition to which the restraining order is subject;
 - (c) an order relating to an undertaking required under section 21;
 - (d) an order directing the owner of the property (including, if the owner is a body corporate, a specified *director of the body corporate) to give a sworn statement to a specified person, within a specified period, setting out particulars of, or dealings with, the property;
 - (e) if the *Official Trustee is ordered under section 38 to take custody and control of property:
 - (i) an order regulating the manner in which the Official Trustee may exercise its powers or perform its duties under the restraining order; or
 - (ii) an order determining any question relating to the property, including a question relating to the liabilities of the owner or the exercise of powers or the performance of duties of the Official Trustee; or

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

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- (iii) an order directing any person to do anything necessary or convenient to enable the Official Trustee to take custody and control of the property;
- (f) an order giving directions about the operation of the restraining order and any one or more of the following:
 - (i) a *forfeiture order that covers the same property as the restraining order;
 - (ii) a *pecuniary penalty order or a *literary proceeds order that relates to the same offence as the restraining order;
- (g) an order requiring a person whose property is covered by a restraining order to do anything necessary or convenient to bring the property within the jurisdiction.

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

- (2) The court can only make an ancillary order on the application of:
 - (a) the *DPP; or
 - (b) the owner of the property covered by the order; or
 - (c) if the *Official Trustee was ordered to take custody and control of the property—the Official Trustee; or
 - (d) any other person who has the leave of the court.
- (3) A person who applies for an ancillary order must give written notice of the application to all other persons entitled to make such an application.
- (4) An ancillary order may be made:
 - (a) if it is made by the court that made the *restraining order—when making the restraining order; or
 - (b) in any case—at any time after the restraining order is made.
- (5) An order that is ancillary to a *restraining order does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under subsection 45(4) or (5).

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

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

40 Contravening ancillary orders relating to foreign property

A person is guilty of an offence if:

- (a) the court makes an order under paragraph 39(1)(g); and
- (b) the person contravenes the order.

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

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

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

Division 6—Duration of restraining orders

41 When a restraining order is in force

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

42 Application to revoke a restraining order

- (1) A person who was not notified of the application for a *restraining order may apply to the court to revoke the order.
 - (1A) The application must be made:
 - (a) within 28 days after the person is notified of the order; or
 - (b) if the person applies to the court, within that period of 28 days, for an extension of the time for applying for revocation—within such longer period, not exceeding 3 months, as the court allows.
- (2) The applicant must give written notice to the *DPP and the *Official Trustee of both the application and the grounds on which the revocation is sought.
- (3) However, the *restraining order remains in force until the court revokes the order.
- (4) The *DPP may adduce additional material to the court relating to the application to revoke the *restraining order.
- (5) The court may revoke the *restraining order if satisfied that there are no grounds on which to make the order at the time of considering the application to revoke the order.

43 Notice of revocation of a restraining order

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

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

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

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

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

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

- (1) A court may:
 - (a) revoke a *restraining order that covers a *suspect's property;
or
 - (b) exclude specified property from such a restraining order;if:
 - (c) the suspect applies to the court to revoke the order or exclude the property; and
 - (d) the suspect gives written notice of the application to the *DPP; and
 - (e) the suspect gives security that is satisfactory to the court to meet any liability that may be imposed on the suspect under this Act.
- (2) A court may:
 - (a) revoke a *restraining order that covers the property of a person who is not a *suspect; or
 - (b) exclude specified property from such a restraining order;if:
 - (c) the person applies to the court to revoke the order or exclude the property; and
 - (d) the person gives written notice of the application to the *DPP; and
 - (e) the person gives an undertaking concerning the person's property that is satisfactory to the court.

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

45 Cessation of restraining orders

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

- (1) A *restraining order that relates to one or more offences ceases to be in force 28 days after one of the following occurs:
- (a) the charge, or all of the charges, that relate to the restraining order are withdrawn;
 - (b) the *suspect is acquitted of the offence, or all of the offences, with which he or she was charged;
 - (c) the suspect's conviction for the offence, or all of the offences, of which he or she was convicted are *quashed;
- unless:
- (d) there is a *confiscation order that relates to the offence; or
 - (e) there is an application for such a confiscation order before the court; or
 - (f) there is an application under:
 - (i) Division 6 of Part 2-2; or
 - (ii) Division 4 of Part 2-3; or
 - (iii) Division 5 of Part 2-4 or 2-5;for confirmation of a forfeiture, or a confiscation order, that relates to the offence; or
 - (g) the suspect is charged with a *related offence.

Restraining orders if there is no conviction etc.

- (2) A *restraining order ceases to be in force if, within 28 days after the order was made:
- (a) the *suspect has not been convicted of, or charged with, the offence, or at least one offence, to which the restraining order relates; and
 - (b) there is no *confiscation order or application for a confiscation order that relates to the offence.

Restraining orders and forfeiture orders etc.

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

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

- (a) either:
 - (i) the court refuses an application for a *forfeiture order that would have covered the property; or
 - (ii) the court excludes the property from a forfeiture order; or
 - (iii) a forfeiture order that covers the property is discharged or ceases to have effect; or
 - (iv) the court excludes the property under section 94 from forfeiture under Part 2-3; and
 - (b) in the case of a refusal of an application for a *forfeiture order:
 - (i) the time for an appeal against the refusal has expired without an appeal being lodged; or
 - (ii) an appeal against the refusal has lapsed; or
 - (iii) an appeal against the refusal has been dismissed and finally disposed of; and
 - (c) no application for another *confiscation order relating to:
 - (i) an offence to which the restraining order relates; or
 - (ii) a *related offence;is yet to be determined; and
 - (d) no other confiscation order relating to such an offence is in force.
- (4) A *restraining order ceases to be in force to the extent that property that it covers vests absolutely in the Commonwealth under Division 4 of Part 2-2 or Division 1 of Part 2-3.

Restraining orders, pecuniary penalty orders and literary proceeds orders

- (5) A *restraining order that relates to one or more offences ceases to be in force in respect of property covered by the restraining order if:
- (a) a *pecuniary penalty order or a *literary proceeds order relates to that offence or those offences; and
 - (b) one or more of the following occurs:
 - (i) the pecuniary penalty order or the literary proceeds order is satisfied;

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

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- (ii) the property is sold or disposed of to satisfy the pecuniary penalty order or literary proceeds order;
- (iii) the pecuniary penalty order or the literary proceeds order is discharged or ceases to have effect.

Restraining orders and instruments owned by third parties

- (6) Despite subsection (1), if:
- (a) a *restraining order covers property of a person who is not a *suspect; and
 - (b) the property is an *instrument of an offence to which the order relates; and
 - (c) the property is not *proceeds of such an offence; and
 - (ca) the property is not an instrument of a *terrorism offence to which the order relates; and
 - (d) the property is not subject to the *effective control of another person who is a suspect in relation to the order;
- the restraining order ceases to be in force in respect of that property if the suspect has not been charged with the offence or a *related offence within 28 days after the restraining order is made.

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

Part 2-2—Forfeiture orders

46 Simplified outline of this Part

Forfeiture orders can be made, forfeiting property to the Commonwealth, if certain offences have been committed. (It is not always a requirement that a person has been convicted of such an offence.)

Orders are made on the application of the DPP. Other orders can be made to reduce the effect of forfeiture orders on grounds such as hardship to the person's dependants.

Note: If a person is convicted of a serious offence, forfeiture can be automatic under Part 2-3. There is no need for a forfeiture order.

Division 1—Making forfeiture orders

47 Forfeiture orders—conduct constituting serious offences

- (1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:
- (a) the *DPP applies for the order; and
 - (b) the property to be specified in the order is covered by a *restraining order under section 18 that has been in force for at least 6 months; and
 - (c) the court is satisfied that:
 - (i) a person whose conduct or suspected conduct formed the basis of the restraining order engaged in conduct constituting one or more *serious offences; and
 - (ii) for each such suspected offence that is not a *terrorism offence—the offence was committed within the 6 years preceding the application for the restraining order, or since that application was made.

Note: The order can be made before the end of the period of 6 months referred to in paragraph (1)(b) if it is made as a consent order: see section 316.

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

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- (2) A finding of the court for the purposes of paragraph (1)(c) need not be based on a finding as to the commission of a particular offence, and can be based on a finding that some *serious offence or other was committed.
- (3) The raising of a doubt as to whether a person engaged in conduct constituting a *serious offence is not of itself sufficient to avoid a finding by the court under paragraph (1)(c).

48 Forfeiture orders—convictions for indictable offences

- (1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) a person has been convicted of one or more *indictable offences; and
 - (c) the court is satisfied that the property to be specified in the order is *proceeds of one or more of the offences.
- (2) A court with *proceeds jurisdiction may make an order that property specified in the order is forfeited to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) a person has been convicted of one or more *indictable offences; and
 - (c) subsection (1) does not apply; and
 - (d) the court is satisfied that the property to be specified in the order is an *instrument of one or more of the offences.
- (3) In considering whether it is appropriate to make an order under subsection (2) in respect of particular property, the court may have regard to:
 - (a) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
 - (b) the use that is ordinarily made, or was intended to be made, of the property to be specified in the order; and
 - (c) the gravity of the offence or offences concerned.

Note: Section 52 limits the court's power to make a forfeiture order if one or more of the person's convictions were due to the person absconding.

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

49 Forfeiture orders—conduct constituting indictable offences etc.

- (1) A court with *proceeds jurisdiction must make an order that property specified in the order is forfeited to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) the property to be specified in the order is covered by a *restraining order under section 19 that has been in force for at least 6 months; and
 - (c) the court is satisfied that one or more of the following applies:
 - (i) the property is *proceeds of one or more *indictable offences;
 - (ii) the property is proceeds of one or more *foreign indictable offences;
 - (iii) the property is proceeds of one or more *indictable offences of Commonwealth concern;
 - (iv) the property is an instrument of one or more *terrorism offences; and
 - (d) the court is satisfied that each such offence that is not a terrorism offence was committed within the 6 years preceding the application for the restraining order, or since that application was made; and
 - (e) the court is satisfied that the DPP has taken reasonable steps to identify and notify persons with an *interest in the property.
- (2) A finding of the court for the purposes of paragraph (1)(c):
 - (a) need not be based on a finding that a particular person committed any offence; and
 - (b) need not be based on a finding as to the commission of a particular offence, and can be based on a finding that some offence or other of a kind referred to in paragraph (1)(c) was committed.
- (3) Paragraph (1)(c) does not apply if the court is satisfied that:
 - (a) no application has been made under Division 3 of Part 2-1 for the property to be excluded from the *restraining order; or
 - (b) any such application that has been made has been withdrawn.

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

50 Existence of other confiscation orders

The court's power to make a *forfeiture order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

Note: There are restrictions on the DPP applying for forfeiture orders if previous applications for forfeiture etc. have already been made: see section 60.

51 Acquittals do not affect forfeiture orders under section 47 or 49

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *forfeiture order under section 47 or 49 in relation to the offence.

52 Making of forfeiture order if person has absconded

If, because of paragraph 331(1)(d), a person is taken to have been convicted of an *indictable offence, a court must not make a *forfeiture order relating to the person's conviction unless:

- (a) the court is satisfied, on the balance of probabilities, that the person has *absconded; and
- (b) either:
 - (i) the person has been committed for trial for the offence; or
 - (ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

53 Jurisdictional issues concerning forfeiture orders

- (1) 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.
- (2) A court may make a *forfeiture order in respect of property even though, apart from section 314, the court does not have jurisdiction

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

with respect to property whose value equals the value of that property.

- (3) A reference in subsection (1) 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.

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

Division 2—Other relevant matters when a court is considering whether to make forfeiture orders

54 Presumption in certain cases that property is an instrument of an offence

If:

- (a) the *DPP applies for:
 - (i) a *forfeiture order under section 47 or 49 against particular property in relation to a person's commission of a *terrorism offence; or
 - (ii) a forfeiture order under section 48 against particular property in relation to a person's conviction of an *indictable offence; and
- (b) evidence is given, at the hearing of the application, that the property was in the person's possession at the time of, or immediately after, the person committed the offence;

then:

- (c) if no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offence—the court must presume that the property was used in, or in connection with, the commission of the offence; or
- (d) in any other case—the court must not make a forfeiture order against the property unless it is satisfied that the property was used or intended to be used in, or in connection with, the commission of the offence.

55 Forfeiture orders can extend to other interests in property

- (1) In specifying an *interest in property in a *forfeiture order, the court may also specify other interests in the property (regardless of whose they are) if:
 - (a) the amount received from disposing of the combined interests would be likely to be greater than the amount received from disposing of each of the interests separately; or

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

- (b) disposing of the interests separately would be impracticable or significantly more difficult than disposing of the combined interests.
- (2) If the court so specifies other *interests in the *forfeiture order, the court may make such ancillary orders as it thinks fit for the protection of a person having one or more of those other interests. These ancillary orders may include:
 - (a) an order directing the Commonwealth to pay the person a specified amount as the value of the person's interest in the property; or
 - (b) an order directing that specified other interests in the property be transferred to the person.
- (3) In deciding whether to make an ancillary order, the court must have regard to:
 - (a) the nature, extent and value of the person's *interest in the property concerned; and
 - (b) if the court is aware that any other person claims an interest in the property—the nature, extent and value of the interest claimed; and
 - (c) any other matter that the court considers relevant.

56 Forfeiture orders must specify the value of forfeited property

The court must specify, in any *forfeiture order it makes, the amount it considers to be the value, at the time the order is made, of the property (other than money) specified in the order.

57 A person may buy back forfeited property

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:

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

Chapter 2 The confiscation scheme

Part 2-2 Forfeiture orders

Division 2 Other relevant matters when a court is considering whether to make forfeiture orders

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- (c) declare the nature, extent and value (as at the time when the order is made) of the interest; and
- (d) declare that the interest may be excluded, under section 89, from the operation of the forfeiture order.

58 The court may also make supporting directions

- (1) If a court makes a *forfeiture order, the court has power to give all directions that are necessary or convenient for giving effect to the order.
- (2) This includes, for a *forfeiture order specifying *registrable property, a direction to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

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

Division 3—How forfeiture orders are obtained

59 DPP may apply for a forfeiture order

- (1) The *DPP may apply for a *forfeiture order.
- (2) If the application relates to a person's conviction of an *indictable offence, the application must be made before the end of the period of 6 months after the *conviction day.

60 Additional application for a forfeiture order

- (1) The *DPP cannot, unless the court gives leave, apply for a *forfeiture order under a section of Division 1 in relation to an offence if:
 - (a) an application has previously been made:
 - (i) under this Division for an order under the same section of Division 1; or
 - (ii) under another law of the Commonwealth (other than Division 1); or
 - (iii) under a law of a *non-governing Territory; for the forfeiture or condemnation of the property in relation to the offence; and
 - (b) the application has been finally determined on the merits.
- (2) The court must not give leave unless it is satisfied that:
 - (a) the property to which the new application relates was identified only after the first application was determined; or
 - (b) necessary evidence became available only after the first application was determined; or
 - (c) it is in the interests of justice to grant the leave.
- (3) To avoid doubt:
 - (a) the *DPP may apply for a *forfeiture order under a section of Division 1 against property in relation to an offence even though an application has previously been made under a different section of Division 1 for forfeiture of that property in relation to that offence; and

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

- (b) the DPP may apply for a forfeiture order against property in relation to an offence even though an application has previously been made for a *pecuniary penalty order or a *literary proceeds order in relation to that offence.

61 Notice of application

- (1) The *DPP must give written notice of an application for a *forfeiture order to:
 - (a) if the order is sought relating to a person's conviction of an offence—the person; and
 - (b) any person who claims an *interest in property covered by the application; and
 - (c) any person whom the DPP reasonably believes may have an interest in that property.
- (2) The court hearing the application may, at any time before finally determining the application, direct the *DPP to give or publish notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

62 Amending an application

- (1) The court hearing an application for a *forfeiture order may amend the application:
 - (a) on application by the *DPP; or
 - (b) with the consent of the DPP.
- (2) However, the court must not amend the application to include additional property in the application unless:
 - (a) the court is satisfied that:
 - (i) the property was not reasonably capable of identification when the application was originally made; or
 - (ii) necessary evidence became available only after the application was originally made; or
 - (b) the *forfeiture order applied for is an order under section 47 or 49 and the court is satisfied that:

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

- (i) including the additional property in the application for the order might have prejudiced the investigation of, or the prosecution of a person for, an offence; or
 - (ii) it is for any other reason appropriate to grant the application to amend.
- (3) On applying for an amendment to include additional property in the application, the *DPP must give written notice of the application to amend to any person whom the DPP reasonably believes may have an *interest in that additional property.
- (4) If the *forfeiture order applied for is an order under section 48, any person who claims an *interest in that additional property may appear and adduce evidence at the hearing of the application to amend.

63 Court may dispense with notice requirements if person has absconded

The court to which an application for a *forfeiture order is made in relation to an offence may, on application by the *DPP, dispense with the requirements to give notice to a person under subsections 61(1) and 62(3) if the court is satisfied that the person has *absconded in connection with the offence.

64 Procedure on application

- (1) Any person who claims an *interest in property covered by an application for a *forfeiture order may appear and adduce evidence at the hearing of the application.
- (2) If the application relates to a person's conviction of an *indictable offence, the court may, in determining the application, have regard to:
- (a) the transcript of any proceeding against the person for:
 - (i) that offence; or
 - (ii) if the person is taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph; and
 - (b) the evidence given in any such proceeding.

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

- (3) The court may still make a *forfeiture order if a person entitled to be given notice of the relevant application fails to appear at the hearing of the application.

65 Applications to courts before which persons are convicted

If an application for a *forfeiture order is made to a court before which a person was convicted of an *indictable offence:

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

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

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

Division 4—Effect of forfeiture orders

66 What property is forfeited and when—general rule

Property specified in a *forfeiture order vests absolutely in the Commonwealth at the time the order is made.

67 First exception—registrable property

- (1) Despite section 66, if property specified in the *forfeiture order is *registrable property:
 - (a) that property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and
 - (b) the *DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and
 - (c) the Commonwealth is entitled to be registered as the owner of that property; and
 - (d) the *Official Trustee has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as the owner.
- (2) Any action by the *DPP under paragraph (1)(b) is not a dealing for the purposes of subsection 69(1).
- (3) The *Official Trustee's powers under paragraph (1)(d) include executing any instrument required to be executed by a person transferring an *interest in property of that kind.

68 Second exception—if a joint owner dies before the order was made

- (1) Despite section 66, if a person:
 - (a) was, immediately before his or her death, the joint owner of property specified in the *forfeiture order; but

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

- (b) died before the order was made, but:
 - (i) after the *DPP applied for the order; or
 - (ii) while a *restraining order covering the property was in force;that property is taken to have vested in the Commonwealth immediately before the person's death.
- (2) Any such *restraining order is also taken to have continued to apply to the property as if the person had not died.

69 When can the Commonwealth begin dealing with forfeited property?

- (1) The Commonwealth, and persons acting on its behalf, can only dispose of, or otherwise deal with, property specified in a *forfeiture order after, and only if the order is still in force at, the later of the following times:
 - (a) when:
 - (i) if the period provided for lodging an appeal against the order has ended without such an appeal having been lodged—that period ends; or
 - (ii) if an appeal against the order has been lodged—the appeal lapses or is finally determined;
 - (b) if the order was made in relation to a person's conviction of an offence—when:
 - (i) if the period provided for lodging an appeal against the conviction has ended without such an appeal having been lodged—that period ends; or
 - (ii) if an appeal against the conviction has been lodged—the appeal lapses or is finally determined.
- (2) However, such disposals and dealings may occur earlier with the leave of the court and in accordance with any directions of the court.
- (3) For the purposes of paragraph (1)(b):
 - (a) if the person is to be taken to have been convicted of the offence because of paragraph 331(1)(b)—an appeal against

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

the finding of the person guilty of the offence is taken to be an appeal against the conviction; and

- (b) if the person is to be taken to have been convicted of the offence because of paragraph 331(1)(c)—an appeal against the person's conviction of the other offence referred to in that paragraph is taken to be an appeal against the conviction.

70 How must the Commonwealth deal with forfeited property?

- (1) If the *forfeiture order is still in force at the later time mentioned in subsection 69(1), the *Official Trustee must, on the Commonwealth's behalf and as soon as practicable:
- (a) dispose of any property specified in the order that is not money; and
 - (b) apply:
 - (i) any amounts received from that disposal; and
 - (ii) any property specified in the order that is money; to payment of its remuneration and other costs, charges and expenses of the kind referred to in subsection 288(1) payable to or incurred by it in connection with the disposal and with the *restraining order that covered the property; and
 - (c) credit the remainder of the money and amounts received to the *Confiscated Assets Account as required by section 296.
- (2) However, if the *Official Trustee is required to deal with property specified in a *forfeiture order but has not yet begun:
- (a) the Minister; or
 - (b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;
- may direct that the property be alternatively disposed of, or otherwise dealt with, as specified in the direction.
- (3) Such a direction could be that property is to be disposed of in accordance with the provisions of a specified law.

Note: The quashing of a conviction of an offence relating to a forfeiture may prevent things being done under this section: see section 86.

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

71 Dealings with forfeited property

A person is guilty of an offence if:

- (a) the person knows that a *forfeiture order has been made in respect of *registrable property; and
- (b) the person disposes of, or otherwise deals with, the property before the Commonwealth's interest has been registered on the appropriate register; and
- (c) the forfeiture order has not been discharged.

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

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

Division 5—Reducing the effect of forfeiture orders

Subdivision A—Relieving hardship

72 Relieving certain dependants from hardship

- (1) The court making a *forfeiture order specifying a *person's property must make another order directing the Commonwealth to pay a specified amount to a *dependant of the person if:
 - (a) the forfeiture order is not to be made under section 48; and
 - (b) the court is satisfied that:
 - (i) the forfeiture order would cause hardship to the dependant; and
 - (ii) the specified amount would relieve that hardship; and
 - (iii) if the dependant is aged at least 18 years—the dependant had no knowledge of the person's conduct that is the subject of the forfeiture order.
- (2) The specified amount must not exceed the difference between:
 - (a) what the court considers is likely to be the amount received from disposing of the *person's property under the *forfeiture order; and
 - (b) what the court considers is likely to be the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the forfeiture order.
- (3) An order under this section may relate to more than one of the person's *dependants.

Subdivision B—Excluding property from a forfeiture order

73 Making exclusion orders

- (1) A court that made a *forfeiture order, or that is hearing, or is to hear, an application (a *forfeiture application*) for a forfeiture order, must make an order excluding property from forfeiture (an *exclusion order*) if:
 - (a) a person applies for the exclusion order; and

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

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- (b) the forfeiture order, or the forfeiture application, specifies the applicant's property; and
 - (c) if the forfeiture order was (or the forfeiture order applied for would be) made under section 47 or 49 and the applicant is the person on whose commission of an offence the order was (or would be) based—the court is satisfied that the property to be specified in the exclusion order is neither:
 - (i) *proceeds of *unlawful activity; nor
 - (ii) if an offence on which the order is (or would be) based is a *terrorism offence—an *instrument of any terrorism offence; and
 - (d) if the forfeiture order was (or the forfeiture order applied for would be) made under section 47 or 49 and the applicant is not the person on whose commission of an offence the order was (or would be) based—the court is satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of any of the offences to which the forfeiture order or forfeiture application relates; and
 - (ii) the property to be specified in the exclusion order is not proceeds of unlawful activity; and
 - (iii) if an offence on which the order is (or would be) based is a terrorism offence—the property to be specified in the exclusion order is not an instrument of any terrorism offence; and
 - (e) if the forfeiture order was (or the forfeiture order applied for would be) made under section 48—the court is satisfied that:
 - (i) the applicant was not, in any way, involved in the commission of any of the offences to which the forfeiture order or forfeiture application relates; and
 - (ii) the property to be specified in the exclusion order is neither proceeds nor an *instrument of any of those offences.
- (2) An *exclusion order must:
- (a) specify the nature, extent and value (at the time of making the order) of the property concerned; and
 - (b) direct that the property be excluded from the operation of the relevant *forfeiture order; and

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

- (c) if the property has vested (in law or equity) in the Commonwealth under this Part and is yet to be disposed of—direct the Commonwealth to transfer the property to the applicant; and
- (d) if the property has vested (in law or equity) in the Commonwealth under this Part and has been disposed of—direct the Commonwealth to pay the applicant an amount equal to the value specified under paragraph (a).

74 Applying for exclusion orders

Before a forfeiture order has been made

- (1) A person may apply for an *exclusion order if a *forfeiture order that could specify the *person's property has been applied for, but is yet to be made.

After a forfeiture order has been made

- (2) A person cannot, unless the court gives leave, apply for an *exclusion order after a *forfeiture order specifying the *person's property has been made if:
 - (a) he or she was given notice of the application for the forfeiture order, but did not appear at the hearing of that application; or
 - (b) he or she appeared at the hearing of that application; or
 - (c) 6 months have elapsed since the forfeiture order was made.
- (3) The court may give the person leave to apply if the court is satisfied that:
 - (a) if paragraph (2)(a) applies—the person had a good reason for not appearing; or
 - (b) if paragraph (2)(b) applies—the person now has evidence relevant to the person's application that was not available to the person at the time of the hearing; or
 - (c) if paragraph (2)(c) applies—the person's failure to apply was not due to any neglect by the person; or
 - (d) there are other special grounds for giving the leave.

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

75 Giving notice of matters relevant to an application

- (1) An applicant for an *exclusion order must give written notice to the *DPP of both the application and the grounds on which the order is sought.
- (2) The *DPP may appear and adduce evidence at the hearing of the application.
- (3) The *DPP must give the applicant notice of any grounds on which it proposes to contest the application. However, the DPP need not do so until it has had a reasonable opportunity to examine the applicant under Part 3-1.

76 When an application can be heard

An application for an *exclusion order must not be heard until the *DPP has had a reasonable opportunity to examine the applicant under Part 3-1.

Subdivision C—Compensating for the proportion of property that did not involve proceeds of an offence

77 Making compensation orders

- (1) A court that made a *forfeiture order must make an order (a *compensation order*) if:
 - (a) a person has applied for the compensation order; and
 - (b) the forfeiture order specifies the applicant's property as *proceeds of an offence to which the forfeiture order relates; and
 - (c) the court is satisfied that, when the property first became proceeds of that offence, a proportion of the value of the property was not acquired using the proceeds of any offence.
- (2) A *compensation order must:
 - (a) specify the proportion found by the court under paragraph (1)(c); and
 - (b) direct the Commonwealth to:

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

- (i) if the property has not been disposed of—dispose of the property; and
- (ii) pay the applicant an amount equal to that proportion of the difference between the amount received from disposing of the property and the sum of any payments of the kind referred to in paragraph 70(1)(b) in connection with the *forfeiture order.

