



# **Criminal Proceeds Confiscation Act 2002**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

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Queensland

# Criminal Proceeds Confiscation Act 2002

## Contents

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		Page
<b>Chapter 1</b>	<b>Introduction</b>	
1	Short title . . . . .	15
2	Commencement . . . . .	15
3	Definitions . . . . .	16
4	Objects . . . . .	16
5	Act binds State . . . . .	17
6	Notes . . . . .	17
7	Examples in sch 1 . . . . .	17
8	Proceedings are civil, not criminal . . . . .	17
9	Orders under this Act not a sentence . . . . .	18
10	Operation of other laws not affected . . . . .	18
11	Interstate operation of particular orders . . . . .	18
12	Proceedings by the State and meaning of appropriate officer . . . . .	19
<b>Chapter 2</b>	<b>Confiscation without conviction</b>	
<b>Part 1</b>	<b>Preliminary</b>	
13	Explanation of ch 2 . . . . .	20
14	Application of ch 2 . . . . .	21
<b>Part 2</b>	<b>Interpretation</b>	
<b>Division 1</b>	<b>References to relevant offences</b>	
15	Meaning of illegal activity . . . . .	21
16	Meaning of serious crime related activity . . . . .	22
17	Meaning of serious criminal offence . . . . .	22
<b>Division 2</b>	<b>References to proceeds, property and benefits</b>	
18	Meaning of proceeds . . . . .	22
19	Meaning of property . . . . .	23
20	Meaning of effective control of property . . . . .	23
21	Meaning of benefit and benefit derived . . . . .	24

<b>Division 3</b>	<b>References to illegally acquired property and serious crime derived property</b>	
<b>Subdivision 1</b>	<b>Meaning of particular property related terms</b>	
22	Meaning of illegally acquired property . . . . .	24
23	Meaning of serious crime derived property . . . . .	25
<b>Subdivision 2</b>	<b>Provisions about continuing application of subdivision 1 to illegally acquired property and serious crime derived property</b>	
24	Definitions for subdiv 2 . . . . .	26
25	Property retains its character despite disposal. . . . .	26
26	When property stops being illegally acquired property or serious crime derived property . . . . .	26
27	Property may again become illegally acquired property or serious crime derived property . . . . .	27
<b>Part 3</b>	<b>Restraining orders</b>	
<b>Division 1</b>	<b>Application for restraining orders</b>	
28	Application for restraining order . . . . .	28
29	Affidavit. . . . .	29
30	Notice of application. . . . .	30
<b>Division 2</b>	<b>Making restraining orders</b>	
30A	Hearing of application. . . . .	30
31	Making restraining order. . . . .	31
32	Conditions of restraining order . . . . .	31
33	Condition about dealing with property by agreement. . . . .	32
34	Condition about particular payments out of restrained property . . . . .	32
35	Restraining order may direct public trustee to take control of property . . . . .	33
36	Duration of restraining order. . . . .	33
<b>Division 3</b>	<b>Making other orders</b>	
37	Supreme Court may make other orders . . . . .	34
38	Particular orders Supreme Court may make . . . . .	35
<b>Division 4</b>	<b>Provisions about particular orders</b>	
<b>Subdivision 1</b>	<b>Examination orders</b>	
38A	Meaning of judicial registrar for subdiv 1 . . . . .	37
39	Judicial registrar's power to conduct examinations. . . . .	37
39A	Time and place of examination. . . . .	37
39B	Examination to take place in private. . . . .	37
39C	Role of the examinee's lawyer . . . . .	38
39D	Recording evidence . . . . .	38

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40	Privilege—examination order . . . . .	39
41	Offence to contravene examination order. . . . .	40
<b>Subdivision 2</b>	<b>Property particulars orders</b>	
42	Privilege—property particulars order . . . . .	40
<b>Subdivision 3</b>	<b>Property seizure orders</b>	
43	If property seizure order directed to commission officer . . . . .	41
44	If property seizure order directed to police officer . . . . .	42
<b>Division 5</b>	<b>Notice of restraining order and other orders</b>	
45	Notice of restraining order and other orders. . . . .	43
<b>Division 6</b>	<b>Sale of restrained property</b>	
46	Supreme Court may order sale of restrained property. . . . .	43
<b>Division 7</b>	<b>Exclusion of property from restraining order</b>	
<b>Subdivision 1</b>	<b>Application by prescribed respondent</b>	
47	Supreme Court may exclude prescribed respondent's property from restraining order. . . . .	44
48	When Supreme Court may exclude prescribed respondent's property . . . . .	45
<b>Subdivision 2</b>	<b>Application by person other than prescribed respondent</b>	
49	Supreme Court may exclude other property from restraining order . . . . .	46
50	When Supreme Court may exclude applicant's property . . . . .	47
<b>Division 7A</b>	<b>Revocation of restraining order</b>	
50A	Application to revoke restraining order . . . . .	47
50B	Notice of revocation of restraining order. . . . .	48
<b>Division 8</b>	<b>Other provisions about restraining orders</b>	
51	Recording of restraining order . . . . .	48
52	Contravention of restraining order . . . . .	49
53	Restraining order does not prevent other action under this Act . .	50
54	Effect of dismissal of particular applications on restraining order . . . . .	50
55	Authority under restraining order . . . . .	50
<b>Part 4</b>	<b>Forfeiture orders</b>	
<b>Division 1</b>	<b>Making and effect of forfeiture orders</b>	
56	Application for forfeiture order . . . . .	51
57	Notice of application. . . . .	51
58	Making forfeiture order . . . . .	51
59	Effect of forfeiture order . . . . .	53
60	Dealing with forfeited property prohibited. . . . .	53

61	Effect of quashing of conviction on forfeiture order . . . . .	54
<b>Division 2</b>	<b>Other orders</b>	
<b>Subdivision 1</b>	<b>Orders for relief from hardship</b>	
62	Relief from hardship for dependants . . . . .	54
<b>Subdivision 2</b>	<b>Orders about encumbrances</b>	
63	Forfeiture order may provide for discharge of encumbrance . . . . .	55
<b>Subdivision 3</b>	<b>Releasing property from effect of forfeiture order</b>	
64	Order for release of property from forfeiture order . . . . .	55
<b>Subdivision 4</b>	<b>Exclusion of property from forfeiture under exclusion order</b>	
65	Exclusion of property from forfeiture order application . . . . .	56
66	Exclusion of property from forfeiture order . . . . .	57
67	When Supreme Court may give leave for s 66 . . . . .	58
68	Making of exclusion order. . . . .	58
69	What is an exclusion order. . . . .	58
70	Effect of exclusion order. . . . .	59
<b>Subdivision 5</b>	<b>Exclusion of interest from forfeiture under innocent interest exclusion order</b>	
71	Exclusion of value of innocent interest from forfeiture order. . . . .	59
72	When Supreme Court may give leave for s 71 . . . . .	60
73	Making of innocent interest exclusion order. . . . .	61
74	What is an innocent interest exclusion order . . . . .	61
<b>Division 3</b>	<b>Release and buying back interests</b>	
75	Effect of payment under release order . . . . .	61
76	Buying out other interests under court order . . . . .	62
<b>Part 5</b>	<b>Proceeds assessment orders</b>	
<b>Division 1</b>	<b>Application for, and making of, proceeds assessment orders</b>	
77	Application for proceeds assessment order . . . . .	63
78	Making of proceeds assessment order . . . . .	63
79	Amount must be stated in proceeds assessment order . . . . .	64
80	Proceeds assessment order increase if forfeiture order discharged . . . . .	64
<b>Division 2</b>	<b>Assessment of value of proceeds</b>	
81	Application of div 2 . . . . .	65
82	Matters to which Supreme Court must have regard. . . . .	65
83	How particular amounts may be treated. . . . .	66
84	Particular amounts not to be deducted. . . . .	66
85	Evidence by prescribed officer . . . . .	67

<b>Division 3</b>	<b>Other provisions about proceeds assessment orders</b>	
86	Proceeds assessment order amount is debt payable to State . . .	67
87	Enforcement of order against property under effective control . . .	68
88	Charge on property . . . . .	68
89	Effect of other actions on proceeds assessment order . . . . .	70
<b>Part 6</b>	<b>General</b>	
90	Serious crime related activity can form basis of a number of orders . . . . .	70
91	Effect of death of person involved . . . . .	70
92	Effect of death of joint owner of restrained property. . . . .	71
93	No stay of proceedings. . . . .	71
<b>Chapter 3</b>	<b>Confiscation after conviction</b>	
<b>Part 1</b>	<b>Preliminary</b>	
94	Explanation of ch 3. . . . .	72
95	Application of ch 3 . . . . .	73
96	Matters ch 3 does not apply to . . . . .	73
97	Application may be made for more than 1 order . . . . .	73
98	Constitution of court. . . . .	73
<b>Part 2</b>	<b>Interpretation</b>	
<b>Division 1</b>	<b>References to relevant offences</b>	
99	Meaning of confiscation offence. . . . .	74
100	Meaning of serious criminal offence. . . . .	74
<b>Division 2</b>	<b>References to property and benefits</b>	
101	Meaning of benefit . . . . .	75
102	Meaning of benefit derived. . . . .	75
103	Meaning of effective control . . . . .	75
104	Meaning of tainted property . . . . .	75
<b>Division 3</b>	<b>References to relevant criminal proceedings</b>	
105	Meaning of charge if complaint made . . . . .	76
106	Meaning of convicted of offence. . . . .	77
107	Meaning of quash a conviction. . . . .	78
108	Meaning of related offence. . . . .	79
109	Meaning of unamenable to justice . . . . .	79
110	Unamenable to justice if person absconds. . . . .	80
111	Unamenable to justice if person dead . . . . .	80
112	Unamenable to justice if person not fit for trial . . . . .	80
113	Unamenable to justice if warrant issued but not executed . . . . .	81

114	Unamenable to justice if no extradition order at end of extradition proceeding . . . . .	81
115	Unamenable to justice for another reason . . . . .	81
<b>Part 3</b>	<b>Restraining orders</b>	
<b>Division 1</b>	<b>Definitions</b>	
116	Definitions for pt 3. . . . .	82
<b>Division 2</b>	<b>Application for restraining order</b>	
117	Application for restraining order . . . . .	82
118	Affidavit—general requirements . . . . .	83
119	Particular requirements for affidavit relating to relevant property that is not prescribed respondent's property . . . . .	84
120	Notice of application for restraining order. . . . .	85
121	Hearing of application. . . . .	85
<b>Division 3</b>	<b>Making restraining orders and other orders</b>	
122	Making restraining order. . . . .	85
123	Absence of risk does not prevent making of order . . . . .	86
124	Conditions of restraining order . . . . .	86
125	Conditions about dealing with property by agreement . . . . .	87
126	Conditions about particular payments out of restrained property. . . . .	87
127	Restraining order may direct public trustee to take control of property . . . . .	88
128	Duration of restraining order. . . . .	88
<b>Division 4</b>	<b>Making other orders</b>	
129	Supreme Court may make other orders . . . . .	89
130	Particular orders Supreme Court may make . . . . .	90
<b>Division 5</b>	<b>Provisions about particular orders</b>	
<b>Subdivision 1</b>	<b>Examination orders</b>	
130A	Meaning of judicial registrar for subdiv 1 . . . . .	91
131	Judicial registrar's power to conduct examinations. . . . .	92
131A	Time and place of examination. . . . .	92
131B	Examination to take place in private. . . . .	92
131C	Role of the examinee's lawyer . . . . .	92
131D	Recording evidence . . . . .	93
132	Privilege—examination order . . . . .	94
133	Offence to contravene examination order. . . . .	94
<b>Subdivision 2</b>	<b>Property particulars orders</b>	
134	Privilege—property particulars order . . . . .	95

<b>Division 6</b>	<b>Notice of restraining orders</b>	
135	Notice of restraining order . . . . .	95
<b>Division 7</b>	<b>Extension and setting aside of restraining orders</b>	
136	Extension of restraining order . . . . .	96
137	Restraining order may be set side . . . . .	97
<b>Division 8</b>	<b>Sale of restrained property</b>	
138	Supreme Court may order sale of restrained property . . . . .	97
<b>Division 9</b>	<b>Exclusion of particular property from restraining order</b>	
139	Supreme Court may exclude prescribed respondent's property from restraining order . . . . .	98
140	Supreme Court may exclude other property from restraining order . . . . .	99
141	Supreme Court may declare restrained property is not subject to automatic forfeiture. . . . .	100
<b>Division 10</b>	<b>Other provisions about restraining orders</b>	
142	Restraining order to be registered . . . . .	101
143	Contravention of restraining order . . . . .	102
144	Restraining order does not prevent other action under this Act . . . . .	102
145	Authority under restraining order . . . . .	102
<b>Part 4</b>	<b>Forfeiture orders</b>	
<b>Division 1</b>	<b>Applications for forfeiture orders</b>	
146	Application for forfeiture order . . . . .	103
147	Notice of application. . . . .	104
<b>Division 2</b>	<b>Making and effect of forfeiture orders</b>	
148	Amendment of application . . . . .	104
149	Procedure on application . . . . .	105
150	Limitation on powers of Magistrates Courts . . . . .	105
151	Making forfeiture order . . . . .	106
152	Forfeiture order may provide for discharge of encumbrance . . . . .	107
153	Effect of forfeiture . . . . .	107
<b>Division 3</b>	<b>Orders releasing or excluding property from effect of particular orders</b>	
154	Order for release of property from forfeiture order . . . . .	108
155	Exclusion of property from forfeiture order application . . . . .	108
156	Exclusion of property from forfeiture order . . . . .	109
157	When court may give leave for s 156 . . . . .	109
158	Making of innocent interest exclusion order . . . . .	110
159	What is an innocent interest exclusion order . . . . .	110

<b>Division 4</b>	<b>Discharge of forfeiture orders</b>	
160	Discharge of forfeiture order . . . . .	111
<b>Part 5</b>	<b>Automatic forfeiture</b>	
161	Definitions for pt 5 . . . . .	111
162	Application of pt 5 . . . . .	112
163	Automatic forfeiture of restrained property . . . . .	112
164	Effect of automatic forfeiture . . . . .	113
165	Third party protection from automatic forfeiture . . . . .	113
166	When Supreme Court may give leave for s 165 . . . . .	114
167	When Supreme Court may make third party order . . . . .	114
168	What is a third party order . . . . .	115
169	When Supreme Court may make buy-back order . . . . .	115
170	What is a buy-back order . . . . .	116
<b>Part 6</b>	<b>Other provisions about forfeiture</b>	
171	Dealing with forfeited property prohibited . . . . .	116
172	Effect of payment under buy-back order or release order . . . . .	116
173	Buying out other interests under court order . . . . .	117
174	Notice after conviction quashed or forfeiture order discharged . . . . .	118
175	If Attorney-General asked to return property . . . . .	119
176	If application for order declaring value of property . . . . .	120
177	Rehearing . . . . .	120
<b>Part 7</b>	<b>Pecuniary penalty orders</b>	
<b>Division 1</b>	<b>Application for pecuniary penalty order</b>	
178	Pecuniary penalty order application . . . . .	121
179	Notice of application . . . . .	122
180	Right to appear . . . . .	122
181	Amendment of application . . . . .	122
182	Procedure on application . . . . .	122
183	Limitation on powers of Magistrates Courts . . . . .	123
<b>Division 2</b>	<b>Making of pecuniary penalty order</b>	
184	Pecuniary penalty orders . . . . .	123
185	Discharge of pecuniary penalty order to the extent of automatic forfeiture . . . . .	124
186	Pecuniary penalty order increase if forfeiture order discharged . . . . .	125
<b>Division 3</b>	<b>Assessment of benefits</b>	
187	Assessment of benefits . . . . .	125
188	Procedure if application relating to 1 confiscation offence . . . . .	127

189	Procedure if application relating to more than 1 confiscation offence . . . . .	127
190	Property that may be taken into account for assessment. . . . .	127
191	Property under effective control . . . . .	128
192	Particular benefits not to be taken into account . . . . .	128
193	Expenses and outgoings . . . . .	128
194	Evidence. . . . .	129
<b>Division 4</b>	<b>Other provisions</b>	
195	Discharge of pecuniary penalty order. . . . .	129
196	Charge on restrained property under restraining order if pecuniary penalty order made . . . . .	130
197	Pecuniary penalty order to be registered . . . . .	131
198	Application of property under effective control for satisfying pecuniary penalty order . . . . .	131
199	Rehearing. . . . .	132
<b>Chapter 4</b>	<b>Special forfeiture orders</b>	
<b>Part 1</b>	<b>Special forfeiture order application</b>	
200	Application for special forfeiture order . . . . .	133
201	Notice of application. . . . .	133
202	Making of special forfeiture order . . . . .	134
<b>Part 2</b>	<b>Assessment of benefits</b>	
203	Assessment of benefits . . . . .	134
204	How particular amounts may be treated. . . . .	135
205	Property that may be taken into account for assessment. . . . .	135
206	Property under effective control . . . . .	136
207	Expenses and outgoings . . . . .	136
<b>Part 3</b>	<b>Other provisions</b>	
208	Application of property under effective control for satisfying special forfeiture order . . . . .	136
209	Effect of special forfeiture order . . . . .	137
210	Application of amounts paid to the State under this chapter . . . . .	137
211	Special forfeiture order to be registered . . . . .	138
<b>Chapter 5</b>	<b>Particular provisions about forfeiture of property</b>	
212	Chapter does not apply to particular property . . . . .	139
213	Forfeited property not to be disposed of during appeal period. . . . .	139
214	Disposal of forfeited property by State . . . . .	140
215	Procedural matters about forfeiture . . . . .	140
216	Filing of forfeiture certificate . . . . .	141

<b>Chapter 6</b>	<b>Provisions about particular government entities</b>	
<b>Part 1</b>	<b>Powers of public trustee</b>	
<b>Division 1</b>	<b>Provisions for satisfying particular orders</b>	
217	Definition for div 1 . . . . .	142
218	Application of div 1 . . . . .	142
219	Public trustee may apply for order for satisfying liability because of confiscation order or automatic forfeiture. . . . .	143
220	Application of proceeds to satisfy order . . . . .	143
221	Effect of payment under s 220 . . . . .	144
<b>Division 2</b>	<b>Other provisions</b>	
222	If public trustee directed to take control of restrained property . .	144
223	Public trustee's fees and charges. . . . .	145
224	Public trustee's liability for rates etc.. . . . .	145
225	Agents for public trustee. . . . .	145
226	Obstruction . . . . .	146
<b>Part 2</b>	<b>Legal aid</b>	
227	Legal Aid Act . . . . .	146
228	Matters not to be taken into account in deciding application for legal assistance . . . . .	146
229	Legal Aid may require charge over property . . . . .	147
230	Effect of forfeiture on charge . . . . .	147
<b>Chapter 7</b>	<b>Interstate orders and warrants</b>	
<b>Part 1</b>	<b>Interpretation</b>	
231	Definitions for ch 7 . . . . .	147
<b>Part 2</b>	<b>Provisions about filing interstate orders</b>	
232	Filing of interstate orders . . . . .	148
233	Interim filing of facsimile copies . . . . .	149
234	Effect of filing interstate forfeiture order . . . . .	149
235	Effect of filing interstate restraining order. . . . .	150
236	Cancellation of filing. . . . .	151
237	Charge on property subject to filed interstate restraining order . .	152
<b>Part 3</b>	<b>Provisions about property seized under interstate orders and search warrants</b>	
238	Division does not affect particular provisions . . . . .	153
239	Interstate order about return of seized property. . . . .	153
240	Order about property seized in another State for which court refuses to make forfeiture order . . . . .	154

241	Application by person for return of property seized in another State . . . . .	154
<b>Part 4</b>	<b>Other provisions</b>	
242	Public trustee may act as agent . . . . .	155
<b>Chapter 8</b>	<b>Obligations of financial institutions</b>	
<b>Part 1</b>	<b>Interpretation</b>	
243	Meaning of customer-generated financial transaction document . . . . .	155
244	Meaning of essential customer-generated financial transaction document . . . . .	156
245	Meaning of financial transaction document . . . . .	156
246	Meaning of minimum retention period . . . . .	157
<b>Part 2</b>	<b>Provisions applying to financial institutions</b>	
247	Retention of records by financial institutions . . . . .	157
248	Register of original documents . . . . .	158
249	Communication of information by financial institutions to particular officers . . . . .	158
<b>Chapter 9</b>	<b>Offences</b>	
250	Money laundering . . . . .	159
251	Charging of money laundering . . . . .	160
252	Possession etc. of property suspected of being tainted property . . . . .	161
253	Responsibility for acts or omissions of representatives . . . . .	161
<b>Chapter 10</b>	<b>Miscellaneous provisions</b>	
<b>Part 1</b>	<b>Arrangements to defeat operation of act</b>	
254	Definitions for part 1 . . . . .	162
255	Arrangements to defeat operation of Act . . . . .	163
256	Orders for defeating arrangements . . . . .	163
<b>Part 2</b>	<b>Other provisions</b>	
257	Restriction on functions . . . . .	164
258	Publication of proceedings . . . . .	164
259	Requirements to give notice . . . . .	164
260	Sentencing court not to have regard to property forfeiture or pecuniary penalty . . . . .	164
261	Costs incurred on variation of forfeiture or restraining orders on application by third parties . . . . .	165
262	Costs . . . . .	166
263	Appeals . . . . .	166
264	Registration fees . . . . .	166

<b>Chapter 11</b>	<b>General</b>	
265	Evidentiary provision . . . . .	167
266	Review of Act . . . . .	168
267	Regulation-making power. . . . .	168
<b>Chapter 12</b>	<b>Transitional provisions, repeal and amendments</b>	
<b>Part 1</b>	<b>Transitional provisions</b>	
268	Definitions for ch 12 . . . . .	169
269	Incomplete proceedings for old orders . . . . .	170
270	Incomplete rehearing proceedings. . . . .	170
271	Interstate orders . . . . .	171
272	Automatic forfeiture. . . . .	171
273	Old forfeiture orders . . . . .	172
274	Old pecuniary penalty orders . . . . .	172
275	Old restraining orders. . . . .	172
276	Particular orders about buying back interests in property . . . . .	173
277	Property under the control of the public trustee . . . . .	173
278	Persons unamenable to justice under old Act . . . . .	174
279	Application for chapter 2 restraining order if property restrained under old restraining order . . . . .	174
280	Other directions, orders and requirements. . . . .	174
281	References to Crimes (Confiscation) Act 1989 . . . . .	175
<b>Part 2</b>	<b>Repeal</b>	
282	Repeal of Crimes (Confiscation) Act 1989 . . . . .	175
<b>Schedule 1</b>	<b>Examples</b> . . . . .	176
<b>Part 1</b>	<b>Illegally acquired property examples</b>	
1	Example 1 . . . . .	176
2	Example 2 . . . . .	176
<b>Part 2</b>	<b>Proceeds assessment example</b>	
3	Example 1 . . . . .	177
<b>Part 3</b>	<b>Tainted property examples</b>	
4	Example 1 . . . . .	178
5	Example 2 . . . . .	179
6	Example 3 . . . . .	179
7	Example 4 . . . . .	179
8	Example 5 . . . . .	180
9	Example 6 . . . . .	181

<b>Part 4</b>	<b>Assessment of benefits examples</b>	
10	Example 1 .....	181
11	Example 2 .....	182
12	Example 3 .....	182
13	Example 4 .....	183
14	Example 5 .....	183
15	Example 6 .....	184
<b>Schedule 2</b>	<b>Offences</b> .....	185
<b>Schedule 6</b>	<b>Dictionary</b> .....	187
 <b>Endnotes</b>		
1	Index to endnotes .....	197
2	Date to which amendments incorporated .....	197
3	Key .....	197
4	Table of reprints .....	198
5	Tables in earlier reprints .....	198
6	List of legislation .....	198
7	List of annotations .....	199



# **Criminal Proceeds Confiscation Act 2002**

[as amended by all amendments that commenced on or before 8 December 2005]

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

## **Chapter 1 Introduction**

### **1 Short title**

This Act may be cited as the *Criminal Proceeds Confiscation Act 2002*.