78 Applying for compensation orders

- (1) A person whose property is specified in a *forfeiture order may apply for a *compensation order.
- (2) However, if a person was given notice of an application for a *forfeiture order, the person cannot apply for a *compensation order relating to that forfeiture order unless:
 - (a) the person applies for the compensation order within 6 months after the forfeiture order was made; and
 - (b) the court gives leave.
- (3) If a person was not given such notice, the person cannot apply for a *compensation order relating to a *forfeiture order unless:
 - (a) the person applies for the compensation order within 6 months after the forfeiture order was made; or
 - (b) the court gives leave.

79 Giving notice of matters relevant to an application

- (1) An applicant for a *compensation order must give written notice to the *DPP of both the application and the grounds on which the order is sought.
- (2) The *DPP may appear and adduce evidence at the hearing of the application.
- (3) The *DPP must give the applicant notice of any grounds on which it proposes to contest the application.

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

Division 6—The effect on forfeiture orders of acquittals and quashing of convictions

80 Forfeiture order made under section 47 or 49 unaffected by acquittal or quashing of conviction

A *forfeiture order made under section 47 or 49 against a person in relation to an offence is not affected if:

- (a) having been charged with the offence, the person is acquitted; or
- (b) the person is convicted of the offence and the conviction is subsequently *quashed.

81 Discharge of forfeiture order made under section 48 on quashing of conviction

- (1) A *forfeiture order made under section 48 in relation to a person's conviction of an offence is discharged if:
 - (a) the person's conviction of the offence is subsequently *quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
 - (b) the *DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.
- (2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *forfeiture order:
 - (a) for 14 days after the conviction is quashed; and
 - (b) if the *DPP makes such an application.

82 Notice of application for confirmation of forfeiture order

- (1) The *DPP must give written notice of an application for confirmation of the *forfeiture order to:
 - (a) the person whose conviction was *quashed; and

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

- (b) any person who claims, or prior to the forfeiture claimed, an *interest in property covered by the order; and
- (c) any person whom the DPP reasonably believes may have had an interest in that property before the forfeiture.

Note: If the DPP applies for confirmation of a forfeiture order, it can also apply for an examination order under Part 3-1.

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

83 Procedure on application for confirmation of forfeiture order

- (1) Any person who claims an *interest in property covered by the *forfeiture order may appear and adduce evidence at the hearing of the application for confirmation of the order.
- (2) The court may, in determining the application, have regard to:
 - (a) the transcript of any proceeding against the person for:
 - (i) the offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;including any appeals relating to the conviction; and
 - (b) the evidence given in any such proceeding.

84 Court may confirm forfeiture order

- (1) The court may confirm the *forfeiture order if the court is satisfied that:
 - (a) it could have made a forfeiture order under section 47 in relation to the offence in relation to which the person's conviction was *quashed if, when the *DPP applied for an order under section 48, it had instead applied for an order under section 47; or
 - (b) it could have made a forfeiture order under section 49 in relation to the offence in relation to which the person's

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

conviction was quashed if, when the DPP applied for an order under section 48, it had instead applied for an order under section 49.

- (2) For the purposes of paragraph (1)(a), the court is to treat any relevant conduct of the person (other than conduct that constitutes a *terrorism offence) as having been made within the period of 6 years referred to in paragraph 47(1)(c).

85 Effect of court's decision on confirmation of forfeiture order

- (1) If the court confirms the *forfeiture order under paragraph 84(1)(a), the order is taken not to be affected by the *quashing of the person's conviction of the offence.
- (2) If the court confirms the *forfeiture order under paragraph 84(1)(b):
- (a) to the extent that the order covers property that is:
- (i) in any case—*proceeds of the offence; or
- (ii) if the offence is a *terrorism offence—an *instrument of the offence;
- the order is taken not to be affected by the *quashing of the person's conviction of the offence; but
- (b) to the extent that the order covers property that is:
- (i) in any case—not proceeds of the offence; and
- (ii) if the offence is a terrorism offence—not an instrument of the offence;
- the order is discharged.
- (3) If the court decides not to confirm the *forfeiture order, the order is discharged.

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

86 Official Trustee must not deal with forfeited property before the court decides on confirmation of forfeiture order

During the period:

- (a) starting on the day after the person's conviction of the offence was *quashed; and
- (b) ending when the court decides whether to confirm the *forfeiture order;

the *Official Trustee must not do any of the things required under section 70 in relation to property covered by the order or amounts received from disposing of such property.

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

Division 7—Miscellaneous

87 Giving notice if a forfeiture order is discharged on appeal or by quashing of a conviction

- (1) This section applies in relation to particular property if:
 - (a) a *forfeiture order that covered that property is discharged by a court hearing an appeal against the making of the order; or
 - (b) a forfeiture order that covered that property is discharged under section 81 or subsection 85(3); or
 - (c) a forfeiture order that covered the property is discharged under subsection 85(2) in relation to that property.
- (2) The *DPP must, as soon as practicable, give written notice of the discharge to any person the DPP reasonably believes may have had an *interest in that property immediately before the order was made.
- (3) The *DPP must, if required by a court, give or publish notice of the discharge to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.
- (4) A notice given under this section must include a statement to the effect that a person claiming to have had an *interest in that property may apply under section 88 for the transfer of the interest, or its value, to the person.

88 Returning property etc. following the discharge of a forfeiture order

- (1) The Minister must arrange for:
 - (a) if property specified in a *forfeiture order is vested in the Commonwealth—an *interest in the property to be transferred to a person claiming to have had the interest in the property immediately before the order was made; or

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

- (b) if property specified in a forfeiture order is no longer vested in the Commonwealth—an amount equal to the value of the interest in the property to be paid to the person;
if:
 - (c) the forfeiture order has been discharged in relation to the property:
 - (i) by a court hearing an appeal against the making of the order; or
 - (ii) under section 81 or 85; and
 - (d) the person applies to the Minister, in writing, for the transfer of the interest to the person; and
 - (e) the person had that interest in the property immediately before the order was made.
- (2) If the Minister must arrange for the property to be transferred, the Minister may also, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to give effect to the transfer.
- (3) Without limiting subsection (2), things that may be done or authorised under that subsection include:
 - (a) executing any instrument; and
 - (b) applying for registration of an *interest in the property on any appropriate register.

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

- (1) If a court:
 - (a) makes a *forfeiture order against property; and
 - (b) makes an order under section 57 in respect of an *interest in the property;then:
 - (c) the payment to the Commonwealth, while the interest is still vested in the Commonwealth, of the amount specified in the order under section 57 as the value of the interest discharges the forfeiture order to the extent to which it relates to the interest; and
 - (d) the Minister:

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

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- (i) must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Commonwealth; and
 - (ii) may, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to effect the transfer.
- (2) Without limiting subparagraph (1)(d)(ii), things that may be done or authorised under that subparagraph include:
- (a) executing any instrument; and
 - (b) making an application for registration of an *interest in the property on any appropriate register.

90 Buying out other interests in forfeited property

The Minister must arrange for an *interest in property to be transferred to a person (the *purchaser*) if:

- (a) the property is forfeited to the Commonwealth under this Part; and
- (b) the interest is required to be transferred to the purchaser under subsection 88(1) or 89(1), or under a direction under paragraph 73(2)(c); and
- (c) the purchaser's interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and
- (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; and
- (e) no person served with notice under paragraph (d) in relation to that interest lodges a written objection to the purchase of that interest with the Minister within the period referred to in that paragraph; and

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

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

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

Part 2-3—Forfeiture on conviction of a serious offence

91 Simplified outline of this Part

If a person is convicted of a serious offence, property that is subject to a restraining order relating to the offence is forfeited to the Commonwealth unless the property is excluded from forfeiture.

There are cases in which forfeited property can be recovered from the Commonwealth.

Note: Property can be forfeited in relation to a serious offence, without a conviction, under a forfeiture order under Part 2-2.

Division 1—Forfeiture on conviction of a serious offence

92 Forfeiting restrained property without a forfeiture order if a person has been convicted of a serious offence

- (1) Property is forfeited to the Commonwealth at the end of the period applying under subsection (3) if:
 - (a) the person is convicted of a *serious offence; and
 - (b) either:
 - (i) at the end of that period, the property is covered by a *restraining order against the person that relates to the offence; or
 - (ii) the property was covered by such a restraining order against the person, but the order was revoked under section 44 or the property was excluded from the order under that section; and
 - (c) the property is not subject to an order under section 94 excluding the property from forfeiture under this Part.
- (2) It does not matter whether:
 - (a) the *restraining order was made before or after the person's conviction of the *serious offence; or

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

- (b) immediately before forfeiture, the property is the *person's property or another person's property.
- (3) The period at the end of which the property is forfeited is:
 - (a) the 6 month period starting on the day of the conviction; or
 - (b) if an *extension order is in force at the end of that period—the extended period relating to that extension order.
- (4) This section does not apply if the person is taken to have been convicted of the offence because the person *absconded in connection with the offence.
- (5) A *restraining order in relation to a *related offence with which the person has been charged, or is proposed to be charged, is taken, for the purposes of this section, to be a restraining order in relation to the offence of which the person was convicted.
- (6) If:
 - (a) under section 44, a *restraining order that covered particular property is revoked, or particular property is excluded from a restraining order; and
 - (b) the security referred to in paragraph 44(1)(e), or the undertaking referred to in paragraph 44(2)(e), in connection with the revocation or exclusion is still in force;the property is taken, for the purposes of this section, to be covered by the restraining order.

93 Making an extension order extending the period before property is forfeited

- (1) The court that made the *restraining order referred to in paragraph 92(1)(b) may make an order (an *extension order*) specifying an extended period for the purposes of subsection 92(3) if:
 - (a) an application for the order is made within 6 months after the start of the day of the relevant conviction; and
 - (b) the applicant has also applied to the court under section 31 to exclude property from the restraining order; and
 - (c) the court is satisfied that the applicant made the application under section 31 without undue delay, and has since diligently followed up that application.

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

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The extended period specified must end no later than 15 months from the start of the day of the relevant conviction.

- (2) The *extension order stops being in force if the application under section 31 is finally determined before the end of the 6 month period starting on the day of the relevant conviction.
- (3) The extended period ends if the application under section 31 is finally determined before the end of that period.

94 Excluding property from forfeiture under this Part

- (1) The court that made the *restraining order referred to in paragraph 92(1)(b) may make an order excluding particular property from forfeiture under this Part if:
 - (a) the person referred to in paragraph 92(1)(a) applies for an order under this section; and
 - (b) the property is covered by the restraining order; and
 - (c) the person owns the property; and
 - (d) the person has been convicted of a *serious offence to which the restraining order relates; and
 - (e) the court is satisfied that the property is neither *proceeds of *unlawful activity nor an *instrument of unlawful activity; and
 - (f) the court is satisfied that the defendant's interest in the property was lawfully acquired.
- (2) To avoid doubt, an order under this section cannot be made in relation to property if the property has already been forfeited under this Part.
- (3) The person must give written notice to the *DPP of both the application and the grounds on which the order is sought.
- (4) The *DPP may appear and adduce evidence at the hearing of the application.
- (5) The *DPP must give the applicant notice of any grounds on which it proposes to contest the application.

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

95 Court may declare that property has been forfeited under this Part

The court that made the *restraining order referred to in paragraph 92(1)(b) may declare that particular property has been forfeited under this Part if:

- (a) the *DPP applies to the court for the declaration; and
- (b) the court is satisfied that that property is forfeited under this Part.

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

Division 2—Effect of forfeiture on conviction of a serious offence

96 When is property forfeited—general rule

Property forfeited under section 92 vests absolutely in the Commonwealth at the time of the forfeiture.

97 First exception—registrable property

- (1) Despite section 96, if property forfeited under section 92 is *registrable property:
 - (a) that property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and
 - (b) the *DPP has power, on behalf of the Commonwealth, to do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and
 - (c) the Commonwealth is entitled to be registered as the owner of that property; and
 - (d) the *Official Trustee has power, on behalf of the Commonwealth, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Commonwealth as the owner.
- (2) Any action by the *DPP under paragraph (1)(b) is not a dealing for the purposes of subsection 99(1).
- (3) The *Official Trustee's powers under paragraph (1)(d) include executing any instrument required to be executed by a person transferring an *interest in property of that kind.

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

98 Second exception—if a joint owner dies

Despite section 96, if:

- (a) a person who is convicted of a *serious offence was, immediately before his or her death, the joint owner of property; and
- (b) the period that would apply under subsection 92(3) if the property were subject to forfeiture under section 92 in relation to the conviction had not ended before his or her death; and
- (c) if that period had ended immediately before his or her death—the property would have been forfeited under section 92;

the property is taken to have vested in the Commonwealth immediately before his or her death.

99 When can the Commonwealth begin dealing with forfeited property?

- (1) The Commonwealth, and persons acting on its behalf, can dispose of, or otherwise deal with, property forfeited under section 92 in relation to a person's conviction of a *serious offence if and only if:
 - (a) the period applying under subsection (3) has come to an end; and
 - (b) the conviction has not been *quashed by that time.
- (2) However, such disposals and dealings may occur earlier with the leave of the court and in accordance with any directions of the court.
- (3) The period at the end of which the Commonwealth, and persons acting on its behalf, can dispose of or otherwise deal with the property is:
 - (a) if the conviction is one in relation to which neither paragraph 331(1)(b) nor (c) applies, the period ending:
 - (i) if the period provided for lodging an appeal against the conviction has ended without such an appeal having been lodged—at the end of that period; or

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

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- (ii) if an appeal against the conviction has been lodged—when the appeal lapses or is finally determined; or
- (b) if the person is taken to have been convicted because of paragraph 331(1)(b), the period ending:
 - (i) if the period provided for lodging an appeal against the finding of the person guilty of the offence has ended without such an appeal having been lodged—at the end of that period; or
 - (ii) if an appeal against the finding of the person guilty of the offence has been lodged—when the appeal lapses or is finally determined; or
- (c) if the person is taken to have been convicted because of paragraph 331(1)(c), the period ending:
 - (i) if the period provided for lodging an appeal against the person’s conviction of the other offence referred to in that paragraph has ended without such an appeal having been lodged—at the end of that period; or
 - (ii) if an appeal against the person’s conviction of the other offence referred to in that paragraph has been lodged—when the appeal lapses or is finally determined.

100 How must forfeited property be dealt with?

- (1) If subsection 99(1) no longer prevents disposal of or dealing with particular property forfeited under section 92, the *Official Trustee must, on the Commonwealth’s behalf and as soon as practicable:
 - (a) dispose of any of the forfeited property that is not money; and
 - (b) apply:
 - (i) any amounts received from that disposal; and
 - (ii) any of the forfeited property that is money; to payment of its remuneration and other costs, charges and expenses of the kind referred to in subsection 288(1) payable to or incurred by it in connection with the disposal and with the *restraining order that covered the property; and
 - (c) credit the remainder of the money and amounts received to the *Confiscated Assets Account as required by section 296.

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

- (2) However, if the *Official Trustee has not yet begun to deal with property forfeited under section 92, as required by this section:
- (a) the Minister; or
 - (b) a *senior Departmental officer authorised by the Minister for the purposes of this subsection;
- may direct that the property be disposed of, or otherwise dealt with, as specified in the direction.
- (3) Such a direction could be that property is to be disposed of in accordance with the provisions of a specified law.

Note: The quashing of a conviction of an offence relating to the forfeiture will prevent things being done under this section: see section 112.

101 Minister may give supporting directions

- (1) The Minister may give all directions that are necessary or convenient to realise the Commonwealth's *interest in property forfeited under section 92.
- (2) This includes, for *registrable property forfeited under section 92, directing an officer of the Department or a *police officer to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

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

Division 3—Recovery of forfeited property

102 Court may make orders relating to transfer of forfeited property etc.

- (1) If property is forfeited to the Commonwealth under section 92, the court that made the *restraining order referred to in paragraph 92(1)(b) may, if:
 - (a) a person who claims an *interest in the property applies under section 104 for an order under this section; and
 - (b) the court is satisfied that the grounds set out in subsection (2) or (3) exist;make an order:
 - (c) declaring the nature, extent and value of the applicant's interest in the property; and
 - (d) either:
 - (i) if the interest is still vested in the Commonwealth—directing the Commonwealth to transfer the interest to the applicant; or
 - (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).
- (2) An order under this section may be made if:
 - (a) the applicant was not, in any way, involved in the commission of the offence to which the forfeiture relates; and
 - (b) the applicant's *interest in the property is not subject to the *effective control of the person whose conviction caused the forfeiture; and
 - (c) the applicant's interest in the property is not *proceeds of the offence or an *instrument of the offence.
- (3) An order under this section may also be made if:
 - (a) 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
 - (b) the applicant acquired the property lawfully; and

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

- (c) the applicant is not the person convicted of the offence to which the forfeiture relates.

103 Court may make orders relating to buying back forfeited property

If property is forfeited to the Commonwealth under section 92, the court that made the *restraining order referred to in paragraph 92(1)(b) may, if:

- (a) a person who claims an *interest in the property applies under section 104 for an order under this section; and
- (b) the court is satisfied that:
 - (i) it would not be contrary to the public interest for the interest to be transferred to the person; and
 - (ii) there is no other reason why the interest should not be transferred to the person;

make an order:

- (c) declaring the nature, extent and value (as at the time when the order is made) of the interest; and
- (d) declaring that the forfeiture ceases to operate in relation to the interest if payment is made under section 105.

104 Applying for orders under sections 102 and 103

- (1) An application for an order under section 102 or 103 must, unless the court gives leave under subsection (2), be made before the end of the period of 6 months commencing on the day on which the property to which the application relates is forfeited to the Commonwealth.
- (2) The court may give a person leave to apply after the end of that period if the court is satisfied that the delay in making the application is not due to neglect on the part of the applicant.
- (3) A person who was given notice of:
 - (a) proceedings for the application for the *restraining order by virtue of which the property is forfeited; or
 - (b) the making of the restraining order;

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

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must not apply for an order under section 102 or 103 relating to the property unless the court gives leave under subsection (4).

- (4) The court may give a person leave to apply if the court is satisfied that the person's failure to seek to have the property excluded from the forfeiture by an order under section 94 was not due to any neglect on the part of the applicant.

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

(1) If:

- (a) property is forfeited to the Commonwealth under section 92; and
- (b) a court makes an order under section 103 in respect of an *interest in the property; and
- (c) the amount specified in the order as the value of the interest is paid to the Commonwealth, while the interest is still vested in the Commonwealth;

section 92 ceases to apply in relation to the interest, and the Minister:

- (d) must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Commonwealth; and
 - (e) may, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to effect the transfer.
- (2) Without limiting paragraph (1)(e), things that may be done or authorised under that paragraph include:
- (a) executing any instrument; and
 - (b) applying for registration of an *interest in the property on any appropriate register.

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

106 Buying out other interests in forfeited property

The Minister must arrange for an *interest in property to be transferred to a person (the *purchaser*) if:

- (a) the property is forfeited to the Commonwealth under section 92; and
- (b) the interest is required to be transferred to the purchaser under section 105, or under a direction under subparagraph 102(1)(d)(i); and
- (c) the purchaser's interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and
- (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; and
- (e) no person served with the notice under paragraph (d) in relation to that interest lodges a written objection to the purchase of that interest with the Minister within the period referred to in that paragraph; and
- (f) the purchaser pays to the Commonwealth, while that interest is still vested in the Commonwealth, an amount equal to the value of that interest.

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

Division 4—The effect on forfeiture of convictions being quashed

107 The effect on forfeiture of convictions being quashed

- (1) A forfeiture of property to the Commonwealth under section 92 in relation to a person's conviction of an offence ceases to have effect if:
 - (a) the person's conviction of the offence is subsequently *quashed; and
 - (b) the forfeiture does not also relate to the person's conviction of other offences that have not been quashed; and
 - (c) the *DPP does not, within 14 days after the conviction is quashed, apply to the court that made the *restraining order referred to in paragraph 92(1)(b) for the forfeiture to be confirmed.
- (2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the forfeiture:
 - (a) for 14 days after the conviction is quashed; and
 - (b) if the *DPP makes such an application.

108 Notice of application for confirmation of forfeiture

- (1) The *DPP must give written notice of an application for confirmation of the forfeiture to:
 - (a) the person whose conviction was *quashed; and
 - (b) any person who claims, or prior to the forfeiture claimed, an *interest in property covered by the forfeiture; and
 - (c) any person whom the DPP reasonably believes may have had an interest in that property before the forfeiture.

Note: If the DPP applies for confirmation of a forfeiture, it can also apply for an examination order under Part 3-1.

- (2) The court hearing the application may, at any time before finally determining the application, direct the *DPP to give or publish

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

notice of the application to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.

109 Procedure on application for confirmation of forfeiture

- (1) Any person who claims an *interest in property covered by the forfeiture may appear and adduce evidence at the hearing of the application for confirmation of the forfeiture.
- (2) The court may, in determining the application, have regard to:
 - (a) the transcript of any proceeding against the person for:
 - (i) the offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;
 - including any appeals relating to the conviction; and
 - (b) the evidence given in any such proceeding.

110 Court may confirm forfeiture

- (1) The court may confirm the forfeiture if the court is satisfied that:
 - (a) it could make a *forfeiture order under section 47 in relation to the offence in relation to which the person's conviction was *quashed if the *DPP were to apply for an order under that section; or
 - (b) it could make a forfeiture order under section 49 in relation to the offence in relation to which the person's conviction was quashed if the DPP were to apply for an order under that section.
- (2) For the purposes of paragraph (1)(a), the court is to treat any relevant conduct of the person (other than conduct that constitutes a *terrorism offence) as having been made within the period of 6 years referred to in paragraph 47(1)(c).

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

111 Effect of court's decision on confirmation of forfeiture

- (1) If the court confirms the forfeiture under paragraph 110(1)(a), the forfeiture is taken not to be affected by the *quashing of the person's conviction of the offence.
- (2) If the court confirms the forfeiture under paragraph 110(1)(b):
 - (a) to the extent that the property covered by the forfeiture is:
 - (i) in any case—*proceeds of the offence; or
 - (ii) if the offence is a *terrorism offence—an *instrument of the offence;the forfeiture is taken not to be affected by the *quashing of the person's conviction of the offence; but
 - (b) to the extent that the property covered by the forfeiture is:
 - (i) in any case—not proceeds of the offence; and
 - (ii) if the offence is a terrorism offence—not an instrument of the offence;the forfeiture ceases to have effect.
- (3) If the court decides not to confirm the forfeiture, the forfeiture ceases to have effect.

112 Official Trustee must not deal with forfeited property before the court decides on confirmation of forfeiture

During the period:

- (a) starting on the day after the person's conviction of the offence was *quashed; and
- (b) ending when the court decides whether to confirm the forfeiture;

the *Official Trustee must not do any of the things required under section 100 in relation to property covered by the forfeiture or amounts received from disposing of such property.

113 Giving notice if forfeiture ceases to have effect on quashing of a conviction

- (1) This section applies in relation to particular property if:

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

- (a) the property was forfeited to the Commonwealth under section 92 but the forfeiture ceases to have effect under section 107 or subsection 111(3); or
 - (b) the property was forfeited to the Commonwealth under section 92 but the forfeiture ceases to have effect in relation to that property under subsection 111(2).
- (2) The *DPP must, as soon as practicable after the forfeiture ceases to have effect, give written notice of the cessation to any person the DPP reasonably believes may have had an *interest in that property immediately before the forfeiture.
 - (3) The *DPP must, if required by a court, give or publish notice of the cessation to a specified person or class of persons. The court may also specify the time and manner in which the notice is to be given or published.
 - (4) A notice given under this section must include a statement to the effect that a person claiming to have had an *interest in that property may apply under section 114 for the transfer of the interest, or its value, to the person.

114 Returning property etc. following forfeiture ceasing to have effect

- (1) The Minister must arrange for:
 - (a) if property forfeited to the Commonwealth under section 92 is vested in the Commonwealth—an *interest in the property to be transferred to a person claiming to have had the interest in the property immediately before the forfeiture; or
 - (b) if property forfeited to the Commonwealth under section 92 is no longer vested in the Commonwealth—an amount equal to the value of the interest in the property to be paid to the person;
- if:
- (c) the forfeiture has ceased to have effect under section 107 or 111; and
 - (d) the person applies to the Minister, in writing, for the transfer of the interest to the person; and
 - (e) the person had that interest in the property at that time.

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

Chapter 2 The confiscation scheme

Part 2-3 Forfeiture on conviction of a serious offence

Division 4 The effect on forfeiture of convictions being quashed

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- (2) If the Minister must arrange for the property to be transferred, the Minister may also, on behalf of the Commonwealth, do or authorise the doing of anything necessary or convenient to give effect to the transfer.
- (3) Without limiting subsection (2), things that may be done or authorised under that subsection include:
 - (a) executing any instrument; and
 - (b) applying for registration of an *interest in the property on any appropriate register.

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

Part 2-4—Pecuniary penalty orders

115 Simplified outline of this Part

If certain offences have been committed, pecuniary penalty orders can be made, ordering payments to the Commonwealth of amounts based on:

- (a) the benefits that a person has derived from such an offence; and
- (b) (in some cases) the benefits that the person has derived from other unlawful activity.

(It is not always a requirement that a person has been convicted of the offence.)

Division 1—Making pecuniary penalty orders

116 Making pecuniary penalty orders

- (1) A court with *proceeds jurisdiction must make an order requiring a person to pay an amount to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) the court is satisfied of either or both of the following:
 - (i) the person has been convicted of an *indictable offence, and has derived *benefits from the commission of the offence;
 - (ii) subject to subsection (2), the person has committed a *serious offence.

Note: The conviction for, or reasonable grounds for suspecting commission of, an indictable offence could be used as grounds for a restraining order under Part 2-1 covering all or some of the person's property.

- (2) Subparagraph (1)(b)(ii) does not apply in relation to a *serious offence that is not a *terrorism offence unless the court is satisfied that the offence was committed:

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

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- (a) within the 6 years preceding the application (or, if some or all of the *person's property is already covered by a *restraining order, preceding the application for the restraining order); or
- (b) since the application was made.

The period of 6 years may be a period that began before the commencement of this Act.