### **2 Commencement**

- (1) This Act, other than the following provisions, commences on 1 January 2003—
  - (a) chapter 12, part 4;
  - (b) section 283 and schedule 3, items 49 and 50;
  - (c) section 339 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.
- (2) Schedule 3, items 49 and 50 are taken to have commenced on 1 January 2002.
- (3) The following provisions commence on assent—
  - (a) chapter 12, part 4;
  - (b) section 283;
  - (c) section 339 and schedule 4, to the extent the schedule amends the *Trustee Companies Act 1968*.

### **3 Definitions**

The dictionary in schedule 6 defines particular terms used in this Act.

### **4 Objects**

- (1) The main object of this Act is to remove the financial gain and increase the financial loss associated with illegal activity, whether or not a particular person is convicted of an offence because of the activity.
- (2) It is also an important object of this Act—
  - (a) to ensure that property rights are affected by orders under this Act, including orders limiting a person's ability to deal with the property, only through procedures ensuring persons who may be affected by the orders are given a reasonable opportunity to establish the lawfulness of the activity through which they acquired the relevant property rights; and
  - (b) to protect property honestly acquired by persons innocent of illegal activity from forfeiture and other orders affecting property; and
  - (c) to ensure that orders of other States restraining or forfeiting property under corresponding laws may be enforced in Queensland.
- (3) This Act provides for 2 separate schemes to achieve its objects.
- (4) One of the schemes relies on a person being charged and convicted (as defined in this Act) and is administered by the DPP.
- (5) The other scheme does not depend on a charge or conviction and is administered by the Crime and Misconduct Commission.
- (6) Despite the similarities between the schemes, each is separate and neither scheme is to be construed as limiting the other, unless this Act otherwise expressly provides.

## **5 Act binds State**

- (1) This Act binds all persons, including the State and, as far as the legislative power of Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or the other States liable to be prosecuted for an offence.

## **6 Notes**

A note in the text of this Act is part of this Act.

## **7 Examples in sch 1**

- (1) An example in schedule 1, part 1 is an example of the practical operation of the application of the definition *illegally acquired property*.

*Note—*

For the definition, see section 22.

The examples apply in the same way to the practical operation of the definition *serious crime derived property*.

- (2) An example in schedule 1, part 2 is an example of the practical operation of chapter 2, part 5.<sup>1</sup>
- (3) An example in schedule 1, part 3 is an example of the practical operation of the application of the definition *tainted property*.

*Note—*

For the definition, see section 104.

- (4) An example in schedule 1, part 4 is an example of the practical operation of chapter 3, part 7, division 3.<sup>2</sup>

## **8 Proceedings are civil, not criminal**

- (1) This section applies to a proceeding under this Act other than a prosecution for an offence against this Act.

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1 Chapter 2 (Confiscation without conviction), part 5 (Proceeds assessment orders)

2 Chapter 3 (Confiscation after conviction), part 7 (Pecuniary penalty orders), division 3 (Assessment of benefits)

- (2) The proceeding is not a criminal proceeding.
- (3) Questions of fact in the proceeding must be decided on the balance of probabilities.
- (4) The rules of evidence applying in civil proceedings apply to the proceeding.
- (5) The rules of construction applying only to the criminal law do not apply in the interpretation of this Act for the proceeding.
- (6) The *Uniform Civil Procedure Rules 1999*, to the extent that they are not inconsistent with this Act, apply to the proceeding.

## **9 Orders under this Act not a sentence**

An order under this Act requiring the payment of an amount or imposing a penalty, other than for a conviction for an offence against this Act, or restraining or forfeiting property, is not a punishment or sentence for any offence.

## **10 Operation of other laws not affected**

Nothing in this Act limits or restricts the operation of any other law providing for the forfeiture of property.

## **11 Interstate operation of particular orders**

- (1) For the purpose of enabling a forfeiture order or a restraining order to be registered under the corresponding law of another State, the order may be expressed to apply to property in that State.
- (2) A forfeiture order or restraining order does not apply to property in another State, unless—
  - (a) a corresponding law of the other State provides that the order has effect in the State after registration under that law; or
  - (b) the property was movable property and was located in Queensland or another State with a corresponding law when the order took effect.

**12 Proceedings by the State and meaning of *appropriate officer***

- (1) If the State may start a proceeding under this Act, the proceeding may be started for the State as follows—
  - (a) for chapter 2—
    - (i) by the commission; or
    - (ii) with the approval of the commission, by a police officer; or
  - (b) for chapter 3 or 4, by an appropriate officer; or
  - (c) for chapter 10, part 1, by an appropriate officer.
- (2) A proceeding taken by or for the State must be taken under the title “State of Queensland”.
- (3) The DPP is the solicitor on the record for the proceeding.
- (4) Without limiting subsection (2), any document of the State necessary for the proceeding under a provision of this Act may be signed by a person who is an appropriate officer for that provision.
- (5) For this Act, *appropriate officer*—
  - (a) for subsection (1)(c), chapter 2 or chapter 10,<sup>3</sup> means—
    - (i) the chairperson; or
    - (ii) an authorised commission officer; or
    - (iii) the DPP, a deputy DPP, or a lawyer appointed to assist the DPP in the performance of the DPP’s functions; or
  - (b) for subsection (1)(b), chapter 3 or chapter 4<sup>4</sup>—
    - (i) means a person mentioned in paragraph (a)(iii); or
    - (ii) for the purposes of an application to a Magistrates Court for a forfeiture order or pecuniary penalty order and related matters—includes the commissioner of the police service or another police officer.

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3 Chapter 2 (Confiscation without conviction) or 10 (Miscellaneous provisions)

4 Chapter 3 (Confiscation after conviction) or 4 (Special forfeiture orders)

## **Chapter 2      Confiscation without conviction**

### **Part 1            Preliminary**

#### **13      Explanation of ch 2**

- (1) This chapter enables proceedings to be started to confiscate property derived from illegal activity whether or not a person who engaged in the relevant activity has been convicted of any offence.
- (2) Also, this chapter enables proceedings to be taken to confiscate property derived from a serious crime related activity even though the person who engaged in the relevant activity has not been identified.
- (3) The chapter enables the Supreme Court, as a preliminary step, to make a restraining order preventing property, whether the property of the person who engaged in the relevant illegal activity or the serious crime derived property of someone else, being dealt with without the court's leave.
- (4) The court must make a forfeiture order confiscating the property (unless it is not in the public interest to make the order) if it finds it is more probable than not that—
  - (a) the person whose suspected serious crime related activity was the basis of the relevant restraining order engaged in a serious crime related activity; or
  - (b) the property is serious crime derived property because of a serious crime related activity of a person, even though a particular person suspected of having engaged in the serious crime related activity can not be identified.
- (5) The court may also make a proceeds assessment order against a person who has engaged in a serious crime related activity, requiring the person to pay to the State the amount the court decides is the value of proceeds derived from the person's illegal activity over a period of up to 6 years before the application for the order is made.

- (6) The amount payable under the proceeds assessment order may be recovered as a debt payable to the State.
- (7) The chapter contains other ancillary provisions including provisions giving persons opportunities to have lawfully acquired property excluded from the effect of restraining orders and forfeiture orders.

## 14 Application of ch 2

Subject to the limitation period imposed under section 58, this chapter applies in relation to illegal activity or serious crime related activity whether happening before or after the commencement of this section.

# Part 2 Interpretation

## Division 1 References to relevant offences

### 15 Meaning of *illegal activity*

An *illegal activity* is an activity that is—

- (a) a serious crime related activity; or
- (b) an act or omission that is an offence against the law of Queensland or the Commonwealth; or
- (c) an act or omission committed outside Queensland that—
  - (i) is an offence against the law of the place in which it is committed; and
  - (ii) would be an offence mentioned in paragraph (b) if it were committed in Queensland.

*Note—*

This definition applies to the whole Act. See the dictionary.

**16 Meaning of *serious crime related activity***

- (1) Anything done by a person that was, when it was done, a serious criminal offence, is a *serious crime related activity*.
- (2) Subsection (1) applies whether or not the person has been charged with the offence or, if charged—
  - (a) has been tried; or
  - (b) has been tried and acquitted; or
  - (c) has been convicted, even if the conviction has been quashed or set aside.

**17 Meaning of *serious criminal offence***

- (1) An offence is a *serious criminal offence* if it is any of the following—
  - (a) an indictable offence for which the maximum penalty is at least 5 years imprisonment;
  - (b) an offence prescribed under a regulation for this definition;
  - (c) an ancillary offence to an offence mentioned in paragraph (a) or (b).
- (2) In this section—

*indictable offence* includes an indictable offence dealt with summarily.

**Division 2                      References to proceeds, property and benefits****18 Meaning of *proceeds***

*Proceeds*, in relation to an activity, includes property and another benefit derived because of the activity—

- (a) by the person who engaged in the activity; or
- (b) by another person at the direction or request, directly or indirectly, of the person who engaged in the activity.

**19 Meaning of *property***

*Property* of a person—

- (a) includes—
  - (i) an interest the person has in a licence a person must hold to carry on a particular business; and
  - (ii) an interest the person has in the goodwill of a business; and
  - (iii) property of someone else that is under the effective control of the person; and
- (b) does not include property of the person that is under the effective control of someone else.

*Note—*

This provision is in addition to the definition of property given by the *Acts Interpretation Act 1954*, section 36.

**20 Meaning of *effective control* of property**

- (1) Property may be under a person's *effective control* even if—
  - (a) the person does not have a direct or indirect right, power or privilege over, or in relation to, the property; or
  - (b) the person does not otherwise have an interest in the property.
- (2) Regard may be had to all relevant matters in deciding—
  - (a) whether or not property is under a person's effective control; or
  - (b) whether or not there are reasonable grounds to suspect that property is under a person's effective control.
- (3) Matters to which regard may be had include, for example—
  - (a) shareholdings in, debentures over, or directorships of, a corporation that has a direct or indirect interest in the property; and
  - (b) a trust that has a relationship to the property; and
  - (c) family, domestic, business and other relationships between any of the following and other persons—

- (i) persons having an interest in the property;
  - (ii) corporations that have a direct or indirect interest in the property;
  - (iii) trusts that have a relationship to the property.
- (4) However, property is under the effective control of a person (the **first person**) if the property—
- (a) is held by another person for the ultimate benefit of the first person; or
  - (b) was a gift given by the first person to another person within 6 years before the making of an application for a restraining order, whether or not the gift is still in the other person's possession.

*Note—*

This definition applies to the whole Act. See the dictionary.

## 21 Meaning of **benefit** and **benefit derived**

- (1) **Benefit** includes service and advantage.
- (2) A **benefit derived** by a person includes a benefit derived by someone else at the person's request or direction.

## Division 3 References to illegally acquired property and serious crime derived property

### Subdivision 1 Meaning of particular property related terms

## 22 Meaning of **illegally acquired property**

- (1) Property is **illegally acquired property** if it is all or part of the proceeds of an illegal activity.
- (2) Property is also **illegally acquired property** if—
  - (a) it is all or part of the proceeds of dealing with illegally acquired property; or

- (b) all or part of it was acquired using illegally acquired property.
- (3) For subsection (2), it does not matter whether the property dealt with or used in the acquisition became illegally acquired property because of subsection (1) or subsection (2).
- (4) Subsections (1) and (2) apply whether or not the activity, dealing or acquisition because of which the property became illegally acquired property happened before the commencement of this section.
- (5) Also, if the proceeds of dealing with illegally acquired property are credited to or placed in an account, the proceeds do not lose their identity as proceeds because they are credited to or placed in an account.

*Note—*

Generally, illegally acquired property is used in this chapter, but some provisions, for example, section 28(3)(c), use the narrower expression *serious crime derived property*.<sup>5</sup>

This definition applies to the whole Act. See the dictionary.

## **23 Meaning of *serious crime derived property***

- (1) Property is *serious crime derived property* if it is all or part of the proceeds of a serious crime related activity.
- (2) Property is also *serious crime derived property* if—
  - (a) it is all or part of the proceeds of dealing with serious crime derived property; or
  - (b) all or part of it was acquired using serious crime derived property.
- (3) For subsection (2), it does not matter whether the property dealt with or used in the acquisition became serious crime derived property because of subsection (1) or subsection (2).
- (4) Subsections (1) and (2) apply whether or not the activity, dealing or acquisition because of which the property became serious crime derived property happened before the commencement of this section.

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<sup>5</sup> Section 28 (Application for restraining order)

- (5) Also, if the proceeds of dealing with serious crime derived property are credited to or placed in an account, the proceeds do not lose their identity as proceeds because they are credited to or placed in an account.

## **Subdivision 2      Provisions about continuing application of subdivision 1 to illegally acquired property and serious crime derived property**

### **24      Definitions for subdiv 2**

In this subdivision—

*character* of property means its character as either illegally acquired property or serious crime derived property.

*property* means property that is either of the following because of subdivision 1—

- (a) illegally acquired property;
- (b) serious crime derived property.

### **25      Property retains its character despite disposal**

Illegally acquired property or serious crime derived property retains its character—even if it is disposed of, including by using it to acquire other property—until it stops being property of that character under section 26.

### **26      When property stops being illegally acquired property or serious crime derived property**

Property stops being illegally acquired property or serious crime derived property—

- (a) when it is acquired by a person for sufficient consideration, without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was illegally acquired property or serious crime derived property; or

- (b) when it vests in a person on the distribution of the estate of a deceased; or
- (c) when it is disposed of under this Act, including when discharging a pecuniary penalty order or a proceeds assessment order; or
- (d) when it is the proceeds of the disposal of property under this Act other than by sale under a condition of a restraining order or by order of the Supreme Court under section 46 or 138;<sup>6</sup> or
- (e) when it is acquired by Legal Aid as payment of reasonable legal expenses payable because of an application under this Act or in defending a charge of an offence; or
- (f) in circumstances prescribed under a regulation.

## **27 Property may again become illegally acquired property or serious crime derived property**

If property that was, but is no longer, illegally acquired property or serious crime derived property is again acquired by the person who owned it when it had that character, the property again becomes property of that character unless it is acquired by the person under an order under this Act.

*Note—*

For an example of the practical operation of this provision, see schedule 1, part 1, example 2.

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<sup>6</sup> Section 46 (Supreme Court may order sale of restrained property) or 138 (Supreme Court may order sale of restrained property)

## Part 3                      Restraining orders

### Division 1                  Application for restraining orders

#### 28      Application for restraining order

- (1) The State may apply to the Supreme Court for an order (*restraining order*) restraining any person from dealing with property stated in the order (the *restrained property*) other than in a stated way or in stated circumstances.
- (2) The application—
  - (a) must be supported by an affidavit of an authorised commission officer or a police officer; and
  - (b) may be made without notice to any person to whom it relates.
- (3) The application may relate to all or any of the following property—
  - (a) for property of a person suspected of having engaged in 1 or more serious crime related activities (a *prescribed respondent*)—
    - (i) stated property; or
    - (ii) a stated class of property; or
    - (iii) all property; or
    - (iv) all property other than stated property; or
    - (v) all or stated property acquired after the restraining order is made;
  - (b) stated property, or a stated class of property, of a stated person, other than a prescribed respondent;
  - (c) stated property suspected of being serious crime derived property because of a serious crime related activity of a person, even though a particular person suspected of having engaged in the serious crime related activity can not be identified.

- (4) The court may refuse to consider the application until the State gives the court all the information the court requires about the application in the way the court requires.

*Example—*

The court may require additional information supporting the application to be given by affidavit or statutory declaration.

## **29 Affidavit**

The affidavit of the authorised commission officer or police officer must state—

- (a) for property mentioned in section 28(3)(a) if the serious crime related activity involves an offence stated in schedule 2, part 1—the officer suspects the prescribed respondent—
- (i) has engaged in 1 or more serious crime related activities; and
  - (ii) the reason for the suspicion; or
- (b) for property mentioned in section 28(3)(a) if paragraph (a) does not apply—the officer suspects the prescribed respondent—
- (i) has engaged in 1 or more serious crime related activities; and
  - (ii) has derived proceeds from engaging in 1 or more of these serious crime related activities; and
  - (iii) the reason for the suspicion; or
- (c) for property mentioned in section 28(3)(b)—the officer suspects the property is serious crime derived property because of a serious crime related activity of a prescribed respondent and the reason for the suspicion; or
- (d) for property mentioned in section 28(3)(c)—the officer suspects the property is serious crime derived property and the reason for the suspicion.

**30 Notice of application**

- (1) Subject to section 30A(2), the State must give notice of the application—
  - (a) to each person whose property the authorised commission officer or police officer whose affidavit supports the application reasonably believes is the subject of the application; and
  - (b) to anyone else the authorised commission officer or police officer whose affidavit supports the application considers has an interest in the property the subject of the application.
- (2) Notice given under subsection (1)(a) must be accompanied by a copy of the affidavit supporting the application.
- (3) Notice given under subsection (1)(b) must include a statement informing the person that if the person asks, the person will be given a copy of the affidavit supporting the application.

**Division 2 Making restraining orders****30A Hearing of application**

- (1) The Supreme Court must not hear an application for a restraining order unless satisfied the person whose property is the subject of the application has received reasonable notice of the application.
- (2) Despite subsection (1), the court must consider the application without notice having been given if the DPP asks the court to do so.
- (3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way, and within the time, the court considers appropriate.
- (4) A person whose property is the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.

**31 Making restraining order**

- (1) The Supreme Court must make a restraining order in relation to property if, after considering the application and the relevant affidavit, it is satisfied there are reasonable grounds for the suspicion on which the application is based.
- (2) However, the court may refuse to make the order if—
  - (a) the court is satisfied in the particular circumstances it is not in the public interest to make the order; or
  - (b) the State fails to give the court the undertakings the court considers appropriate for the payment of damages or costs, or both, in relation to the making and operation of the order.
- (3) The commission or, if the application is made by a police officer, the commissioner of the police service may, for the State, give the court the undertakings the court requires.
- (4) A restraining order does not apply to property of a person acquired after the order is made unless the order expressly states it applies to the property.
- (5) Also, the making of a restraining order does not prevent the person whose property is restrained under the order from giving Legal Aid a charge over the property as a condition of an approval to give legal assistance under the Legal Aid Act in relation to—
  - (a) a proceeding under this Act; or
  - (b) a criminal proceeding in which the person is a defendant, including any proceeding on appeal against conviction or sentence.

**32 Conditions of restraining order**

- (1) It is a condition of every restraining order that the person whose property is restrained under the order must preserve the property.
- (2) The Supreme Court may impose the other conditions the court considers appropriate, including, but not limited to, the following—

- (a) a condition about who is to have possession of the property;
- (b) a condition of a kind mentioned in section 33 or 34.

### **33 Condition about dealing with property by agreement**

The Supreme Court may impose a condition authorising the commission or, if the application is made by a police officer, the commissioner of the police service to agree to—

- (a) the disposal of the property restrained under the restraining order by its owner to enable the proceeds of the disposal to be applied to satisfy all or part of a debt payable under a pecuniary penalty order or a proceeds assessment order; or
- (b) the application of the property by its owner to satisfy all or part of a debt payable under a pecuniary penalty order or a proceeds assessment order.

### **34 Condition about particular payments out of restrained property**

- (1) The Supreme Court may impose a condition providing for all or any of the following to be paid out of the property of a particular person, or a stated part of the person's property, restrained under the restraining order—
  - (a) the person's reasonable living expenses and reasonable business expenses;
  - (b) the reasonable living expenses of any of the person's dependants;
  - (c) a stated debt incurred in good faith by the person.
- (2) Subsection (1) is the only provision of this chapter under which provision may be made for the payment of expenses or a debt mentioned in subsection (1).
- (3) Also, subsection (1) applies only if the Supreme Court is satisfied—
  - (a) the person can not meet the expenses or debt out of property that is not restrained under the order; and

- (b) the property from which the expenses or debt are to be paid is not illegally acquired property.
- (4) Further, subsection (1) does not authorise the imposition of a condition providing for the payment of a person's legal expenses that are payable because—
  - (a) the person is a party to a proceeding under this Act; or
  - (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against conviction or sentence.

### **35 Restraining order may direct public trustee to take control of property**

If the Supreme Court considers the circumstances require it, the court may, in a restraining order or a later order, direct the public trustee to take control of some or all of the property restrained under the order.

### **36 Duration of restraining order**

- (1) A restraining order is in force for 28 days after it is made.
- (2) Despite subsection (1), a restraining order continues in force after the end of the 28 days if—
  - (a) before the end of the 28 days, an application for either or both of the following is made but the application has not been decided—
    - (i) a forfeiture order for the restrained property;
    - (ii) a proceeds assessment order against a person whose property is restrained under the restraining order; or
  - (b) there is an unsatisfied proceeds assessment order in force against the person whose suspected serious crime related activities were the basis of the restraining order; or

- (c) the order continues in force because of an order of the Supreme Court under section 54.<sup>7</sup>

## **Division 3                      Making other orders**

### **37                      Supreme Court may make other orders**

- (1) The Supreme Court may make the other orders in relation to a restraining order the court considers appropriate, including, but not limited to, orders mentioned in section 38.
- (2) However, section 38(h) is the only provision of this chapter under which provision may be made for the payment of legal expenses that are expenses payable because—
  - (a) the person is a party to a proceeding under this Act; or
  - (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against a conviction or sentence.
- (3) The court may make an order under this section—
  - (a) when making the restraining order or, on application, at a later time; and
  - (b) whether or not it affects a person whose property is restrained under the restraining order.
- (4) Any of the following may apply for an order under this section—
  - (a) the State;
  - (b) a person whose property is restrained under the restraining order;
  - (c) if the restraining order directs the public trustee to take control of restrained property under the restraining order—the public trustee.
- (5) Also, with the Supreme Court's leave, a person other than a person mentioned in subsection (4) may apply for an order under this section.

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<sup>7</sup> Section 54 (Effect of dismissal of particular applications on restraining order)

- (6) An applicant must give notice of the making of the application to each other person who may apply under subsection (4) for an order under this section.
- (7) Subsection (6) does not apply to an application for an order under this section made in a proceeding on an application for a restraining order that is made without notice to any person to whom it relates.

### **38 Particular orders Supreme Court may make**

- (1) For section 37, the orders are as follows—
  - (a) an order varying the property restrained under the restraining order;
  - (b) an order imposing additional conditions on the restraining order or varying a condition of the order;
  - (c) an order (*examination order*) requiring a person whose property is restrained under the restraining order or a stated person to attend for examination on oath before the court or a stated officer of the court about the following—
    - (i) the affairs of any person whose property is restrained under the restraining order;
    - (ii) the nature and location of any property of a person whose property is restrained under the restraining order;
    - (iii) the nature and location of any property restrained under the restraining order that the applicant for the order reasonably suspects is serious crime derived property;
  - (d) an order (also an *examination order*) requiring the spouse of a person whose property is restrained under the restraining order to attend for examination on oath before the court or a stated officer of the court about the spouse's affairs, including the nature and location of property in which the spouse or the person has an interest;

- (e) an order about the performance of an undertaking given in relation to the restraining order for the payment of damages or costs;
- (f) an order (***property particulars order***) directing either of the following to give to the commission or the public trustee, within a stated time, a sworn statement of particulars of the property, or dealings with the property, in which the owner has or had an interest, as the court considers appropriate—
  - (i) a person who is or was the owner of restrained property;
  - (ii) if the owner of restrained property is or was a corporation—an executive officer of the corporation;
- (g) if the restraining order directs the public trustee to take control of property, an order—
  - (i) regulating the way the public trustee may perform functions under the restraining order; or
  - (ii) deciding any question about the property, including a question affecting the liabilities of the owner of the property or the functions of the public trustee;
- (h) an order for the payment to Legal Aid, from property restrained under the restraining order, of expenses payable by the person whose property is restrained because—
  - (i) the person is a party to a proceeding under this Act; or
  - (ii) the person is a defendant in a criminal proceeding, including any proceeding on appeal against conviction or sentence;
- (i) an order (***property seizure order***) requiring or authorising a commission officer or a police officer to seize property restrained under the restraining order.

- (2) An order mentioned in subsection (1)(i) may state the powers the commission officer or police officer may exercise for giving effect to the order.

*Note—*

See sections 43 and 44 for the general effect of a property seizure order.

## **Division 4                    Provisions about particular orders**

### **Subdivision 1            Examination orders**

#### **38A    Meaning of *judicial registrar* for subdiv 1**

In this subdivision—

*judicial registrar*, for an examination conducted under an examination order, includes an officer of the court other than the judicial registrar mentioned in the order.

#### **39      Judicial registrar’s power to conduct examinations**

- (1) A judicial registrar may conduct an examination under an examination order.
- (2) For those applications, the judicial registrar constitutes, and may exercise all the jurisdiction and powers of, the court.
- (3) However, a judicial registrar may not exercise any power of the court to punish for contempt.

#### **39A    Time and place of examination**

The examination of a person must be conducted at the time and place stated in the examination order.

#### **39B    Examination to take place in private**

- (1) The examination must take place in private.
- (2) The court or judicial registrar 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) a lawyer of the person being examined; and
  - (b) an appropriate officer; and
  - (c) a commission officer; and
  - (d) a lawyer representing an appropriate officer or a commission officer; and
  - (e) any person who is entitled to be present because of a direction under subsection (2).

### **39C Role of the examinee's lawyer**

The lawyer of the person being examined may, at the times during the examination that the court or judicial registrar decides—

- (a) address the court or judicial registrar about matters on which the person has been examined; and
- (b) examine the person about matters on which the person has been examined.

### **39D Recording evidence**

- (1) The court or judicial registrar must ensure that, if practicable, evidence given at an examination in Queensland is recorded under the *Recording of Evidence Act 1962*<sup>8</sup> or recorded in

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<sup>8</sup> Note the *Recording of Evidence Act 1962*, section 5—

#### **5 Power to direct recording under this Act**

- (1) In any legal proceeding in or before any court or judicial person, the court or judicial person may in its or the judicial person's discretion, with or without any application for the purpose, direct that any evidence to be given and any ruling, direction, address, summing up, and other matter in the legal proceeding (or of any part of the legal proceeding in question) be recorded—
- (a) if a shorthand reporter is available—in shorthand; or
  - (b) if a mechanical device and a recorder are available—by the mechanical device; or
  - (c) if a shorthand reporter, mechanical device, and a recorder are available—in shorthand or by the mechanical device or partly in shorthand and partly by the mechanical device.

another way and authenticated by the court or judicial registrar.

- (2) The court or judicial registrar must authenticate and sign any deposition or other recording.
- (3) If evidence given at an examination is recorded in a deposition, it must—
  - (a) contain, in question and answer form, the evidence of the person examined; and
  - (b) be transcribed and read over by or to the person in the court's or judicial registrar's presence and in the presence of the parties who wish to attend; and
  - (c) be signed by the person, or, if the person refuses to sign the deposition, by the court or judicial registrar for the person.
- (4) The court or judicial registrar may impose on the person being examined the conditions (if any) that the court or judicial registrar reasonably considers necessary to prevent improper disclosure of the record.

#### **40 Privilege—examination order**

- (1) A person examined under an examination order is not excused from answering a question, or from producing a document or other thing, on the ground that—
  - (a) answering the question or producing the document may tend to incriminate the person or make the person liable to a forfeiture or penalty; or
  - (b) producing the document would be in breach of an obligation, whether imposed by an enactment or otherwise, of the person not to disclose the existence or contents of the document; or
  - (c) answering the question or producing the document would disclose information that is the subject of legal professional privilege.
- (2) A statement or disclosure made by a person in answer to a question asked in an examination under an examination order, or a document or other thing produced in the examination, is

not admissible against the person in any civil or criminal proceeding, other than—

- (a) a proceeding about the false or misleading nature of the statement or disclosure; or
- (b) a proceeding on an application under this Act; or
- (c) a proceeding for the enforcement of a confiscation order; or
- (d) for a document or other thing, a proceeding about a right or liability it confers or imposes.

#### **41 Offence to contravene examination order**

A person who is required to attend an examination under an examination order under this part must not—

- (a) fail to attend as required by the order, unless the person has a reasonable excuse; or
- (b) fail to attend from day to day until the conclusion of the examination, unless the person has a reasonable excuse; or
- (c) fail to take an oath for the purpose of the examination; or
- (d) fail to answer a question that the person is directed to answer by the court or judicial registrar; or
- (e) make a statement in the examination that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

## **Subdivision 2 Property particulars orders**

#### **42 Privilege—property particulars order**

- (1) A person directed under a property particulars order to give a statement to the commission or the public trustee is not excused from giving the statement or including particulars in the statement on the ground that the statement or particulars

may tend to incriminate the person or make the person liable to a forfeiture or penalty.

- (2) If a person gives a statement to the commission or the public trustee under a property particulars order, the statement is not admissible against the person in any criminal proceeding other than a proceeding about the false or misleading nature of the statement.

### **Subdivision 3      Property seizure orders**

#### **43      If property seizure order directed to commission officer**

- (1) This section applies if the Supreme Court makes a property seizure order that is directed to a commission officer.
- (2) The order—
  - (a) is taken to be a search warrant issued by a Supreme Court judge under the *Crime and Misconduct Act 2001* in relation to confiscation related evidence as defined under that Act; and
  - (b) is taken to authorise a commission officer to exercise search warrant powers under the *Crime and Misconduct Act 2001*, section 92,<sup>9</sup> including search warrant powers mentioned in section 92(2) and (3) or stated in the order, to the extent necessary for giving effect to the order.
- (3) Property seized under the order is taken to have been seized under the *Crime and Misconduct Act 2001*.
- (4) The *Crime and Misconduct Act 2001*, section 93<sup>10</sup> applies to the order as if the order were a search warrant.
- (5) It is sufficient compliance with the *Crime and Misconduct Act 2001*, section 93(1) for the commission officer to give the occupier of the place a copy of the order or, if the occupier of the place is not present, to leave the copy in a conspicuous place.

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<sup>9</sup> *Crime and Misconduct Act 2001*, section 92 (Powers under search warrants)

<sup>10</sup> *Crime and Misconduct Act 2001*, section 93 (Copy of search warrant to be given to occupier)

- (6) The *Crime and Misconduct Act 2001*, sections 113 and 114<sup>11</sup> do not apply to property seized under the order.

#### **44 If property seizure order directed to police officer**

- (1) This section applies if the Supreme Court makes a property seizure order that is directed to a police officer.
- (2) The order—
- (a) is taken to be a search warrant issued by a Supreme Court judge under the *Police Powers and Responsibilities Act 2000* in relation to confiscation related evidence as defined under that Act; and
  - (b) is taken to authorise a police officer to exercise search warrant powers under the *Police Powers and Responsibilities Act 2000*, section 74,<sup>12</sup> including search warrant powers mentioned in section 74(2) and (3), to the extent necessary for giving effect to the order.
- (3) Property seized under the order is taken to have been seized under the *Police Powers and Responsibilities Act 2000*.
- (4) The *Police Powers and Responsibilities Act 2000*, section 75<sup>13</sup> applies to the order as if it were a search warrant.
- (5) It is sufficient compliance with the *Police Powers and Responsibilities Act 2000*, section 75(1) for the police officer to give the occupier of the place a copy of the order or, if the occupier of the place is not present, to leave the copy in a conspicuous place.

*Note—*

The *Police Powers and Responsibilities Act 2000* provisions about applications for the return of things in the possession of the police service generally do not apply to things seized under a property seizure order.

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11 *Crime and Misconduct Act 2001*, sections 113 (Application for order in relation to seized things) and 114 (Orders magistrate may make in relation to seized thing)

12 *Police Powers and Responsibilities Act 2000*, section 74 (Powers under search warrants)

13 *Police Powers and Responsibilities Act 2000*, section 75 (Copy of search warrant to be given to occupier)

## **Division 5                      Notice of restraining order and other orders**

### **45            Notice of restraining order and other orders**

- (1) This section applies if the Supreme Court—
  - (a) makes a restraining order; or
  - (b) makes another order under division 3<sup>14</sup> in relation to a restraining order.
- (2) As soon as practicable after the order is made, the commission must give each person whose property is restrained under the order and anyone else who is affected by the order a copy of the order.
- (3) If the order directs the public trustee to take control of property, the commission must give the public trustee a copy of the order.
- (4) However, if the application was made for the State by the commissioner of the police service, the commissioner of the police service—
  - (a) must give the commission a copy of the order; and
  - (b) must give the notice required to be given under subsection (2) or (3).
- (5) A restraining order, or another order under division 3, does not stop having effect only because a person required to be served under subsection (2) has not been served with a copy of the order.

## **Division 6                      Sale of restrained property**

### **46            Supreme Court may order sale of restrained property**

- (1) This section applies to restrained property under a restraining order only if the State applies to the Supreme Court for a

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14    Division 3 (Making other orders)

forfeiture order for the property and the application has not been decided.

- (2) The State may, when applying for the forfeiture order or at a later time, apply to the Supreme Court for an order directing the public trustee to sell all or part of the restrained property (*application property*).
- (3) The State must give notice of the application to each person who has an interest in the application property.
- (4) The Supreme Court may make the order if the court is satisfied, on evidence of the public trustee or otherwise—
  - (a) the application property may deteriorate or lose value before the forfeiture order application is decided; or
  - (b) the cost of controlling the application property would be more than the value of the property if it were disposed of after a forfeiture order was made.
- (5) The proceeds of a sale under an order under this section are taken to be restrained under the restraining order applying to the application property.

## **Division 7                      Exclusion of property from restraining order**

### **Subdivision 1                Application by prescribed respondent**

#### **47            Supreme Court may exclude prescribed respondent's property from restraining order**

- (1) The prescribed respondent under the restraining order may apply to the Supreme Court to amend the order to exclude particular property of the prescribed respondent from the order.
- (2) The application must be made before the State applies for a forfeiture order to be made.

*Note—*

After the State applies for a forfeiture order, an application by a prescribed respondent may be made under section 65 or 66.

- (3) The prescribed respondent must give notice of the making of the application and the grounds for the application to the State and anyone else who has an interest in the property.
- (4) The State must be a party to the application.
- (5) Anyone else who is given notice of the application may appear at the hearing of the application.
- (6) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- (7) The State must give the applicant notice of the grounds for opposing the application.
- (8) However—
  - (a) the State is not required to give the notice; and
  - (b) the application may not be heard;until the DPP has had a reasonable opportunity to examine the applicant under an examination order, whether or not an examination order has already been made.

#### **48 When Supreme Court may exclude prescribed respondent's property**

- (1) The Supreme Court may exclude the prescribed respondent's property from the order if—
  - (a) it is satisfied it is more probable than not that the property to which the application relates is not illegally acquired property; and
  - (b) the property is unlikely to be required to satisfy a proceeds assessment order.
- (2) Also, the Supreme Court may exclude the prescribed respondent's property from the order if it is satisfied it is in the public interest to amend the order in the particular circumstances.

- (3) The Supreme Court may require the prescribed respondent to give security satisfactory to the court to meet any liability that may be imposed on the prescribed respondent under this Act.

## **Subdivision 2      Application by person other than prescribed respondent**

### **49      Supreme Court may exclude other property from restraining order**

- (1) If the Supreme Court makes a restraining order, a person other than the prescribed respondent (the *applicant*) whose property is restrained under the order may apply to the court to amend the order to exclude the applicant's property from the order.
- (2) The applicant must give notice of the making of the application and the grounds for the application to the State and anyone else who has an interest in the property.
- (3) The State must be a party to the application.
- (4) Anyone else who is given notice of the application may appear at the hearing of the application.
- (5) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- (6) The State must give the applicant notice of the grounds for opposing the application.
- (7) However—
  - (a) the State is not required to give the notice; and
  - (b) the application may not be heard;until the DPP has had a reasonable opportunity to examine the applicant under an examination order, whether or not an examination order has already been made.

**50 When Supreme Court may exclude applicant's property**

- (1) The Supreme Court may exclude the applicant's property from the order if it is satisfied the applicant acquired the property—
  - (a) in good faith and for sufficient consideration; and
  - (b) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was illegally acquired property.
- (2) The Supreme Court may make the order only to the extent to which the interest in the property concerned was not, when it first became illegally acquired property, acquired using the proceeds of an illegal activity.
- (3) In addition, the Supreme Court may exclude the applicant's property from the order if it is satisfied it is in the public interest to amend the order in the particular circumstances.
- (4) The Supreme Court may require the applicant to give the undertakings about the applicant's property the court considers appropriate.

**Division 7A Revocation of restraining order****50A Application to revoke restraining order**

- (1) A person whose property is the subject of a restraining order and who was not given notice of the application for the restraining order may apply to the Supreme Court to revoke the order.
- (2) The application must be made within 28 days or, with the approval of the court, the further period, of not more than 3 months, after the person is notified of the making of the restraining order.
- (3) The applicant must give to the State written notice of the making of the application and the grounds for the application.
- (4) The restraining order remains in force until the court revokes the order or the order otherwise stops having effect.

- (5) The State may present additional material to the court relating to the application to revoke the restraining order.
- (6) After considering the application, the court may revoke the restraining order if satisfied, on the facts before the court, there would be no basis for making a restraining order in relation to the property.

### **50B Notice of revocation of restraining order**

- (1) On the revocation of a restraining order under section 50A, the State must give notice of the revocation to—
  - (a) each person whose property was restrained under the order, if known; and
  - (b) anyone else who was affected by the order.
- (2) Subsection (1) does not require the State to notify the applicant for the revocation of the restraining order of the revocation of the order.

## **Division 8 Other provisions about restraining orders**

### **51 Recording of restraining order**

- (1) This section applies if a restraining order applies to property of a particular kind and a law, whether or not a law of the State, provides for the registration of title to, an interest in, or a charge over, property of that kind.
- (2) On the application of the commission or the commissioner of the police service, the authority responsible for administering the law must record the particulars of the relevant restraining order in the register kept under the law.
- (3) Subsection (2) applies even though a relevant document of title is not produced to a registrar or any other person.
- (4) Unless the contrary is proved, a person who later deals with property for which particulars are recorded under subsection (2) is taken to have had notice of the relevant restraining order.

- (5) If the *Land Title Act 1994* applies to the property, the commission or the commissioner of the police service may lodge, and the registrar of titles must register, a caveat over the property under that Act.
- (6) As soon as practicable after the relevant restraining order stops having effect in relation to the property—
  - (a) the commission or the commissioner of the police service must apply for cancellation of the record of the order; and
  - (b) the authority responsible for administering the relevant law must take the steps necessary to cancel the record.
- (7) Also, if the commission or the commissioner of the police service lodged a caveat over the property under subsection (5), as soon as practicable after the relevant restraining order stops having effect in relation to the property, the commission or the commissioner of the police service must withdraw the caveat.

## **52 Contravention of restraining order**

- (1) A person who conceals restrained property or does another act or makes another omission in relation to restrained property with the intention of directly or indirectly defeating the operation of the restraining order commits a crime.  
Maximum penalty—350 penalty units or 7 years imprisonment.
- (2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was restrained under a restraining order and no reason to suspect it was.
- (3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

**53 Restraining order does not prevent other action under this Act**

A restraining order does not prevent the enforcement of any other order made under this Act against restrained property under a restraining order.

**54 Effect of dismissal of particular applications on restraining order**

- (1) This section applies if, while a restraining order is in force over property, the Supreme Court dismisses an application for—
  - (a) a forfeiture order for the property; or
  - (b) a proceeds assessment order against the person whose property is restrained under the restraining order.
- (2) The Supreme Court may—
  - (a) if the court considers it appropriate, make an order extending the operation of the restraining order for a stated period or in stated circumstances; or
  - (b) make another order the court considers appropriate about the operation of the restraining order.
- (3) An order under subsection (2) may be made to take effect immediately, at a stated time, or when a stated event happens.