- (3) In determining whether a person has derived a *benefit, the court may treat as property of the person any property that, in the court's opinion, is subject to the person's *effective control.
- (4) The court's power to make a *pecuniary penalty order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

Note: There are restrictions on the DPP applying for pecuniary penalty orders if previous applications for pecuniary penalty orders have already been made: see section 135.

117 Pecuniary penalty orders made in relation to serious offence convictions

- (1) A court must not make a *pecuniary penalty order in relation to a person's conviction of a *serious offence until after the end of the period of 6 months commencing on the *conviction day.
- (2) However, if the court before which the person was convicted has *proceeds jurisdiction, the court may make a *pecuniary penalty order in relation to the person's conviction when it passes sentence on the person.

Note: Pecuniary penalty orders made under this subsection cannot be enforced within 6 months: see subsection 140(3).

- (3) Subsection (1) does not apply if the person is taken to have been convicted of the *serious offence because of paragraph 331(1)(d).

118 Making of pecuniary penalty order if person has absconded

If, because of paragraph 331(1)(d), a person is taken to have been convicted of an *indictable offence, a court must not make a *pecuniary penalty order in relation to the person's conviction unless:

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

- (a) the court is satisfied, on the balance of probabilities, that the person has *absconded; and
- (b) either:
 - (i) the person has been committed for trial for the offence; or
 - (ii) the court is satisfied, having regard to all the evidence before the court, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

119 Ancillary orders

The court that made a *pecuniary penalty order, or any other court that could have made the pecuniary penalty order, may make orders ancillary to the pecuniary penalty order, either when it makes the pecuniary penalty order or at a later time.

120 Acquittals do not affect pecuniary penalty orders

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *pecuniary penalty order in relation to the offence.

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

Division 2—Penalty amounts

Subdivision A—General

121 Determining penalty amounts

- (1) The amount that a person is ordered to pay to the Commonwealth under a *pecuniary penalty order (the *penalty amount*) is the amount the court determines under this Division.
 - (2) If the offence to which the order relates is not a *serious offence, the *penalty amount is determined by:
 - (a) assessing under Subdivision B the value of the *benefits the person derived from the commission of the offence; and
 - (b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under Subdivision C.
 - (3) If the offence to which the order relates is a *serious offence, the *penalty amount is determined by:
 - (a) assessing under Subdivision B the value of the *benefits the person derived from:
 - (i) the commission of that offence; and
 - (ii) subject to subsection (4), the commission of any other offence that constitutes *unlawful activity; and
 - (b) subtracting from that value the sum of all the reductions (if any) in the penalty amount under Subdivision C.
- Note: Pecuniary penalty orders can be varied under Subdivision D to increase penalty amounts in some cases.
- (4) Subparagraph (3)(a)(ii) does not apply in relation to an offence that is not a *terrorism offence unless the offence was committed:
 - (a) within:
 - (i) if some or all of the person's property is covered by a *restraining order—the period of 6 years preceding the application for the restraining order; or
 - (ii) otherwise—the period of 6 years preceding the application for the *pecuniary penalty order; or

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

- (b) during the period since that application for the restraining order or the pecuniary penalty order was made

Subdivision B—The value of benefits derived from the commission of an offence

122 Evidence the court is to consider

- (1) In assessing the value of *benefits that a person has derived from the commission of an offence or offences (the *illegal activity*), the court is to have regard to the evidence before it concerning all or any of the following:
 - (a) the money, or the value of the property other than money, that, because of the illegal activity, came into the possession or under the control of:
 - (i) the person; or
 - (ii) another person at the person's request or direction;
 - (b) the value of any other benefit that, because of the illegal activity, was provided to:
 - (i) the person; or
 - (ii) another person at the person's request or direction;
 - (c) if any of the illegal activity consisted of doing an act or thing in relation to a *narcotic substance:
 - (i) the market value, at the time of the offence, of similar or substantially similar narcotic substances; and
 - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing;
 - (d) the value of the *person's property before, during and after the illegal activity;
 - (e) the person's income and expenditure before, during and after the illegal activity.
- (2) At the hearing of an application for a *pecuniary penalty order, a *police officer, or a *Customs officer, who is experienced in the investigation of narcotics offences may testify, to the best of the officer's information, knowledge and belief:

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

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- (a) with respect to the amount that was the market value of a *narcotic substance at a particular time or during a particular period; or
 - (b) with respect to the amount, or the range of amounts, ordinarily paid at a particular time, or during a particular period, for the doing of an act or thing in relation to a narcotic substance.
- (3) The officer's testimony under subsection (2):
- (a) is admissible at the hearing despite any rule of law or practice relating to hearsay evidence; and
 - (b) is prima facie evidence of the matters testified.

123 Value of benefits derived—non-serious offences

- (1) If:
- (a) an application is made for a *pecuniary penalty order against a person in relation to an offence or offences (the *illegal activity*); and
 - (b) the offence is not a *serious offence, or none of the offences are serious offences; and
 - (c) at the hearing of the application, evidence is given that the value of the *person's property during or after the illegal activity exceeded the value of the person's property before the illegal activity;
- the court is to treat the value of the *benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.
- (2) The amount treated as the value of the *benefits under this section is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to the illegal activity.

124 Value of benefits derived—serious offences

- (1) If:
- (a) an application is made for a *pecuniary penalty order against a person in relation to an offence or offences (the *illegal activity*); and

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

- (b) the offence is a *serious offence, or one or more of the offences are serious offences; and
 - (c) at the hearing of the application, evidence is given that the value of the *person's property during or after:
 - (i) the illegal activity; or
 - (ii) any other *unlawful activity that the person has engaged in that constitutes a *terrorism offence; or
 - (iii) any other unlawful activity that the person has engaged in, within the period referred to in subsection (5), that does not constitute a terrorism offence;exceeded the value of the person's property before the illegal activity;
- the court is to treat the value of the *benefits derived by the person from the commission of the illegal activity as being not less than the amount of the greatest excess.
- (2) The amount treated as the value of the *benefits under subsection (1) is reduced to the extent (if any) that the court is satisfied that the excess was due to causes unrelated to:
 - (a) the illegal activity; or
 - (b) any other *unlawful activity that the person has engaged in that constitutes a *terrorism offence; or
 - (c) any other unlawful activity that the person has engaged in, within the period referred to in subsection (5), that does not constitute a terrorism offence;
 - (3) If evidence is given, at the hearing of the application, of the person's expenditure during the period referred to in subsection (5), the amount of the expenditure is presumed, unless the contrary is proved, to be the value of a *benefit that, because of the illegal activity, was provided to the person.
 - (4) Subsection (3) does not apply to expenditure to the extent that it resulted in acquisition of property that is taken into account under subsection (1).
 - (5) The period for the purposes of subparagraph (1)(c)(iii), paragraph (2)(c) and subsection (3) is:

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

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- (a) if some or all of the person's property is covered by a *restraining order—the period of 6 years preceding the application for the restraining order;
 - (b) otherwise—the period of 6 years preceding the application for the *pecuniary penalty order;
- and includes the period since that application for the restraining order or the pecuniary penalty order was made.

125 Value of benefits may be as at time of assessment

- (1) In quantifying the value of a *benefit for the purposes of this Subdivision, the court may treat as the value of the benefit the value that the benefit would have had if derived at the time the court makes its assessment of the value of benefits.
- (2) Without limiting subsection (1), the court may have regard to any decline in the purchasing power of money between the time when the *benefit was derived and the time the court makes its assessment.

126 Matters that do not reduce the value of benefits

In assessing the value of *benefits that a person has derived from the commission of an offence or offences (the *illegal activity*), none of the following are to be subtracted:

- (a) expenses or outgoings the person incurred in relation to the illegal activity;
- (b) the value of any benefits that the person derives as *agent for, or otherwise on behalf of, another person (whether or not the other person receives any of the benefits).

127 Benefits already the subject of pecuniary penalty

- (1) A *benefit is not to be taken into account for the purposes of this Subdivision if a pecuniary penalty has been imposed in respect of the benefit under:
 - (a) this Act; or
 - (b) Division 3 of Part XIII of the *Customs Act 1901*; or
 - (c) a law of a Territory; or

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

- (d) a law of a State.
- (2) To avoid doubt, an amount payable under a *literary proceeds order is a pecuniary penalty for the purposes of this section.

128 Property under a person's effective control

In assessing the value of *benefits that a person has derived, the court may treat as property of the person any property that, in the court's opinion, is subject to the person's *effective control.

129 Effect of property vesting in an insolvency trustee

In assessing the value of *benefits that a person has derived, the *person's property is taken to continue to be the person's property if it vests in any of the following:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or
- (c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or
- (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

Subdivision C—Reducing penalty amounts

130 Reducing penalty amounts to take account of forfeiture and proposed forfeiture

The *penalty amount under a *pecuniary penalty order against a person is reduced by an amount equal to the value, as at the time of the making of the order, of any property that is *proceeds of the offence to which the order relates if:

- (a) the property has been forfeited, under this Act or another law of the Commonwealth or under a law of a *non-governing Territory, in relation to the offence to which the order relates; or

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

- (b) an application has been made for a *forfeiture order that would cover the property.

131 Reducing penalty amounts to take account of tax paid

- (1) The court must reduce the *penalty amount under a *pecuniary penalty order against a person by an amount that, in the court's opinion, represents the extent to which tax that the person has paid is attributable to the *benefits to which the order relates.
- (2) The tax may be tax payable under a law of the Commonwealth, a State, a Territory or a foreign country.

132 Reducing penalty amounts to take account of fines etc.

The court may, if it considers it appropriate to do so, reduce the *penalty amount under a *pecuniary penalty order against a person by an amount equal to the amount payable by the person by way of fine, restitution, compensation or damages in relation to an offence to which the order relates.

Subdivision D—Varying pecuniary penalty orders to increase penalty amounts

133 Varying pecuniary penalty orders to increase penalty amounts

- (1) The court may, on the application of the *DPP, vary a *pecuniary penalty order against a person by increasing the *penalty amount if one or both of subsections (2) and (3) apply. The amount of each increase is as specified in the relevant subsection.
- (2) The *penalty amount may be increased if:
 - (a) the penalty amount was reduced under section 130 to take account of a forfeiture of property or a proposed *forfeiture order against property; and
 - (b) an appeal against the forfeiture or forfeiture order is allowed, or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made.

The amount of the increase is equal to the value of the property.

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

- (3) The *penalty amount may be increased if:
- (a) the penalty amount was reduced under section 131 to take account of an amount of tax the person paid; and
 - (b) an amount is repaid or refunded to the person in respect of that tax.

The amount of the increase is equal to the amount repaid or refunded.

- (4) The *DPP's application may deal with more than one increase to the same *penalty amount.

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

Division 3—How pecuniary penalty orders are obtained

134 DPP may apply for a pecuniary penalty order

- (1) The *DPP may apply for a *pecuniary penalty order.
- (2) If the application relates to a person's conviction of a *serious offence, the application must be made before:
 - (a) the end of the period of 9 months after the *conviction day; or
 - (b) if an *extension order is in force at the end of that period—the end of the period of 3 months after the end of the extended period relating to that extension order.
- (3) If the application relates to a person's conviction of an *indictable offence that is not a *serious offence, the application must be made before the end of the period of 6 months after the *conviction day.
- (4) An application may be made in relation to one or more offences.
- (5) An application may be made for a *pecuniary penalty order in relation to an offence even if:
 - (a) a *forfeiture order in relation to the offence, or an application for such a forfeiture order, has been made; or
 - (b) Part 2-3 (forfeiture on conviction of a serious offence) applies to the offence.

135 Additional application for a pecuniary penalty order

- (1) The *DPP cannot, unless the court gives leave, apply for a *pecuniary penalty order against a person in respect of *benefits the person derived from the commission of an offence if:
 - (a) an application has previously been made:
 - (i) under this Division; or
 - (ii) under another law of the Commonwealth; or
 - (iii) under a law of a *non-governing Territory;for a pecuniary penalty in respect of those benefits the person derived from the commission of the offence; and

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

- (b) the application has been finally determined on the merits.
- (2) The court must not give leave unless it is satisfied that:
 - (a) the *benefit to which the new application relates was identified only after the first application was determined; or
 - (b) necessary evidence became available only after the first application was determined; or
 - (c) it is in the interests of justice to give the leave.
- (3) An application for a *literary proceeds order is not, for the purposes of this section, an application for a pecuniary penalty.

136 Notice of application

- (1) The *DPP must give written notice of the application to a person who would be subject to the *pecuniary penalty order if it were made.
- (2) The *DPP must include a copy of the application, and any affidavit supporting the application, with the notice.
- (3) However, the *DPP may delay giving a copy of an affidavit to the person if the court to which the application was made so orders.
- (4) The court must not make such an order unless it is satisfied that:
 - (a) including a copy of the affidavit with the notice would prejudice the investigation of, or the prosecution of a person for, an offence; or
 - (b) it is for any other reason appropriate to make the order.

137 Amendment of application

- (1) The court hearing the application may amend the application:
 - (a) on application by the *DPP; or
 - (b) with the consent of the DPP.
- (2) However, the court must not amend the application so as to include an additional *benefit in the application unless the court is satisfied that:
 - (a) the benefit was not reasonably capable of identification when the application was originally made; or

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

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- (b) necessary evidence became available only after the application was originally made.
- (3) On applying for an amendment to include an additional *benefit in the application, the *DPP must give to the person against whom the *pecuniary penalty order would be made a written notice of the application to amend.

138 Procedure on application

- (1) The person who would be subject to the *pecuniary penalty order if it were made may appear and adduce evidence at the hearing of the application.
- (2) If the application relates to a person's conviction of an *indictable offence, the court may, in determining the application, have regard to:
 - (a) the transcript of any proceeding against the person for:
 - (i) that offence; or
 - (ii) if the person is taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph; and
 - (b) the evidence given in any such proceeding.

139 Applications to courts before which persons are convicted

If an application for a *pecuniary penalty order is made to a court before which a person was convicted of an *indictable offence:

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

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

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

Division 4—Enforcement of pecuniary penalty orders

140 Enforcement of pecuniary penalty orders

- (1) An amount payable by a person to the Commonwealth under a *pecuniary penalty order is a civil debt due by the person to the Commonwealth.
- (2) A *pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.
- (3) However, if the order was made under subsection 117(2) when sentence was being passed on the person for the offence to which the order relates, the order cannot be enforced against the person within the period of 6 months after the order was made.
- (4) The debt arising from the order is taken to be a judgment debt.
- (5) If a *pecuniary penalty order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

141 Property subject to a person's effective control

- (1) If:
 - (a) a person is subject to a *pecuniary penalty order; and
 - (b) the *DPP applies to the court for an order under this section; and
 - (c) the court is satisfied that particular property is subject to the *effective control of the person;the court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.
- (2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.
- (3) A *restraining order may be made in respect of the property as if:

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

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- (a) the property were the *person's property; and
 - (b) the person had committed a *serious offence.
- (4) If the *DPP applies for an order under subsection (1) relating to particular property, the DPP must give written notice of the application to:
- (a) the person who is subject to the *pecuniary penalty order; and
 - (b) any person whom the DPP has reason to believe may have an *interest in the property.
- (5) The person who is subject to the *pecuniary penalty order, and any person who claims an *interest in the property, may appear and adduce evidence at the hearing of the application.

142 Charge on property subject to restraining order

- (1) If:
- (a) a *pecuniary penalty order is made against a person in relation to an *indictable offence; and
 - (b) a *restraining order is, or has been, made against:
 - (i) the *person's property; or
 - (ii) another person's property in relation to which an order under subsection 141(1) is, or has been, made; and
 - (c) the restraining order relates to that offence or a *related offence;
- then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the *penalty amount.
- (2) The charge ceases to have effect in respect of the property:
- (a) if the *pecuniary penalty order was made in relation to the person's conviction of the *indictable offence and that conviction is *quashed—upon the order being discharged under Division 5; or
 - (b) upon the discharge of the pecuniary penalty order or the *restraining order by a court hearing an appeal against the making of the order; or
 - (c) upon payment to the Commonwealth of the *penalty amount in satisfaction of the pecuniary penalty order; or

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

- (d) upon the sale or other disposition of the property:
 - (i) under an order under Division 4 of Part 4-1; or
 - (ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or
 - (iii) if the restraining order directed the *Official Trustee to take custody and control of the property—by the owner of the property with the consent of the Official Trustee; or
 - (e) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;
- whichever first occurs.
- (3) The charge:
 - (a) is subject to every *encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.

143 Charges may be registered

- (1) If:
 - (a) a charge is created by section 142 on property of a particular kind; and
 - (b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind;the *Official Trustee or the *DPP may cause the charge so created to be registered under the provisions of that law.
- (2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph 142(2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

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

144 Penalty amounts exceeding the court's jurisdiction

- (1) If:
 - (a) a court makes a *pecuniary penalty order of a particular amount; and
 - (b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount;the registrar of the court must issue a certificate containing the particulars specified in the regulations.
- (2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the relevant order.
- (3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

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

Division 5—The effect on pecuniary penalty orders of convictions being quashed

145 Pecuniary penalty order unaffected if not made in relation to a conviction

A *pecuniary penalty order made in relation to an offence but not made in relation to a person's conviction of the offence is not affected if the person is convicted of the offence and the conviction is subsequently *quashed.

146 Discharge of pecuniary penalty order if made in relation to a conviction

- (1) A *pecuniary penalty order made in relation to a person's conviction of a *serious offence is discharged if:
 - (a) the person's conviction of the offence is subsequently *quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
 - (b) the *DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.
- (2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *pecuniary penalty order:
 - (a) for 14 days after the conviction is quashed; and
 - (b) if the *DPP makes such an application.
- (3) A *pecuniary penalty order made in relation to a person's conviction of an offence that is not a *serious offence is discharged if the person's conviction of the offence is subsequently *quashed.

147 Notice of application for confirmation of pecuniary penalty order

The *DPP must give to the person written notice of an application for confirmation of the *pecuniary penalty order.

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

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Note: If the DPP applies for confirmation of a pecuniary penalty order, it can also apply for an examination order under Part 3-1.

148 Procedure on application for confirmation of pecuniary penalty order

- (1) The person may appear and adduce evidence at the hearing of the application for confirmation of the order.
- (2) The court may, in determining the application, have regard to:
 - (a) the transcript of any proceeding against the person for:
 - (i) the offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;including any appeals relating to the conviction; and
 - (b) the evidence given in any such proceeding.

149 Court may confirm pecuniary penalty order

The court may confirm the *pecuniary penalty order if the court is satisfied that, when the *DPP applied for the order, the court could have made the order:

- (a) on the ground that:
 - (i) if the offence in relation to which the person's conviction was *quashed is a *terrorism offence—the person had committed the offence; or
 - (ii) if the offence in relation to which the person's conviction was *quashed is not a *terrorism offence—the person had committed the offence within the period of 6 years referred to in subsection 116(2) in relation to that order, or since the end of that period; and
- (b) without relying on the person's conviction of the offence.

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

150 Effect of court's decision on confirmation of pecuniary penalty order

- (1) If the court confirms the *pecuniary penalty order under section 149, the order is taken not to be affected by the *quashing of the person's conviction of the offence.
- (2) If the court decides not to confirm the *pecuniary penalty order, the order is discharged.

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

Part 2-5—Literary proceeds orders

151 Simplified outline of this Part

If certain offences have been committed, literary proceeds orders can be made, ordering payments to the Commonwealth of amounts based on the literary proceeds that a person has derived in relation to such an offence. (There is no requirement that a person has been convicted of the offence.)

Division 1—Making literary proceeds orders

152 Making literary proceeds orders

- (1) A court with *proceeds jurisdiction may make an order requiring a person to pay an amount to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) the court is satisfied that the person has committed an *indictable offence (whether or not the person has been convicted of the offence); and
 - (c) the court is satisfied that the person has derived *literary proceeds in relation to the offence.
- (2) A court with *proceeds jurisdiction may make an order requiring a person to pay an amount to the Commonwealth if:
 - (a) the *DPP applies for the order; and
 - (b) the court is satisfied that the person has committed a *foreign indictable offence (whether or not the person has been convicted of the offence); and
 - (c) the court is satisfied that the person has derived *literary proceeds in relation to the offence.
- (3) However, the *literary proceeds must have been derived after the commencement of this Act.

Note: Because of section 14, it does not matter whether the offence to which the order relates was committed before or after the commencement of this Act.

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

- (4) The court's power to make a *literary proceeds order in relation to an offence is not affected by the existence of another *confiscation order in relation to that offence.

153 Meaning of *literary proceeds*

- (1) ***Literary proceeds*** are any *benefit that a person derives from the commercial exploitation of:
- (a) the person's notoriety resulting, directly or indirectly, from the person committing an *indictable offence or a *foreign indictable offence; or
 - (b) the notoriety of another person, involved in the commission of that offence, resulting from the first-mentioned person committing that offence.
- (2) The commercial exploitation may be by any means, including:
- (a) publishing any material in written or electronic form; or
 - (b) any use of media from which visual images, words or sounds can be produced; or
 - (c) any live entertainment, representation or interview.
- (3) If the offence is an *indictable offence, it does not matter whether the *benefits are derived within or outside *Australia.
- (3A) If the offence is a *foreign indictable offence, then a *benefit is not treated as *literary proceeds unless the benefit is derived in *Australia or transferred to Australia.
- (4) In determining:
- (a) whether a person has derived *literary proceeds; or
 - (b) the value of literary proceeds that a person has derived;
- the court may treat as property of the person any property that, in the court's opinion:
- (c) is subject to the person's *effective control; or
 - (d) was not received by the person, but was transferred to, or (in the case of money) paid to, another person at the person's direction.

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

154 Matters taken into account in deciding whether to make literary proceeds orders

In deciding whether to make a *literary proceeds order, the court:

- (a) must take into account:
 - (i) the nature and purpose of the product or activity from which the *literary proceeds were derived; and
 - (ii) whether supplying the product or carrying out the activity was in the public interest; and
 - (iii) the social, cultural or educational value of the product or activity; and
 - (iv) the seriousness of the offence to which the product or activity relates; and
 - (v) how long ago the offence was committed; and
- (b) may take into account such other matters as it thinks fit.

155 Additional literary proceeds orders

More than one *literary proceeds order may be made against a person in relation to the same offence.

156 Ancillary orders

The court that made a *literary proceeds order, or any other court that could have made the literary proceeds order, may make orders ancillary to the literary proceeds order, either when it makes the literary proceeds order or at a later time.

157 Acquittals do not affect literary proceeds orders

The fact that a person has been acquitted of an offence with which the person has been charged does not affect the court's power to make a *literary proceeds order in relation to the offence.

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

Division 2—Literary proceeds amounts

158 Determining literary proceeds amounts

- (1) The amount that a person is ordered to pay to the Commonwealth under a *literary proceeds order (the ***literary proceeds amount***) is the amount that the court thinks appropriate.
- (2) However, the amount:
 - (a) must not exceed the amount of the *literary proceeds relating to the offence to which the order relates, less any deductions arising under section 159; and
 - (b) may be further reduced under section 160.
- (3) In determining the *literary proceeds amount, the court is to have regard to such matters as it thinks fit, including any of the following:
 - (a) the amount of the *literary proceeds relating to the offence;
 - (b) if the person stood trial for the offence—the evidence adduced in the proceedings for the offence;
 - (c) if the person was convicted of the offence—the transcript of the sentencing proceedings.

159 Deductions from literary proceeds amounts

In determining the *literary proceeds amount under a *literary proceeds order against a person, the court must deduct the following:

- (a) any expenses and outgoings that the person incurred in deriving the *literary proceeds;
- (b) the value of any property of the person forfeited under:
 - (i) a *forfeiture order; or
 - (ii) an *interstate forfeiture order; or
 - (iii) a *foreign forfeiture order;relating to the offence to which the literary proceeds order relates, to the extent that the property is literary proceeds;
- (c) any amount payable by the person under:

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

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- (i) a *pecuniary penalty order; or
- (ii) an order under section 243B of the *Customs Act 1901*;
or
- (iii) an *interstate pecuniary penalty order; or
- (iv) a *foreign pecuniary penalty order;
relating to the offence to which the literary proceeds order
relates, to the extent that the amount is literary proceeds;
- (d) the amount of any previous literary proceeds order made
against the person in relation to the same exploitation of the
person's notoriety resulting from the person committing the
offence in question.

160 Reducing literary proceeds amounts to take account of tax paid

- (1) The court may reduce the *literary proceeds amount under a
*literary proceeds order against a person by an amount that, in the
court's opinion, represents the extent to which tax that the person
has paid is attributable to the *literary proceeds to which the order
relates.
- (2) The tax may be tax payable under a law of the Commonwealth, a
State, a Territory or a foreign country.

**161 Varying literary proceeds orders to increase literary proceeds
amounts**

- (1) The court may, on the application of the *DPP, vary a *literary
proceeds order against a person by increasing the *literary proceeds
amount if one or more of subsections (2), (3) and (4) apply. The
amount of each increase is as specified in the relevant subsection.
- (2) The *literary proceeds amount may be increased if:
 - (a) the value of property of the person forfeited under a
*forfeiture order, an *interstate forfeiture order or a *foreign
forfeiture order was deducted from the literary proceeds
amount under paragraph 159(b); and
 - (b) an appeal against the forfeiture, or against the order, is
allowed.

The amount of the increase is equal to the value of the property.

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

- (3) The *literary proceeds amount may be increased if:
- (a) an amount payable under a *pecuniary penalty order, an order under section 243B of the *Customs Act 1901*, an *interstate pecuniary penalty order or a *foreign pecuniary penalty order was deducted from the *literary proceeds amount under paragraph 159(c); and
 - (b) an appeal against the amount payable, or against the order, is allowed.

The amount of the increase is equal to the amount that was payable.

- (4) The *literary proceeds amount may be increased if:
- (a) in determining a *literary proceeds amount, the court took into account, under section 160, an amount of tax paid by the person who is the subject of the order; and
 - (b) an amount is repaid or refunded to the person in respect of that tax.

The amount of the increase is equal to the amount repaid or refunded.

- (5) The *DPP's application may deal with more than one increase to the same *literary proceeds amount.

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

Division 3—How literary proceeds orders are obtained

162 DPP may apply for a literary proceeds order

- (1) The *DPP may apply for a *literary proceeds order.
- (2) An application may be made in relation to one or more offences.

163 Notice of application

- (1) The *DPP must give written notice of the application to the person who would be subject to the *literary proceeds order if it were made.
- (2) The *DPP must include a copy of the application, and any affidavit supporting the application, with the notice.

164 Amendment of application

- (1) The court hearing the application may amend the application:
 - (a) on application by the *DPP; or
 - (b) with the consent of the DPP.
- (2) However, the court must not amend the application so as to include additional *literary proceeds in the application unless the court is satisfied that:
 - (a) the literary proceeds were not reasonably capable of identification when the application was originally made; or
 - (b) necessary evidence became available only after the application was originally made.
- (3) If:
 - (a) the *DPP applies to amend the application for a *literary proceeds order against a person; and
 - (b) the effect of the amendment would be to include additional *literary proceeds in the application;the DPP must give the person written notice of the application to amend.

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

165 Procedure on application

The person who would be subject to the *literary proceeds order if it were made may appear and adduce evidence at the hearing of the application.

166 Applications to courts before which persons are convicted

If an application for a *literary proceeds order is made to a court before which a person was convicted of an *indictable offence:

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

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

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

Division 4—Enforcement of literary proceeds orders

167 Enforcement of literary proceeds orders

- (1) An amount payable by a person to the Commonwealth under a *literary proceeds order is a civil debt due by the person to the Commonwealth.
- (2) A *literary proceeds order against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.
- (3) The debt arising from the order is taken to be a judgment debt.

168 Property subject to a person's effective control

- (1) If:
 - (a) a person is subject to a *literary proceeds order; and
 - (b) the *DPP applies to the court for an order under this section; and
 - (c) the court is satisfied that particular property is subject to the *effective control of the person;the court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the literary proceeds order.
- (2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.
- (3) A *restraining order may be made in respect of the property as if:
 - (a) the property were the *person's property; and
 - (b) the person had committed a *serious offence.
- (4) If the *DPP applies for an order under subsection (1) relating to particular property, the DPP must give written notice of the application to:
 - (a) the person who is subject to the *literary proceeds order; and

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

- (b) any person whom the DPP reasonably believes may have an *interest in the property.
- (5) The person who is subject to the *literary proceeds order, and any person who claims an *interest in the property, may appear and adduce evidence at the hearing of the application.

169 Charge on property subject to restraining order

- (1) If:
 - (a) a *literary proceeds order is made against a person in relation to an *indictable offence; and
 - (b) a *restraining order is, or has been, made against:
 - (i) the *person's property; or
 - (ii) another person's property in relation to which an order under subsection 168(1) is, or has been, made; and
 - (c) the restraining order relates to that offence or a *related offence;then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Commonwealth of the *literary proceeds amount.
- (2) The charge ceases to have effect in respect of the property:
 - (a) if the *literary proceeds order was made in relation to the person's conviction of the *indictable offence and that conviction is *quashed—upon the order being discharged under Division 5; or
 - (b) upon the discharge of the literary proceeds order or the *restraining order by a court hearing an appeal against the making of the order; or
 - (c) upon payment to the Commonwealth of the *literary proceeds amount in satisfaction of the literary proceeds order; or
 - (d) upon the sale or other disposition of the property:
 - (i) under an order under Division 4 of Part 4-1; or
 - (ii) by the owner of the property with the consent of the court that made the literary proceeds order; or
 - (iii) where the restraining order directed the *Official Trustee to take custody and control of the property—by

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

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the owner of the property with the consent of the Official Trustee; or

- (e) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

- (3) The charge:

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

170 Charges may be registered

- (1) If:

- (a) a charge is created by section 169 on property of a particular kind; and
- (b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind;

the *Official Trustee or the *DPP may cause the charge so created to be registered under the provisions of that law.

- (2) A person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph 169(2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

171 Literary proceeds amounts exceeding the court's jurisdiction

- (1) If:

- (a) a court makes a *literary proceeds order; and
- (b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to the *literary proceeds amount under the order;

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

the registrar of the court must issue a certificate containing the particulars specified in the regulations.

- (2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the *literary proceeds amount.
- (3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

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

Division 5—The effect on literary proceeds orders of convictions being quashed

172 Literary proceeds order unaffected if not made in relation to a conviction

A *literary proceeds order made in relation to an offence but not made in relation to a person's conviction of the offence is not affected if the person is convicted of the offence and the conviction is subsequently *quashed.

173 Discharge of literary proceeds order if made in relation to a conviction

- (1) A *literary proceeds order made in relation to a person's conviction of an offence is discharged if:
 - (a) the person's conviction of the offence is subsequently *quashed (whether or not the order relates to the person's conviction of other offences that have not been quashed); and
 - (b) the *DPP does not, within 14 days after the conviction is quashed, apply to the court that made the order for the order to be confirmed.
- (2) However, unless and until a court decides otherwise on such an application, the *quashing of the conviction does not affect the *literary proceeds order:
 - (a) for 14 days after the conviction is quashed; and
 - (b) if the *DPP makes such an application.

174 Notice of application for confirmation of literary proceeds order

The *DPP must give to the person written notice of an application for confirmation of the *literary proceeds order.

Note: If the DPP applies for confirmation of a forfeiture order, it can also apply for an examination order under Part 3-1.

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

175 Procedure on application for confirmation of literary proceeds order

- (1) The person may appear and adduce evidence at the hearing of the application for confirmation of the order.
- (2) The court may, in determining the application, have regard to:
 - (a) the transcript of any proceeding against the person for:
 - (i) the offence of which the person was convicted; or
 - (ii) if the person was taken to be convicted of that offence because of paragraph 331(1)(c)—the other offence referred to in that paragraph;including any appeals relating to the conviction; and
 - (b) the evidence given in any such proceeding.

176 Court may confirm literary proceeds order

The court may confirm the *literary proceeds order if the court is satisfied that, when the *DPP applied for the order, the court could have made the order:

- (a) on the ground that the person had committed the offence in relation to which the person's conviction was *quashed; and
- (b) without relying on the person's conviction of the offence.

177 Effect of court's decision on confirmation of literary proceeds order

- (1) If the court confirms the *literary proceeds order under section 176, the order is taken not to be affected by the *quashing of the person's conviction of the offence.
- (2) If the court decides not to confirm the *literary proceeds order, the order is discharged.

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

Division 6—Literary proceeds orders covering future literary proceeds

178 Literary proceeds orders can cover future literary proceeds

- (1) The court may include in a *literary proceeds order one or more amounts in relation to *benefits that the person who is the subject of the order may derive in the future if the court is satisfied that:
 - (a) the person will derive the benefits; and
 - (b) if the person derives the benefits, they will be *literary proceeds in relation to the offence to which the order relates.
- (2) However, the court must not include an amount in the order unless the *DPP, in its application for the order, requested the inclusion in the order of one or more amounts in relation to *benefits that the person who would be the subject of the order may derive in the future.
- (3) Each amount included in the order is to be an amount that the court considers would be a *literary proceeds amount in relation to a *benefit that the person may derive in the future, if the court were to make a *literary proceeds order after the person derived the benefit.

Note: Division 2 describes how literary proceeds amounts are determined.

179 Enforcement of literary proceeds orders in relation to future literary proceeds

If:

- (a) an amount is included in a *literary proceeds order in relation to *benefits that the person who is the subject of the order may derive in the future; and
 - (b) the person subsequently derives those benefits;
- immediately the benefits are derived, Division 4 applies to the amount as if it were a *literary proceeds amount under a literary proceeds order.

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

Chapter 3—Information gathering

Part 3-1—Examinations

Division 1—Examination orders

180 Examination orders relating to restraining orders

- (1) If a *restraining order is in force, the court that made the restraining order, or any other court that could have made the restraining order, may make an order (an *examination order*) for the *examination of any person, including:
 - (a) a person whose property is, or a person who has or claims an *interest in property that is, the subject of the restraining order; or
 - (b) a person whom the restraining order states to be a *suspect for the offence to which the restraining order relates; or
 - (c) the spouse (including de facto spouse) of a person referred to in paragraph (a) or (b);about the affairs (including the nature and location of any property) of a person referred to in paragraph (a), (b) or (c).
- (2) The *examination order ceases to have effect if the *restraining order to which it relates ceases to have effect.

181 Examination orders relating to applications for confirmation of forfeiture

- (1) If an application relating to the *quashing of a person's conviction of an offence is made, as mentioned in section 81, 107, 146 or 173, the court to which the application is made may make an order (an *examination order*) for the *examination of any person, including:
 - (a) the person whose conviction is quashed; or
 - (b) a person whose property is, or a person who has an *interest in property that is, the subject of the forfeiture, *pecuniary penalty order or *literary proceeds order to which the application relates; or

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

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- (c) the spouse (including de facto spouse) of a person referred to in paragraph (a) or (b);
about the affairs (including the nature and location of any property) of a person referred to in paragraph (a), (b) or (c).
- (2) The *examination order ceases to have effect:
 - (a) if the application is withdrawn; or
 - (b) when the court makes a decision on the application.

182 Applications for examination orders

An *examination order can only be made on application by the *DPP.

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

Division 2—Examination notices

183 Examination notices

- (1) An *approved examiner may, on application by the *DPP, give to a person who is the subject of an *examination order a written notice (an *examination notice*) for the *examination of the person.
- (2) However, the *approved examiner must not give the *examination notice if:
 - (a) an application has been made under section 42 for the *restraining order to which the notice relates to be revoked; and
 - (b) the court to which the application is made orders that *examinations are not to proceed.
- (3) The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) does not prevent the *approved examiner giving the *examination notice.
- (4) An *approved examiner* is a person who:
 - (a) holds an office, or is included in a class of people, specified in the regulations; or
 - (b) is appointed by the Minister under this section.

184 Additional examination notices

A person who is the subject of an *examination order may be given more than one *examination notice.

185 Form and content of examination notices

- (1) The *examination notice:
 - (a) must be in the prescribed form; and
 - (b) must require the person to attend the *examination; and
 - (c) must specify the time and place of the examination; and
 - (d) must specify such further information as the regulations require.

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

Chapter 3 Information gathering

Part 3-1 Examinations

Division 2 Examination notices

Section 185

- (2) The *examination notice may require the person to produce at the *examination the documents specified in the notice.

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

Division 3—Conducting examinations

186 Time and place of examination

- (1) The *examination of a person must be conducted:
 - (a) at the time and place specified in the *examination notice; or
 - (b) at such other time and place as the *approved examiner decides on the request of a person referred to in paragraph 188(3)(b), (c) or (d).

- (2) However, the *approved examiner must:
 - (a) give the person a written notice withdrawing the *examination notice; and
 - (b) if the *examination of the person has started (but not finished)—stop the examination;if, after the examination notice is given:
 - (c) an application has been made under section 42 for the *restraining order to which the notice relates to be revoked; and
 - (d) the court to which the application is made orders that examinations are not to proceed.

- (3) This section does not prevent the *approved examiner giving the person a further *examination notice if the application for revocation of the *restraining order is unsuccessful.

- (4) The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) does not prevent the *examination of a person.

187 Requirements made of person examined

- (1) The person may be examined on oath or affirmation by:
 - (a) the *approved examiner; and
 - (b) the *DPP.

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

Section 188

- (2) The *approved examiner may, for that purpose:
 - (a) require the person either to take an oath or to make an affirmation; and
 - (b) administer an oath or affirmation to the person.
- (3) The oath or affirmation to be taken or made by the person for the purposes of the *examination is an oath or affirmation that the statements that the person will make will be true.
- (4) The *examination must not relate to a person's affairs:
 - (a) if the *examination relates to a *restraining order and the person is no longer a person whose affairs can, under section 180, be subject to the examination; or
 - (b) if the examination relates to the *quashing of a conviction for an offence and the person is no longer a person whose affairs can, under section 181, be subject to the examination.
- (5) The *approved examiner may require the person to answer a question that:
 - (a) is put to the person at the *examination; and
 - (b) is relevant to the affairs (including the nature and location of any property) of a person referred to in paragraph 180(1)(a), (b) or (c) or 181(1)(a), (b) or (c).

188 Examination to take place in private

- (1) The *examination is to take place in private.
- (2) The *approved examiner may give directions about who may be present during the *examination, or during a part of it.
- (3) These people are entitled to be present at the *examination:
 - (a) the *approved examiner;
 - (b) the person being examined, and the person's *lawyer;
 - (c) the *DPP;
 - (d) any person who is entitled to be present because of a direction under subsection (2).

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

189 Role of the examinee's lawyer

- (1) The *lawyer of the person being examined may, at such times during the *examination as the *approved examiner determines:
 - (a) address the approved examiner; and
 - (b) examine the person;about matters about which the approved examiner, or the *DPP, has examined the person.
- (2) The *approved examiner may require a *lawyer who, in the approved examiner's opinion, is trying to obstruct the *examination by exercising rights under subsection (1), to stop addressing the approved examiner, or stop his or her examination, as the case requires.

190 Examination by video link or telephone

- (1) The *approved examiner may, on the request of a person referred to in paragraph 188(3)(b), (c) or (d), direct that a person be examined by video link if:
 - (a) the facilities required by subsection (2) are available or can reasonably be made available; and
 - (b) the approved examiner is satisfied that attendance of the person at the place of the *examination would cause unreasonable expense or inconvenience; and
 - (c) the approved examiner is satisfied that it is consistent with the interests of justice that the person be examined by video link.
- (2) The person can be examined under the direction only if the place where the person is to attend for the purposes of the *examination is equipped with video facilities that enable the people referred to in subsection 188(3) to see and hear the person be examined.
- (3) An oath or affirmation to be sworn or made by a person who is to be examined under such a direction may be administered either:
 - (a) by means of video link, in as nearly as practicable the same way as if the person were to be examined at the place of the *examination; or

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

Section 191

- (b) on behalf of the *approved examiner, by a person authorised by the approved examiner, at the place where the person to be examined attends for the purposes of the examination.
- (4) The *approved examiner may, on the request of a person referred to in paragraph 188(3)(b), (c) or (d), direct that a person be examined by telephone if:
 - (a) the approved examiner is satisfied that attendance of the person at the place of the *examination would cause unreasonable expense or inconvenience; and
 - (b) the approved examiner is satisfied that it is consistent with the interests of justice that the person be examined by telephone.

191 Record of examination

- (1) The *approved examiner:
 - (a) may cause a record to be made of statements made at the *examination; and
 - (b) must make such a record if the person being examined, or the *DPP, so requests; and
 - (c) if the record is not a written record—must cause the record to be reduced to writing if the person being examined, or the DPP, so requests.
- (2) If a record made under subsection (1) is in writing or is reduced to writing:
 - (a) the *approved examiner may require the person being examined to read it, or to have it read to him or her, and may require him or her to sign it; and
 - (b) if the person being examined requests in writing that the approved examiner give to the person a copy of the written record—the approved examiner must comply with the request without charge.
- (3) The *approved examiner may, in complying with the request under paragraph (2)(b), impose on the person being examined such conditions (if any) as the approved examiner reasonably considers to be necessary to prevent improper disclosure of the record.

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

- (4) The fact that a person being *examined signs a record as required under paragraph (2)(a) does not of itself constitute an acknowledgment that the record is accurate.

192 Questions of law

The *approved examiner may:

- (a) on his or her own initiative; or
 - (b) at the request of the person being examined, or the *DPP;
- refer a question of law arising at the *examination to the court that made the *examination order.

193 Approved examiner may restrict publication of certain material

- (1) The *approved examiner may:
- (a) on his or her own initiative; or
 - (b) at the request of the person being examined, or the *DPP;
- give directions preventing or restricting disclosure to the public of matters contained in answers given or documents produced in the course of the *examination.
- (2) In deciding whether or not to give a direction, the *approved examiner is to have regard to:
- (a) whether:
 - (i) an answer that has been or may be given; or
 - (ii) a document that has been or may be produced; or
 - (iii) a matter that has arisen or may arise;during the *examination is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against a law of the Commonwealth or a State or Territory; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the approved examiner gives the direction; and
 - (c) whether giving the direction is in the public interest; and
 - (d) any other relevant matter.

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

194 Protection of approved examiner etc.

- (1) The *approved examiner has, in the performance of his or her duties as an approved examiner, the same protection and immunity as a Justice of the High Court.
- (2) A *lawyer appearing at the *examination:
 - (a) on behalf of the person being examined; or
 - (b) as or on behalf of the *DPP;has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, the person being *examined:
 - (a) has the same protection; and
 - (b) in addition to the penalties provided by this Act, is subject to the same liabilities;as a witness in proceedings in the High Court.

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

Division 4—Offences

Note: In addition to the offences in this Division, there are other offences that may be relevant to examinations, such as sections 137.1 (false or misleading information) and 137.2 (false or misleading documents) of the *Criminal Code*.

195 Failing to attend an examination

A person is guilty of an offence if the person:

- (a) is required by an *examination notice to attend an *examination; and
- (b) refuses or fails to attend the examination at the time and place specified in the notice.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

196 Offences relating to appearance at an examination

- (1) A person attending an *examination to answer questions or produce documents must not:
 - (a) refuse or fail to be sworn or to make an affirmation; or
 - (b) refuse or fail to answer a question that the *approved examiner requires the person to answer; or
 - (c) refuse or fail to produce at the examination a document specified in the *examination notice that required the person's attendance; or
 - (d) leave the examination before being excused by the approved examiner.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (2) Paragraph (1)(c) does not apply if the person complied with the notice in relation to production of the document to the extent that it was practicable to do so.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2); see subsection 13.3(3) of the *Criminal Code*.

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

197 Privileged information

(1) Paragraph 196(1)(b) or (c) does not apply if, under:

- (a) a law of the Commonwealth; or
- (b) a law of the State or Territory in which the *examination takes place;

the person could not, in proceedings before a court, be compelled to answer the question or produce the document.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

(2) However, paragraph 196(1)(b) or (c) applies if the only reason or reasons why the person could not be so compelled are one or more of the following:

- (a) answering the question or producing the document would tend to incriminate the person or to expose the person to a penalty;
- (b) the answer would be privileged from being disclosed, or the document would be privileged from being produced, in legal proceedings on the ground of *legal professional privilege;
- (ba) the answer would be privileged from being disclosed, or the document would be privileged from being produced, in legal proceedings on the ground of *professional confidential relationship privilege;
- (c) the answer or document would, under a law of the Commonwealth, a State or a Territory relating to the law of evidence, be inadmissible in legal proceedings for a reason other than because:
 - (i) the answer would be privileged from being disclosed; or
 - (ii) the document would be privileged from being produced.

(3) To avoid doubt, the following are not reasons why a person cannot, in proceedings before a court, be compelled to answer a question or produce a document:

- (a) the person is contractually obliged not to disclose information, and answering the question or producing the document would disclose that information;

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

- (b) the person is obliged under a law of a foreign country not to disclose information, and answering the question or producing the document would disclose that information.

198 Admissibility of answers and documents

An answer given or document produced in an *examination is not admissible in evidence in civil or criminal proceedings against the person who gave the answer or produced the document except:

- (a) in criminal proceedings for giving false or misleading information; or
- (b) in proceedings on an application under this Act; or
- (c) in proceedings ancillary to an application under this Act; or
- (d) in proceedings for enforcement of a *confiscation order; or
- (e) in the case of a document—in civil proceedings for or in respect of a right or liability it confers or imposes.

199 Unauthorised presence at an examination

A person is guilty of an offence if the person:

- (a) is present at an *examination; and
- (b) is not entitled under subsection 188(3) to be present.

Maximum penalty: 30 penalty units.

200 Breaching conditions on which records of statements are provided

A person is guilty of an offence if the person breaches a condition imposed under subsection 191(3) relating to a record given to the person under that subsection.

Maximum penalty: 30 penalty units.

201 Breaching directions preventing or restricting publication

- (1) A person is guilty of an offence if:
 - (a) the person publishes a matter contained in answers given or documents produced in the course of an *examination; and

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

Section 201

- (b) the publication is in contravention of a direction given under section 193 by the *approved examiner who conducted the examination.

Maximum penalty: 30 penalty units.

- (2) This section does not apply to disclosure of a matter:
 - (a) to obtain legal advice or legal representation in relation to the order; or
 - (b) for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

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

Part 3-2—Production orders

202 Making production orders

- (1) A magistrate may make an order (a *production order*) requiring a person to:
 - (a) produce one or more *property-tracking documents to an *authorised officer; or
 - (b) make one or more property-tracking documents available to an authorised officer for inspection.
- (2) However:
 - (a) the magistrate must not make a *production order unless the magistrate is satisfied by information on oath that the person is reasonably suspected of having possession or control of such documents; and
 - (b) a production order cannot require documents that are not:
 - (i) in the possession or under the control of a body corporate; or
 - (ii) used or intended to be used in the carrying on of a business;to be produced or made available to an *authorised officer; and
 - (c) a production order cannot require any accounting records used in the ordinary business of a *financial institution (including ledgers, day-books, cash-books and account books) to be produced to an *authorised officer.
- (3) The *production order can only be made on application by an *authorised officer of an *enforcement agency.
- (4) The *authorised officer need not give notice of the application to any person.
- (5) Each of the following is a *property-tracking document*:
 - (a) a document relevant to identifying, locating or quantifying property of any person:

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

Section 203

- (i) who has been convicted of, charged with, or whom it is proposed to charge with, an *indictable offence; or
 - (ii) whom there are reasonable grounds to suspect of having engaged in conduct constituting a *terrorism offence; or
 - (iii) whom there are reasonable grounds to suspect of having, within the last 6 years, engaged in conduct constituting any other *serious offence;
- (b) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;
- (c) a document relevant to identifying, locating or quantifying:
- (i) *proceeds of an indictable offence, or an *instrument of an indictable offence, of which a person has been convicted or with which a person has been charged or is proposed to be charged; or
 - (ii) proceeds of a terrorism offence, or an instrument of a terrorism offence, that a person is reasonably suspected of having committed; or
 - (iii) proceeds of any other serious offence, or an instrument of any other serious offence, that a person is reasonably suspected of having committed within the last 6 years;
- (d) a document relevant to identifying or locating any document necessary for the transfer of such property;
- (e) a document relevant to identifying, locating or quantifying *literary proceeds in relation to an indictable offence or a *foreign indictable offence of which a person has been convicted or which a person is reasonably suspected of having committed;
- (f) a document that would assist in the reading or interpretation of a document referred to in paragraph (a), (b), (c), (d) or (e).
- (6) It is sufficient for the purposes of subparagraph (5)(c)(ii) or (iii) that the document is relevant to identifying, locating or quantifying *proceeds of some offence or other of a kind referred to in that subparagraph. It does not need to be relevant to identifying, locating or quantifying proceeds of a particular offence.

203 Contents of production orders

- (1) A *production order must:

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

- (a) specify the nature of the documents required; and
 - (b) specify the place at which the person must produce the documents or make the documents available; and
 - (c) specify the time at which, or the times between which, this must be done; and
 - (d) specify the name of the *authorised officer who, unless he or she inserts the name of another authorised officer in the order, is to be responsible for giving the order to the person; and
 - (e) if the order specifies that information about the order must not be disclosed—set out the effect of section 210 (disclosing existence or nature of production orders); and
 - (f) set out the effect of section 211 (failing to comply with an order).
- (2) The time or times specified under paragraph (1)(c) must be at least 14 days from the day on which the order is given. However, the magistrate making the order may specify an earlier time or times if satisfied that it will not cause hardship to the person required to produce documents or make documents available.

204 Powers under production orders

The *authorised officer may inspect, take extracts from, or make copies of, a document produced or made available under a *production order.

205 Retaining produced documents

- (1) The *authorised officer may also retain a document produced under a *production order for as long as is necessary for the purposes of this Act.
- (2) The person to whom a *production order is given may require the *authorised officer to:
 - (a) certify in writing a copy of the document retained to be a true copy and give the person the copy; or
 - (b) allow the person to do one or more of the following:
 - (i) inspect the document;

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

Section 206

- (ii) take extracts from the document;
- (iii) make copies of the document.

206 Privilege against self-incrimination etc. does not apply

- (1) A person is not excused from producing a document or making a document available under a *production order on the ground that:
 - (a) to do so would tend to incriminate the person or expose the person to a penalty; or
 - (b) producing the document or making it available would breach an obligation (whether imposed by an enactment or otherwise) of the person not to disclose the existence or contents of the document; or
 - (c) producing the document or making it available would disclose information that is the subject of *legal professional privilege.
- (2) However, in the case of a natural person, the document is not admissible in evidence in a *criminal proceeding against the person, except in proceedings under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

207 Varying production orders

- (1) A person who is required to produce a document to an *authorised officer under a *production order may apply to:
 - (a) the magistrate who made the order; or
 - (b) if that magistrate is unavailable—any other magistrate;to vary the order so that it instead requires the person to make the document available for inspection.
- (2) The magistrate may vary the *production order if satisfied that the document is essential to the person's business activities.

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

208 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *production order relating to one or more documents that are located in:

- (a) that State or Territory; or
- (b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the order appropriate; or
- (c) a *non-governing Territory.

209 Making false statements in applications

A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, an application for a *production order.

Maximum penalty: Imprisonment for 12 months or 60 penalty units, or both.

210 Disclosing existence or nature of production orders

- (1) A person is guilty of an offence if:
 - (a) the person is given a *production order; and
 - (b) the order specifies that information about the order must not be disclosed; and
 - (c) the person discloses the existence or nature of the order to another person.

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

- (2) A person is guilty of an offence if:

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

Section 211

- (a) the person is given a *production order; and
- (b) the order specifies that information about the order must not be disclosed; and
- (c) the person discloses information to another person; and
- (d) that other person could infer the existence or nature of the order from that information.

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

- (3) Subsections (1) and (2) do not apply if:
- (a) the person discloses the information to an employee, *agent or other person in order to obtain a document that is required by the order in order to comply with it, and that other person is directed not to inform the person to whom the document relates about the matter; or
 - (b) the disclosure is made to obtain legal advice or legal representation in relation to the order; or
 - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

211 Failing to comply with a production order

- (1) A person is guilty of an offence if:
- (a) the person is given a *production order in relation to a *property-tracking document; and
 - (b) the person fails to comply with the order; and
 - (c) the person has not been notified of sufficient compliance under subsection (2).

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

- (2) A person is notified of sufficient compliance under this subsection if:

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

- (a) the person gives an *authorised officer a statutory declaration stating that the person does not have possession or control of the document; and
- (b) the officer notifies the person in writing that the statutory declaration is sufficient compliance with the *production order.