**55 Authority under restraining order**

A restraining order is sufficient authority for a person to whom the order is directed to take all steps necessary or desirable to give effect to the order.

## **Part 4                      Forfeiture orders**

### **Division 1                      Making and effect of forfeiture orders**

#### **56                      Application for forfeiture order**

- (1) The State may apply to the Supreme Court for an order (*forfeiture order*) forfeiting to the State particular property restrained under a restraining order.
- (2) The application may include particulars of any encumbrance over the restrained property that an appropriate officer considers an encumbrancee took in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business.

#### **57                      Notice of application**

- (1) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give written notice of the application to each person whose property is restrained under the restraining order and anyone else the commission or the commissioner of the police service considers has an interest in the restrained property.
- (2) A person given notice under subsection (1) may appear at the hearing of the application.
- (3) Anyone else who claims any of the property may also appear at the hearing of the application.
- (4) The absence of a person given notice under subsection (1) does not prevent the court from making a forfeiture order.

#### **58                      Making forfeiture order**

- (1) The Supreme Court must make a forfeiture order if the court finds it is more probable than not that—

*Criminal Proceeds Confiscation Act 2002*

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- (a) for property restrained because of an application relating to property mentioned in section 28(3)(a) or (b)<sup>15</sup>—the prescribed respondent mentioned in that application engaged during the limitation period in a serious crime related activity; or
  - (b) for property restrained because of an application relating to property mentioned in section 28(3)(c)—the property is serious crime derived property because of a serious crime related activity that happened during the limitation period.
- (2) Subsection (1)(b) applies whether or not the person who engaged in the serious crime related activity because of which the property became serious crime derived property has been identified.
  - (3) However, for property mentioned in subsection (1)(b), the court must also be satisfied the commission or, if the application is made for the State by a police officer, the commissioner of the police service, has taken reasonable steps to identify and notify anyone with an interest in the property.
  - (4) Also, the court may refuse to make the order if the court is satisfied it is not in the public interest to make the order.
  - (5) A finding of the court under subsection (1)—
    - (a) need not be based on a finding about the commission of a particular offence; and
    - (b) may be based on a finding that some offence that is a serious crime related activity was committed.
  - (6) Also, the raising of a doubt whether a person engaged in a serious crime related activity is not of itself enough to avoid a finding on which a forfeiture order may be made.
  - (7) The forfeiture order must state the property to which it applies.

*Note—*

Property may be excluded from the effect of a forfeiture order if it has been excluded under section 47, 49 or 68.<sup>16</sup>

- (8) The court may make the ancillary orders the court considers appropriate when it makes a forfeiture order or at a later time.

*Example—*

Ancillary orders for facilitating the transfer to the State of property forfeited to the State.

- (9) In this section—

***limitation period—***

- (a) means the period of 6 years before the day the application for the order is made; and  
(b) includes periods before and after the commencement of this section.

## **59 Effect of forfeiture order**

- (1) On the making of a forfeiture order the property the subject of the order—
- (a) is forfeited to the State; and  
(b) vests absolutely in the State.
- (2) Subsection (1)(b) is subject to the provisions of this Act under which the Supreme Court may make orders about the property vested or to be vested in the State.

## **60 Dealing with forfeited property prohibited**

- (1) A person who conceals property that is the subject of a forfeiture order or does another act or makes another omission in relation to property that is the subject of a forfeiture order with the intention of directly or indirectly defeating the operation of the forfeiture order commits a crime.

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<sup>16</sup> Section 47 (Supreme Court may exclude prescribed respondent's property from restraining order), 49 (Supreme Court may exclude other property from restraining order) or 68 (Making of exclusion order)

Maximum penalty—350 penalty units or 7 years imprisonment.

- (2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was the subject of a forfeiture order and no reason to suspect it was.
- (3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

## **61 Effect of quashing of conviction on forfeiture order**

The quashing of a conviction for a serious crime related activity does not affect the validity of a forfeiture order made before or after the conviction was quashed and based on the serious crime related activity.

## **Division 2 Other orders**

### **Subdivision 1 Orders for relief from hardship**

#### **62 Relief from hardship for dependants**

- (1) If the Supreme Court is satisfied the operation of a forfeiture order will cause hardship to a dependant of the person who will forfeit property under the order, the court may—
  - (a) order the State to pay to the dependant out of the proceeds of the sale of the property the amount the court considers necessary to prevent hardship to the dependant; and
  - (b) if the dependant is under 18 years old, make the ancillary orders the court considers necessary for ensuring the proper application of an amount to be paid to the dependant.
- (2) The court must not make an order under subsection (1) in favour of an adult dependant of a person whose serious crime related activity was the basis for the forfeiture order concerned unless the court is satisfied the dependant had no

knowledge of any serious crime related activities of the person.

(3) In this section—

*dependant* of a person means a spouse or child of the person, or a member of the household of the person, dependent for support on the person.

## Subdivision 2 Orders about encumbrances

### 63 Forfeiture order may provide for discharge of encumbrance

(1) If—

- (a) the Supreme Court is satisfied an encumbrancee took an encumbrance over property to be forfeited under a forfeiture order in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business; and
- (b) the State gives an undertaking to apply the proceeds of disposing of the forfeited property towards discharging the encumbrance;

the court may make the orders about the encumbrance the court considers appropriate.

(2) The commission or, if the application is made by a police officer, the commissioner of the police service may give the undertaking for the State.

## Subdivision 3 Releasing property from effect of forfeiture order

### 64 Order for release of property from forfeiture order

(1) The Supreme Court may order (*release order*) that a stated interest in property of a stated person that has been forfeited under a forfeiture order may be released from the forfeiture order on payment to the State of the amount the court decides is the value of the interest.

- (2) The order must state the nature, extent and value, when the order is made, of the person's interest in the forfeited property.
- (3) The court may make the order only if it is satisfied—
  - (a) the interest is still vested in the State; and
  - (b) it would not be against the public interest for the interest to be transferred to the person; and
  - (c) there is no other reason the interest should not be transferred to the person.

#### **Subdivision 4      Exclusion of property from forfeiture under exclusion order**

##### **65      Exclusion of property from forfeiture order application**

- (1) This section applies if an application for a forfeiture order has been made but the application has not been decided.
- (2) A person, including a prescribed respondent, who claims an interest in property to which the application relates may apply to the Supreme Court for an exclusion order.
- (3) The applicant must give notice of the making of the application and the grounds for the application to the State and anyone else who has an interest in the property.
- (4) The State must be a party to the application.
- (5) Anyone else who is given notice of the application may appear at the hearing of the application.
- (6) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- (7) The State must give the applicant notice of the grounds for opposing the application.
- (8) However—
  - (a) the State is not required to give the notice; and
  - (b) the application may not be heard;

until the DPP has had a reasonable opportunity to examine the applicant under an examination order, whether or not an examination order has already been made.

## **66 Exclusion of property from forfeiture order**

- (1) A person, including a prescribed respondent, who claims an interest in property that is forfeited under a forfeiture order may apply to the Supreme Court for an exclusion order.
- (2) Unless the court gives leave under section 67—
  - (a) the application must be made within 6 months after the forfeiture order was made; and
  - (b) the following persons can not apply for an exclusion order—
    - (i) a person who was given notice of the application for the forfeiture order;
    - (ii) a person who appeared at the hearing of the application for the forfeiture order.
- (3) For each application made under this section, including an application for leave the applicant must give notice of the making of the application and the grounds for the application to the State and anyone else who has an interest in the property.
- (4) The State must be a party to the application.
- (5) Anyone else who is given notice of the application may appear at the hearing of the application.
- (6) If the State proposes to oppose the application, the State must give the applicant notice of intention to oppose the application.
- (7) The State must give the applicant notice of the grounds for opposing the application.
- (8) However—
  - (a) the State is not required to give the notice; and
  - (b) the application may not be heard;

until the DPP has had a reasonable opportunity to examine the applicant under an examination order, whether or not an examination order has already been made.

## **67 When Supreme Court may give leave for s 66**

- (1) The Supreme Court may give leave to apply for an exclusion order after the end of the 6 months mentioned in section 66(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give a person mentioned in section 66(2)(b) leave to apply for an exclusion order only if it considers there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
  - (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

## **68 Making of exclusion order**

- (1) The Supreme Court, on an application under section 65 or 66, may make an exclusion order.
- (2) The Supreme Court must, and may only, make an exclusion order if it is satisfied—
  - (a) the applicant has or, apart from the forfeiture, would have, an interest in the property; and
  - (b) it is more probable than not that the property to which the application relates is not illegally acquired property.

## **69 What is an exclusion order**

- (1) An *exclusion order* is an order that—
  - (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant's interest in the property; and

- (b) if the application for the forfeiture order has not been decided, excludes the applicant's property from the application for the forfeiture order; and
  - (c) if a forfeiture order has been made for the property, and the property is still vested in the State, directs the State to transfer the property to the applicant; and
  - (d) if a forfeiture order has been made for the property and the property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.
- (2) However, if the applicant is the prescribed respondent and an application has been made for a proceeds assessment order against the prescribed respondent, subsection (1)(b) applies only if the court is satisfied the property is unlikely to be required to satisfy any proceeds assessment order the court may make against the person.

## **70 Effect of exclusion order**

On the making of an exclusion order excluding an interest in property from an application for a forfeiture order, the restraining order applying to the restrained property stops having effect in relation to the excluded interest.

## **Subdivision 5 Exclusion of interest from forfeiture under innocent interest exclusion order**

### **71 Exclusion of value of innocent interest from forfeiture order**

- (1) A person who has an interest in particular property to which a forfeiture order relates may apply to the Supreme Court for an innocent interest exclusion order.
- (2) Unless the court gives leave under section 72—
  - (a) the application must be made within 6 months after the forfeiture order was made; and

- (b) the following persons can not apply for an innocent interest exclusion order—
  - (i) a person who was given notice of the application for the forfeiture order;
  - (ii) a person who appeared at the hearing of the application for the forfeiture order.
- (3) For each application made under this section, including an application for leave, the applicant must give notice of the making of the application and the grounds for the application to the State and anyone else who has an interest in the property.
- (4) The State must be a party to the application.
- (5) Anyone else who is given notice of the application may appear at the hearing of the application.
- (6) If the State intends to oppose the application, the State must give the applicant—
  - (a) notice of intention to oppose the application; and
  - (b) the grounds for opposing the application.

## **72 When Supreme Court may give leave for s 71**

- (1) The Supreme Court may give leave to apply for an innocent interest exclusion order after the end of the 6 months mentioned in section 71(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give a person mentioned in section 71(2)(b) leave to apply for an innocent interest order only if it is satisfied there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
  - (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

**73 Making of innocent interest exclusion order**

- (1) The Supreme Court, on an application under section 71, may make an innocent interest exclusion order.
- (2) The Supreme Court must, and may only, make an innocent interest exclusion order if the applicant proves it is more probable than not that a stated proportion of the value of the interest in property forfeited under the forfeiture order is not attributable to the proceeds of an illegal activity.
- (3) The Supreme Court may make the order only to the extent to which the interest in the property concerned was not, when it first became illegally acquired property, acquired using the proceeds of an illegal activity.

**74 What is an innocent interest exclusion order**

An *innocent interests exclusion order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the interest mentioned in section 73(2); and
- (b) directs the State to pay to the applicant the value of the interest.

**Division 3 Release and buying back interests****75 Effect of payment under release order**

- (1) On the payment to the State of the amount stated in a release order as the value of an interest in forfeited property, while the interest is still vested in the State, the forfeiture order ceases to apply to the interest.
- (2) As soon as practicable after the amount is paid, the Attorney-General must arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the State.
- (3) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

**76 Buying out other interests under court order**

- (1) This section applies if—
  - (a) property that is forfeited to the State under a forfeiture order is still vested in the State; and
  - (b) the property or an interest in the property is required to be transferred to a person (the *buyer*) under an exclusion order or an innocent interest order or under section 75; and
  - (c) the buyer's interest in the property, immediately before the forfeiture, was not the only interest in the property.
- (2) If the buyer intends to buy the other interests in the property, the buyer must give written notice to any other person who had an interest in the property immediately before the forfeiture stating—
  - (a) the buyer intends to buy the other interests from the State; and
  - (b) within 21 days after receiving the notice, the person may give the Attorney-General a written objection to the sale of the person's interest to the buyer.
- (3) If—
  - (a) the person given the notice does not give a written objection to the buying of the interest to the Attorney-General within the 21 days; and
  - (b) the buyer pays to the State an amount equal to the value of the interest;the Attorney-General must arrange for the interest to be transferred to the buyer.
- (4) The Attorney-General may do, or authorise the doing of, anything necessary or convenient to be done for the transfer.

## **Part 5**                      **Proceeds assessment orders**

### **Division 1**                **Application for, and making of, proceeds assessment orders**

#### **77**      **Application for proceeds assessment order**

- (1) The State may apply to the Supreme Court for an order (*proceeds assessment order*) requiring a person to pay to the State the value of the proceeds derived from the person's illegal activity that took place within 6 years before the day the application for the order is made.
- (2) The State must give notice of the application to the person against whom the order is sought and anyone else required under a regulation to be given notice.
- (3) A person given notice under subsection (2) may appear at the hearing of the application.
- (4) The absence of a person required to be given notice of the application does not prevent the Supreme Court from making a proceeds assessment order.
- (5) The 6 years mentioned in subsection (1) includes periods before and after the commencement of this section.

#### **78**      **Making of proceeds assessment order**

- (1) The Supreme Court must make a proceeds assessment order against a person if the court finds it is more probable than not that, at any time within the 6 years before the application was made, the person engaged in a serious crime related activity.
- (2) However, the court may refuse to make the order if the court is satisfied it is not in the public interest to make the order.
- (3) A finding of the court under subsection (1)—
  - (a) need not be based on a finding about the commission of a particular offence; and
  - (b) may be based on a finding that some offence that is a serious crime related activity was committed.

- (4) The court may make the ancillary orders the court considers appropriate when it makes the proceeds assessment order or at a later time.

## **79 Amount must be stated in proceeds assessment order**

- (1) A proceeds assessment order must state, as the amount required to be paid to the State, the value of the proceeds derived from the person's illegal activity.
- (2) The value of the proceeds must be assessed under division 2.
- (3) However, the Supreme Court may, if it considers it appropriate, deduct from the value of the proceeds the value of any property forfeited under a forfeiture order made in relation to a person's illegal activities.
- (4) In assessing the value of the proceeds, the Supreme Court is not limited to assessing the value of the serious crime related activity on which the application is based but must assess the value of other illegal activities of the person during the period to which the proceeds assessment order application relates.

## **80 Proceeds assessment order increase if forfeiture order discharged**

- (1) This section applies if—
  - (a) the Supreme Court makes a proceeds assessment order; and
  - (b) in deciding the value of the proceeds derived from a person's illegal activities, the court takes into account the value of property forfeited under a forfeiture order; and
  - (c) after the proceeds assessment order is made, the forfeiture ends because of an appeal.
- (2) The State may apply to the Supreme Court for a variation of the proceeds assessment order to increase the amount payable under the order.
- (3) If the Supreme Court considers an increase appropriate, it may vary the amount payable under the proceeds assessment order.

## **Division 2                      Assessment of value of proceeds**

### **81            Application of div 2**

- (1) This division applies to—
  - (a) property in Queensland or elsewhere; and
  - (b) proceeds of an illegal activity, whether acquired in Queensland or elsewhere.
- (2) Also, this division applies for assessing the value of the proceeds derived from an illegal activity of a person (*relevant person*).

### **82            Matters to which Supreme Court must have regard**

- (1) The Supreme Court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;
  - (b) the value of any benefit provided for the relevant person or someone else at the request, or by the direction, of the relevant person, because of the illegal activity;
  - (c) if the illegal activity involved a dangerous drug or controlled substance (the *illegal drug*)—
    - (i) the market value, when the illegal activity happened, of a dangerous drug or controlled substance similar, or substantially similar, to the illegal drug; and
    - (ii) the amount that was, or the range of amounts that were, ordinarily paid for an act similar, or substantially similar, to the illegal activity;
  - (d) the value of the relevant person's property before, during and after the illegal activity;
  - (e) the relevant person's income and expenditure before, during and after the illegal activity.

- (2) The court—
  - (a) may treat as the value of the proceeds the value the proceeds would have had if derived when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the proceeds were derived and the time the valuation is being made.

### **83 How particular amounts may be treated**

- (1) This section applies if, at the hearing of an application for a proceeds assessment order—
  - (a) evidence is given that the value of the person's property after an illegal activity was more than the value of the property before the activity; or
  - (b) evidence is given of the amount of the person's expenditure within the 6 years before the day the application for the order was made.
- (2) If subsection (1)(a) applies, the court must treat the difference as proceeds derived by the person from the activity, other than to the extent the court is satisfied the reason for the difference was not related to an illegal activity.
- (3) If subsection (1)(b) applies, the court must treat the amount as proceeds derived by the person from an illegal activity, other than to the extent the court is satisfied the expenditure was funded from income, or amounts from other sources, not related to an illegal activity.
- (4) The court must not take expenditure into account under subsection (3) to the extent the court is satisfied it resulted in the acquisition of property the value of which is taken into account under subsection (2).

### **84 Particular amounts not to be deducted**

For this division, any expenses or outgoings incurred by the relevant person in relation to the illegal activity must be disregarded.

*Example—*

For deciding the value of the proceeds derived by the relevant person from an illegal activity involving the sale of dangerous drugs the person's expenses paid in acquiring the drugs must be disregarded.

**85 Evidence by prescribed officer**

- (1) Despite any rule of law or practice about hearsay evidence, the court may, for this division, receive evidence of the opinion of a prescribed officer who is experienced in the investigation of illegal activities involving dangerous drugs about—
  - (a) the market value at a particular time of a particular kind of dangerous drug or controlled substance; or
  - (b) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of dangerous drug or controlled substance.
- (2) In this section—

*prescribed officer* means—

  - (a) a police officer; or
  - (b) a member of the Australian Federal Police; or
  - (c) an officer of customs within the meaning of the *Customs Act 1901* (Cwlth); or
  - (d) an authorised commission officer.

**Division 3 Other provisions about proceeds assessment orders****86 Proceeds assessment order amount is debt payable to State**

- (1) The amount a person is ordered to pay to the State under a proceeds assessment order is a debt payable by the person to the State.
- (2) The proceeds assessment order may be enforced as if it were a money order made by the Supreme Court in a civil proceeding

taken by the State against the person for the recovery of the amount payable under the proceeds assessment order.

## **87 Enforcement of order against property under effective control**

- (1) The State may apply to the Supreme Court for an order declaring that particular property is under the effective control of a person against whom the court has made a proceeds assessment order (the *controlling person*).
- (2) The commission or, if the application is made for the State by a police officer, the commissioner of the police service must give written notice of the application to—
  - (a) the controlling person; and
  - (b) anyone else the commission, or the commissioner of the police service, considers may have an interest in the property.
- (3) The controlling person, and anyone else who claims an interest in the property, may appear at the hearing of the application.
- (4) If the court is satisfied that the property is under the effective control of the controlling person, the court may make an order declaring that the property is available to satisfy the proceeds assessment order to the extent to which other property of the controlling person is not readily available for the purpose.
- (5) The proceeds assessment order may be enforced against the property to the extent stated in the declaration.
- (6) The court may also make a restraining order in relation to the property.
- (7) The absence of a person required to be given notice of the application does not prevent the court from making the order.

## **88 Charge on property**

- (1) On the making of a proceeds assessment order against a person, all the interests of the person in property are, while the amount payable under the order remains unpaid, charged in

*Criminal Proceeds Confiscation Act 2002*

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favour of the State to the extent necessary to secure payment of the amount.

- (2) A charge created under subsection (1)—
  - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this paragraph, have priority over the charge; and
  - (b) has priority over all other encumbrances; and
  - (c) is not affected by any change of ownership of the interest charged, unless the charge stops having effect under subsection (3).
- (3) The charge stops having effect if any of the following happens—
  - (a) the proceeds assessment order is discharged on the hearing of an appeal against the making of the order;
  - (b) the amount payable to the State is paid;
  - (c) the person against whom the order is made becomes bankrupt;
  - (d) the interest charged is sold or otherwise disposed of under this Act other than under a condition of a restraining order under this chapter or chapter 3 or by order of the Supreme Court under section 46 or 138;<sup>17</sup>
  - (e) the interest charged is sold to a purchaser for sufficient consideration who, at the time of purchase, had no notice of the charge.
- (4) If a law, whether or not a law of the State, provides for the registration of title to, interests in, or charges over, property charged under subsection (1), the public trustee or an appropriate officer may cause the charge to be registered under that law.

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<sup>17</sup> Section 46 (Supreme Court may order sale of restrained property) or 138 (Supreme Court may order sale of restrained property)

**89 Effect of other actions on proceeds assessment order**

- (1) The quashing of a conviction for a serious crime related activity does not affect the validity of a proceeds assessment order.
- (2) If a proceeds assessment order is made against a deceased, the order has effect before final distribution of the estate as if the person had died the day after the making of the order.

**Part 6 General****90 Serious crime related activity can form basis of a number of orders**

- (1) The fact that a restraining order or a forfeiture order has been made on the basis of a person's serious crime related activity does not prevent the making of another restraining order or forfeiture order on the basis of that activity.
- (2) Also, the fact that a forfeiture order has been made on the basis of a person's serious crime related activity does not prevent the making of a proceeds assessment order on the basis of that activity.
- (3) In addition, the fact that a proceeds assessment order has been made on the basis of a person's serious crime related activity does not prevent the making of a forfeiture order on the basis of that activity.

**91 Effect of death of person involved**

- (1) A notice authorised or required to be given under this chapter to a person who is dead is taken to have been given if it is given to the person's legal personal representative.
- (2) A reference in this chapter to an interest in property of a person who is dead is a reference to an interest in the property the person had immediately before death.
- (3) An order may be applied for and made under this chapter—

- (a) in relation to a person's interest in property even if the person is dead; and
- (b) on the basis of the previous activities of a person who is dead.

## **92 Effect of death of joint owner of restrained property**

- (1) This section applies only if a person who is a joint owner of restrained property under a restraining order dies while the restraining order is in force.
- (2) The death of the person does not, while the order is in force, operate to vest the deceased's interest in the surviving joint owner or owners.
- (3) Also, the restraining order continues to apply to the interest as if the person had not died.
- (4) A forfeiture order applying to the interest applies as if the order took effect immediately before the person died.
- (5) If a restraining order stops applying to property without a forfeiture order being made in relation to the property, subsection (2) is taken not to have applied to the property.

## **93 No stay of proceedings**

The fact that a criminal proceeding has been started against a person, whether or not under this Act, is not a ground on which the Supreme Court may stay a proceeding against or in relation to the person under this chapter that is not a criminal proceeding.

## **Chapter 3      Confiscation after conviction**

### **Part 1            Preliminary**

#### **94      Explanation of ch 3**

- (1) This chapter enables proceedings to be started against a person to recover property and benefits derived from, and anything used for, or in the commission of, a confiscation offence, after the person has been charged with or convicted of the offence.
- (2) It does this by enabling a court, as a preliminary step in appropriate cases, to make a restraining order preventing the property being dealt with without the court's leave.
- (3) It also empowers the court to forfeit the following property to the State—
  - (a) property used, or intended to be used, in or for the commission of a confiscation offence;
  - (b) property derived from property mentioned in paragraph (a) or from the commission of a confiscation offence.

*Note—*

For matters that the court is to consider in deciding whether to forfeit property mentioned in paragraph (a), see section 151(2).<sup>18</sup>

- (4) In addition, it provides a mechanism for—
  - (a) preventing the disposal or concealment of property and benefits derived from the commission of a confiscation offence; and
  - (b) depriving persons who have directly or indirectly benefited from the commission of a confiscation offence of the benefits derived from the offence.

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18 Section 151 (Making forfeiture order)

**95 Application of ch 3**

- (1) This chapter applies in relation to—
  - (a) a confiscation offence committed or suspected of having been committed at any time, whether before or after the commencement of this Act; and
  - (b) a person's conviction of a confiscation offence at any time, whether before or after the commencement of this Act.
- (2) Subsection (1) applies subject to section 96.

**96 Matters ch 3 does not apply to**

- (1) This chapter does not apply to a person's conviction of an offence if the person was convicted of the offence before 12 May 1989.
- (2) Subsection (1) does not apply to interstate forfeiture orders, interstate pecuniary penalty orders or interstate restraining orders.

**97 Application may be made for more than 1 order**

Nothing in this chapter prevents a court hearing and deciding at the same time—

- (a) an application for a forfeiture order or pecuniary penalty order; and
- (b) an application under a Commonwealth law that makes provision substantially similar to this chapter.

**98 Constitution of court**

- (1) This section applies—
  - (a) if an application for a forfeiture order, pecuniary penalty order or restraining order is made to a court before which a person was convicted of a confiscation offence; and
  - (b) whether or not the court is constituted in the same way as it was constituted when the person was convicted of the offence.

- (2) The court—
- (a) may deal with the application; and
  - (b) may perform any function and exercise any power in relation to the forfeiture order, pecuniary penalty order or restraining order, that the court may perform or exercise under this Act.

## Part 2 Interpretation

### Division 1 References to relevant offences

#### 99 Meaning of *confiscation offence*

An offence is a *confiscation offence* if it is—

- (a) a serious criminal offence; or
- (b) another indictable offence, whether dealt with on indictment or summarily; or
- (c) an offence against this Act for which an offender is liable to imprisonment; or
- (d) an offence against an Act or a provision specified in schedule 2, part 2;<sup>19</sup> or
- (e) another offence prescribed under a regulation as a confiscation offence.

*Note*—

This definition applies to the whole Act. See the dictionary.

#### 100 Meaning of *serious criminal offence*

*Serious criminal offence* has the same meaning as in section 17.<sup>20</sup>

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19 Schedule 2 (Offences), part 2 (Confiscation offences)

20 Section 17 (Meaning of *serious criminal offence*)

## Division 2                      References to property and benefits

### 101      **Meaning of *benefit***

*Benefit* includes service and advantage.

### 102      **Meaning of *benefit derived***

A *benefit derived* by a person includes a benefit derived by someone else at the person's request or direction.

### 103      **Meaning of *effective control***

*Effective control* of property has the same meaning as in section 20.<sup>21</sup>

*Note—*

The definition of property is given by the *Acts Interpretation Act 1954*, section 36.

### 104      **Meaning of *tainted property***

- (1) *Tainted property*, for a confiscation offence, means—
- (a) property used, or intended to be used, by a person in, or in connection with, the commission of the offence; or
  - (b) property or another benefit derived by a person from property mentioned in paragraph (a); or
  - (c) property or another benefit derived by a person from the commission of the offence; or
  - (d) if the offence is money laundering, property mentioned in section 250(2)(a);<sup>22</sup> or
  - (e) if the offence is against section 252(1),<sup>23</sup> property mentioned in that subsection.

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21 Section 20 (Meaning of *effective control* of property)

22 Section 250 (Money laundering)

23 Section 252 (Possession etc. of property suspected of being tainted property)

- (2) Property mentioned in subsection (1)(a) includes property the use of which is, or the intended use of which would be, all or part of the confiscation offence.
- (3) Subsection (1)(d) and (e)—
  - (a) do not limit subsection (1)(a) to (c); and
  - (b) apply even though an act done in relation to the property is all or part of the confiscation offence.
- (4) If the confiscation offence is conspiracy to commit a confiscation offence, the references to the confiscation offence in subsection (1)(a) and (c) are taken to include a reference to the confiscation offence the subject of the conspiracy.

*Note—*

An offence may be a conspiracy to commit a confiscation offence if it is an ancillary offence to a serious criminal offence, or another indictable offence that is a conspiracy to commit a crime under the Criminal Code, section 541.

- (5) For part 3, **property** mentioned in subsection (1) includes benefits that the prescribed respondent has derived, is deriving, or is to derive, under a contract formed on or after 12 May 1989 about either of the following—
  - (a) a depiction of a confiscation offence or alleged confiscation offence in a movie, book, newspaper, magazine, radio, or television production, or in any other electronic form, or live or recorded entertainment of any kind;
  - (b) an expression of the prescribed respondent's thoughts, opinions or emotions about a confiscation offence.

## **Division 3                      References to relevant criminal proceedings**

### **105      Meaning of *charge* if complaint made**

- (1) This section applies if a proceeding for an offence is started against a person—

- (a) by complaint and summons under the *Justices Act 1886*;  
or
  - (b) by notice to appear under the *Police Powers and Responsibilities Act 2000*.
- (2) If the complaint is sworn, the person is charged when the complaint is made whether or not a justice has issued on the complaint—
- (a) a summons requiring the person's attendance before a court; or
  - (b) a warrant for the person's arrest.
- (3) If the complaint is not sworn, the person is charged when the summons is served on the person.
- (4) If the proceeding is started by notice to appear, the person is charged when the notice to appear is issued and served on the person.

## **106 Meaning of *convicted* of offence**

- (1) A person must be treated as if *convicted* of an offence if—
- (a) the person is found guilty of the offence, whether or not a conviction is recorded; or
  - (b) the offence is taken into account by a court in sentencing the person for another offence; or
  - (c) the person becomes unamenable to justice for the offence; or
  - (d) the person is acquitted of the offence because of unsoundness of mind.
- (2) However, if a person is treated as if convicted of a confiscation offence because—
- (a) the person is unamenable to justice for the offence; or
  - (b) the person is acquitted of the offence because of unsoundness of mind;

a court may rely on the person being so treated to make a forfeiture order, pecuniary penalty order or special forfeiture order only if it is satisfied that, apart from paragraph (a) or (b),

the evidence is of sufficient weight to support a conviction of the person for the offence.

### **107 Meaning of *quash* a conviction**

- (1) *Quash* includes set aside and rescind.<sup>24</sup>
- (2) Also, a person's conviction is taken to be *quashed* if—
  - (a) for a conviction because a person is found guilty of an offence, whether or not a conviction is recorded, the conviction is quashed by a court or a free pardon is granted by the Governor; or
  - (b) for a conviction because an offence is taken into account by a court in sentencing the person for another offence—
    - (i) the person's conviction of the other offence is quashed; or
    - (ii) the court's decision to take the offence into account is quashed by a court; or
  - (c) for a conviction because a person has become unamenable to justice, the person is afterwards brought before a court to be dealt with for the offence and—
    - (i) the proceeding is discontinued; or
    - (ii) the person is acquitted; or
    - (iii) the person is convicted, but the conviction is afterwards quashed by a court or a free pardon is granted by the Governor; or
    - (iv) the offence is taken into account by a court in sentencing the person for another offence, but the person's conviction of the other offence is quashed; or
    - (v) the offence is taken into account by a court in sentencing the person for another offence, but the

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24 This definition covers various expressions used in the Criminal Code, section 668E (Determination of appeal in ordinary cases) and the *Justices Act 1886*, section 225 (Powers of judge on hearing appeal).

court's decision to take the offence into account is quashed by a court; or

- (vi) for a conviction because a person is acquitted of an offence because of unsoundness of mind, the acquittal because of unsoundness of mind is quashed by a court.

### 108 Meaning of *related* offence

An offence is *related* to another offence if both offences consist substantially of the same acts or omissions or form part of the same series of acts or omissions.

### 109 Meaning of *unamenable to justice*

- (1) A person becomes *unamenable to justice* for an offence only if—
  - (a) a proceeding for the offence is started against the person in a way mentioned in subsection (2); and
  - (b) the person is taken to become unamenable to justice under any of sections 110 to 115.
- (2) For subsection (1), a proceeding for an offence starts when—
  - (a) a person is charged as defined in section 105;<sup>25</sup> or
  - (b) a Magistrates Court charges the person with the offence or commits the person for trial or sentence for the offence; or
  - (c) an indictment is presented against the person for the offence.

*Note—*

This definition applies to the whole Act. See the dictionary.

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<sup>25</sup> Section 105 (Meaning of *charge* if complaint made)

**110 Unamenable to justice if person absconds**

- (1) The person is taken to become unamenable to justice if any of the following decides the person has absconded from the proceeding for the offence—
  - (a) the Supreme Court;
  - (b) the court to which the person is committed for trial or sentence;
  - (c) the court in which the proceeding is waiting to be heard, or being heard.
- (2) The person is taken to become unamenable to justice when the court decides the person has absconded or on another day decided by the court.

**111 Unamenable to justice if person dead**

- (1) The person is taken to become unamenable to justice if the person dies before the proceeding for the offence is finally decided.
- (2) The person is taken to become unamenable to justice when the person dies.

**112 Unamenable to justice if person not fit for trial**

- (1) The person is taken to become unamenable to justice if—
  - (a) under the *Mental Health Act 2000*, chapter 7, part 6,<sup>26</sup> the person is found to be not fit for trial on the charge of the offence; and
  - (b) the proceeding for the offence is discontinued because of the finding.
- (2) The person is taken to become unamenable to justice when the proceeding is discontinued.

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<sup>26</sup> *Mental Health Act 2000*, chapter 7 (Examinations, references and orders for persons charged with offences), part 6 (Inquiries on references to Mental Health Court)

**113 Unamenable to justice if warrant issued but not executed**

- (1) The person is taken to become unamenable to justice if—
  - (a) a warrant is issued for the arrest of the person for the offence, whether because of a complaint and summons or otherwise; and
  - (b) the warrant has not been executed within 6 months after its issue even though all reasonable steps have been taken to execute it.
- (2) The person is taken to be unamenable to justice at the end of the last day of the 6 months mentioned in subsection (1)(b).
- (3) In this section—

*arrest* includes apprehension.

**114 Unamenable to justice if no extradition order at end of extradition proceeding**

- (1) The person is taken to become unamenable to justice if—
  - (a) 6 months after the proceeding for the offence is started the person is unamenable to justice because the person is outside Australia; and
  - (b) an extradition proceeding against the person for the offence has been started; and
  - (c) the extradition proceeding ends without an extradition order being made.
- (2) The person is taken to be unamenable to justice when the extradition proceeding ends.

**115 Unamenable to justice for another reason**

- (1) The person is taken to become unamenable to justice if, 6 months after the proceeding for the offence is started—
  - (a) the person is unamenable to justice for another reason; and
  - (b) if the person is outside Australia, there is no extradition proceeding pending against the person.

- (2) The person is taken to be unamenable to justice at the end of the last day of the 6 months mentioned in subsection (1).

## **Part 3                      Restraining orders**

### **Division 1                Definitions**

#### **116      Definitions for pt 3**

In this part—

*prescribed respondent* means a person who—

- (a) is about to be, or has been, charged with the confiscation offence to which an application for a restraining order, or a restraining order relates; or
- (b) has been convicted of the confiscation offence to which an application for a restraining order, or a restraining order relates.

*relevant offence* means the confiscation offence or confiscation offences to which an application for a restraining order, or a restraining order, under this part relates.

### **Division 2                Application for restraining order**

#### **117      Application for restraining order**

- (1) The State may apply to the Supreme Court for an order (*restraining order*) restraining any person from dealing with property stated in the order (the restrained property) other than in a stated way or in stated circumstances.
- (2) If the application is made in urgent circumstances or the prescribed respondent is about to be charged with a relevant offence, the application may be made without notice to the prescribed respondent or another person to whom it relates.

- (3) The application must be supported by an affidavit of a police officer.
- (4) The application may relate to all or any of the following property—
  - (a) for property of a prescribed respondent—
    - (i) stated property; or
    - (ii) a stated class of property; or
    - (iii) all property; or
    - (iv) all property other than stated property; or
    - (v) all or stated property acquired after the restraining order is made;
  - (b) stated property, or a stated class of property, of a stated person, other than a prescribed respondent.
- (5) The court may refuse to consider the application until the applicant gives the court all the information the court requires about the application in the way the court requires.

*Example—*

The court may require additional information supporting the application to be given by affidavit or statutory declaration.

## **118 Affidavit—general requirements**

The police officer's affidavit must state the following—

- (a) the confiscation offence on which the application is based;
- (b) if the confiscation offence is not a serious drug offence and the police officer suspects the relevant property is the prescribed respondent's property, the police officer suspects—
  - (i) the property is tainted property and the reason for the suspicion; or
  - (ii) the prescribed respondent derived a benefit from the commission of the offence and the reason for the suspicion;

- (c) if the basis of the application is the conviction of the prescribed respondent of the confiscation offence, details of the conviction;
- (d) if the basis of the application is the fact that the prescribed respondent has been or is about to be charged with the confiscation offence, the police officer suspects the prescribed respondent committed the offence and the reason for the suspicion;
- (e) details of the property sought to be restrained;
- (f) the police officer suspects the property sought to be restrained is the property of the person mentioned in the affidavit and the reason for the suspicion.

**119 Particular requirements for affidavit relating to relevant property that is not prescribed respondent's property**

- (1) This section applies only if a police officer's affidavit relates to property of someone other than the prescribed respondent.
- (2) This section is in addition to section 118.
- (3) If the relevant offence is a serious drug offence, the police officer's affidavit must state—
  - (a) the police officer suspects that the property is tainted property and the reason for the suspicion; or
  - (b) the police officer suspects that the property is under the prescribed respondent's effective control and the reason for the suspicion.
- (4) If the relevant offence is not a serious drug offence, the police officer's affidavit must state—
  - (a) the police officer suspects that the property is tainted property and the reason for the suspicion; or
  - (b) the police officer—
    - (i) suspects that the property is under the prescribed respondent's effective control; and
    - (ii) suspects that the prescribed respondent derived a benefit from the commission of the offence; and
    - (iii) the reason for the suspicion.

**120 Notice of application for restraining order**

Subject to section 121(2), the State must give notice of the application to each person whose property is the subject of the application and anyone else the appropriate officer making the application for the State considers has an interest in the property.

*Note—*

Under the *Uniform Civil Procedure Rules 1999*, an application filed in a court must be served on each respondent at least 3 business days before the day set for hearing the application.

**121 Hearing of application**

- (1) The Supreme Court must not hear an application for a restraining order unless satisfied the person whose property is the subject of the application has received reasonable notice of the application.
- (2) Despite subsection (1), the court must consider the application without notice having been given if the DPP asks the court to do so.
- (3) However, the Supreme Court may, at any time before finally deciding the application, direct the State to give notice of the application to a stated person or class of persons in the way and within the time the court considers appropriate.
- (4) A person whose property is the subject of the application, and anyone else who claims to have an interest in the property, may appear at the hearing of the application.

**Division 3 Making restraining orders and other orders****122 Making restraining order**

- (1) The Supreme Court may make a restraining order if, after considering the application and the relevant affidavit, it is satisfied that—
  - (a) the application relates to a prescribed respondent; and

- (b) there are reasonable grounds for the suspicions on which the application is based.
- (2) However, if the confiscation offence is a serious criminal offence, the court must make a restraining order unless the court is satisfied in the particular circumstances it is not in the public interest to make the order.
- (3) The court may make a restraining order in relation to a prescribed respondent who is about to be charged with a confiscation offence only if the court is satisfied the prescribed respondent will be charged with the confiscation offence or a related offence within the next 48 hours.
- (4) The court may refuse to make the restraining order if the State fails to give the court the undertakings the court considers appropriate for the payment of damages or costs, or both, in relation to the making and operation of the order.
- (5) The DPP may give the court the undertakings the court requires.
- (6) Also, the making of a restraining order does not prevent the person whose property is restrained under the order from giving Legal Aid a charge over the property as a condition of an approval to give legal assistance under the Legal Aid Act in relation to—
  - (a) a proceeding under this Act; or
  - (b) a criminal proceeding in which the person is a defendant, including any proceeding on appeal against conviction or sentence.

### **123 Absence of risk does not prevent making of order**

The Supreme Court may make a restraining order against property whether or not there is a risk of the property being dealt with in a way that would defeat the operation of this Act.

### **124 Conditions of restraining order**

- (1) It is a condition of every restraining order that the person whose property is restrained under the order must preserve the property.

- (2) The Supreme Court may impose the other conditions the court considers appropriate, including, but not limited to, the following—
- (a) a condition about who is to have possession of the property;
  - (b) a condition of a kind mentioned in section 125 or 126.

### **125 Conditions about dealing with property by agreement**

The Supreme Court may impose a condition authorising the DPP to agree to—

- (a) the disposal of the property restrained under the restraining order by its owner to enable the proceeds of the disposal to be applied to satisfy all or part of a debt payable under a pecuniary penalty order or a proceeds assessment order; or
- (b) the application of the property by its owner to satisfy all or part of a debt payable under a pecuniary penalty order or a proceeds assessment order.

### **126 Conditions about particular payments out of restrained property**

- (1) The Supreme Court may impose a condition providing for all or any of the following to be paid out of the property of a particular person, or a stated part of the person's property, restrained under the restraining order—
- (a) the person's reasonable living expenses and reasonable business expenses;
  - (b) the reasonable living expenses of any of the person's dependants;
  - (c) a stated debt incurred in good faith by the person.
- (2) Subsection (1) is the only provision of this chapter under which provision may be made for the payment of expenses or a debt mentioned in subsection (1).

- (3) Also, subsection (1) applies only if the court is satisfied—
  - (a) the person can not meet the expense or debt out of property that is not restrained under the order; and
  - (b) the property from which the expenses or debt are to be paid is not tainted property.
- (4) Further, subsection (1) does not authorise the imposition of a condition providing for the payment of a person's legal expenses that are expenses payable because—
  - (a) the person is a party to a proceeding under this Act; or
  - (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against a conviction or sentence.

## **127 Restraining order may direct public trustee to take control of property**

If the Supreme Court considers the circumstances require it, the court may, in a restraining order or a later order, direct the public trustee to take control of some or all of the property restrained under the order.

## **128 Duration of restraining order**

- (1) A restraining order made on an application made without notice to the person to whom it relates is in force for the period, of not more than 7 days, stated in the order or, if no period is stated, 7 days after it is made.
- (2) However, a restraining order made on the basis of the proposed charging of the prescribed respondent with a confiscation offence lapses if the person is not charged with the offence or a related offence within 48 hours after the order is made.
- (3) Otherwise, a restraining order is in force for the period stated in the order or, if no period is stated, for 1 year after it is made.