212 Destroying etc. a document subject to a production order

A person is guilty of an offence if:

- (a) the person destroys, defaces or otherwise interferes with a *property-tracking document; and
- (b) a *production order is in force requiring the document to be produced or made available.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

Part 3-3—Notices to financial institutions

213 Giving notices to financial institutions

- (1) An officer specified in subsection (3) may give a written notice to a *financial institution requiring the institution to provide to an *authorised officer any information or documents relevant to any one or more of the following:
 - (a) determining whether an *account is held by a specified person with the financial institution;
 - (b) determining whether a particular person is a signatory to an account;
 - (c) if a person holds an account with the institution, the current balance of the account;
 - (d) details of transactions on such an account over a specified period of up to 6 months;
 - (e) details of any related accounts (including names of those who hold those accounts);
 - (f) a transaction conducted by the financial institution on behalf of a specified person.
- (2) The officer must not issue the notice unless the officer reasonably believes that giving the notice is required:
 - (a) to determine whether to take any action under this Act; or
 - (b) in relation to proceedings under this Act.
- (3) The officers who may give a notice to a *financial institution are:
 - (a) the Commissioner of the Australian Federal Police; or
 - (b) a Deputy Commissioner of the Australian Federal Police; or
 - (c) a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979*) who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this section; or
 - (ca) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or

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

- (d) the Chief Executive Officer of the Australian Crime Commission; or
- (e) an examiner (within the meaning of the *Australian Crime Commission Act 2002*).

214 Contents of notices to financial institutions

The notice must:

- (a) state that the officer giving the notice believes that the notice is required:
 - (i) to determine whether to take any action under this Act; or
 - (ii) in relation to proceedings under this Act; (as the case requires); and
- (b) specify the name of the *financial institution; and
- (c) specify the kind of information or documents required to be provided; and
- (d) specify the form and manner in which that information or those documents are to be provided; and
- (e) state that the information or documents must be provided within 14 days of the notice; and
- (f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 217 (disclosing existence or nature of a notice); and
- (g) set out the effect of section 218 (failing to comply with a notice).

215 Protection from suits etc. for those complying with notices

- (1) No action, suit or proceeding lies against:
 - (a) a *financial institution; or
 - (b) an *officer, employee or *agent of the institution acting in the course of that person's employment or agency;in relation to any action taken by the institution or person under a notice under section 213 or in the mistaken belief that action was required under the notice.

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

Section 216

- (2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a notice under section 213 is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

216 Making false statements in notices

A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, a notice under section 213.

Maximum penalty: Imprisonment for 12 months or 60 penalty units, or both.

217 Disclosing existence or nature of notice

A person is guilty of an offence if:

- (a) the person is given a notice under section 213; and
- (b) the notice specifies that information about the notice must not be disclosed; and
- (c) the person discloses the existence or nature of the notice.

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

218 Failing to comply with a notice

A person is guilty of an offence if:

- (a) the person is given a notice under section 213; and
- (b) the person fails to comply with the notice:

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

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

Part 3-4—Monitoring orders

219 Making monitoring orders

- (1) A judge of a court of a State or Territory that has jurisdiction to deal with criminal matters on indictment may make an order (a ***monitoring order***) that a *financial institution provide information about transactions conducted during a particular period through an *account held by a particular person with the institution.
- (2) The judge must not make a *monitoring order unless the judge is satisfied that there are reasonable grounds for suspecting that:
 - (a) the person in respect of whose *account the information is sought:
 - (i) has committed, or is about to commit, a *serious offence; or
 - (ii) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
 - (iii) has *benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence; or
 - (b) the account is being used to commit an offence against Part 10.2 of the *Criminal Code* (money laundering).
- (3) It does not matter, for the purposes of paragraph (2)(b), whether the person holding the account in question commits or is involved in the offence against Part 10.2 of the *Criminal Code*.
- (4) The *monitoring order can only be made on application by an *authorised officer of an *enforcement agency.

220 Contents of monitoring orders

- (1) A *monitoring order must:
 - (a) specify the name or names in which the *account is believed to be held; and

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

- (b) specify the kind of information that the *financial institution is required to provide; and
 - (c) specify the period during which the transactions must have occurred; and
 - (d) specify to which *enforcement agency the information is to be provided; and
 - (e) specify the form and manner in which the information is to be given; and
 - (f) if the order specifies that information about the order must not be disclosed—set out the effect of section 223 (disclosing existence or operation of an order); and
 - (g) set out the effect of section 224 (failing to comply with an order).
- (2) The period mentioned in paragraph (1)(c) must:
- (a) begin no earlier than the day on which notice of the *monitoring order is given to the *financial institution; and
 - (b) end no later than 3 months after the date of the order.

221 Protection from suits etc. for those complying with orders

- (1) No action, suit or proceeding lies against:
- (a) a *financial institution; or
 - (b) an *officer, employee or *agent of the institution acting in the course of that person's employment or agency;
- in relation to any action taken by the institution or person in complying with a *monitoring order or in the mistaken belief that action was required under the order.
- (2) A *financial institution, or person who is an *officer, employee or *agent of a financial institution, who provides information under a *monitoring order is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money-laundering), not to have been in possession of that information at any time.

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

222 Making false statements in applications

A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, an application for a *monitoring order.

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

223 Disclosing existence or operation of monitoring order

(1) A person is guilty of an offence if:

- (a) the person discloses the existence or the operation of a *monitoring order to another person; and
- (b) the disclosure is not to a person specified in subsection (4); and
- (c) the disclosure is not for a purpose specified in subsection (4).

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

(2) A person is guilty of an offence if:

- (a) the person discloses information to another person; and
- (b) the other person could infer the existence or operation of a *monitoring order from that information; and
- (c) the disclosure is not to a person specified in subsection (4); and
- (d) the disclosure is not for a purpose specified in subsection (4).

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

(3) A person is guilty of an offence if:

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

- (a) the person receives information relating to a *monitoring order in accordance with subsection (4); and
- (b) the person ceases to be a person to whom information could be disclosed in accordance with subsection (4); and
- (c) the person makes a record of, or discloses, the existence or the operation of the order.

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

- (4) A person may disclose the existence or the operation of a *monitoring order to the following persons for the following purposes:
 - (a) the head of the *enforcement agency specified under paragraph 220(1)(d) or an *authorised officer of that agency:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for purposes arising in the course of proceedings before a court;
 - (b) the Chief Executive Officer of *AUSTRAC, or a member of the staff of AUSTRAC who is authorised by the Chief Executive Officer of AUSTRAC as a person who may be advised of the existence of a monitoring order:
 - (i) for the purpose of performing that person's duties; or
 - (ii) for the purpose of, or for purposes connected with, legal proceedings; or
 - (iii) for purposes arising in the course of proceedings before a court;
 - (c) an *officer or *agent of the *financial institution for the purpose of ensuring that the order is complied with;
 - (d) a barrister or solicitor for the purpose of obtaining legal advice or representation in relation to the order.

224 Failing to comply with monitoring order

A person is guilty of an offence if:

- (a) the person is given a *monitoring order; and

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

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(b) the person fails to comply with the order.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

Note: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

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

Part 3-5—Search and seizure

Division 1—Search warrants

Subdivision A—Issuing search warrants

225 Issuing a search warrant

- (1) A magistrate may issue a warrant to search *premises if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is at the premises, or will be within the next 72 hours, *tainted property or *evidential material.
- (2) If an application for a *search warrant is made under section 229 (applying for warrants by telephone or other electronic means), this section applies as if subsection (1) referred to 48 hours rather than 72 hours.
- (3) The *search warrant can only be issued on application by an *authorised officer of an *enforcement agency.

226 Additional contents of the information

- (1) If the person applying for a warrant to search *premises suspects that it will be necessary to use firearms in executing the warrant, the person must state that suspicion, and the grounds for that suspicion, in the information.
- (2) A person applying for a warrant to search *premises who has previously applied for a warrant relating to the same premises, must include particulars of the application and its outcome in the information.

227 Contents of warrants

- (1) A *search warrant must state:
 - (a) the nature of the property in respect of which action has been or could be taken under this Act; and

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

- (b) the nature of that action; and
 - (c) a description of the *premises to which the warrant relates; and
 - (d) the kinds of *tainted property or *evidential material that is to be searched for under the warrant; and
 - (e) the name of the *authorised officer who is responsible for executing the warrant, unless he or she inserts the name of another authorised officer in the warrant; and
 - (f) the time at which the warrant expires (see subsection (2)); and
 - (g) whether the warrant may be executed at any time or only during particular hours; and
 - (h) that the warrant authorises the seizure of other things found at the premises in the course of the search that the *executing officer or a *person assisting believes on reasonable grounds to be:
 - (i) tainted property to which the warrant relates; or
 - (ii) evidential material in relation to property to which the warrant relates; or
 - (iii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence; if he or she believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
 - (i) whether the warrant authorises an *ordinary search or a *frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or a person assisting reasonably suspects that the person has any tainted property or evidential material in his or her possession.
- (2) The time stated in the *search warrant under paragraph (1)(f) as the time at which the warrant expires must be a time that is not later than:
- (a) if the application for the warrant is made under section 229 (telephone warrants)—48 hours after the warrant is issued; or
 - (b) otherwise, a time that is not later than the end of the seventh day after the day on which the warrant is issued.

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

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

- (3) Paragraph (1)(f) does not prevent the issue of successive *search warrants in relation to the same *premises.

228 The things that are authorised by a search warrant

- (1) A *search warrant authorises the *executing officer or a *person assisting:
- (a) to enter the *premises and, if the premises are a *conveyance, to enter the conveyance, wherever it is; and
 - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
 - (c) to search the premises for the kinds of *tainted property or *evidential material specified in the warrant, and to seize things of that kind found at the premises; and
 - (d) to seize other things found at the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be:
 - (i) tainted property to which the warrant relates; or
 - (ii) evidential material in relation to property to which the warrant relates; or
 - (iii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence;if he or she believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
 - (e) if the warrant so allows—to conduct an *ordinary search or a *frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any tainted property or evidential material in his or her possession.
- (2) A *search warrant authorises the *executing officer to make things seized under the warrant available to officers of other *enforcement agencies if it is necessary to do so for the purpose of:

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

- (a) investigating or prosecuting an offence to which the things relate; or
- (b) recovering *proceeds of an offence or an *instrument of an offence.

Subdivision B—Applying for search warrants by telephone or other electronic means

229 Applying for search warrants by telephone or other electronic means

- (1) An *authorised officer may apply to a magistrate for a *search warrant by telephone, fax or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) An application under subsection (1):
 - (a) must include all information that would be required in an ordinary application for a *search warrant; and
 - (b) if necessary, may be made before the information is sworn.
- (3) The magistrate may require:
 - (a) communication by voice to the extent that it is practicable in the circumstances; and
 - (b) any further information.

230 Issuing warrants by telephone etc.

- (1) The magistrate may complete and sign the same form of *search warrant that would be issued under section 225 if satisfied that:
 - (a) a search warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) If the magistrate issues the *search warrant, he or she must inform the applicant, by telephone, fax or other electronic means, of the

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

terms of the warrant and the day on which and the time at which it was signed.

- (3) The applicant must then:
 - (a) complete a form of *search warrant in terms substantially corresponding to those given by the magistrate; and
 - (b) state on the form:
 - (i) the name of the magistrate; and
 - (ii) the day on which the warrant was signed; and
 - (iii) the time at which the warrant was signed.
- (4) The applicant must give the magistrate:
 - (a) the form of *search warrant completed by the applicant; and
 - (b) if the information was unsworn under paragraph 229(2)(b)—the sworn information;by the end of the day after whichever first occurs:
 - (c) the warrant expires; or
 - (d) the warrant is executed.
- (5) The magistrate must attach the form of *search warrant completed by the magistrate to the documents provided under subsection (4).

231 Unsigned telephone warrants in court proceedings

If:

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a *search warrant issued under this Subdivision was duly authorised; and
- (b) the form of search warrant signed by the magistrate is not produced in evidence;

the court must assume that the exercise of the power was not duly authorised unless the contrary is proved.

232 Offence for stating incorrect names in telephone warrants

A person is guilty of an offence if:

- (a) the person states a name of a magistrate in a document; and
- (b) the document purports to be a form of *search warrant under section 230; and

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

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- (c) the name is not the name of the magistrate that issued the warrant.

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

233 Offence for unauthorised form of warrant

A person is guilty of an offence if:

- (a) the person states a matter in a form of *search warrant under section 230; and
- (b) the matter departs in a material particular from the form authorised by the magistrate.

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

234 Offence for execution etc. of unauthorised form of warrant

A person is guilty of an offence if:

- (a) the person executes a document or presents a document to a person; and
- (b) the document purports to be a form of *search warrant under section 230; and
- (c) the document:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by the magistrate under that section.

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

235 Offence for giving unexecuted form of warrant

A person is guilty of an offence if:

- (a) the person gives a magistrate a form of *search warrant under section 230; and
- (b) the document is not the form of *search warrant that the person executed.

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

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

Subdivision C—Executing search warrants

236 Warrants that must be executed only during particular hours

A *search warrant that states that it may be executed only during particular hours must not be executed outside those hours.

237 Restrictions on personal searches

- (1) A *search warrant cannot authorise a *strip search or a search of a person's body cavities.
- (2) If a *search warrant authorises an *ordinary search or a *frisk search of a person:
 - (a) a different search from the one authorised must not be done under the warrant; and
 - (b) the search must, if practicable, be conducted by a person of the same sex as the person being searched.
- (3) A person who is not an *authorised officer but who has been authorised by the relevant *executing officer to assist in executing a *search warrant must not take part in searching a person.

238 Availability of assistance and use of force in executing a warrant

Executing officers

- (1) In executing a *search warrant, an *executing officer may obtain such assistance and use such force against persons and things as is necessary and reasonable in the circumstances.

Authorised officers

- (2) In executing a *search warrant, an *authorised officer who is assisting in executing the warrant may use such force against persons and things as is necessary and reasonable in the circumstances.

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

Persons who are not authorised officers

- (3) In executing a *search warrant, a person who is not an *authorised officer but who has been authorised to assist in executing the warrant may use such force against things as is necessary and reasonable in the circumstances.

239 Announcement before entry

- (1) An *executing officer must, before any person enters *premises under a *search warrant:
- (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or another person who apparently represents the occupier, is present at the premises—identify himself or herself to that person.
- (2) The *executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the *premises is required to ensure:
- (a) the safety of a person (including an *authorised officer); or
 - (b) that the effective execution of the warrant is not frustrated.

240 Details of warrant to be given to occupier etc.

- (1) If the occupier of the *premises, or another person who apparently represents the occupier, is present at premises when a *search warrant is being executed, the *executing officer or a *person assisting must make available to the person:
- (a) a copy of the warrant; and
 - (b) a document setting out the rights and obligations of the person.
- (2) If a person is searched under a *search warrant, the *executing officer or a *person assisting must show the person a copy of the warrant.

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

- (3) The copy of the warrant need not include the signature of the magistrate or the seal of the relevant court.

241 Occupier entitled to be present during search

- (1) If an occupier of *premises, or another person who apparently represents the occupier, is present at the premises while a *search warrant is being executed, the occupier or person has the right to observe the search being conducted.
- (2) However, the right ceases if:
- (a) the person impedes the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the *premises being searched at the same time.

242 Specific powers available to officers executing the warrant

- (1) In executing a *search warrant, the *executing officer or a *person assisting may take photographs (including video recordings) of the *premises or of things at the premises:
- (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing.
- (2) The *executing officer and a *person assisting may complete the execution of a *search warrant, provided that the warrant is still in force, after all of them temporarily leave the *premises:
- (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) The execution of a *search warrant may be completed if:
- (a) the execution is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force.

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

243 Use of equipment to examine or process things

- (1) The *executing officer or *person assisting may bring to the *premises any equipment reasonably necessary to examine or process a thing found at the premises in order to determine whether it may be seized under the *search warrant in question.
- (2) The *executing officer or a *person assisting may operate equipment already at the *premises to carry out such an examination or processing if he or she believes on reasonable grounds that:
 - (a) the equipment is suitable for this purpose; and
 - (b) the examination or processing can be carried out without damaging the equipment or thing.

244 Moving things to another place for examination or processing

- (1) A thing found at the *premises may be moved to another place for examination or processing in order to determine whether it may be seized under a *search warrant if:
 - (a) both of the following apply:
 - (i) there are reasonable grounds to believe that the thing contains or constitutes *tainted property or *evidential material;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises consents in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An *executing officer may apply to a magistrate for an extension of that time if the officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The *executing officer must give notice of the application to the occupier of *premises, and the occupier is entitled to be heard in relation to the application.

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

- (5) If a thing is moved to another place under subsection (1), the *executing officer must, if it is practicable to do so:
- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.

245 Use of electronic equipment at premises

- (1) The *executing officer or a *person assisting may operate electronic equipment at the *premises to access *data (including data not held at the premises) if he or she believes on reasonable grounds that:
- (a) the data might constitute *evidential material; and
 - (b) the equipment can be operated without damaging it.
- Note: An executing officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 246.
- (2) If the *executing officer or *person assisting believes that any *data accessed by operating the electronic equipment might constitute *evidential material, he or she may:
- (a) copy the data to a disk, tape or other similar device brought to the *premises; or
 - (b) if the occupier of the premises agrees in writing—copy the data to a disk, tape or other similar device at the premises; and take the device from the premises.
- (3) The *executing officer or a *person assisting may do the following things if he or she finds that any *evidential material is accessible using the equipment:
- (a) seize the equipment and any disk, tape or other similar device;
 - (b) if the material can, by using facilities at the *premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.

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

- (4) An *authorised officer may seize equipment under paragraph (3)(a) only if:
- (a) it is not practicable to copy the *data as mentioned in subsection (2) or to put the material in documentary form as mentioned in paragraph (3)(b); or
 - (b) possession of the equipment by the occupier could constitute an offence.

246 Person with knowledge of a computer or a computer system to assist access etc.

- (1) An *executing officer may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable or necessary to allow the officer to do one or more of the following:
- (a) access *data held in or accessible from a computer that is on the *premises;
 - (b) copy the data to a *data storage device;
 - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that:
- (a) there are reasonable grounds for suspecting that *evidential material is accessible from the computer; and
 - (b) the specified person is:
 - (i) reasonably suspected of possessing, or having under his or her control, *tainted property or evidential material; or
 - (ii) the owner or lessee of the computer; or
 - (iii) an employee of the owner or lessee of the computer; and
 - (c) the specified person has knowledge of:
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect *data held in or accessible from the computer.
- (3) A person is guilty of an offence if the person fails to comply with the order.

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

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

247 Securing electronic equipment

- (1) If the *executing officer or a *person assisting believes on reasonable grounds that:
 - (a) *evidential material may be accessible by operating electronic equipment at the *premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (2) The *executing officer or a *person assisting must give notice to the occupier of the *premises of:
 - (a) his or her intention to secure equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.
- (3) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert; whichever happens first.
- (4) If the *executing officer or a *person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate to extend the period.
- (5) The *executing officer or a *person assisting must notify the occupier of the *premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The provisions of this Division relating to the issue of *search warrants apply, with such modifications as are necessary, to the issuing of an extension.

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

248 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) damage is caused to equipment as a result of it being operated as mentioned in section 243 or 245; or
 - (b) the *data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;because:
 - (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (d) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the *data or programs, such reasonable compensation for the damage or corruption as they agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the *premises and his or her employees and *agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1), damage to *data includes damage by erasure of data or addition of other data.

249 Copies of seized things to be provided

- (1) The occupier of the *premises, or another person who apparently represents the occupier and who is present when a *search warrant is executed, may request an *authorised officer who seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or

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

- (b) a storage device the information in which can be readily copied;
to give the occupier or other person a copy of the thing or the information.
- (2) The officer must do so as soon as practicable after the seizure.
- (3) However, the officer is not required to do so if:
 - (a) the thing was seized under subsection 245(2) or paragraph 245(3)(b) (use of electronic equipment at premises); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

250 Providing documents after execution of a search warrant

If:

- (a) documents were on, or accessible from, the *premises of a *financial institution at the time when a *search warrant relating to those premises was executed; and
- (b) those documents were not able to be located at that time; and
- (c) the financial institution provides them to the *executing officer as soon as practicable after the execution of the warrant;

then the documents are taken to have been seized under the warrant.

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

Division 2—Stopping and searching conveyances

251 Searches without warrant in emergency situations

- (1) This section applies if an *authorised officer suspects, on reasonable grounds, that:
 - (a) a thing constituting *tainted property or *evidential material is in or on a *conveyance; and
 - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a *search warrant because the circumstances are serious and urgent.
- (2) The officer may:
 - (a) stop and detain the *conveyance; and
 - (b) search the conveyance and any container in or on the conveyance, for the thing; and
 - (c) seize the thing if he or she finds it there.
- (3) If, in the course of searching for the thing, the officer finds another thing constituting *tainted property or *evidential material, the officer may seize that thing if he or she suspects, on reasonable grounds, that:
 - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
 - (b) it is necessary to seize it without the authority of a *search warrant because the circumstances are serious and urgent.
- (4) The officer must exercise his or her powers subject to section 252.

252 How an authorised officer exercises a power under section 251

When an *authorised officer exercises a power under section 251 in relation to a *conveyance, he or she:

- (a) may use such assistance as is necessary; and

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

- (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
- (c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:
 - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
 - (ii) it is not possible to give that person such an opportunity.

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

Division 3—Dealing with things seized

Subdivision A—General requirements

253 Receipts for things seized under warrant

- (1) The *executing officer or a *person assisting must provide a receipt for:
 - (a) a thing seized under a warrant; or
 - (b) a thing moved under subsection 244(1) (moving things to another place for examination or processing); or
 - (c) a thing seized under section 251 (searches without warrant in emergency situations).
- (2) One receipt may cover 2 or more things.

254 Responsibility for things seized

- (1) If a thing is seized under a *search warrant or under section 251, the *responsible custodian of the thing must:
 - (a) arrange for the thing to be kept until it is dealt with in accordance with another provision of this Act; and
 - (b) ensure that all reasonable steps are taken to preserve the thing while it is so kept.
- (2) The *responsible custodian* of a thing that is seized under a *search warrant or under section 251 is the head of the *enforcement agency of the *authorised officer who is responsible for executing the warrant, or who seized the thing under section 251.

255 Effect of obtaining forfeiture orders

If:

- (a) a thing is seized under a *search warrant or under section 251; and
- (b) while the thing is in the possession of the responsible custodian, a *forfeiture order is made covering the thing;

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

the *responsible custodian must deal with the thing as required by the order.

Subdivision B—Things seized as evidence

256 Returning seized things

- (1) If:
- (a) a thing is seized under a *search warrant or under section 251; and
 - (b) it is seized on the ground that a person believes on reasonable grounds that it is:
 - (i) *evidential material; or
 - (ii) evidential material (within the meaning of the *Crimes Act 1914*) relating to an *indictable offence; and
 - (c) either:
 - (i) the reason for the thing's seizure no longer exists or it is decided that the thing is not to be used in evidence; or
 - (ii) if the thing was seized under section 251—the period of 60 days after the thing's seizure ends;
- the *authorised officer responsible for executing the warrant, or who seized the thing under section 251, must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.
- (2) However, the *authorised officer does not have to take those steps if:
- (a) in a subparagraph (1)(c)(ii) case:
 - (i) proceedings in respect of which the thing might afford evidence have been instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (ii) there is an order in force under section 258 (retaining things for a further period); or
 - (b) in any case—the authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory) to retain, destroy or dispose of the thing; or

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

Section 257

- (c) in any case—the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

257 Authorised officer may apply for a thing to be retained for a further period

- (1) This section applies if an *authorised officer has seized a thing under this Part and proceedings in respect of which the thing might afford evidence have not commenced before the end of:
 - (a) 60 days after the seizure; or
 - (b) a period previously specified in an order of a magistrate under this section.
- (2) The *authorised officer may apply to a magistrate for an order that the officer may retain the thing for a further period.
- (3) Before making the application, the *authorised officer must:
 - (a) take reasonable steps to discover whose interests would be affected by the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to be such a person of the proposed application.

258 Magistrate may order that the thing be retained

- (1) The magistrate may order that the *authorised officer who made an application under section 257 may retain the thing if the magistrate is satisfied that it is necessary for the officer to do so for the purpose of initiating or conducting proceedings under this Act.
- (2) The order must specify the period for which the officer may retain the thing.

Subdivision C—Things seized on other grounds

259 Return of seized property to third parties

- (1) A person who claims an *interest in a thing that has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property

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

may apply to a court for an order that the thing be returned to the person.

- (2) The court must be:
 - (a) if the thing was seized under a *search warrant—a court of the State or Territory in which the warrant was issued that has *proceeds jurisdiction; or
 - (b) if the thing was seized under section 251—a court of the State or Territory in which the thing was seized that has proceeds jurisdiction.
- (3) The court must order the *responsible custodian of the thing to return the thing to the applicant if the court is satisfied that:
 - (a) the applicant is entitled to possession of the thing; and
 - (b) the thing is not *tainted property in relation to the relevant offence; and
 - (c) the person in respect of whose suspected commission of, or conviction for, an offence the thing was seized has no *interest in the thing.
- (4) If the court makes such an order, the *responsible custodian of the thing must arrange for the thing to be returned to the applicant.

260 Return of seized property if applications are not made for restraining orders or forfeiture orders

- (1) If:
 - (a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and
 - (b) at the time when the thing was seized, an application had not been made for a *restraining order or a *forfeiture order that would cover the thing; and
 - (c) such an application is not made during the period of 14 days after the day on which the thing was seized;the *responsible custodian of the thing must arrange for the thing to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

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

- (2) However, this section does not apply to a thing to which section 261 applies.

261 Effect of obtaining restraining orders

- (1) If:

- (a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and
- (b) but for this subsection, the *responsible custodian of the thing would be required to arrange for the thing to be returned to a person as soon as practicable after the end of a particular period; and
- (c) before the end of that period, a *restraining order is made covering the thing;

then:

- (d) if the restraining order directs the *Official Trustee to take custody and control of the thing—the responsible custodian must arrange for the thing to be given to the Official Trustee in accordance with the restraining order; or
- (e) if the court that made the restraining order has made an order under subsection (3) in relation to the thing—the responsible custodian must arrange for the thing to be kept until it is dealt with in accordance with another provision of this Act.

- (2) If:

- (a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and
- (b) a *restraining order is made in relation to the thing; and
- (c) at the time when the restraining order is made, the thing is in the possession of the responsible custodian;

the *responsible custodian of the thing may apply to the court that made the restraining order for an order that the responsible custodian retain possession of the property.

- (3) The court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of an offence, make an order that the responsible

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

custodian may retain the property for so long as the property is required as evidence as to the commission of that offence.

- (4) A witness who is giving evidence relating to an application for an order under subsection (2) is not required to answer a question or produce a document if the court is satisfied that the answer or document may prejudice the investigation of, or the prosecution of a person for, an offence.