## **Division 4                      Making other orders**

### **129      Supreme Court may make other orders**

- (1) The Supreme Court may make the other orders in relation to a restraining order the court considers appropriate, including, but not limited to, orders mentioned in section 130.
- (2) However, section 130(h) is the only provision of this chapter under which provision may be made for the payment of legal expenses that are expenses payable because—
  - (a) the person is a party to a proceeding under this Act; or
  - (b) the person is a defendant in a criminal proceeding, including any proceeding on appeal against a conviction or sentence.
- (3) The court may make an order under this section—
  - (a) when making the restraining order or, on application, at a later time; and
  - (b) whether or not it affects a person whose property is restrained under the restraining order.
- (4) Any of the following may apply for an order under this section—
  - (a) the State;
  - (b) the prescribed respondent;
  - (c) a person whose property is restrained under the restraining order;
  - (d) if the restraining order directs the public trustee to take control of the restrained property under the restraining order—the public trustee.
- (5) Also, with the court's leave, a person other than a person mentioned in subsection (4) may apply for an order under this section.
- (6) The applicant must give notice of the making of the application to each other person who could have applied for an order under this section.

- (7) Subsection (6) does not apply to an application for an order under this section made in a proceeding on an application for a restraining order that is made without notice to any person to whom it relates.

### 130 Particular orders Supreme Court may make

For section 129, the orders are as follows—

- (a) an order varying the property restrained under the restraining order;
- (b) an order imposing additional conditions on the restraining order or varying a condition of the order;
- (c) an order (*examination order*) requiring a person whose property is restrained under the restraining order or a stated person to attend for examination on oath before the court or a stated officer of the court about the following—
  - (i) the affairs of any person whose property is restrained under the restraining order;
  - (ii) the nature and location of any property of a person whose property is restrained under the restraining order;
  - (iii) the nature and location of any property restrained under the restraining order that the applicant for the order reasonably suspects is tainted property;
- (d) an order (also an *examination order*) requiring the spouse of a person whose property is restrained under the restraining order to attend for examination on oath before the court or a stated officer of the court about the spouse's affairs, including the nature and location of property in which the spouse or the person has an interest;
- (e) an order about the performance of an undertaking for the payment of damages or costs given for the restraining order;
- (f) an order (*property particulars order*) directing either of the following to give the DPP or the public trustee, within a stated time, a sworn statement of particulars of

the property, or dealings with the property, in which the owner has or had an interest, as the court considers appropriate—

- (i) a person who is or was the owner of restrained property; or
  - (ii) if the owner of restrained property is or was a corporation—an executive officer of the corporation;
- (g) if the restraining order directs the public trustee to take control of property—
- (i) an order regulating the way the public trustee may perform functions under the restraining order; or
  - (ii) an order deciding any question about the property, including a question affecting the liabilities of the owner of the property or the functions of the public trustee;
- (h) an order for the payment to Legal Aid from property restrained under the restraining order of expenses payable by the person whose property is restrained because—
- (i) the person is a party to a proceeding under this Act; or
  - (ii) the person is a defendant in a criminal proceeding, including any proceeding on appeal against conviction or sentence.

## **Division 5                    Provisions about particular orders**

### **Subdivision 1            Examination orders**

#### **130A    Meaning of *judicial registrar* for subdiv 1**

In this subdivision—

*judicial registrar*, for an examination conducted under an examination order, includes an officer of the court other than the judicial registrar mentioned in the order.

**131 Judicial registrar's power to conduct examinations**

- (1) A judicial registrar may conduct an examination under an examination order.
- (2) For those applications, the judicial registrar constitutes, and may exercise all the jurisdiction and powers of, the court.
- (3) However, a judicial registrar may not exercise any power of the court to punish for contempt.

**131A Time and place of examination**

The examination of a person must be conducted at the time and place stated in the examination order.

**131B Examination to take place in private**

- (1) The examination must take place in private.
- (2) The court or judicial registrar 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) a lawyer of the person being examined; and
  - (b) an appropriate officer; and
  - (c) a commission officer; and
  - (d) a police officer; and
  - (e) a lawyer representing an appropriate officer, commission officer or police officer; and
  - (f) any person who is entitled to be present because of a direction under subsection (2).

**131C Role of the examinee's lawyer**

The lawyer of the person being examined may, at the times during the examination that the court or judicial registrar decides—

- (a) address the court or judicial registrar about matters on which the person has been examined; and

- (b) examine the person about matters on which the person has been examined.

### **131D Recording evidence**

- (1) The court or judicial registrar must ensure that, if practicable, evidence given at an examination in Queensland is recorded under the *Recording of Evidence Act 1962*<sup>27</sup> or recorded in another way and authenticated by the court or judicial registrar.
- (2) The court or judicial registrar must authenticate and sign any deposition or other recording.
- (3) If evidence given at an examination is recorded in a deposition, it must—
  - (a) contain, in question and answer form, the evidence of the person examined; and
  - (b) be transcribed and read over by or to the person in the court's or judicial registrar's presence and in the presence of the parties who wish to attend; and
  - (c) be signed by the person, or, if the person refuses to sign the deposition, by the court or judicial registrar for the person.
- (4) The court or judicial registrar may impose on the person being examined the conditions (if any) that the court or judicial

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<sup>27</sup> Note the *Recording of Evidence Act 1962*, section 5—

#### **5 Power to direct recording under this Act**

- (1) In any legal proceeding in or before any court or judicial person, the court or judicial person may in its or the judicial person's discretion, with or without any application for the purpose, direct that any evidence to be given and any ruling, direction, address, summing up, and other matter in the legal proceeding (or of any part of the legal proceeding in question) be recorded—
  - (a) if a shorthand reporter is available—in shorthand; or
  - (b) if a mechanical device and a recorder are available—by the mechanical device; or
  - (c) if a shorthand reporter, mechanical device, and a recorder are available—in shorthand or by the mechanical device or partly in shorthand and partly by the mechanical device.

registrar reasonably considers necessary to prevent improper disclosure of the record.

### **132 Privilege—examination order**

- (1) A person examined under an examination order is not excused from answering a question, or from producing a document or other thing, on the ground that—
  - (a) answering the question or producing the document may tend to incriminate the person or make the person liable to a forfeiture or penalty; or
  - (b) producing the document would be in breach of an obligation, whether imposed by an enactment or otherwise, of the person not to disclose the existence or contents of the document; or
  - (c) answering the question or producing the document would disclose information that is the subject of legal professional privilege.
- (2) A statement or disclosure made by a person in answer to a question asked in an examination under an examination order, or a document or other thing produced in the examination, is not admissible against the person in any civil or criminal proceeding, other than—
  - (a) a proceeding about the false or misleading nature of the statement or disclosure; or
  - (b) a proceeding on an application under this Act; or
  - (c) a proceeding for the enforcement of a forfeiture order; or
  - (d) for a document or other thing, a proceeding about a right or liability it confers.

### **133 Offence to contravene examination order**

A person who is required to attend an examination under an examination order under this part must not—

- (a) fail to attend as required by the order, unless the person has a reasonable excuse; or

- (b) fail to attend from day to day until the conclusion of the examination, unless the person has a reasonable excuse; or
- (c) fail to take an oath for the purpose of the examination; or
- (d) fail to answer a question that the person is directed to answer by the court or judicial registrar; or
- (e) make a statement in the examination that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

## **Subdivision 2 Property particulars orders**

### **134 Privilege—property particulars order**

- (1) A person directed under a property particulars order to give a statement to the DPP or the public trustee is not excused from giving the statement or including particulars in the statement on the ground that the statement or particulars may tend to incriminate the person or make the person liable to a forfeiture or penalty.
- (2) If a person gives a statement to the DPP or the public trustee under a property particulars order, the statement is not admissible against the person in any criminal proceeding other than a proceeding about the false or misleading nature of the statement.

## **Division 6 Notice of restraining orders**

### **135 Notice of restraining order**

- (1) This section applies if the Supreme Court—
  - (a) makes a restraining order; or

- (b) makes another order under division 4<sup>28</sup> in relation to a restraining order.
- (2) As soon as practicable after the order is made, the DPP must give each person whose property is restrained under the order and anyone else who is affected by the order a copy of the order.
- (3) If the order directs the public trustee to take control of property, the DPP must give the public trustee a copy of the order.
- (4) The DPP must give the commissioner of the police service a copy of the order.
- (5) A restraining order, or another order under division 4, does not stop having effect only because a person required to be served under subsection (2) has not been served with a copy of the order.

## **Division 7                      Extension and setting aside of restraining orders**

### **136      Extension of restraining order**

- (1) On the application of the State, the Supreme Court may extend the period for which a restraining order is to remain in force.
- (2) The State must give notice of the application to—
  - (a) the prescribed respondent; and
  - (b) anyone else whose property is restrained under the restraining order; and
  - (c) anyone else the applicant considers may have an interest in the restrained property.
- (3) A person given or entitled to be given notice under subsection (2) may appear at the hearing of the application.

**137 Restraining order may be set aside**

- (1) On the application of a person mentioned in subsection (2), the Supreme Court may make an order setting aside the restraining order.
- (2) The application may be made by—
  - (a) the State; or
  - (b) the prescribed respondent; or
  - (c) a person whose property is restrained under the restraining order or who has an interest in the restrained property.
- (3) The applicant must give notice of the application to the DPP and anyone else the applicant considers has an interest in the restrained property.
- (4) A person given or entitled to be given notice under subsection (3) may appear at the hearing of the application.
- (5) Without limiting subsection (1), the court may set aside a restraining order on the application of a prescribed respondent if the prescribed respondent—
  - (a) gives security acceptable to the court for payment to satisfy any pecuniary penalty order that may be made against the prescribed respondent on the prescribed respondent's conviction for the offence; or
  - (b) gives undertakings satisfactory to the court about the prescribed respondent's property.

**Division 8 Sale of restrained property****138 Supreme Court may order sale of restrained property**

- (1) This section applies to restrained property under a restraining order only if the State applies to a court for a forfeiture order for the property and the application has not been decided.
- (2) The State may, when applying for the forfeiture order or at a later time, apply to the Supreme Court for an order directing the public trustee to sell all or part of the restrained property (*application property*).

*Note—*

The forfeiture order application may have been made in another court because the prescribed respondent was convicted before that court.

- (3) The State must give notice of the application to each person who has an interest in the application property.
- (4) The Supreme Court may make the order if the court is satisfied, on evidence of the public trustee or otherwise—
  - (a) the application property may deteriorate or lose value before the forfeiture order application is decided; or
  - (b) the cost of controlling the application property would be more than the value of the property if it were disposed of after a forfeiture order was made.
- (5) The proceeds of a sale under an order under this section are taken to be restrained under the restraining order applying to the application property.

## **Division 9                      Exclusion of particular property from restraining order**

### **139      Supreme Court may exclude prescribed respondent's property from restraining order**

- (1) A prescribed respondent whose property is restrained under a restraining order may apply to the court to amend the restraining order to exclude particular property of the prescribed respondent from the order.
- (2) The court may exclude the prescribed respondent's property from the order if it is satisfied—
  - (a) the property is not tainted property; and
  - (b) the relevant offence is not a serious criminal offence; and
  - (c) a pecuniary penalty order can not be made against the prescribed respondent.
- (3) Also, the court may exclude the prescribed respondent's property from the order if it is satisfied it is in the public

interest to amend the order having regard to all the circumstances, including—

- (a) a financial hardship or other result of the property remaining restrained under the order; and
  - (b) the seriousness of the offence; and
  - (c) the likelihood that the interest will be—
    - (i) liable to forfeiture under a forfeiture order; or
    - (ii) automatically forfeited; or
    - (iii) required to satisfy a pecuniary penalty order.
- (4) The Supreme Court may require the prescribed respondent to give security satisfactory to the court to meet any liability that may be imposed on the prescribed respondent under this Act.

#### **140 Supreme Court may exclude other property from restraining order**

- (1) A person, other than the prescribed respondent (the *applicant*), whose property is restrained under a restraining order may apply to the Supreme Court to amend the order to exclude the applicant's property from the order.
- (2) If the restraining order was made in relation to a serious criminal offence, the Supreme Court may exclude the applicant's property from the order if the court is satisfied—
  - (a) the property is not tainted property; and
  - (b) the property is not under the prescribed respondent's effective control; and
  - (c) the applicant was not in any way involved in the commission of the offence.
- (3) If the restraining order was made in relation to an offence that is not a serious criminal offence, the Supreme Court may exclude the applicant's property from the order if the court is satisfied—
  - (a) the interest is not tainted property; and
  - (b) either—

- (i) the applicant's property is not under the prescribed respondent's effective control; or
  - (ii) a pecuniary penalty order can not be made against the prescribed respondent.
- (4) Also, the Supreme Court may exclude the applicant's property from the restraining order if the court is satisfied—
  - (a) the applicant was not, in any way, involved in the commission of the offence; and
  - (b) if the applicant acquired the property at the time of or after the commission, or alleged commission, of the offence, the applicant acquired the property—
    - (i) in good faith and for sufficient consideration; and
    - (ii) without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property in relation to the offence.
- (5) In addition, the Supreme Court may exclude the applicant's property from the order if the court is satisfied it is in the public interest to amend the order having regard to all the circumstances, including—
  - (a) a financial hardship or other result of the property remaining restrained under the order; and
  - (b) the seriousness of the offence; and
  - (c) the likelihood that the interest will be—
    - (i) liable to forfeiture under a forfeiture order; or
    - (ii) automatically forfeited; or
    - (iii) required to satisfy a pecuniary penalty order.
- (6) The Supreme Court may require the applicant to give the undertakings about the applicant's property the court considers appropriate.

**141 Supreme Court may declare restrained property is not subject to automatic forfeiture**

- (1) This section applies only if the confiscation offence a prescribed respondent has been charged with, is about to be

charged with, or has been convicted of, is a serious criminal offence.

- (2) If the prescribed respondent has an interest in property restrained under a restraining order, the prescribed respondent may apply to the Supreme Court for a declaration that the property is not subject to automatic forfeiture.
- (3) The court may make the declaration sought if it is satisfied—
  - (a) the property was not used in, or in connection with, any illegal activity and was not derived by a person from illegal activity; and
  - (b) the prescribed respondent's interest in the property was lawfully acquired.

## **Division 10                      Other provisions about restraining orders**

### **142      Restraining order to be registered**

- (1) This section applies if a restraining order applies to property of a particular kind and a law, whether or not a law of the State, provides for the registration of title to, an interest in, or a charge over, property of that kind.
- (2) On the application of the DPP, the authority responsible for administering the law must record the particulars of the relevant restraining order in the register kept under the law.
- (3) Subsection (2) applies even though a relevant document of title is not produced to a registrar or any other person.
- (4) Unless the contrary is proved, a person who deals with property affected by a registered restraining order is taken to know of the restraining order.
- (5) If the *Land Title Act 1994* applies to the property, the DPP may lodge, and the registrar of titles must register, a caveat over the property under that Act.
- (6) As soon as practicable after the relevant restraining order stops having effect in relation to the property—

- (a) the DPP must apply for cancellation of the record of the order; and
  - (b) the authority responsible for administering the relevant law must take the steps necessary to cancel the record.
- (7) Also, if the DPP lodged a caveat over the property under subsection (5), as soon as practicable after the relevant restraining order stops having effect in relation to the property, the DPP must withdraw the caveat.

### **143 Contravention of restraining order**

- (1) A person who conceals restrained property or does another act or makes another omission in relation to restrained property with the intention of directly or indirectly defeating the operation of the restraining order commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

- (2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was restrained under a restraining order and no reason to suspect it was.
- (3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

### **144 Restraining order does not prevent other action under this Act**

A restraining order does not prevent the enforcement of any other order made under this Act against restrained property under a restraining order.

### **145 Authority under restraining order**

A restraining order is sufficient authority for a person to whom the order is directed to take all steps necessary or desirable to give effect to the order.

## Part 4                      Forfeiture orders

### Division 1                  Applications for forfeiture orders

#### 146      Application for forfeiture order

- (1) This section applies if a person is convicted of a confiscation offence.
- (2) The State may apply to the Supreme Court or the court before which the person is convicted for an order (*forfeiture order*) forfeiting particular property to the State.
- (3) The application may include particulars of any encumbrance over the restrained property that an appropriate officer considers an encumbrancee took in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business.
- (4) Unless the court gives leave, the application must be made within 6 months after the day the person is treated as if convicted of the offence because of section 106.<sup>29</sup>
- (5) If the application has been finally decided on the merits, the State may apply to a court under subsection (2) for a further forfeiture order against property relying on a person's conviction of the confiscation offence to which the previous application relates only with the Supreme Court's leave.
- (6) The Supreme Court may give leave under subsection (5) only if it is satisfied—
  - (a) the property to which the new application relates was identified only after the first application was finally decided; or
  - (b) necessary evidence became available only after the first application was finally decided; or
  - (c) it is otherwise in the interests of justice to give the leave.

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<sup>29</sup> Section 106 (Meaning of *convicted* of offence)

**147 Notice of application**

- (1) The State must give written notice of the application for the forfeiture order to the person whose conviction is the basis for the application and anyone else the appropriate officer making the application for the State considers has an interest in the property to which the application relates.
- (2) A person given notice under subsection (1) may appear at the hearing of the application.
- (3) Anyone else who claims an interest in the property may also appear at the hearing of the application.
- (4) The absence of a person given notice under subsection (1) does not prevent the court from making a forfeiture order.

**Division 2 Making and effect of forfeiture orders****148 Amendment of application**

- (1) A court hearing an application for a forfeiture order may amend the application at the request, or with the agreement, of the State.
- (2) If the State applies for an amendment of an application for a forfeiture order and the proposed amendment would have the effect of including additional property in the application for the forfeiture order, the State must give written notice of the application for the amendment to—
  - (a) the person whose conviction is the basis for the application for the forfeiture order; and
  - (b) anyone else the appropriate officer making the application for the State considers may have an interest in property proposed to be included in the application for the forfeiture order.
- (3) A person given notice under subsection (2) and anyone else who claims to have an interest in the additional property may appear at the hearing of the application to amend.

- (4) The court may amend an application under this section to include additional property in the application only if the court is satisfied—
- (a) the property was not reasonably capable of identification when the application was originally made; or
  - (b) necessary evidence became available only after the application was originally made.

### **149 Procedure on application**

- (1) In deciding an application for a forfeiture order, the court must have regard to the evidence given in any proceeding against the person for the confiscation offence on which the application is based.
- (2) If—
- (a) the application is made to the court before which the person is convicted; and
  - (b) when the application is made, the court has not passed sentence on the person for the confiscation offence;
- the court may defer passing sentence until it has decided the application.
- (3) If a person is treated as if convicted under section 106<sup>30</sup> because the offence is taken into account in sentencing the person for another offence, the reference in subsection (1) to a proceeding against the person for the offence includes a reference to the proceeding for the other offence.

### **150 Limitation on powers of Magistrates Courts**

- (1) A Magistrates Court may make a forfeiture order because of a conviction for an offence only if it is satisfied the total value of the property to be forfeited under the order and all other property forfeited under other undischarged forfeiture orders made by the court because of the conviction is not more than the limit of a Magistrates Court's civil jurisdiction.

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30 Section 106 (Meaning of *convicted* of offence)

- (2) A Magistrates Court may make a forfeiture order for real property only as permitted under a regulation.
- (3) For this section, the value of property is its value as decided by the court.
- (4) In this section—  
*Magistrates Court*, other than in relation to the limit of the court's civil jurisdiction, includes the Childrens Court constituted by a magistrate.

### **151 Making forfeiture order**

- (1) The court may make a forfeiture order in relation to particular property if—
  - (a) a person is convicted of a confiscation offence; and
  - (b) the conviction is the basis for the application for the forfeiture order against the property; and
  - (c) the court is satisfied the property, or an interest in the property, is tainted property; and
  - (d) the court, having regard to subsection (2), considers it appropriate to make the order.
- (2) For subsection (1)(d), the court may have regard to—
  - (a) any hardship that may reasonably be expected to be caused to anyone by the order; and
  - (b) the use that is ordinarily made, or was intended to be made, of the property; and
  - (c) the seriousness of the offence concerned; and
  - (d) anything else the court considers appropriate.
- (3) The court must presume that particular property is tainted property if—
  - (a) at the hearing of the application, evidence is presented that the property was in the person's possession at the time of, or immediately after, the commission of the offence concerned; and
  - (b) no evidence is presented tending to show that the property is not tainted property.

**152 Forfeiture order may provide for discharge of encumbrance**

(1) If—

- (a) the court is satisfied an encumbrancee took an encumbrance over property to be forfeited under a forfeiture order in good faith, for valuable consideration, and in the ordinary course of the encumbrancee's business; and
- (b) the State gives an undertaking to apply the proceeds of disposing of the forfeited property towards discharging the encumbrance;

the court may make the orders about the encumbrance the court considers appropriate.

(2) The DPP may give the undertaking for the State.

**153 Effect of forfeiture**

(1) On the making of a forfeiture order, the property the subject of the order—

- (a) is forfeited to the State; and
- (b) vests absolutely in the State.

*Note—*

Under section 213, the State may not dispose of forfeited property during the appeal period as defined in that section.<sup>31</sup>

(2) Subsection (1)(b) is subject to the provisions of this Act under which the Supreme Court may make orders about the property vested or to be vested in the State.

(3) The court that makes the forfeiture order may give any necessary or convenient directions for giving effect to the forfeiture.

*Example—*

If the person forfeiting the property is in possession of the forfeited property, the court may give directions about who is to have possession of the property.

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31 Section 213 (Forfeited property not to be disposed of during appeal period)

### **Division 3                      Orders releasing or excluding property from effect of particular orders**

#### **154      Order for release of property from forfeiture order**

- (1) A court that makes a forfeiture order may make an order under this section (*release order*) that a stated interest in property of a stated person that has been forfeited under a forfeiture order may be released from the forfeiture order on payment to the State of the amount the court decides is the value of the interest.
- (2) The order must state the nature, extent and value, when the order is made, of the person's interest in the forfeited property.
- (3) The court may make the order only if it is satisfied—
  - (a) the interest is still vested in the State; and
  - (b) it would not be against the public interest for the interest to be transferred to the person; and
  - (c) there is no other reason the interest should not be transferred to the person.

#### **155      Exclusion of property from forfeiture order application**

- (1) A person, other than a person whose conviction is the basis for the application for the forfeiture order, who claims an interest in property included in an application for a forfeiture order may apply to the court to which the application for the forfeiture order is made for an innocent interest exclusion order.
- (2) The applicant must give the DPP notice of the making of the application.
- (3) The State must be a party to the application represented by the DPP.

**156 Exclusion of property from forfeiture order**

- (1) A person, other than a person whose conviction is the basis for the application for the forfeiture order or the forfeiture order, who claims an interest in property forfeited under a forfeiture order may apply to the court that made the forfeiture order for an innocent interest exclusion order.
- (2) Unless the court gives leave under section 157—
  - (a) the application must be made before the end of the 6 months starting on the day the forfeiture order was made; and
  - (b) the following persons can not apply under this section for an innocent interest exclusion order—
    - (i) a person who was given notice of the application for the forfeiture order;
    - (ii) a person who appeared at the hearing of the application for the forfeiture order.
- (3) The applicant must give the DPP notice of the making of the application, including an application for leave.
- (4) The State must be a party to the application represented by the DPP.

**157 When court may give leave for s 156**

- (1) The court may give leave to apply for an innocent interest exclusion order after the end of the 6 months mentioned in section 156(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the court may give a person mentioned in section 156(2)(b) leave to apply for an innocent interest exclusion order only if it is satisfied there are special grounds, including, for example—
  - (a) for a good reason, the person did not attend the hearing of the application for the forfeiture order even though the person had notice of it; or
  - (b) particular evidence proposed to be presented by the person in the application was not available to the person when the application for the forfeiture order was heard.

**158 Making of innocent interest exclusion order**

- (1) The Supreme Court, on an application under section 155 or 156, may make an innocent interest exclusion order.
- (2) The court must, and may only, make an innocent interest exclusion order if it is satisfied—
  - (a) the applicant has or, apart from the forfeiture, would have, an interest in the property; and
  - (b) the applicant was not, in any way, involved in the commission of a relevant confiscation offence; and
  - (c) the applicant acquired the interest—
    - (i) in good faith and for sufficient consideration; and
    - (ii) if the applicant acquired the interest at the time of or after the commission of the relevant confiscation offence—without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property.

**159 What is an innocent interest exclusion order**

An *innocent interest exclusion order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value when the order is made, of the applicant's interest in the property; and
- (b) if the application for the forfeiture order has not been decided, excludes the applicant's property from the operation of any restraining order applying to the property and the application for the forfeiture order; and
- (c) if the applicant's property has been forfeited to the State and is still vested in the State, directs the State to transfer the property to the applicant; and
- (d) if the applicant's property has been forfeited to the State and is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.

## Division 4 Discharge of forfeiture orders

### 160 Discharge of forfeiture order

A forfeiture order is discharged if any of the following happens—

- (a) the conviction because of which the order was made is quashed;
- (b) a payment is made under a release order in relation to all of the interests in forfeited property;
- (c) the order is set aside under section 177;<sup>32</sup>
- (d) the order is discharged on appeal.

## Part 5 Automatic forfeiture

### 161 Definitions for pt 5

In this part—

*forfeiture period*, for a prescribed respondent, means the later of—

- (a) a period of 6 months starting on the day of the prescribed respondent's conviction of a serious criminal offence; or
- (b) the 6 months mentioned in paragraph (a) as extended under section 163; or
- (c) if the prescribed respondent appeals against the conviction and the appeal is not decided within the 6 months after conviction, the period ending when the appeal is finally decided.

*prescribed respondent* means a person who is treated as if convicted of a serious criminal offence, other than because the person is unamenable to justice.

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32 Section 177 (Rehearing)

**162 Application of pt 5**

This part applies if—

- (a) a restraining order is, or was, granted for property, whether the property of a prescribed respondent or someone else, because of—
  - (i) the prescribed respondent's conviction of the serious criminal offence; or
  - (ii) the charging, or proposed charging, of the prescribed respondent with the serious criminal offence or a related serious criminal offence; and
- (b) the Supreme Court has not made an order declaring that the property is not subject to automatic forfeiture;<sup>33</sup> and
- (c) the restraining order is still in force when the forfeiture period ends.

**163 Automatic forfeiture of restrained property**

- (1) Property of the prescribed respondent that was acquired after the day that is 6 years before the commission of the serious criminal offence and is restrained under the relevant restraining order is forfeited to the State when the forfeiture period ends.
- (2) Property of another person that is restrained under the relevant restraining order is forfeited to the State when the forfeiture period ends.
- (3) The 6 years mentioned in subsection (1) includes periods before and after the commencement of this section.
- (4) However, before the end of the first 6 months of the forfeiture period, the prescribed respondent may apply to the Supreme Court for an extension of the forfeiture period for up to 3 months.
- (5) The Supreme Court may extend the forfeiture period by not more than 3 months if it is satisfied it is in the interests of the

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<sup>33</sup> See section 141 (Supreme Court may declare restrained property is not subject to automatic forfeiture).

administration of justice to extend the period in the special circumstances of the case.

### **164 Effect of automatic forfeiture**

- (1) Property automatically forfeited under this part vests absolutely in the State on its forfeiture to the State.
- (2) On application, the Supreme Court may give any necessary or convenient directions for giving effect to the forfeiture.

### **165 Third party protection from automatic forfeiture**

- (1) A person, other than the prescribed respondent, who claims an interest in the property may apply to the Supreme Court for a third party order or a buy-back order.
- (2) Unless the court gives leave under section 166—
  - (a) the application must be made within 6 months after the property is forfeited to the State; and
  - (b) the following can not apply to the court for a third party order or a buy-back order—
    - (i) a person who was given notice of the application for the relevant restraining order;
    - (ii) a person who appeared at the hearing of the application for the relevant restraining order;
    - (iii) a person who was given notice of the relevant restraining order.<sup>34</sup>
- (3) The applicant must give the DPP notice of the making of an application under this section, including an application for leave to apply for a third party order or a buy-back order.
- (4) The State must be a party to the application represented by the DPP.

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<sup>34</sup> Sections 139, 140 and 141 also provide rights to apply to the Supreme Court to exclude property from the effects of a restraining order.

**166 When Supreme Court may give leave for s 165**

- (1) The Supreme Court may give leave to apply for a third party order or a buy-back order after the end of the 6 months mentioned in section 165(2)(a) if it is satisfied the delay in applying was not because of the applicant's neglect.
- (2) Also, the Supreme Court may give leave for a person mentioned in section 165(2)(b) to apply for a third party order or a buy-back order only if it considers the failure of the applicant to apply, or apply successfully, to have the property excluded from the relevant restraining order was not because of the applicant's neglect.
- (3) In this section—  
*relevant restraining order*, for property automatically forfeited, means the restraining order made in relation to the forfeited property.

**167 When Supreme Court may make third party order**

- (1) The Supreme Court, on an application under section 165, may make a third party order.
- (2) The Supreme Court may make a third party order if it is satisfied—
  - (a) the applicant, apart from the forfeiture, would have an interest in the property; and
  - (b) the applicant was not, in any way, involved in the commission of the relevant serious criminal offence; and
  - (c) the applicant acquired the interest—
    - (i) in good faith and for sufficient consideration; and
    - (ii) if the applicant acquired the interest at the time of or after the commission of the relevant serious criminal offence—without knowing, and in circumstances not likely to arouse a reasonable suspicion, that the property was tainted property; and

- (d) the applicant's interest in the property was not under the prescribed respondent's effective control before it was forfeited.
- (3) Also, the Supreme Court may make a third party order if it is satisfied—
- (a) the applicant, apart from the forfeiture, would have an interest in the property; and
  - (b) the property was not used in, or in connection with, any illegal activity and was not derived by anyone from any illegal activity; and
  - (c) the applicant's interest in the property was lawfully acquired.

### **168 What is a third party order**

A *third party order* is an order that—

- (a) states the nature, extent and, if necessary for the order, the value, when the order is made, of the applicant's interest in the property; and
- (b) if the relevant property is still vested in the State, directs the State to transfer the property to the applicant; and
- (c) if the relevant property is no longer vested in the State, directs the State to pay to the applicant the value of the applicant's property.

### **169 When Supreme Court may make buy-back order**

- (1) The Supreme Court, on an application under section 165, may make a buy-back order.
- (2) The Supreme Court may make a buy-back order if it is satisfied—
  - (a) the applicant, apart from the forfeiture, would have an interest in the property; and
  - (b) it would not be against the public interest for the relevant interest in the property to be transferred to the applicant; and

- (c) there is no other reason why the interest should not be transferred to the applicant.

### **170 What is a buy-back order**

A *buy-back order* is an order that states—

- (a) the nature, extent and value, when the order is made, of the interest; and
- (b) that the person may buy back the interest by paying to the State the amount stated as the value of the interest.

## **Part 6 Other provisions about forfeiture**

### **171 Dealing with forfeited property prohibited**

- (1) A person who conceals property that is the subject of a forfeiture order or does another act or makes another omission in relation to property that is the subject of a forfeiture order with the intention of directly or indirectly defeating the operation of the forfeiture order commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

- (2) It is a defence to a charge of an offence against subsection (1) for the person to prove that the person had no notice that the property was the subject of a forfeiture order and no reason to suspect it was.
- (3) A dealing with property in contravention of subsection (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

### **172 Effect of payment under buy-back order or release order**

- (1) On the payment to the State of the amount stated in a buy-back order as the value of an interest in forfeited property, the effect of the forfeiture of the interest ends.

- (2) On the payment to the State of the amount stated in a release order as the value of an interest in forfeited property, the forfeiture order applying to the interest ceases to apply to the interest.
- (3) Subsections (1) and (2) have effect only if the payment is made while the interest is still vested in the State.
- (4) As soon as practicable after the amount mentioned in the buy-back order or release order is paid, the Attorney-General must arrange for the interest to be transferred to the person in whom it was vested immediately before it was forfeited to the State.
- (5) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

### **173 Buying out other interests under court order**

- (1) This section applies if—
  - (a) property that is forfeited to the State under a forfeiture order or on automatic forfeiture is still vested in the State; and
  - (b) the property or an interest in the property is required to be transferred to a person (the *buyer*) under an innocent interest exclusion order or a third party order or under section 172 or 175;<sup>35</sup> and
  - (c) the buyer's interest in the property, immediately before the forfeiture, was not the only interest in the property.
- (2) If the buyer intends to buy the other interests in the property, the buyer must give written notice to any other person who had an interest in the property immediately before the forfeiture stating—
  - (a) the buyer intends to buy the other interests from the State; and

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<sup>35</sup> Section 172 (Effect of payment under buy-back order or release order) or 175 (If Attorney-General asked to return property)

- (b) within 21 days after receiving the notice, the person may give the Attorney-General a written objection to the sale of the person's interest to the buyer.
- (3) If—
  - (a) a person given a notice under subsection (2) does not give the Attorney-General a written objection to the sale of the interest to the buyer within the 21 days; and
  - (b) the buyer pays to the State an amount equal to the value of the interest;the Attorney-General must arrange for the interest to be transferred to the buyer.
- (4) The Attorney-General may do, or authorise the doing of, anything necessary or convenient to be done for the transfer.

**174 Notice after conviction quashed or forfeiture order discharged**

- (1) This section applies if a relevant event happens.
- (2) As soon as practicable after a relevant event happens, the DPP must give notice of the happening of the relevant event to each person the DPP considers may have had an interest in the property to which it relates immediately before it was vested in the State.
- (3) If required by a court, the DPP must also give notice of the happening of the relevant event to the persons the court considers appropriate, in the way and within the time the court considers appropriate.
- (4) If the property is still vested in the State, the notice must include a statement to the effect that a person who had an interest in the property immediately before the property was vested in the State may, by written notice given to the Attorney-General, ask for the return of the property.
- (5) If the property is no longer vested in the State, the notice must include a statement to the effect that a person who had an interest in the property immediately before the property was vested in the State may apply for an order declaring the value of the property—

- (a) if the property was forfeited under a forfeiture order—to the court that made the forfeiture order; or
  - (b) if the property was automatically forfeited—to the Supreme Court.
- (6) In this section—
- relevant event*** means—
- (a) for property forfeited to the State under a forfeiture order—
    - (i) the discharge of the forfeiture order on appeal under section 263;<sup>36</sup> or
    - (ii) the quashing of the conviction on which the forfeiture order was based; or
  - (b) for automatically forfeited property—the quashing of the conviction because of which the property was automatically forfeited.

### **175 If Attorney-General asked to return property**

- (1) This section applies if a person is given a notice under section 174 relating to property that is still vested in the State.
- (2) The person may, in writing, ask the Attorney-General to return the property to the person.
- (3) As soon as practicable after receiving the notice, the Attorney-General must arrange for the property to be transferred to the applicant or someone else nominated by the applicant.
- (4) However, if the State has paid an amount to the person in relation to the property under an innocent interest exclusion order or a third party order, the Attorney-General must not arrange for the transfer of the property until the person pays to the State the total amount paid by the State in relation to the property under the relevant order.
- (5) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for the transfer.

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36 Section 263 (Appeals)

**176 If application for order declaring value of property**

- (1) This section applies if a person is given a notice under section 174 relating to property that is no longer vested in the State.
- (2) The person may apply for an order declaring the value of forfeited property—
  - (a) if the property was forfeited under a forfeiture order—to the court that made the forfeiture order; or
  - (b) if the property was automatically forfeited—to the Supreme Court.
- (3) The court must make an order declaring the value, at the time of the declaration, of the property.
- (4) The court may make the other orders the court considers appropriate.
- (5) After the court makes the order, the applicant for the order may, by written application to the Attorney-General, ask for payment of the amount declared by the order to be the value of the property.
- (6) The Attorney-General must arrange for payment to the applicant, or someone else nominated by the applicant, of the amount declared by the order less the total amount paid by the State for the relevant property because of an innocent interest exclusion order or a third party order.

**177 Rehearing**

- (1) This section applies if a forfeiture order has been made against a person who was charged with a confiscation offence on the ground that the person is treated as having been convicted of the offence because the person has become unamenable to justice for the offence.
- (2) The person or the State may apply to the court that made the forfeiture order to have the order set aside.
- (3) If the applicant is not the State, the applicant must give notice of the application to the Attorney-General.
- (4) The Attorney-General may appear to oppose the grant of the application.

- (5) The court may set aside the forfeiture order on the conditions about costs or otherwise the court considers appropriate.
- (6) If the court sets aside the order, the court may rehear the application for the forfeiture order immediately or at a later time fixed by the court.

## **Part 7 Pecuniary penalty orders**

### **Division 1 Application for pecuniary penalty order**

#### **178 Pecuniary penalty order application**

- (1) If a person is convicted of a confiscation offence, the State may apply to the Supreme Court or the court before which the person is convicted for an order (*pecuniary penalty order*) requiring the person to pay to the State the amount of the benefits derived from the commission of the confiscation offence.
- (2) Unless the court gives leave, the application must be made within 6 months after the day the person is treated as if convicted of the offence because of section 106.<sup>37</sup>
- (3) The State may apply to a court for a further pecuniary penalty order for the benefits derived by the person from the commission of a confiscation offence to which an application for an earlier pecuniary penalty order relates (*first application*) only with the Supreme Court's leave.
- (4) The Supreme Court may give leave under subsection (3) only if it is satisfied—
  - (a) the benefit to which the new application relates was identified only after the first application was finally decided; or

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<sup>37</sup> Section 106 (Meaning of *convicted* of offence)

- (b) necessary evidence became available only after the first application was finally decided; or
- (c) it is otherwise in the interests of justice to give the leave.

**179 Notice of application**

The State must give written notice of the application for the pecuniary penalty order to the person named in the application.

**180 Right to appear**

A person named in the application for the pecuniary penalty order may appear at the hearing of the application.

**181 Amendment of application**

- (1) The court hearing the application for the pecuniary penalty order may amend the application at the request, or with the agreement, of the State.
- (2) If the State applies for an amendment of the application and the amendment would have the effect of including an additional benefit in the application, the State must give the person named in the application written notice of the application for the amendment.
- (3) The court may amend the application to include an additional benefit in the application only if the court is satisfied—
  - (a) the benefit was not reasonably capable of identification when the application was originally made; or
  - (b) necessary evidence became available only after the application was originally made.

**182 Procedure on application**

- (1) In deciding an application for a pecuniary penalty order, the court must have regard to the evidence given in any proceeding against the person for the relevant confiscation offence.

- (2) If—
- (a) the application is made to the court before which the person is convicted; and
  - (b) when the application is made, the court has not passed sentence on the person for the confiscation offence;
- the court may defer passing sentence until it has decided the application.
- (3) If a person is treated as if convicted under section 106 because the offence is taken into account in sentencing the person for another offence, the reference in subsection (1) to a proceeding against the person for the offence includes a reference to the proceeding for the other offence.

### **183 Limitation on powers of Magistrates Courts**

- (1) A Magistrates Court may make a pecuniary penalty order because of a conviction for an offence only if it is satisfied the total amount payable under the pecuniary penalty order and all other undischarged pecuniary penalty orders made by the court because of the conviction is not more than the limit of a Magistrates Court's civil jurisdiction.
- (2) In this section—
- Magistrates Court*, other than in relation to the limit of the court's civil jurisdiction, includes the Childrens Court constituted by a magistrate.

## **Division 2 Making of pecuniary penalty order**

### **184 Pecuniary penalty orders**

- (1) On an application for a pecuniary penalty order against a person, the court may or, if the offence is a serious drug offence, must—
- (a) assess the value of the benefits derived by the person under division 3; and

- (b) order the person to pay to the State a pecuniary penalty equal to the assessed value of the benefits less the amounts deducted under subsections (2) and (3).
- (2) The value, when the pecuniary penalty order is made, of any property for which a forfeiture order is made for the same conviction must be deducted.
- (3) The court may also deduct either of the following amounts, if the court considers it appropriate to take the amount into account—
  - (a) any amount payable for restitution or compensation for the same conviction;
  - (b) the value of any property forfeited under a forfeiture order under chapter 2 made in relation to a period including the day the offence to which the conviction relates was committed.
- (4) The amount payable by the person to the State under the pecuniary penalty order is a debt payable by the person to the State.
- (5) The order may be enforced as if it were a money order made by a court in a civil proceeding taken by the State against the person for the recovery of the amount payable under the pecuniary penalty order.

**185 Discharge of pecuniary penalty order to the extent of automatic forfeiture**

- (1) This section applies to a person who has been convicted of a serious criminal offence and against whom a pecuniary penalty order has been made because of the conviction.
- (2) If property of the person is also automatically forfeited to the State because of the conviction, the debt payable under the pecuniary penalty order is discharged to the extent of—
  - (a) if the property is sold—the value of the proceeds of the sale; or
  - (b) if the property is not sold—the amount the Attorney-General decides is the reasonable value of the property.

**186 Pecuniary penalty order increase if forfeiture order discharged**

- (1) This section applies if—
  - (a) a court makes a pecuniary penalty order; and
  - (b) in deciding the amount payable under the pecuniary penalty order, the court takes into account the value of property forfeited under a forfeiture order; and
  - (c) after the pecuniary penalty order is made, the forfeiture ends because of an appeal.
- (2) The State may apply to the court that made the pecuniary penalty order for a variation of the order to increase the amount payable under the order.
- (3) If the court considers an increase appropriate, it may vary the amount payable under the pecuniary penalty order.

**Division 3 Assessment of benefits****187 Assessment of benefits**

- (1) When assessing the value of benefits derived by a person from the commission of a confiscation offence for the purposes of making a pecuniary penalty order against a person (*relevant person*), the court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the relevant person or someone else at the request, or by the direction, of the relevant person, because of the commission of the offence;
  - (b) the value of any benefit provided for the relevant person or someone else at the request, or by the direction, of the relevant person because of the commission of the offence;
  - (c) if the offence consisted of the doing of an act or thing in relation to a dangerous drug or controlled substance (the *illegal drug*)—

*Criminal Proceeds Confiscation Act 2002*

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- (i) the market value, when the offence was committed, of a dangerous drug or controlled substance similar, or substantially similar, to the illegal drug involved in the offence; 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 relevant person's property—
    - (i) if the application relates to a single offence—before, during and after the commission of the offence; or
    - (ii) if the application relates to 2 or more offences—before, during and after the offence period;
  - (e) the relevant person's income and expenditure—
    - (i) if the application relates to a single offence—before, during and after the commission of the offence; or
    - (ii) if the application relates to 2 or more offences—before, during and after the offence period.
- (2) The court—
- (a) may treat as the value of the benefit the value the benefit would have had if derived when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the benefit was derived and the time the valuation is being made.
- (3) In this section—
- offence period*, for an application for a pecuniary penalty order made in relation to 2 or more offences, means the period starting when the earlier or earliest of the offences was committed and ending when the later or latest of the offences was committed.