262 Effect of refusing applications for restraining orders or forfeiture orders

If:

- (a) a thing has been seized under a *search warrant, or under section 251, on the ground that a person believes on reasonable grounds that it is *tainted property; and
- (b) an application is made for a *restraining order or a *forfeiture order that would cover the thing; and
- (c) the application is refused; and
- (d) at the time when the application is refused, the thing is in the possession of the *responsible custodian;

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

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

Division 4—General

263 Application of Part

This Part is not intended to limit or exclude the operation of another law of the Commonwealth, a State or a Territory relating to:

- (a) the search of persons or *premises; or
- (b) the stopping, detaining or searching of *conveyances; or
- (c) the seizure of things.

264 Law relating to legal professional privilege not affected

This Part does not affect the law relating to *legal professional privilege.

265 Jurisdiction of magistrates

A magistrate in a State or a *self-governing Territory may issue a *search warrant in:

- (a) that State or Territory; or
- (b) another State or self-governing Territory if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
- (c) a *non-governing Territory.

266 Offence for making false statements in applications

A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, an application for a *search warrant.

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

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

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

Chapter 4—Administration

Part 4-1—Powers and duties of the Official Trustee

Division 1—Preliminary

267 Property to which the Official Trustee’s powers and duties under this Part apply

- (1) The powers conferred on the *Official Trustee under this Part may be exercised, and the duties imposed on the Official Trustee under this Part are to be performed, in relation to property if a court orders the Official Trustee to take custody and control of the property under section 38.
- (2) This property is *controlled property*.
- (3) However, powers conferred on the *Official Trustee under Division 4 may be exercised, and the duties imposed on the Official Trustee under Division 4 are to be performed, in relation to any property that is the subject of a *restraining order, whether or not the property is *controlled property.

267A Additional property to which the Official Trustee’s powers and duties under Division 3 apply

- (1) The powers conferred on the *Official Trustee under Division 3 may be exercised, and the duties imposed on the Official Trustee under Division 3 are to be performed, in relation to property that, under paragraph 278(2)(d), may be disposed of to pay, under Part 4-2, a *legal aid commission’s costs.
- (2) Without limiting the definition of *controlled property* in section 267, for the purposes of Division 3 this property is *controlled property*.

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

Division 2—Obtaining information about controlled property

268 Access to books

- (1) The *Official Trustee, or another person authorised in writing by the Official Trustee to exercise powers under this section, may, for the purpose of:
 - (a) ensuring that all the *controlled property is under the Official Trustee's custody and control; or
 - (b) ensuring the effective exercise of the Official Trustee's powers or the performance of the Official Trustee's duties, under this Part in relation to the controlled property;require:
 - (c) the *suspect in relation to the *restraining order covering the controlled property; or
 - (d) any other person entitled to, or claiming an *interest in, the controlled property;to produce specified *books in accordance with this section.
- (2) The requirement must be by written notice.
- (3) The requirement must be to produce the *books:
 - (a) to a specified person; and
 - (b) at a specified place, and within a specified period or at a specified time on a specified day, being a place, and a period or a time and day, that are reasonable in the circumstances.
- (4) The *books must be:
 - (a) in the possession of the person of whom the requirement is made; and
 - (b) in the opinion of the *Official Trustee or other person making the requirement, relevant for the purpose for which they are required.
- (5) If the *books are so produced, the *Official Trustee or other person making the requirement, or the specified person:
 - (a) may make copies of, or take extracts from, the books; and

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

Section 269

- (b) may require:
 - (i) the person required under this section to produce the books; or
 - (ii) any other person who was a party to the compilation of the books;
to explain to the best of his or her knowledge and belief any matter about the compilation of the books or to which the books relate.
- (6) If the *books are not so produced, the *Official Trustee or other person making the requirement, or the specified person, may require the person required under this section to produce the books to state, to the best of his or her knowledge or belief:
 - (a) where the books may be found; and
 - (b) who last had possession, custody or control of the books and where that person may be found.
- (7) The production of *books under this section does not prejudice a lien that a person has on the books.

269 Suspect to assist Official Trustee

The *suspect in relation to the *restraining order covering the *controlled property must, unless excused by the *Official Trustee or prevented by illness or other sufficient cause:

- (a) give to the Official Trustee such *books (including books of an associated entity (within the meaning of the *Bankruptcy Act 1966*) of the person) that:
 - (i) are in the person's possession; and
 - (ii) relate to any of the person's affairs;as the Official Trustee requires; and
- (b) attend the Official Trustee whenever the Official Trustee reasonably requires; and
- (c) give to the Official Trustee such information about any of the person's conduct and examinable affairs as the Official Trustee requires; and
- (d) give to the Official Trustee such assistance as the Official Trustee reasonably requires, in connection with the exercise of the Official Trustee's powers or the performance of the

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

Official Trustee's duties under this Part in relation to the controlled property.

270 Power to obtain information and evidence

- (1) The *Official Trustee, by written notice given to any person, may require the person:
 - (a) to give to the Official Trustee such information as the Official Trustee requires for the purposes of the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part; and
 - (b) to attend before the Official Trustee, or person authorised in writing by the Official Trustee to exercise powers under this paragraph, and:
 - (i) give evidence; and
 - (ii) produce all *books in the possession of the person notified;
relating to any matters connected with the exercise of the Official Trustee's powers or the performance of the Official Trustee's duties under this Part.
- (2) The *Official Trustee or person authorised under paragraph (1)(b):
 - (a) may require the information or evidence to be given on oath, and either orally or in writing; and
 - (b) for that purpose may administer an oath.

271 Privilege against self-incrimination

- (1) A person is not excused from giving information or producing a document under this Part on the ground that to do so would tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of a natural person:
 - (a) the information given; or
 - (b) the giving of the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or document;is not admissible in evidence in *criminal proceedings against the natural person, except proceedings under, or arising out of,

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

Section 272

section 137.1 or 137.2 of the *Criminal Code 1995* (false and misleading information and documents) in relation to giving the information or document.

272 Offences relating to exercise of powers under section 268 or 269

- (1) A person is guilty of an offence if the person refuses or fails to comply with a requirement under section 268 or 269.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (2) A person is guilty of an offence if the person obstructs or hinders a person in the exercise of a power under section 268 or 269.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

273 Failure to provide information

A person is guilty of an offence if the person refuses or fails to comply with a notice given to the person under paragraph 270(1)(a).

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

274 Failure of person to attend

- (1) A person is guilty of an offence if:

(a) the person is required by a notice under paragraph 270(1)(b) to attend before the *Official Trustee or a person authorised under that paragraph; and

(b) the person:

(i) fails to attend as required by the notice; or

(ii) fails to appear and report from day to day, without being excused or released from further attendance by the Official Trustee or person authorised under that paragraph, as the case may be.

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

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

275 Refusal to be sworn or give evidence etc.

A person is guilty of an offence if:

- (a) the person attends before the *Official Trustee, or a person authorised under paragraph 270(1)(b), as required by a notice under that paragraph; and
- (b) the person refuses or fails:
 - (i) to be sworn or to make an affirmation; or
 - (ii) to answer a question that the person is required to answer by the Official Trustee or a person authorised under that paragraph, as the case may be; or
 - (iii) to produce any books that the person is required by the notice to produce.

Maximum penalty: Imprisonment for 6 months or 30 penalty units, or both.

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

Division 3—Dealings relating to controlled property

276 Preserving controlled property

The *Official Trustee may do anything that is reasonably necessary for the purpose of preserving the *controlled property, including the following:

- (a) becoming a party to any civil proceedings affecting the property;
- (b) ensuring that the property is insured;
- (c) realising or otherwise dealing with any of the property that is securities or investments;
- (d) if any of the property is a business:
 - (i) employing, or terminating the employment of, persons in the business; or
 - (ii) doing anything necessary or convenient to carry on the business on a sound commercial basis.

277 Rights attaching to shares

The *Official Trustee may exercise the rights attaching to any of the *controlled property that is shares as if the Official Trustee were the registered holder of the shares, to the exclusion of the registered holder.

278 Destroying or disposing of property

- (1) The *Official Trustee may destroy the *controlled property if:
 - (a) it is in the public interest to do so; or
 - (b) it is required for the health or safety of the public.
- (2) The *Official Trustee may dispose of the *controlled property, by sale or other means:
 - (a) with the agreement of all parties with an *interest in the property; or
 - (b) if the property is likely to lose value in the opinion of the Official Trustee; or

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

- (c) if, in the Official Trustee's opinion, the cost of controlling the property until the Official Trustee finally deals with it is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with; or
- (d) if, in the opinion of the Official Trustee, the disposal of the property or part of the property is necessary to pay, under Part 4-2, a *legal aid commission's costs.

279 Notice of proposed destruction or disposal

- (1) The *Official Trustee must give written notice of the proposed destruction or disposal to:
 - (a) the owner of the *controlled property; and
 - (b) any other person whom the Official Trustee has reason to believe may have an *interest in the property.
- (2) A person who has been so notified may object in writing to the *Official Trustee within 14 days of receiving the notice.
- (3) However, the person may object to the disposal of the *controlled property for the reason set out in paragraph 278(2)(d) only if:
 - (a) the value of the controlled property exceeds the total amount of the money payable to the *legal aid commission in question; and
 - (b) the person and the *Official Trustee have failed to agree on which item or items of, or which portion of, the controlled property should be disposed of.
- (4) An objection to which subsection (3) applies must:
 - (a) relate only to which item or items of, or which portion of, the *controlled property should be disposed of; and
 - (b) specify the item or items of, or the portion of, the controlled property that the person does not object to the *Official Trustee disposing of.

280 Procedure if person objects to proposed destruction or disposal

- (1) If the *Official Trustee wishes to continue with a proposed destruction or disposal that has been objected to, the Official Trustee must apply to the court that made the *restraining order

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

covering the *controlled property for an order that the Official Trustee may destroy or dispose of the property.

- (2) The court must make an order to destroy the *controlled property if:
 - (a) it is in the public interest to do so; or
 - (b) it is required for the health or safety of the public.
- (3) The court may take into account any matters it sees fit in determining whether it is in the public interest to destroy the *controlled property, including:
 - (a) the use to which the property would be put if it were sold; and
 - (b) whether the cost of restoring the property to a saleable condition would exceed its realisable value; and
 - (c) whether the cost of sale would exceed its realisable value; and
 - (d) whether the sale of the property would otherwise be legal.
- (4) The court may make an order to dispose of the *controlled property if, in the court's opinion:
 - (a) the property is likely to lose value; or
 - (b) the cost of controlling the property until it is finally dealt with by the *Official Trustee is likely to exceed, or represent a significant proportion of, the value of the property when it is finally dealt with.
- (4A) The court must make an order to dispose of the *controlled property, or a specified item or items of or a specified portion of the property, if in the court's opinion the disposal is necessary to pay, under Part 4-2, a *legal aid commission's costs.
- (5) The court may also:
 - (a) order that a specified person bear the costs of controlling the *controlled property until it is finally dealt with by the *Official Trustee; or
 - (b) order that a specified person bear the costs of an objection to a proposed destruction or disposal of the property.

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

281 Proceeds from sale of property

Amounts realised from any sale of the *controlled property under section 278:

- (a) are taken to be covered by the *restraining order that covered the property; and
- (b) if the restraining order covered the property on the basis that the property was *proceeds of an offence or an *instrument of an offence to which the order relates—continue to be proceeds of that offence or an instrument of that offence.

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

Division 4—Discharging pecuniary penalty orders and literary proceeds orders

282 Direction by a court to the Official Trustee

- (1) A court may, if subsection (2), (3) or (4) applies, direct the *Official Trustee to pay the Commonwealth, out of property that is subject to a *restraining order, an amount equal to:
 - (a) the *penalty amount under a *pecuniary penalty order; or
 - (b) the *literary proceeds amount under a *literary proceeds order.
- (2) The court that makes the *pecuniary penalty order or *literary proceeds order may include such a direction in the order if:
 - (a) the order is made against a person in relation to one or more offences; and
 - (b) the *restraining order has already been made against that person in relation to that offence or one or more of those offences, or in relation to one or more *related offences.
- (3) The court that makes the *restraining order may include such a direction in the order if:
 - (a) the *pecuniary penalty order or *literary proceeds order has been made against a person in relation to one or more offences; and
 - (b) the restraining order is subsequently made:
 - (i) against that person in relation to that offence or one or more of those offences; or
 - (ii) against property of another person in relation to which an order is in force under subsection 141(1) in relation to the pecuniary penalty order, or under subsection 168(1) in relation to the literary proceeds order.
- (4) The court that made the *pecuniary penalty order, the *literary proceeds order or the *restraining order may, on application by the *DPP, make the direction if:

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

- (a) the pecuniary penalty order or literary proceeds order has been made against a person in relation to one or more offences; and
- (b) the restraining order has been made:
 - (i) against that person in relation to that offence or one or more of those offences; or
 - (ii) against property of another person in relation to which an order is in force under subsection 141(1) in relation to the pecuniary penalty order, or under subsection 168(1) in relation to the literary proceeds order.

283 Court may include further directions etc.

- (1) For the purposes of enabling the *Official Trustee to comply with a direction given by a court under section 282, the court may, in the order in which the direction is given or by a subsequent order:
 - (a) direct the Official Trustee to sell or otherwise dispose of such of the property that is subject to the *restraining order as the court specifies; and
 - (b) appoint an officer of the court or any other person:
 - (i) to execute any deed or instrument in the name of a person who owns or has an *interest in the property; and
 - (ii) to do any act or thing necessary to give validity and operation to the deed or instrument.
- (2) The execution of the deed or instrument by the person appointed by an order under this section has the same force and validity as if the deed or instrument had been executed by the person who owned or had the *interest in the property.

284 Official Trustee to carry out directions

- (1) If the *Official Trustee is given a direction under section 282 in relation to property, the Official Trustee must, as soon as practicable after the end of the appeal period under section 285:
 - (a) to the extent that the property is not money—sell or otherwise dispose of the property; and
 - (b) apply:

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

Section 285

- (i) to the extent that the property is money—that money;
and
 - (ii) the amounts received from the sale or disposition of the
other property;
in payment of the costs, charges, expenses and remuneration,
of the kind referred to in subsection 288(1), incurred or
payable in connection with the *restraining order and payable
to the Official Trustee under the regulations; and
 - (c) credit the remainder of the money and amounts received to
the *Confiscated Assets Account as required by section 296.
- (2) However, if the remainder referred to in paragraph (1)(c) exceeds
the *penalty amount or *literary proceeds amount (as the case
requires), the *Official Trustee must:
- (a) credit to the *Confiscated Assets Account as required by
section 296 an amount equal to the penalty amount or literary
proceeds amount; and
 - (b) pay the balance to the person whose property was subject to
the *restraining order.

**285 Official Trustee not to carry out directions during appeal
periods**

- (1) If the *Official Trustee is given a direction under section 282 in
relation to property, the Official Trustee must not:
- (a) if the property is money—apply the money under section 284
until the end of the appeal period under this section; and
 - (b) if the property is not money—sell or otherwise dispose of the
property until the end of that period.
- (2) The appeal period under this section is the period ending:
- (a) if the period provided for lodging an appeal against the
*pecuniary penalty order or *literary proceeds order to which
the direction relates has ended without such an appeal having
been lodged—at the end of that period; or
 - (b) if an appeal against the pecuniary penalty order or literary
proceeds order has been lodged—when the appeal lapses or
is finally determined.

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

- (3) However, if the person is convicted of the offence, or any of the offences, to which the *pecuniary penalty order or *literary proceeds order relates, the appeal period is:
- (a) the period ending:
 - (i) if the period provided for lodging an appeal against the conviction or convictions to which the direction relates has ended without such an appeal having been lodged— at the end of that period; or
 - (ii) if an appeal against the conviction or convictions has been lodged—when the appeal lapses or is finally determined; or
 - (b) the appeal period under subsection (2);
- whichever ends last.
- (4) For the purposes of subsection (3):
- (a) if the person is to be taken to have been convicted of an offence because of paragraph 331(1)(b)—references in that subsection to lodging of an appeal against the conviction are references to lodging of an appeal against the finding that the person is guilty of the offence; and
 - (b) if the person is to be taken to have been convicted of an offence because of paragraph 331(1)(c)—references in that subsection to lodging of an appeal against the conviction are references to lodging of an appeal against the person's conviction of the other offence referred to in that paragraph.

286 Discharge of pecuniary penalty orders and literary proceeds orders by credits to the Confiscated Assets Account

- (1) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under a *pecuniary penalty order, the person's liability under the pecuniary penalty order is, to the extent of the credit, discharged.
- (2) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under a *literary proceeds order,

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

Chapter 4 Administration

Part 4-1 Powers and duties of the Official Trustee

Division 4 Discharging pecuniary penalty orders and literary proceeds orders

Section 286

the person's liability under the literary proceeds order is, to the extent of the credit, discharged.

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

Division 5—Miscellaneous

287 Money not to be paid into the Common Investment Fund

Money that is in the custody or control of the *Official Trustee because of a *restraining order must not be paid into the Common Investment Fund under section 20B of the *Bankruptcy Act 1966* (despite anything in that Act).

288 Official Trustee's costs etc.

- (1) The regulations may make provision relating to:
 - (a) the costs, charges and expenses incurred in connection with the *Official Trustee's exercise of powers and performance of functions or duties under this Act or under Part VI of the *Mutual Assistance Act; and
 - (b) the Official Trustee's remuneration in respect of those activities.
- (2) An amount equal to each amount of remuneration that the *Official Trustee receives under the regulations is to be paid to the Commonwealth.

289 Income generated from controlled property

- (1) The *Official Trustee may apply any income generated from *controlled property to the payment of amounts payable to the Official Trustee, in relation to the property, under regulations made for the purposes of section 288.
- (2) However, if the *restraining order relating to the *controlled property ceases to be in force and the property is returned to its owner, the *Official Trustee must arrange for an amount to be paid to the owner that is equal to the difference between:
 - (a) the sum of all the amounts applied under this section in relation to the property; and

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

Section 290

- (b) the sum of all the amounts of expenditure by the *Official Trustee that were necessary for maintaining the property or generating the income from property.
- (3) This section does not affect other ways in which the *Official Trustee may recover amounts payable to the Official Trustee under regulations made for the purposes of section 288.

290 Official Trustee is not personally liable

- (1) The *Official Trustee is not personally liable for:
 - (a) any loss or damage, sustained by a person claiming an *interest in all or part of the *controlled property, arising from the Official Trustee taking custody and control of the property; or
 - (b) the cost of proceedings taken to establish an interest in the property;unless the court is satisfied that the Official Trustee is guilty of negligence in respect of taking custody and control of the property.
- (2) The *Official Trustee is not personally liable for:
 - (a) any rates, land tax or municipal or statutory charges imposed under a law of the Commonwealth, a State or a Territory in respect of the *controlled property, except out of any rents or profits that the Official Trustee receives from the property; and
 - (b) if, in taking custody and control of the property, the Official Trustee carries on a business—any payment in respect of long service leave or extended leave:
 - (i) for which the person who carried on the business before the Official Trustee was liable; or
 - (ii) to which an employee of the Official Trustee in its capacity as custodian and controller of the business, or a legal representative of such an employee, becomes entitled after the *restraining order covering the property was made; and
 - (c) any other expenses in respect of the property.

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

291 Indemnification of Official Trustee

- (1) The Commonwealth must indemnify the *Official Trustee against any personal liability (including any personal liability as to costs) incurred by it for any act done, or omitted to be done, by it in the exercise, or purported exercise, of its powers and duties under this Act.
- (2) The Commonwealth has the same right of reimbursement in respect of a payment made under this indemnity as the *Official Trustee would have if the Official Trustee had made the payment.
- (3) This same right of reimbursement includes reimbursement under another indemnity given to the *Official Trustee.
- (4) Nothing in subsection (1) affects:
 - (a) any other right the *Official Trustee has to be indemnified in respect of any personal liability referred to in that subsection; or
 - (b) any other indemnity given to the Official Trustee in respect of any such personal liability.

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

Part 4-2—Legal assistance

292 Payments to legal aid commissions for representing suspects and other persons

- (1) The *Official Trustee must pay to a *legal aid commission, out of property of a *suspect that is covered by a *restraining order:
 - (a) the commission's legal costs for representing the suspect in proceedings for defending any criminal charge against the suspect; and
 - (b) the commission's legal costs for representing the suspect in proceedings under this Act.
- (2) The *Official Trustee must pay to a *legal aid commission, out of the property of a person (who is not the *suspect) that is covered by a *restraining order, the commission's legal costs for representing the person in proceedings under this Act.
- (3) However, this section only applies to the extent that the commission's representation of the suspect or other person is in accordance with guidelines included in an applicable agreement entered into with the Commonwealth relating to provision of legal assistance in Commonwealth matters.

293 Payments made out of the Confiscated Assets Account

- (1) The *Official Trustee must pay to a *legal aid commission, out of the *Confiscated Assets Account, legal costs mentioned in section 292 if:
 - (a) the Official Trustee certifies that the costs exceed the value of the property of the person that is covered by the *restraining order; and
 - (b) the costs have been certified by:
 - (i) the Attorney-General; or
 - (ii) a *senior Departmental officer authorised by the Attorney-General for the purposes of this section; and
 - (c) the Minister consents to the payment.

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

The amount that the Official Trustee must pay is the amount of the excess.

- (2) The *Official Trustee must pay to a *legal aid commission, out of the *Confiscated Assets Account, legal costs mentioned in section 292 if:
- (a) the Official Trustee is satisfied that it will take considerable time to dispose of the property of the person that is covered by the *restraining order in order to pay the costs; and
 - (b) the value of the property has been assessed; and
 - (c) the costs have been certified by:
 - (i) the Attorney-General; or
 - (ii) a *senior Departmental officer authorised by the Attorney-General for the purposes of this section; and
 - (d) the Minister consents to the payment.
- However, the Official Trustee must not pay the legal aid commission more than the assessed value of the property.
- (3) If the Commonwealth pays an amount to a *legal aid commission under subsection (2), the person whose property is covered by the *restraining order must pay to the Commonwealth an amount equal to that amount.
- (4) The person's obligation to pay the amount is discharged if there is forfeited to the Commonwealth under this Act:
- (a) all of the property that is covered by the *restraining order; or
 - (b) some of the property that is so covered, being property of a value that equals or exceeds the amount.

294 Disclosure of information to legal aid commissions

The *DPP or the *Official Trustee may, for the purpose of a *legal aid commission determining whether a person should receive legal assistance under this Part, disclose to the commission information obtained under this Act that is relevant to making that determination.

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

Part 4-3—Confiscated Assets Account

295 Establishment of Account

- (1) There is hereby established the Confiscated Assets Account.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

296 Credits to the Account

- (1) There must be credited to the *Confiscated Assets 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 deriving from the enforcement of an *interstate forfeiture order registered in a *non-governing Territory, other than money covered by a direction under subsection 70(2) or 100(2); and
 - (e) the Commonwealth's share, under the *equitable sharing program, of proceeds resulting from a breach of the criminal law of a State or a *self-governing Territory; and
 - (f) money, other than money referred to in paragraph (b), paid to the Commonwealth by a foreign country in connection with assistance provided by the Commonwealth in relation to the recovery by that country of the proceeds of *unlawful activity or the investigation or prosecution of unlawful activity; and
 - (g) money paid to the Commonwealth under subsection 293(3), and any amounts recovered by the Commonwealth as a result of executing a charge created under section 302A.

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

- (2) Subject to section 299, all amounts credited to the *Confiscated Assets Account are to be identified in accordance with the regulations as *distributable funds or *suspended funds and are to retain that identity while they remain within the Account.
- (3) The following are ***proceeds of confiscated assets***:
- (a) the remainder of the money and amounts referred to in paragraph 70(1)(c);
 - (b) the amount referred to in paragraph 89(1)(c) or 90(f);
 - (c) the remainder of the money and amounts referred to in paragraph 100(1)(c);
 - (d) the amount referred to in paragraph 105(1)(c) or 106(f);
 - (e) the amount referred to in subsection 140(1);
 - (f) the amount referred to in subsection 167(1);
 - (g) the remainder of the money and amounts referred to in paragraph 284(1)(c);
 - (h) the amount referred to in paragraph 284(2)(a);
 - (i) the remainder of the money referred to in paragraph 35G(1)(b) of the *Mutual Assistance Act;
 - (j) the remainder of the proceeds referred to in paragraph 35G(2)(c) of the *Mutual Assistance Act;
 - (k) the remainder of the proceeds referred to in paragraph 9A(c) of the *Crimes Act 1914*;
 - (l) the money referred to in paragraph 208DA(3)(a) of the *Customs Act 1901*;
 - (m) the remainder of the proceeds referred to in paragraph 208DA(3)(b) of the *Customs Act 1901*;
 - (n) the amount referred to in subsection 243B(4) of the *Customs Act 1901*;
 - (o) the remainder of the money referred to in paragraph 243G(6)(a) of the *Customs Act 1901*;
 - (p) the remainder of the proceeds referred to in paragraph 243G(6)(b) of the *Customs Act 1901*.
- (4) The ***equitable sharing program*** is an arrangement under which any or all of the following happen:
- (a) the Commonwealth shares with a participating State or *self-governing Territory a proportion of any *proceeds of

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

Section 297

- any *unlawful activity recovered under a Commonwealth law, if, in the Minister's opinion, that State or Territory has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the relevant unlawful activity;
- (b) each participating State or Territory shares with the Commonwealth any proceeds resulting from a breach of the criminal law of that State or Territory if, in the opinion of the appropriate Minister of that State or Territory, officers of an *enforcement agency have made a significant contribution to the recovery of those proceeds;
 - (c) the Commonwealth shares with a foreign country a proportion of any proceeds of any unlawful activity recovered under a Commonwealth law if, in the Minister's opinion, the foreign country has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the unlawful activity.

297 Payments out of the Account

- (1) The following are purposes of the *Confiscated Assets Account in respect of *suspended funds:
 - (a) making any payments to the States, to *self-governing Territories or to foreign countries that the Minister considers are appropriate under the *equitable sharing program;
 - (b) making any payments under a program approved by the Minister under section 298;
 - (c) making any payments that the Minister considers necessary to satisfy the Commonwealth's obligations in respect of:
 - (i) a registered *foreign forfeiture order; or
 - (ii) an order registered under section 45 of the *International War Crimes Tribunals Act 1995*; or
 - (iii) a registered *foreign pecuniary penalty order;
 - (d) making any payments to a State or to a self-governing Territory that the Attorney-General considers necessary following a crediting to the Account under paragraph 296(1)(b) of money received from a foreign country;

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

- (e) paying the *Official Trustee amounts that were payable to the Official Trustee under regulations made for the purposes of paragraph 288(1)(a) but that the Official Trustee has been unable to recover;
 - (f) paying the annual management fee for the Official Trustee as specified in the regulations;
 - (g) making any payments by way of restitution that are required under paragraph 73(2)(d) or 88(1)(b), subparagraph 102(1)(d)(ii) or subsection 289(2);
 - (ga) making any payments in relation to the conduct of an *examination, so long as the payments have been approved by the *DPP;
 - (h) making any payments to a *legal aid commission under Part 4-2.
- (2) **Suspended funds** are amounts credited to the *Confiscated Assets Account that are:
- (a) identified as suspended funds in accordance with the regulations (other than money that is identified by the *Official Trustee under subsection 299(4) as *distributable funds); or
 - (b) identified by the Official Trustee under subsection 299(2) as suspended funds.

298 Programs for expenditure on law enforcement, drug treatment etc.

- (1) The Minister may, in writing, approve a program for the expenditure in a particular financial year of money standing to the credit of the *Confiscated Assets Account.
- (2) The expenditure is to be approved for one or more of the following purposes:
 - (a) crime prevention measures;
 - (b) law enforcement measures;
 - (c) measures relating to treatment of drug addiction;
 - (d) diversionary measures relating to illegal use of drugs.

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

299 Determinations by Inspector-General in Bankruptcy about suspended and distributable funds

- (1) The Inspector-General in Bankruptcy may determine whether the amount of *suspended funds credited to the *Confiscated Assets Account:
 - (a) is likely to be insufficient to meet the payments to be made out of those funds for the purposes of subsection 297(1); or
 - (b) is likely to exceed the amount required to meet those payments.
- (2) If the Inspector-General in Bankruptcy determines that the amount of *suspended funds is likely to be insufficient to meet the payments to be made out of the suspended funds, the Inspector-General in Bankruptcy must specify an amount of the *distributable funds that is to be identified as suspended funds.
- (3) The amount specified under subsection (2) must not be more than the amount required to meet those payments.
- (4) However, if the Inspector-General in Bankruptcy determines that the amount of *suspended funds is likely to exceed the amount required to meet those payments, the Inspector-General in Bankruptcy must specify an amount of the suspended funds that is to be identified as *distributable funds.
- (5) The amount specified under subsection (4) must not be more than the amount of the likely excess.
- (6) The Inspector-General in Bankruptcy may make a determination under subsection (1) at such times as the Inspector-General in Bankruptcy considers appropriate, but must make at least one determination in every 6 months.
- (7) ***Distributable funds*** are amounts credited to the *Confiscated Assets Account that are:
 - (a) identified as distributable funds in accordance with the regulations (other than money that is identified by the Inspector-General in Bankruptcy under subsection (2) as *suspended funds); or

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

- (b) identified by the Inspector-General in Bankruptcy under subsection (4) as distributable funds.

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

Part 4-4—Charges over restrained property for payment of certain amounts

Division 1—Charges to secure certain amounts payable to legal aid commissions

300 Legal aid commissions' charges

If:

- (a) a *legal aid commission is to be paid an amount out of property that is covered by a *restraining order; and
- (b) either:
 - (i) the court revokes the restraining order; or
 - (ii) the order ceases to be in force under section 45;

there is created by force of this section a charge on the property to secure the payment of the amount to the legal aid commission.

301 When the charge ceases to have effect

A charge created under section 300 ceases to have effect on a *person's property on the earliest of the following events:

- (a) the amount owing is paid to the *legal aid commission;
- (b) the person sells or disposes of the property with the consent of the Official Trustee.

302 Priority of charge

If a charge is created under section 300 in favour of a *legal aid commission, the commission's charge:

- (a) is subject to every *encumbrance on the property that came into existence before it and that would otherwise have priority; and
- (b) has priority over all other encumbrances; and
- (c) subject to section 301, is not affected by any change of ownership of the property.

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

Division 2—Charges to secure certain amounts payable to the Commonwealth

302A Charges to secure amounts payable under subsection 293(3)

If:

- (a) a person whose property is covered by a *restraining order is liable to pay an amount to the Commonwealth under subsection 293(3); and
 - (b) either:
 - (i) the court revokes the restraining order; or
 - (ii) the order ceases to be in force under section 45;
- there is created by force of this section a charge on the property to secure the payment of the amount to the Commonwealth.

302B When the charge ceases to have effect

A charge created under section 302A ceases to have effect on a *person's property on the earliest of the following events:

- (a) the amount owing under subsection 293(3) is paid to the Commonwealth;
- (b) there is forfeited to the Commonwealth under this Act:
 - (i) all of the property that is covered by the charge; or
 - (ii) some of the property that is so covered, being property of a value that equals or exceeds the amount owing under subsection 293(3);
- (c) the person sells or disposes of the property with the consent of the *Official Trustee.

302C Priority of charge

If a charge is created under section 302A in favour of the Commonwealth, the Commonwealth's charge:

- (a) is subject to every *encumbrance on the property that came into existence before it and that would otherwise have priority; and

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

Chapter 4 Administration

Part 4-4 Charges over restrained property for payment of certain amounts

Division 2 Charges to secure certain amounts payable to the Commonwealth

Section 302C

- (b) has priority over all other encumbrances; and
- (c) subject to section 302B, is not affected by any change of ownership of the property.

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

Part 4-5—Enforcement of interstate orders in certain Territories

Division 1—Interstate restraining orders

303 Registration of interstate restraining orders

- (1) If an *interstate restraining order expressly applies to:
 - (a) specified property in a *non-governing Territory; or
 - (b) all property in such a Territory of a specified person; or
 - (c) all property (other than specified property) in such a Territory of a specified person;a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by:
 - (d) the person on whose application the order was made; or
 - (e) an *appropriate officer.
- (2) A copy of any amendments made to an *interstate restraining order (before or after registration), sealed by the court making the amendments, may be registered in the same way. The amendments do not, for the purposes of this Act, have effect until they are registered.
- (3) Registration of an *interstate restraining order may be refused to the extent that the order would not, on registration, be capable of enforcement in the Territory.
- (4) Registration is to be effected in accordance with the rules of the Supreme Court of the Territory.

304 Effect of registration

- (1) An *interstate restraining order registered in the Supreme Court of a Territory under this Division may be enforced in the Territory as if it were a *restraining order made at the time of registration.
- (2) This Act (other than sections 33, 42 to 45, 142 and 169, Division 5 of Part 2-1, Part 2-3 and Division 4 of Part 4-1) applies in relation

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

Section 305

to an *interstate restraining order registered in the Supreme Court of a Territory under this Division as it applies in relation to a *restraining order.

305 Duration of registration

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

- (a) the court in which it is registered receives notice that it has ceased to be in force in the jurisdiction in which it was made; or
- (b) the registration is cancelled under section 306.

306 Cancellation of registration

- (1) The registration of an *interstate restraining order in the Supreme Court of a Territory under this Division may be cancelled by the Supreme Court or a prescribed officer of the Supreme Court if:
 - (a) the registration was improperly obtained; or
 - (b) particulars of any amendments made to:
 - (i) the interstate restraining order; or
 - (ii) any ancillary orders or directions made by a court; are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.
- (2) The registration of an *interstate restraining order in the Supreme Court of a Territory under this Division may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the Territory.

307 Charge on property subject to registered interstate restraining order

- (1) If:
 - (a) an *interstate restraining order is made against property in relation to a person's conviction of an *interstate indictable offence or in relation to the charging, or proposed charging, of a person with an interstate indictable offence; and

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

- (b) an *interstate pecuniary penalty order is made against the person in relation to the person's conviction of that offence or an interstate indictable offence that is a *related offence; and
- (c) the interstate restraining order is registered under this Division in the Supreme Court of a Territory; and
- (d) the interstate pecuniary penalty order is registered in a court of the Territory under the *Service and Execution of Process Act 1992*;

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

- (2) If a charge is created by subsection (1) on property of a person to secure payment of the amount due under an *interstate pecuniary penalty order, the charge ceases to have effect in respect of the property:
 - (a) upon the *quashing of the conviction in relation to which the interstate pecuniary penalty order was made; or
 - (b) upon the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order; or
 - (c) upon payment of the amount due under the interstate pecuniary penalty order; or
 - (d) upon the sale or other disposition of the property:
 - (i) under an order made by a court under the *corresponding law of the State or Territory in which the interstate pecuniary penalty order was made; or
 - (ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or
 - (iii) where the *interstate restraining order directed a person to take control of the property—by the owner of the property with the consent of that person; or
 - (e) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;

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

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; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.
- (4) If:
- (a) a charge is created by subsection (1) on property of a particular kind; and
 - (b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind:
- then:
- (c) the *Official Trustee or the *DPP may cause the charge so created to be registered under the provisions of that law; and
 - (d) if the charge is so registered—a person who purchases or otherwise acquires an *interest in the property after the registration of the charge is, for the purposes of paragraph (2)(e), taken to have notice of the charge at the time of the purchase or acquisition.

308 Powers of Official Trustee in relation to interstate restraining orders

If:

- (a) an *interstate restraining order is registered in the Supreme Court of a Territory under this Division; and
 - (b) the interstate restraining order directs an official of a State or a *self-governing Territory to take control of property;
- the *Official Trustee may, with the agreement of the official, exercise the same powers in relation to the property that the official would have been able to exercise if the property were located in that State or self-governing Territory.

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

Division 2—Interstate forfeiture orders

309 Registration of interstate forfeiture orders

- (1) If an *interstate forfeiture order expressly applies to property in a *non-governing Territory, a copy of the order, sealed by the court making the order, may be registered in the Supreme Court of the Territory by:
 - (a) the person on whose application the order was made; or
 - (b) an *appropriate officer.
- (2) A copy of any amendments made to an *interstate forfeiture order (before or after registration), sealed by the court making the amendments, may be registered in the same way. The amendments do not, for the purposes of this Act, have effect until they are registered.
- (3) Registration of an *interstate forfeiture order may be refused to the extent that the order would not, on registration, be capable of enforcement in the Territory.
- (4) Registration is to be effected in accordance with the rules of the Supreme Court of the Territory.

310 Effect of registration

- (1) An *interstate forfeiture order registered in the Supreme Court of a Territory under this Division may be enforced in the Territory as if it were a *forfeiture order made at the time of registration.
- (2) This Act (other than Divisions 5 and 6 of Part 2-2 and section 322) applies to an *interstate forfeiture order registered in the Supreme Court of a Territory under this Division as it applies to a *forfeiture order.

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

311 Duration of registration

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

- (a) the order ceases to be in force in the jurisdiction in which it was made; or
- (b) the registration is cancelled under section 312.

312 Cancellation of registration

- (1) The registration of an *interstate forfeiture order in the Supreme Court of a Territory under this Division may be cancelled by the Supreme Court or a prescribed officer of the Supreme Court if:
 - (a) the registration was improperly obtained; or
 - (b) particulars of any amendments made to:
 - (i) the interstate forfeiture order; or
 - (ii) any ancillary orders or directions made by a court; are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.
- (2) The registration of an *interstate forfeiture order in the Supreme Court of a Territory under this Division may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the Territory.

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

Division 3—Miscellaneous

313 Interim registration of faxed copies

- (1) A faxed copy of a sealed copy of:
 - (a) an *interstate restraining order; or
 - (b) an *interstate forfeiture order; or
 - (c) any amendments made to such an order;is, for the purposes of this Act, taken to be the same as the sealed copy if the faxed copy is itself certified in accordance with the rules of the Supreme Court.
- (2) Registration effected by means of a faxed copy ceases to have effect at the end of the period of 5 days commencing on the day of registration unless a sealed copy that is not a faxed copy has been filed in the Supreme Court by that time.
- (3) Filing of the sealed copy before the end of the period referred to in subsection (2) has effect, as if it were registration of the sealed copy, from the day of registration of the faxed copy.

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

Chapter 5—Miscellaneous

314 State and Territory courts to have jurisdiction

- (1) Jurisdiction is vested in the several courts of the States and Territories with respect to matters arising under this Act.
- (2) Subject to section 53, the jurisdiction vested in a court by virtue of subsection (1) is not limited by any limits to which any other jurisdiction of the court may be subject.
- (3) Jurisdiction is vested in a court of a Territory by virtue of subsection (1) so far only as the Constitution permits.

315 Proceedings are civil, not criminal

- (1) Proceedings on an application for a *restraining order or a *confiscation order are not criminal proceedings.
- (2) Except in relation to an offence under this Act:
 - (a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
 - (b) the rules of evidence applicable in civil proceedings apply, and those applicable only in criminal proceedings do not apply, to proceedings under this Act.

316 Consent orders

- (1) A court may make an order in a proceeding under Chapter 2 with the consent of:
 - (a) the applicant in the proceeding; and
 - (b) everyone whom the court has reason to believe has an interest in the property that is the subject of the proceeding.
- (2) The order may be made:
 - (a) without consideration of the matters that the court would otherwise consider in the proceeding; and

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

- (b) if the order is an order under section 47 (forfeiture orders relating to conduct constituting serious offences)—before the end of the period of 6 months referred to in paragraph 47(1)(b).

317 Onus and standard of proof

- (1) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.
- (2) Subject to sections 52 and 118, any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

318 Proof of certain matters

- (1) A certificate of conviction of an offence, that is a certificate of a kind referred to in section 178 (Convictions, acquittals and other judicial proceedings) of the *Evidence Act 1995*:
 - (a) is admissible in any civil proceedings under this Act; and
 - (b) is evidence of the commission of the offence by the person to whom it relates.
- (2) In any proceedings:
 - (a) on an application for an order under this Act; or
 - (b) ancillary to such an application; or
 - (c) for the enforcement of an order made under this Act;
 the transcript of any *examination is evidence of the answers given by a person to a question put to the person in the course of the examination.

319 Stay of proceedings

The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) is not a ground on which a court may stay proceedings under this Act that are not criminal proceedings.

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

320 Effect of the confiscation scheme on sentencing

A court passing sentence on a person in respect of the person's conviction of an *indictable offence:

- (a) may have regard to any cooperation by the person in resolving any action taken against the person under this Act; and
- (b) must not have regard to any *forfeiture order that relates to the offence, to the extent that the order forfeits *proceeds of the offence; and
- (c) must have regard to the forfeiture order to the extent that the order forfeits any other property; and
- (d) must not have regard to any *pecuniary penalty order, or any *literary proceeds order, that relates to the offence.

321 Deferral of sentencing pending determination of confiscation order

If:

- (a) an application is made for a *confiscation order in respect of a person's conviction of an *indictable offence; and
- (b) the application is made to the court before which the person was convicted; and
- (c) the court has not, when the application is made, passed sentence on the person for the offence;

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

322 Appeals

- (1) A person:
 - (a) against whom a *confiscation order is made; or
 - (b) who has an *interest in property against which a *forfeiture order is made; or
 - (c) who has an interest in property that is declared in an order under section 141 or 168 to be available to satisfy a *pecuniary penalty order or *literary proceeds order;

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

may appeal against the confiscation order, forfeiture order or order under section 141 or 168 (the *targeted order*) in the manner set out in this section.

- (2) If:
- (a) the *confiscation order; or
 - (b) the *forfeiture order; or
 - (c) the *pecuniary penalty order or *literary proceeds order to which the order under section 141 or 168 relates;
- (the *primary order*) was made in relation to a conviction of an offence, the person may appeal against the targeted order in the same manner as if the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.
- (3) In any other case, the person may appeal against the targeted order in the same manner as if:
- (a) the person had been convicted of the offence to which the primary order relates; and
 - (b) the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.
- (4) However, despite subsection (2) or (3), if the primary order related to a *foreign indictable offence, the person may appeal against the targeted order in the same manner as if:
- (a) the person had been convicted of the offence in the State or Territory in which the targeted order was made; and
 - (b) the targeted order were, or were part of, a sentence imposed on the person in respect of the offence.
- (5) The *DPP:
- (a) has the same right of appeal against a targeted order as the person referred to in subsection (1) has under this section; and
 - (b) may appeal against a refusal by a court to make a targeted order in the same manner as if such an order were made and the DPP were appealing against that order.
- (6) On an appeal against a targeted order, the order may be confirmed, discharged or varied.

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

Section 323

- (7) This section does not affect any other right of appeal.

323 Costs

- (1) If:
- (a) a person brings, or appears at, proceedings under this Act before a court in order:
 - (i) to prevent a *forfeiture order or *restraining order from being made against property of the person; or
 - (ii) to have property of the person excluded from a forfeiture order or restraining order; and
 - (b) the person is successful in those proceedings; and
 - (c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made;
- the court may order the Commonwealth to pay all costs incurred by the person in connection with the proceedings or such part of those costs as is determined by the court.
- (2) The costs referred to in subsection (1) are not limited to costs of a kind that are normally recoverable by the successful party to civil proceedings.

324 Powers conferred on judicial officers in their personal capacity

- (1) A power:
- (a) that is conferred by this Act on a State or Territory judge or on a magistrate; and
 - (b) that is neither judicial nor incidental to a judicial function or power;
- is conferred on that person in a personal capacity and not as a court or a member of a court.
- Note: *Magistrate* is defined in section 16C of the *Acts Interpretation Act 1901*.
- (2) The State or Territory judge, or the magistrate, need not accept the power conferred.
- (3) A State or Territory judge, or magistrate, exercising a conferred power has the same protection and immunity as if he or she were

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

exercising that power as, or as a member of, the court of which the judge or magistrate is a member.

325 Effect of a person's death

- (1) Any notice authorised or required to be given to a person under this Act is, if the person has died, sufficiently given if given to the person's legal personal representative.
- (2) A reference in this Act to a person's *interest in property or a thing is, if the person has died, a reference to an interest in the property or thing that the person had immediately before his or her death.
- (3) An order can be applied for and made under this Act:
 - (a) in respect of a person's *interest in property or a thing even if the person has died, and
 - (b) on the basis of the activities of a person who has died.

326 Operation of other laws not affected

Nothing in this Act limits or restricts:

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

327 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as practicable after the third anniversary of the commencement of this Act.
- (2) The persons who undertake such a review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

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

Section 328

- (4) However, this section does not apply if a committee of one or both Houses of the Parliament has reviewed the operation of this Act, or started such a review, before the third anniversary of the commencement of this Act.

328 Regulations

The Governor-General may make regulations prescribing matters:

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

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

Chapter 6—Interpreting this Act

Part 6-1—Meaning of some important concepts

Division 1—Proceeds and instrument of an offence

329 Meaning of *proceeds* and *instrument*

- (1) Property is *proceeds* of an offence if:
 - (a) it is wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
 - (b) it is partly derived or realised, whether directly or indirectly, from the commission of the offence;whether the property is situated within or outside *Australia.
- (2) Property is an *instrument* of an offence if:
 - (a) the property is used in, or in connection with, the commission of an offence; or
 - (b) the property is intended to be used in, or in connection with, the commission of an offence;whether the property is situated within or outside *Australia.
- (3) Property can be proceeds of an offence or an instrument of an offence even if no person has been convicted of the offence.
- (4) *Proceeds* or an *instrument* of an *unlawful activity means proceeds or an instrument of the offence constituted by the act or omission that constitutes the unlawful activity.

330 When property becomes, remains and ceases to be proceeds or an instrument

- (1) Property becomes *proceeds of an offence if it is:
 - (a) wholly or partly derived or realised from a disposal or other dealing with proceeds of the offence; or
 - (b) wholly or partly acquired using proceeds of the offence;including because of a previous application of this section.

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

Section 330

- (2) Property becomes an *instrument of an offence if it is:
 - (a) wholly or partly derived or realised from the disposal or other dealing with an instrument of the offence; or
 - (b) wholly or partly acquired using an instrument of the offence; including because of a previous application of this section.
- (3) Property remains *proceeds of an offence or an *instrument of an offence even if:
 - (a) it is credited to an *account; or
 - (b) it is disposed of or otherwise dealt with.
- (4) Property only ceases to be *proceeds of an offence or an *instrument of an offence:
 - (a) if it is acquired by a third party for *sufficient consideration without the third party knowing, and in circumstances that would not arouse a reasonable suspicion, that the property was proceeds of an offence or an instrument of an offence (as the case requires); or
 - (b) if the property vests in a person from the distribution of the estate of a deceased person, having been previously vested in a person from the distribution of the estate of another deceased person while the property was still proceeds of an offence or an instrument of an offence (as the case requires); or
 - (ba) the property has been distributed in accordance with:
 - (i) an order in proceedings under the *Family Law Act 1975* with respect to the property of the parties to a marriage or either of them; or
 - (ii) a financial agreement within the meaning of that Act; and 6 years have elapsed since that distribution; or
 - (c) if the property is acquired by a person as payment for reasonable legal expenses incurred in connection with an application under this Act or defending a criminal *charge; or
 - (d) if a *forfeiture order in respect of the property is satisfied; or
 - (e) if an *interstate restraining order or an *interstate forfeiture order is satisfied in respect of the property; or
 - (f) if the property is otherwise sold or disposed of under this Act; or

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

- (g) in any other circumstances specified in the regulations.
- (5) However, if:
- (a) a person once owned property that was *proceeds of an offence or an *instrument of an offence; and
 - (b) the person ceased to be the owner of the property and (at that time or a later time) the property stopped being proceeds of an offence or an instrument of the offence under subsection (4) (other than under paragraph (4)(d)); and
 - (c) the person acquires the property again;
- then the property becomes proceeds of an offence or an instrument of the offence again (as the case requires).
- (5A) Paragraph (4)(ba) does not apply if, despite the distribution referred to in that paragraph, the property is still subject to the *effective control of a person who:
- (a) has been convicted of; or
 - (b) has been charged with, or who is proposed to be charged with; or
 - (c) has committed, or is suspected of having committed; the offence in question.
- (6) Property becomes, remains or ceases to be *proceeds of an *unlawful activity, or an *instrument of an unlawful activity, if the property becomes, remains or ceases to be proceeds of the offence, or an instrument of the offence, constituted by the act or omission that constitutes the unlawful activity.

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

Division 2—Convicted and related concepts

331 Meaning of *convicted* of an offence

- (1) For the purposes of this Act, a person is taken to be *convicted* of an offence if:
 - (a) the person is convicted, whether summarily or on indictment, of the offence; or
 - (b) the person is charged with, and found guilty of, the offence but is discharged without conviction; or
 - (c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence; or
 - (d) the person *absconds in connection with the offence.
- (2) Such a person is taken to have been convicted of the offence in the following State or Territory:
 - (a) if paragraph (1)(a) applies—the State or Territory in which the person was convicted;
 - (b) if paragraph (1)(b) applies—the State or Territory in which the person was discharged without conviction;
 - (c) if paragraph (1)(c) applies—the State or Territory in which the court took the offence into account in passing sentence on the person for the other offence;
 - (d) if paragraph (1)(d) applies—the State or Territory in which the information was laid alleging the person’s commission of the offence.
- (3) If paragraph (2)(d) applies to a person:
 - (a) the person is taken to have been convicted of the offence before the Supreme Court of that State or Territory; and
 - (b) the person is taken to have committed the offence.
- (4) This section does not apply to a *foreign serious offence.

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

332 Meaning of *quashing* a conviction of an offence

- (1) For the purposes of this Act, a person's conviction of an offence is taken to be *quashed* if:
- (a) if the person is taken to have been convicted of the offence because of paragraph 331(1)(a)—the conviction is quashed or set aside; or
 - (b) if the person is taken to have been convicted of the offence because of paragraph 331(1)(b)—the finding of guilt is quashed or set aside; or
 - (c) if the person is taken to have been convicted of the offence because of paragraph 331(1)(c)—either of the following events occur:
 - (i) the person's conviction of the other offence referred to in that paragraph is quashed or set aside;
 - (ii) the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside; or
 - (d) if the person is taken to have been convicted of the offence because of paragraph 331(1)(d)—after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.
- (2) This section does not apply to a *foreign serious offence.

333 Meaning of *conviction day*

- (1) For the purposes of this Act, the *conviction day*, in relation to a person's conviction of an *indictable offence, is:
- (a) if the person is taken to have been convicted of the offence because of paragraph 331(1)(a)—the day on which the person was convicted of the offence; or
 - (b) if the person is taken to have been convicted of the offence because of paragraph 331(1)(b)—the day on which the person was discharged without conviction; or
 - (c) if the person is taken to have been convicted of the offence because of paragraph 331(1)(c)—the day on which the court

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

- took the offence into account in passing sentence for the other offence referred to in that paragraph; or
- (d) if the person is taken to have been convicted of the offence because of paragraph 331(1)(d)—the day on which the person is taken to have *absconded in connection with the offence.
- (2) For the purposes of paragraph (1)(a), the day on which the person was convicted of the offence is taken to be the first day on which the court acted on the finding that the offence was proved against the person (whether or not the court passed sentence on that day in relation to the offence).

334 Meaning of *abscond*

- (1) For the purposes of this Act, a person is taken to ***abscond*** in connection with an offence if and only if:
- (a) an information is laid alleging the person committed the offence; and
 - (b) a warrant for the person's arrest is issued in relation to that information; and
 - (c) subsection (2) applies to the person and the warrant.
- (2) This subsection applies to a person and a warrant if either of the following occurs:
- (a) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (i) the person cannot be found; or
 - (ii) the person is, for any other reason, not amenable to justice and, if the person is outside *Australia, extradition proceedings are not on foot;
 - (b) at the end of the period of 6 months commencing on the day on which the warrant is issued:
 - (i) the person is, because he or she is outside Australia, not amenable to justice; and
 - (ii) extradition proceedings are on foot;
and subsequently those proceedings terminate without an order for the person's extradition being made.

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

- (3) Extradition proceedings taking place in a jurisdiction in relation to a person are not taken, for the purposes of subsection (2), to be on foot unless the person is in custody, or is on bail, in that jurisdiction.

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

Division 3—Other concepts

335 Proceeds jurisdiction

- (1) Whether a court has *proceeds jurisdiction* for an order depends on the circumstances of the offence or offences to which the order would relate.

General rules

- (2) If all or part of the conduct constituting an offence to which the order would relate:
- (a) occurred in a particular State or Territory; or
 - (b) is reasonably suspected of having occurred in that State or Territory;

the courts that have *proceeds jurisdiction* for the order are those with jurisdiction to deal with criminal matters on indictment in that State or Territory.

- (3) If all of the conduct constituting an offence to which the order would relate:
- (a) occurred outside *Australia; or
 - (b) is reasonably suspected of having occurred outside *Australia;

the courts that have *proceeds jurisdiction* for the order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

Offender not identified

- (4) If:
- (a) the order would, if made, be:
 - (i) a *restraining order under section 19 that relates to an offence committed by a person whose identity is not known and that is not based on a finding as to the commission of a particular offence; or
 - (ii) a *forfeiture order under section 49 that is not based on a finding that a particular person committed any offence

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

and that is not based on a finding as to the commission of a particular offence; and

- (b) the property to which the order would relate is located in a particular State or Territory;

despite subsections (2) and (3), the courts that have *proceeds jurisdiction* for the order are those with jurisdiction to deal with criminal matters on indictment in that State or Territory.

- (5) If:

- (a) the order would, if made, be:

- (i) a *restraining order under section 19 that relates to an offence committed by a person whose identity is not known and that is not based on a finding as to the commission of a particular offence; or
- (ii) a *forfeiture order under section 49 that is not based on a finding that a particular person committed any offence and that is not based on a finding as to the commission of a particular offence; and

- (b) the property to which the order would relate is located outside *Australia;

despite subsections (2) and (3), the courts that have *proceeds jurisdiction* for the order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

Magistrates may have proceeds jurisdiction in some cases

- (6) If:

- (a) the order would, if made, be a *restraining order under section 17, or a *forfeiture order under section 48, relating to an offence of which a person has been convicted; and
- (b) the person was convicted before a magistrate;

the magistrate has *proceeds jurisdiction* for the order. However, this does not prevent other courts having proceeds jurisdiction for the order under subsection (2) or (3) (whichever is applicable).

Note: Although this Act is only concerned with indictable offences, these offences can often be tried summarily. For example, see section 4J of the *Crimes Act 1914*.

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

336 Meaning of *derived*

A reference to a person having *derived* *proceeds, a *benefit or *literary proceeds includes a reference to:

- (a) the person; or
- (b) another person at the request or direction of the first person; having derived the proceeds, benefit or literary proceeds directly or indirectly.

337 Meaning of *effective control*

- (1) Property may be subject to the *effective control* of a person whether or not the person has:
 - (a) a legal or equitable estate or *interest in the property; or
 - (b) a right, power or privilege in connection with the property.
- (2) Property that is held on trust for the ultimate *benefit of a person is taken to be under the *effective control* of the person.
- (3) However, if a person is one of 2 or more beneficiaries under a *discretionary trust, the following undivided proportion of the trust property is taken to be under the *effective control* of the person:

$$\frac{1}{\text{Number of beneficiaries}}$$

- (4) If property is initially owned by a person and, within 6 years either before or after an application for a *restraining order or a *confiscation order is made, disposed of to another person without *sufficient consideration, then the property is taken still to be under the effective control of the first person.
- (5) In determining whether or not property is subject to the effective control of a person, regard may be had to:
 - (a) shareholdings in, debentures over or *directorships of a company that has an *interest (whether direct or indirect) in the property; and
 - (b) a trust that has a relationship to the property; and
 - (c) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind

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

referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

337A Meaning of *foreign indictable offence*

(1) If:

- (a) an application (the *current application*) is made for a *restraining order or *confiscation order in relation to conduct that constituted an offence against a law of a foreign country; and
- (b) if the conduct had occurred in Australia at the testing time referred to in subsection (2), the conduct would have constituted an offence against a law of the Commonwealth, a State or a Territory punishable by at least 12 months imprisonment;

then, for the purposes of the current application, the conduct is treated as having constituted a *foreign indictable offence* at all relevant times.

Example: X commits an offence against a law of a foreign country at a time when the conduct is not an offence against Australian law. X then derives literary proceeds in relation to the offence and transfers the proceeds to Australia. After the proceeds are transferred, a new Commonwealth offence is created that applies to the type of conduct concerned. An application is then made for a literary proceeds order. For the purposes of the proceedings for that order, the original conduct is treated as having constituted a foreign indictable offence at all relevant times and accordingly an order can be made in respect of those proceeds.

(2) The *testing time* for the current application is:

- (a) if the current application is an application for a *restraining order—the time when the current application was made; or
- (b) if the current application is an application for a *confiscation order (other than a *literary proceeds order) in relation to a restraining order—the time when the application for the restraining order was made; or
- (c) if:
 - (i) the current application is an application for a literary proceeds order; and
 - (ii) an earlier restraining order has been made in respect of the same offence;

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

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the time when the application was made for that earlier restraining order; or

- (d) if the current application is an application for a literary proceeds order but paragraph (c) does not apply—the time when the current application was made.

- (3) In this section:

offence against a law of a foreign country includes an offence triable by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism”.

337B Definition of *serious offence*—valuation rules

In determining the value of a transaction or transactions for the purposes of paragraph (ea), (eb) or (ec) of the definition of *serious offence* in section 338 of this Act, apply the following provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

- (a) the definition of *value* in section 5;
(b) section 18;
(c) section 19.

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

Part 6-2—Dictionary

338 Dictionary

In this Act, unless the contrary intention appears:

abscond has the meaning given by section 334.

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

- (a) a *fixed term deposit; and
- (b) a safety deposit box.

AFP member means a member, or special member, (within the meaning of the *Australian Federal Police Act 1979*) of the Australian Federal Police.

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

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

approved examiner has the meaning given by subsection 183(4).

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

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

authorised officer means:

- (a) an *AFP member who is authorised by the Commissioner of the Australian Federal Police; or
- (aa) any of the following:
 - (i) the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*);

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

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- (ii) an Assistant Integrity Commissioner (within the meaning of that Act);
- (iii) a staff member of ACLEI (within the meaning of that Act) who is authorised in writing by the Integrity Commissioner for the purposes of this paragraph; or
- (b) any of the following:
 - (i) the Chief Executive Officer of the Australian Crime Commission;
 - (ii) an examiner (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission;
 - (iii) a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*) who is authorised by the Chief Executive Officer of the Australian Crime Commission; or
- (c) an officer of Customs (within the meaning of the *Customs Act 1901*) who is authorised by the CEO of Customs; or
- (d) a member, or staff member, (within the meaning of the *Australian Securities and Investments Commission Act 2001*) of the Australian Securities and Investments Commission who is authorised by the Chairperson of the Australian Securities and Investments Commission; or
- (e) a member, officer or employee of any other agency specified in the regulations who is authorised by the head of that agency.

bankruptcy court means a court having jurisdiction in bankruptcy under the *Bankruptcy Act 1966*.

bankruptcy property of a person means property that:

- (a) is vested in another person under subsection 58(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:
 - (i) property of the person; or
 - (ii) subject to the *effective control of the person; or
- (b) is vested in another person under subsection 249(1) of the *Bankruptcy Act 1966* but immediately before being so vested was:

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

- (i) property of the person's estate; or
- (ii) subject to the effective control of the executors of the person's estate.

benefit includes service or advantage.

books includes any account, deed, paper, writing or document and any record of information however compiled, recorded or stored, whether in writing, on microfilm, by electronic process or otherwise.

charged: a person is charged with an offence if an information is laid against the person for the offence whether or not:

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

compensation order means an order made under subsection 77(1).

Confiscated Assets Account means the account established under section 295.

confiscation order means a *forfeiture order, a *pecuniary penalty order or a *literary proceeds order.

controlled property has the meaning given by section 267.

Note: Section 267A alters the meaning of this term for the purposes of Division 3 of Part 4-1.

conveyance includes an aircraft, vehicle or vessel.

convicted has the meaning given by section 331.

conviction day has the meaning given by section 333.

corresponding law means a law of a State or of a *self-governing Territory that is declared by the regulations to be a law that corresponds to this Act.

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

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

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Customs officer means an officer of Customs within the meaning of the *Customs Act 1901*.

data includes:

- (a) information in any form; or
- (b) any program (or part of a program).

data held in a computer includes:

- (a) *data held in any removable *data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, *data for use by a computer.

deal: dealing with a person's property includes:

- (a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from *Australia; and
- (c) receiving or making a gift of the property; and
- (d) if the property is covered by a *restraining order—engaging in a transaction that has the direct or indirect effect of reducing the value of the person's interest in the property.

dependant: each of the following is a dependant of a person:

- (a) the person's spouse or de facto partner;
- (b) the person's child, or member of the person's household, who depends on the person for support.

derived has the meaning given by section 336.

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

- (a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory—a constituent member of the body corporate; and
- (b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and

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

whether or not validly appointed to occupy or duly authorised to act in the position; and

- (c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act, other than when those directors only do so:
 - (i) in the proper performance of the functions attaching to the person's professional capacity; or
 - (ii) in their business relationship with the person.

discretionary trust means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (i) the identities of those who may benefit under the trust;
 - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

distributable funds has the meaning given by subsection 299(7).

DPP means the Director of Public Prosecutions.

effective control has a meaning affected by section 337.

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

enforcement agency means:

- (a) an agency mentioned in paragraphs (a) to (d) of the definition of *authorised officer; or
- (b) an agency specified in the regulations to be a law enforcement, revenue or regulatory agency for the purposes of this Act.

equitable sharing program has the meaning given by subsection 296(4).

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

Section 338

evidential material means evidence relating to:

- (a) property in respect of which action has been or could be taken under this Act; or
- (b) *benefits derived from the commission of an *indictable offence; or
- (c) *literary proceeds.

examination means an examination under Part 3-1.

examination notice means a notice given under section 183.

examination order means an order made under section 180 or 181 that is in force.

exclusion order means an order made under subsection 73(1).

executing officer, in relation to a warrant, means:

- (a) the *authorised officer named in the warrant by the magistrate as being responsible for executing the warrant; or
- (b) if that authorised officer does not intend to be present at the execution of the warrant—another authorised officer whose name has been written in the warrant by the first authorised officer; or
- (c) another authorised officer whose name has been written in the warrant by the officer last named in the warrant.

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

extension order means an order made under section 93.

financial institution means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory; or

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

- (d) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution; or
- (e) a body corporate that is a financial corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (f) a body corporate that, if it had been incorporated in *Australia, would be a financial corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (g) a trading corporation (within the meaning of paragraph 51(xx) of the Constitution) that carries on a business of operating a casino; or
- (h) a trading corporation (within the meaning of paragraph 51(xx) of the Constitution) that is a *totalisator agency board.

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

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

foreign indictable offence has the meaning given by section 337A.

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

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

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

forfeiture order means an order made under Division 1 of Part 2-2 that is in force.

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

indictable offence means an offence against a law of the Commonwealth, or a *non-governing Territory, that may be dealt

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

Section 338

with as an indictable offence (even if it may also be dealt with as a summary offence in some circumstances).

indictable offence of Commonwealth concern means an offence against a law of a State or a *self-governing Territory:

- (a) that may be dealt on indictment (even if it may also be dealt with as a summary offence in some circumstances); and
- (b) the *proceeds of which were (or were attempted to have been) dealt with in contravention of a law of the Commonwealth on:
 - (i) importation of goods into, or exportation of goods from, *Australia; or
 - (ii) a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or
 - (iii) a transaction in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).

instrument has the meaning given by sections 329 and 330.

interest, in relation to property or a thing, means:

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

whether present or future and whether vested or contingent.

Note: For references to an ***interest*** in property of a person who has died, see subsection 325(2).

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

interstate indictable offence means an offence against a law of a State or a *self-governing Territory, being an offence in relation to which an *interstate forfeiture order or an *interstate pecuniary penalty order may be made under a *corresponding law of that State or Territory.

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

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.

lawyer means a duly qualified legal practitioner.

legal aid commission means an authority established by or under a law of a State or a *self-governing Territory for the purpose of providing legal assistance.

legal professional privilege includes privilege under Division 1 of Part 3.10 of the *Evidence Act 1995*.

literary proceeds has the meaning given by section 153.

literary proceeds amount has the meaning given by subsection 158(1).

literary proceeds order means an order made under section 152 that is in force.

monitoring order means an order made under section 219 that is in force.

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

narcotic substance means:

- (a) a narcotic substance within the meaning of the *Customs Act 1901*; or
- (b) a substance specified in the regulations for the purposes of this definition.

non-governing Territory means a Territory that is not a *self-governing Territory.

officer, in relation to a *financial institution or a corporation, means a *director, secretary, *executive officer or employee.

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

Section 338

Official Trustee means the Official Trustee in Bankruptcy.

ordinary search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

pecuniary penalty order means an order made under section 116 that is in force.

penalty amount has the meaning given by subsection 121(1).

person assisting, in relation to a *search warrant, means:

- (a) a person who is an *authorised officer and who is assisting in executing the warrant; or
- (b) a person who is not an authorised officer and who has been authorised by the relevant *executing officer to assist in executing the warrant.

person's property: a person's property includes property in respect of which the person has the beneficial interest.

petition means a petition under the *Bankruptcy Act 1966*.

police officer means:

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

premises includes:

- (a) any land; and
- (b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not); and
- (c) any part of such a structure, building, aircraft, vehicle, vessel or place.

proceeds has the meaning given by sections 329 and 330.

proceeds jurisdiction has the meaning given by section 335.

proceeds of confiscated assets has the meaning given by subsection 296(3).

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

production order means an order made under subsection 202(1) that is in force.

professional confidential relationship privilege means privilege under:

- (a) Division 1A of Part 3.10 of the *Evidence Act 1995*; or
- (b) Division 1A of Part 3.10 of the *Evidence Act 1995* of New South Wales or a similar law of a State or Territory.

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

property-tracking document has the meaning given in subsection 202(5).

quashed has the meaning given by section 332.

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

registration authority means an authority responsible for administering a law of the Commonwealth, a State or a Territory providing for registration of title to, or charges over, property of a particular kind.

related offence: an offence is related to another offence if the physical elements of the 2 offences are substantially the same acts or omissions.

responsible custodian has the meaning given by subsection 254(2).

restraining order means an order under section 17, 18, 19 or 20 that is in force.

search warrant means a warrant issued under section 225 that is in force.

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory; or

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

Section 338

(c) Norfolk Island.

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

serious offence means:

- (a) an *indictable offence punishable by imprisonment for 3 or more years, involving:
 - (i) unlawful conduct relating to a *narcotic substance; or
 - (ia) unlawful conduct constituted by or relating to a breach of Part 9.1 of the *Criminal Code* (serious drug offences); or
 - (ii) unlawful conduct constituted by or relating to a breach of section 81 of the *Proceeds of Crime Act 1987* or Part 10.2 of the *Criminal Code* (money-laundering); or
 - (iii) unlawful conduct by a person that causes, or is intended to cause, a *benefit to the value of at least \$10,000 for that person or another person; or
 - (iv) unlawful conduct by a person that causes, or is intended to cause, a loss to the Commonwealth or another person of at least \$10,000; or
- (b) an offence against any of the following provisions of the *Migration Act 1958*:
 - (i) section 232A (organising bringing groups of non-citizens into Australia);
 - (ii) subsection 233(1) (bringing etc. non-citizens into Australia in contravention of Act);
 - (iii) section 233A (other offences relating to groups of non-citizens); or
- (c) an offence against any of the following provisions of the *Financial Transaction Reports Act 1988* involving a transaction of at least \$50,000 in value:
 - (i) section 15 (reports about transfers of currency into or out of Australia); or
 - (ii) section 29 (false or misleading information); or
- (d) an offence against section 24 (opening accounts etc. in false names) of the *Financial Transaction Reports Act 1988* if

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

- transactions on the relevant account total at least \$50,000 in value during any 6 month period; or
- (e) an offence against section 31 (conducting transactions to avoid reporting requirements) of the *Financial Transaction Reports Act 1988* if transactions in breach of that section by the person committing the offence total at least \$50,000 in value during any 6 month period; or
 - (ea) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* involving a transaction of at least \$50,000 in value:
 - (i) section 53 (reports about movements of physical currency into or out of Australia);
 - (ii) section 59 (reports about movements of bearer negotiable instruments into or out of Australia);
 - (iii) section 136 (false or misleading information);
 - (iv) section 137 (false or misleading documents); or
 - (eb) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:
 - (i) section 139 (providing a designated service using a false customer name or customer anonymity);
 - (ii) section 140 (receiving a designated service using a false customer name or customer anonymity);
 - (iii) section 141 (non-disclosure of other name by which customer is commonly known);if:
 - (iv) the customer concerned had an account in relation to the provision of the designated service concerned; and
 - (v) transactions on the account total at least \$50,000 in value during any 6 month period beginning after the commencement of Part 12 of that Act; or
 - (ec) an offence against either of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:
 - (i) section 142 (conducting transactions so as to avoid reporting requirements relating to threshold transactions);

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

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- (ii) section 143 (conducting transfers so as to avoid reporting requirements relating to cross-border movements of physical currency);
if transactions in breach of that section by the person committing the offence total at least \$50,000 in value during any 6 month period; or
- (f) a *terrorism offence; or
- (g) an offence against section 11.1, 11.2, 11.4 or 11.5 of the *Criminal Code* (extensions of criminal responsibility) in relation to an offence referred to in this definition; or
- (h) an indictable offence specified in the regulations.

State indictable offence means an offence against a law of a State or a *self-governing Territory that may be dealt with on indictment (even if it may also be dealt with as a summary offence in some circumstances).

strip search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

sufficient consideration: an acquisition or disposal of property is for sufficient consideration if it is for a consideration that is sufficient and that reflects the value of the property, having regard solely to commercial considerations.

suspect, in relation to a *restraining order or a *confiscation order, means the person who:

- (a) has been convicted of; or
 - (b) has been *charged with, or is proposed to be charged with; or
 - (c) if the order is a restraining order—is suspected of having committed; or
 - (d) if the order is a confiscation order—committed;
- the offence or offences to which the order relates.

suspended funds has the meaning given by subsection 297(2).

tainted property means:

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

- (a) *proceeds of an *indictable offence; or
- (b) an *instrument of an indictable offence.

terrorism offence means an offence against Part 5-3 of the *Criminal Code*.

totalisator agency board means a board or authority established by or under a law of a State or Territory for purposes that include the purpose of operating a betting service.

unlawful activity means an act or omission that constitutes:

- (a) an offence against a law of the Commonwealth; or
- (b) an offence against a law of a State or Territory that may be dealt with on indictment (even if it may also be dealt with as a summary offence in some circumstances); or
- (c) an offence against a law of a foreign country.

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

Table of Acts**Notes to the *Proceeds of Crime Act 2002*****Note 1**

The *Proceeds of Crime Act 2002* as shown in this compilation comprises Act No. 85, 2002 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Proceeds of Crime Act 2002</i>	85, 2002	11 Oct 2002	Ss. 3–338: 1 Jan 2003 (<i>see Gazette</i> 2002, No. GN44) Remainder: Royal Assent	
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (items 116, 117): (a)	—
<i>Crimes Legislation Enhancement Act 2003</i>	41, 2003	3 June 2003	Schedule 2 (items 16A–16E): 1 Jan 2003	—
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 200, 212, 213, 215): 1 Dec 2004 (<i>see Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215)
<i>Anti-terrorism Act 2004</i>	104, 2004	30 June 2004	1 July 2004	S. 4(1)
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 309–312, 496): Royal Assent	S. 4 and Sch. 1 (item 496)
<i>Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005</i>	129, 2005	8 Nov 2005	Schedule 1 (items 67, 75, 76): 6 Dec 2005 Schedule 3: Royal Assent	Sch. 1 (items 75, 76) and Sch. 3 (Item 11)
<i>Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005</i>	136, 2005	15 Nov 2005	16 Nov 2005	Sch. 1 (item 28)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Anti-Terrorism Act (No. 2) 2005</i>	144, 2005	14 Dec 2005	Schedule 9 (items 22, 23): (b)	S. 2(1) (item 19) (am. by 170, 2006, Sch. 1 [item 11])
as amended by				
<i>Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006</i>	170, 2006	12 Dec 2006	Schedule 1 (item 11): (c)	—
<i>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</i>	86, 2006	30 June 2006	Schedule 1: (items 54, 55): 30 Dec 2006 (see s. 2(1))	—
<i>Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006</i>	170, 2006	12 Dec 2006	Schedule 1 (items 153–157): 13 Dec 2006 (see s. 2(1))	—
<i>Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007</i>	57, 2007	15 Apr 2007	Schedule 2 (items 11–19): 16 Apr 2007	Sch. 2 (item 19)
<i>Evidence Amendment (Journalists' Privilege) Act 2007</i>	116, 2007	28 June 2007	Schedule 1: 26 July 2007 Remainder: Royal Assent	—

Act Notes

(a) Subsection 2(1) (item 4) of the *Australian Crime Commission Establishment Act 2002* provides as follows:

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 2, items 116 and 117	The later of: (a) the start of the day on which Schedule 1 to this Act commences; and (b) immediately after the commencement of section 213 of the <i>Proceeds of Crime Act 2002</i>	1 January 2003 (paragraph (b) applies)

(b) Subsection 2(1) (item 19) of the *Anti-Terrorism Act (No. 2) 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
19. Schedule 9, items 18 to 24	14 December 2006. However, if section 3 of the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> commences before 14 December 2006, the provision(s) do not commence at all.	Do not commence

(c) Subsection 2(1) (item 3) of the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
3. Schedule 1, items 2 to 11	Immediately after the commencement of section 2 of the <i>Anti-Terrorism Act (No. 2) 2005</i> .	14 December 2005

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
Part 1-3	
Note to s. 6.....	ad. No. 136, 2005
Chapter 2	
Part 2-1	
Division 1	
Ss. 17, 18.....	am. No. 129, 2005
S. 20.....	am. No. 104, 2004; No. 129, 2005
Division 3	
S. 29.....	am. No. 170, 2006
Part 2-4	
Division 2	
Subdivision B	
S. 129.....	am. No. 80, 2004
Part 2-5	
Division 1	
Ss. 152, 153.....	am. No. 104, 2004
Chapter 3	
Part 3-1	
Division 4	
S. 197.....	am. No. 116, 2007
Part 3-3	
S. 213.....	am. No. 125, 2002; No. 86, 2006
Part 3-4	
S. 223.....	am. No. 170, 2006
Chapter 4	
Part 4-1	
Division 1	
S. 267A.....	ad. No. 41, 2003
Division 3	
Ss. 278–280.....	am. No. 41, 2003
Division 5	
S. 288.....	am. No. 8, 2005
Part 4-3	
S. 297.....	am. Nos. 8 and 136, 2005
Heading to s. 299.....	am. No. 57, 2007
S. 299.....	am. No. 8, 2005; No. 57, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected

How affected

Chapter 6

Part 6-1

Division 3

S. 337A ad. No. 104, 2004

S. 337B ad. No. 170, 2006

Part 6-2

S. 338 am. No. 125, 2002; No. 41, 2003; No. 104, 2004; No. 129,
2005; Nos. 86 and 170, 2006; No. 116, 2007

Table A**Application, saving or transitional provisions***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 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

Table A

- (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:
 - (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);

Table A

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).

Anti-terrorism Act 2004 (No. 104, 2004)

4 Application of amendments

- (1) The amendments of the *Proceeds of Crime Act 2002* apply to any application made under that Act after the commencement of this Act, including an application in relation to:
 - (a) conduct that occurred before the commencement of this Act; or
 - (b) proceeds derived or realised before the commencement of this Act; or
 - (c) literary proceeds derived or transferred to Australia before the commencement of this Act.

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.

Table A

(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.

Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 (No. 129, 2005)

Schedule 1

75 Application of amendments to conduct before and after commencement

(1) In this item:

earlier conduct means conduct engaged in before the commencement of this Schedule.

engage in conduct has the same meaning as in the *Criminal Code*.

later conduct means conduct engaged in after the commencement of this Schedule.

new law means Part 9.1 of the *Criminal Code* as in force from time to time.

old law means:

- (a) the provisions of Division 2 of Part XIII of the *Customs Act 1901* as in force from time to time before the commencement of this Schedule to the extent to which those provisions related to narcotic substances; and
- (b) any law related to those provisions.

(2) The amendments made by this Schedule do not apply in relation to earlier conduct.

Table A

-
- (3) Despite the amendments made by this Schedule, the old law continues to apply in relation to later conduct if:
- (a) the later conduct is related to earlier conduct; and
 - (b) because of that relationship, the later conduct would have constituted a physical element (or a part of a physical element) of an offence against the old law, had the old law remained in force.
- (4) If later conduct is alleged against a person in a prosecution for an offence against the old law, that conduct must not be alleged against the person in a prosecution for:
- (a) an offence against the new law; or
 - (b) an offence related to an offence against the new law.

76 Transitional regulations

- (1) The regulations may make provision for matters of a transitional nature (including any saving or application provisions) arising from the amendments or repeals made by this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Schedule 3**11 Application**

The amendments made by this Part apply in relation to bankruptcy property whether vested in a person under the *Bankruptcy Act 1966* before, on or after the commencement of this item.

Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005 (No. 136, 2005)

Schedule 1**28 Transitional—validation of certain examinations etc.**

- (1) This item applies to each of the following:
- (a) a purported examination conducted under the *Proceeds of Crime Act 2002* during the interim period by a designated

Table A

- AAT member in the purported capacity of approved examiner;
- (b) the purported giving of a notice or direction under Part 3-1 of that Act during the interim period by a designated AAT member in the purported capacity of approved examiner;
 - (c) the purported doing of any other act or thing under Part 3-1 of that Act during the interim period by a designated AAT member in the purported capacity of approved examiner.
- (2) The examination, notice, direction, act or thing is as valid, and is taken always to have been as valid, as it would have been if the designated AAT member had been an eligible legal practitioner during the interim period.
- (3) The designated AAT member has, and is taken always to have had, the same protection and immunity under section 194 of the *Proceeds of Crime Act 2002* that the member would have, or would have had, if the member had been an eligible legal practitioner during the interim period.
- (4) In this item:
- designated AAT member** means a non-presidential member of the Administrative Appeals Tribunal who is not an eligible legal practitioner.
- eligible legal practitioner** means person who is enrolled as a legal practitioner of:
- (a) the High Court; or
 - (b) another federal court; or
 - (c) the Supreme Court of a State or Territory;
- and has been so enrolled for at least 5 years.
- interim period** means the period:
- (a) beginning at the start of 7 September 2004; and
 - (b) ending at the end of 19 August 2005.
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Table A

Bankruptcy Legislation Amendment (Superannuation Contributions) Act 2007
(No. 57, 2007)

Schedule 2

19 Transitional—section 299 of the *Proceeds of Crime Act 2002*

- (1) This item applies to anything done by the Official Trustee under section 299 of the *Proceeds of Crime Act 2002* before the commencement of this item.
- (2) The thing has effect, after the commencement of this item, as if it had been done under that section by the Inspector-General in Bankruptcy.