**188 Procedure if application relating to 1 confiscation offence**

- (1) This section applies if—
  - (a) an application for a pecuniary penalty order relates to 1 confiscation offence; and
  - (b) at the hearing of the application, evidence is given that the value of the person's property after the commission of the confiscation offence was more than the value of the property before the commission of the offence.
- (2) The court must treat the difference as the benefits derived by the person from the commission of the offence, other than to the extent the court is satisfied the reason for the difference was not related to the commission of the offence.

**189 Procedure if application relating to more than 1 confiscation offence**

- (1) This section applies if—
  - (a) an application for a pecuniary penalty order relates to more than 1 confiscation offence; and
  - (b) at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period was more than the value of the property before the start of the offence period.
- (2) The court must treat the difference as the benefits derived by the person from the commission of the offences, other than to the extent the court is satisfied the difference was not related to the commission of the offences.

**190 Property that may be taken into account for assessment**

- (1) For this division, the following property of a person is presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person because of the commission of the offence or offences—
  - (a) all property of the person when the application for the pecuniary penalty order is made; and
  - (b) all property of the person at any time within the shorter of the following periods—

- (i) the period between the day the offence, or the earliest offence, was committed and the day the application is made;
  - (ii) the period of 5 years immediately before the day the application is made.
- (2) For subsection (1), property of a person that vests in the official trustee in bankruptcy because of the person's bankruptcy is taken to continue to be the property of the person.

### **191 Property under effective control**

In assessing the value of benefits derived by a person from the commission of an offence, the court may treat as property of the person any property that, in the court's opinion, is under the person's effective control.

### **192 Particular benefits not to be taken into account**

The court must not take into account a benefit for the purposes of a pecuniary penalty order if a pecuniary penalty has already been imposed because of the benefit under this Act or a law of the Commonwealth or another State.

### **193 Expenses and outgoings**

- (1) For this division, any expenses or outgoings of the person in, or in connection with, the commission of the offence or offences must be disregarded.
- (2) In this section—

*commit* an offence includes attempt, conspire, plan and prepare to commit the offence.

*expenses or outgoings*, of the person, includes all costs and expenses incurred by the person in, or in connection with, committing the offence or offences.

*Example of expenses or outgoings—*

The cost of acquiring or attempting to acquire something concerned in committing the offence.

**194 Evidence**

- (1) Despite any rule of law or practice about hearsay evidence, the court may, for this division, receive evidence of the opinion of a prescribed officer who is experienced in the investigation of illegal activities involving dangerous drugs about—
  - (a) the market value at a particular time of a particular kind of dangerous drug or controlled substance; or
  - (b) the amount, or range of amounts, ordinarily paid at a particular time for the doing of anything in relation to a particular kind of dangerous drug or controlled substance.
- (2) In this section—

*prescribed officer* means—

  - (a) a police officer; or
  - (b) a member of the Australian Federal Police; or
  - (c) an officer of customs within the meaning of the *Customs Act 1901* (Cwlth); or
  - (d) an authorised commission officer.

**Division 4 Other provisions****195 Discharge of pecuniary penalty order**

- (1) A pecuniary penalty order is discharged if—
  - (a) the conviction because of which the order was made is quashed; or
  - (b) it is discharged on appeal.
- (2) If the pecuniary penalty order is registered under the *Service and Execution of Process Act 1992* (Cwlth), notice of the order's discharge must be given to the persons, in the way and within the time the court that quashed the conviction or upheld the appeal considers appropriate.

**196 Charge on restrained property under restraining order if pecuniary penalty order made**

- (1) This section applies if—
  - (a) a pecuniary penalty order is, or has been, made against a person convicted of a confiscation offence (the *prescribed respondent*); and
  - (b) a restraining order is, or has been, made against the property of a person, whether the prescribed respondent or someone else, based on—
    - (i) the prescribed respondent's conviction of the confiscation offence; or
    - (ii) the charging, or proposed charging, of the prescribed respondent with the confiscation offence or a related indictable offence.
- (2) A charge on the property that secures the payment to the State of the amount payable under the pecuniary penalty order comes into existence on the making of whichever is the later of the pecuniary penalty order or the restraining order.
- (3) The charge ceases to have effect if—
  - (a) the pecuniary penalty order is discharged; or
  - (b) the pecuniary penalty is paid; or
  - (c) the property is disposed of under an order under section 219;<sup>38</sup> or
  - (d) the property is disposed of with the approval of—
    - (i) the Supreme Court; or
    - (ii) if the public trustee has been directed to take control of the property—the public trustee; or
  - (e) the property is sold to a buyer in good faith for sufficient consideration and without notice of the charge.
- (4) The charge is subject to every encumbrance over the property that was in existence immediately before the pecuniary

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<sup>38</sup> Section 219 (Public trustee may apply for order for satisfying liability because of confiscation order or automatic forfeiture)

penalty order was made but has priority over all other encumbrances.

- (5) Subject to subsection (3), the charge remains on the property despite any disposal of the property.
- (6) The charge may be registered under a law that provides for the registration of charges on property of the type affected by the charge.
- (7) If the charge is registered under subsection (6), a person who buys the property after the registration of the charge is, for the purposes of subsection (3)(e), taken to have had notice of the charge.

### **197 Pecuniary penalty order to be registered**

- (1) This section applies if a pecuniary penalty order has been made against a person.
- (2) The registrar of titles and any other person responsible for keeping registers relating to property must, on request and on production to the person of sufficient evidence of the order, record in the appropriate register a statement that the pecuniary penalty order has been made.
- (3) This section is to be given effect even though a relevant document of title is not produced to a registrar or any other person.
- (4) This section applies despite any other Act.

### **198 Application of property under effective control for satisfying pecuniary penalty order**

- (1) The State may apply to a court for an order declaring that particular property is under the effective control of a person against whom the court has made a pecuniary penalty order (the *controlling person*).
- (2) The State must give written notice of the application to—
  - (a) the controlling person; and
  - (b) anyone else the appropriate officer making the application for the State considers may have an interest in the property.

- (3) The controlling person, and anyone else who claims an interest in the property, may appear at the hearing of the application.
- (4) If the court is satisfied that the property is under the effective control of the controlling person, the court may make an order declaring that the property is available to satisfy the pecuniary penalty order to the extent to which property of the controlling person is not readily available for the purpose.
- (5) The pecuniary penalty order may be enforced against the property, to the extent stated in the declaration, as if the property were the controlling person's property.
- (6) The court may also make a restraining order in relation to the property as if the property were the controlling person's property.
- (7) The absence of a person required to be given notice of the application does not prevent a court from making the order.

## **199 Rehearing**

- (1) This section applies if a pecuniary penalty order has been made against a person who was charged with a confiscation offence on the ground that the person is unamenable to justice.
- (2) The person or the State may apply to the court that made the order to have the order set aside.
- (3) If the applicant is the person against whom the order was made, the applicant must give notice of the application to the Attorney-General.
- (4) The Attorney-General may appear to oppose the grant of the application.
- (5) The court may set aside the order on the terms and conditions about costs or otherwise the court considers appropriate.
- (6) If the court sets aside the order, the court may rehear the application for the order immediately or at a later time fixed by the court.

## Chapter 4      **Special forfeiture orders**

### Part 1                      **Special forfeiture order application**

#### **200      Application for special forfeiture order**

- (1) This section applies if—
  - (a) a person (the *prescribed respondent*) has been convicted of a confiscation offence; and
  - (b) the prescribed respondent, or someone else for the prescribed respondent, has derived, is deriving, or is to derive, benefits (*benefits*) from a contract entered on or after 12 May 1989 (*relevant contract*) about either of the following—
    - (i) a depiction of the confiscation offence or alleged confiscation offence in a movie, book, newspaper, magazine, radio, or television production, or in any other electronic form, or live or recorded entertainment of any kind; or
    - (ii) an expression of the prescribed respondent's thoughts, opinions or emotions about the confiscation offence.
- (2) The State may apply to the Supreme Court at any time for an order (*special forfeiture order*) that the prescribed respondent pay to the State an amount equal to all or part of the prescribed respondent's benefits under the relevant contract.
- (3) This section applies to a contract made before or after the prescribed respondent's conviction, whether in Queensland or elsewhere, including outside Australia.

#### **201      Notice of application**

- (1) The State must give notice of the application to the prescribed respondent and anyone else mentioned in section 200(1)(b).

- (2) The Supreme Court may, at any time before finally deciding the application—
  - (a) direct the State to give notice of the application to the persons, in the way and within the time the court considers appropriate; or
  - (b) amend the notice of application as it considers appropriate, either at the State's request or with the State's approval.
- (3) Anyone given notice of the application may appear at the hearing of the application.

## **202 Making of special forfeiture order**

- (1) If the Supreme Court is satisfied the prescribed respondent has derived, is deriving or will derive benefits under the relevant contract, the court may make a special forfeiture order.
- (2) The order must—
  - (a) state, as the amount to be paid to the State, the amount assessed under part 2 as the value of the benefit derived under the relevant contract; and
  - (b) direct any person who, under the relevant contract, is required to pay amounts to the prescribed respondent or another person, at the request or by the direction of the prescribed respondent, to pay the amounts to the State.

## **Part 2 Assessment of benefits**

### **203 Assessment of benefits**

- (1) When assessing the value of benefits derived or to be derived under a relevant contract, the Supreme Court must have regard to the evidence before it about the following—
  - (a) the value of cash and other property that came into the possession or under the control of the prescribed respondent or someone else at the request, or by the

- direction, of the prescribed respondent because of the relevant contract;
- (b) the value of any benefit provided for the prescribed respondent or someone else at the request or by the direction of the prescribed respondent because of the relevant contract;
  - (c) the value of the prescribed respondent's property before and after the making of the relevant contract;
  - (d) the prescribed respondent's income and expenditure before and after the making of the relevant contract.
- (2) The court—
- (a) may treat as the value of the benefit the value the benefit would have had if received when the valuation is being made; and
  - (b) without limiting paragraph (a), may have regard to any decline in the purchasing power of money between the time the benefit was received and the time the valuation is being made.

## **204 How particular amounts may be treated**

- (1) This section applies if, at the hearing of an application for a special forfeiture order, evidence is given that the value of the prescribed respondent's property after the making of the relevant contract was more than the value of the property before the making of the contract.
- (2) The Supreme Court must treat the difference as the value of the benefit received by the person from the contract, other than to the extent the court is satisfied the reason for the difference was not related to the making of the contract.

## **205 Property that may be taken into account for assessment**

- (1) For this part, the following property of a person is presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person because of the making of the relevant contract—

- (a) all property of the prescribed respondent when the application for the special forfeiture order is made;
  - (b) all property of the prescribed respondent at any time within the shorter of the following periods—
    - (i) the period between the day the relevant contract was made and the day the application is made;
    - (ii) the 5 years immediately before the day the application is made.
- (2) For subsection (1), property of a person that vests in the official trustee in bankruptcy because of the person's bankruptcy is taken to continue to be the property of the person.

## **206 Property under effective control**

In assessing the value of benefits derived by a person from a relevant contract, the Supreme Court may treat as property of the person any property that, in the court's opinion, is under the effective control of the person.

## **207 Expenses and outgoings**

For this part, any expenses or outgoings of the person in connection with the relevant contract must be disregarded.

# **Part 3 Other provisions**

## **208 Application of property under effective control for satisfying special forfeiture order**

- (1) The State may apply to the Supreme Court for an order declaring that particular property is under the effective control of a person against whom the court has made a special forfeiture order (the *controlling person*).
- (2) The State must give written notice of the application to—
  - (a) the controlling person; and

- (b) anyone else the appropriate officer making the application for the State considers may have an interest in the property.
- (3) The controlling person, and anyone else who claims an interest in the property, may appear at the hearing of the application.
- (4) If the court is satisfied that the property is under the effective control of the controlling person, the court may make an order declaring that the property is available to satisfy the special forfeiture order to the extent to which property of the controlling person is not readily available for the purpose.
- (5) The special forfeiture order may be enforced against the property, to the extent stated in the declaration, as if the property were the controlling person's property.
- (6) The court may also make a restraining order in relation to the property as if the property were the controlling person's property.
- (7) The absence of a person required to be given notice of the application does not prevent the court from making the order.

## **209 Effect of special forfeiture order**

- (1) The amount stated in a special forfeiture order is a debt payable by the prescribed respondent to the State.
- (2) The special forfeiture order may be enforced as if it were a money order made by the Supreme Court in a civil proceeding taken by the State against the person for the recovery of the amount payable under the special forfeiture order.
- (3) A person who pays an amount payable under a relevant contract to the State as directed under a special forfeiture order is discharged from the terms of the relevant contract.

## **210 Application of amounts paid to the State under this chapter**

- (1) The Governor in Council may direct that an amount paid to the State under a special forfeiture order must be applied to satisfy—

- (a) an order made under the *Penalties and Sentences Act 1992* requiring the prescribed respondent to make restitution or pay compensation; or
  - (b) an order made by a court requiring the prescribed respondent to pay damages to a person for injury suffered by the person because of the commission of the confiscation offence or alleged confiscation offence to which the relevant contract relates.
- (2) If an order mentioned in subsection (1) has been made and has not been satisfied, the person in whose favour it was made may, within 5 years after the day the order was made, apply to the Attorney-General for the order to be satisfied out of money paid to the State under a special forfeiture order.
- (3) After the end of the 5 years, money paid to the State under a special forfeiture order must be paid to the consolidated fund and any application by a person under subsection (2) is absolutely barred.

## **211 Special forfeiture order to be registered**

- (1) The registrar of titles and any other person responsible for keeping registers relating to property must, on request and on production to the person of sufficient evidence of a special forfeiture order record in the appropriate register a statement that the order has been made.
- (2) This section is to be given effect even though any relevant document of title is not produced to a registrar or any other person.
- (3) This section applies despite any other Act.

## **Chapter 5 Particular provisions about forfeiture of property**

### **212 Chapter does not apply to particular property**

This chapter does not apply to forfeited property that may be dealt with under the *Police Powers and Responsibilities Act 2000*, chapter 11, part 3, division 7.<sup>39</sup>

### **213 Forfeited property not to be disposed of during appeal period**

- (1) Within the appeal period, the State must not, without the leave of the court that made the order forfeiting property or, for property that is automatically forfeited, the relevant restraining order—
  - (a) dispose of property forfeited to the State under this Act; or
  - (b) authorise anyone else to dispose of the property.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, section 440, forfeited property in the possession of the Police Service may not be dealt with until all proceedings for the offence or suspected offence for which the property was forfeited have been finally decided.

- (2) When the appeal period ends, the State may dispose of the property unless—
  - (a) if the property was forfeited under a forfeiture order—the relevant order has been discharged; or
  - (b) if the property was automatically forfeited because of the conviction of a person of a serious criminal offence—the conviction of the person of the offence has been quashed.

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<sup>39</sup> *Police Powers and Responsibilities Act 2000*, chapter 11 (Administration), part 3 (Dealing with things in the possession of police service), division 7 (Dealing with forfeited things)

(3) In this section—

*appeal period* means—

- (a) if the property was forfeited because of the conviction of a person of a confiscation offence—the period ending when all proceedings relating to the conviction are finally decided; or
- (b) for an appeal that may be started under section 263<sup>40</sup>—the period for starting the appeal or, if an appeal is started, the period ending when the appeal is finally decided.

## **214 Disposal of forfeited property by State**

- (1) The Attorney-General may give directions about how property forfeited under this Act is to be dealt with.
- (2) Also, the Attorney-General may authorise the chairperson, the DPP or a public service officer to give the directions for the Attorney-General.
- (3) Without limiting subsection (1) or (2), a direction may provide for the payment to Legal Aid out of forfeited property, or the proceeds of the disposal of forfeited property, of amounts payable to satisfy a charge over the property in favour of Legal Aid.
- (4) The Attorney-General may do or authorise the doing of anything necessary or convenient to be done for dealing with the property.
- (5) The net proceeds of the disposal of property forfeited under chapter 2 must be paid to the consolidated fund.

## **215 Procedural matters about forfeiture**

- (1) A person who is in possession of property forfeited to the State under this Act or documents of title to forfeited property must give the property or documents of title to a person authorised by the Attorney-General on the authorised person's demand.

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40 Section 263 (Appeals)

- (2) A person who gives property or documents of title to property to an authorised person under subsection (1) is discharged from any duty or obligation to anyone else for the disposal of the property or documents of title and from all liability that, apart from this subsection, might have arisen because of the giving of the property or documents of title.
- (3) The registrar of titles and anybody else who is required or permitted to keep a register about dealings with property must, if asked and given sufficient evidence of the forfeiture of property to the State under this Act, make in the register the entries necessary to record—
  - (a) the forfeiture to and vesting in the State of the property; or
  - (b) if the Attorney-General directs—the public trustee as the holder of the property on trust for the State.
- (4) Subsection (3) applies—
  - (a) despite any other Act; and
  - (b) even if the relevant document of title is not produced.

## **216 Filing of forfeiture certificate**

- (1) This section applies if—
  - (a) the registrar of the Supreme Court issues a forfeiture certificate; or
  - (b) a person produces a forfeiture certificate to the registrar of the Supreme Court.
- (2) The registrar must file the forfeiture certificate, without payment of fee.
- (3) On filing—
  - (a) the certificate is a record of the Supreme Court; and
  - (b) the order it mentions is taken to be a judgment of the Supreme Court, properly entered, obtained by the State as plaintiff in an action for the recovery of the property to which the order relates against the person from whom the property has been divested; and

- (c) the State may take the proceedings to recover the property that could be taken if the judgment had been given in favour of the State.

## **Chapter 6            Provisions about particular government entities**

### **Part 1                Powers of public trustee**

#### **Division 1           Provisions for satisfying particular orders**

##### **217    Definition for div 1**

In this division—

*relevant court* means—

- (a) the Supreme Court; or
- (b) if the confiscation order was made by another court—the court that made the order.

##### **218    Application of div 1**

This part applies if the public trustee has taken control of restrained property because of a direction in a restraining order and—

- (a) a confiscation order is made against the person entitled to the restrained property; or
- (b) the property is automatically forfeited.

**219 Public trustee may apply for order for satisfying liability because of confiscation order or automatic forfeiture**

- (1) The public trustee may apply to a relevant court for an order directing the public trustee to pay to the consolidated fund out of property under the control of the public trustee—
  - (a) the amount the Attorney-General decides is the value, as at the time of the decision, of—
    - (i) the property forfeited under a forfeiture order; or
    - (ii) the automatically forfeited property;
  - (b) the amount ordered to be paid under a proceeds assessment order or a pecuniary penalty order.
- (2) The relevant court may order the public trustee to pay a stated amount to the consolidated fund from the proceeds realised by the public trustee from the property or the disposal of the property.
- (3) The relevant court may make any other order the court considers necessary to enable the public trustee to comply with the order, including, but not limited to the following—
  - (a) an order directing the public trustee to dispose of stated property under the control of the public trustee;
  - (b) an order authorising a stated person to sign any document or to do anything else necessary to enable the public trustee to dispose of property under the control of the public trustee;
  - (c) an order specifying the person to whom the public trustee should pay any amount remaining after making the payments authorised under section 220(a), (b) and (c).
- (4) The relevant court may make an order under subsection (3) when it makes an order under subsection (2) or, on the application of the public trustee, at a later time.

**220 Application of proceeds to satisfy order**

- (1) Proceeds realised by the public trustee from the property or the disposal of the property must be applied as follows—

- (a) first, in payment of fees or charges payable to the public trustee under section 223;
  - (b) second, in payment of expenses incurred by the public trustee in disposing of the property;
  - (c) third, in payment to the consolidated fund of the amount stated in the order of the relevant court under section 219(1);
  - (d) fourth, if the relevant court makes an order of a kind mentioned in section 219(3)(c), in payment of any remainder to the person specified by the relevant court;
  - (e) fifth, in payment of any remainder to the person who appears to the public trustee to be entitled to the remainder of the proceeds.
- (2) For subsection (1), proceeds realised from the disposal of the property means the proceeds that remain after all registered or statutory encumbrances over the property have been discharged.

## **221 Effect of payment under s 220**

On the payment of an amount to the consolidated fund under section 219, the liability of a person under a confiscation order or because of the automatic forfeiture of property to which the payment relates is, to the extent of the payment, discharged.

## **Division 2 Other provisions**

### **222 If public trustee directed to take control of restrained property**

A direction of a court requiring the public trustee to take control of restrained property is sufficient authority for the public trustee to do anything necessary or desirable to be done to give effect to the order.

**223 Public trustee's fees and charges**

If the public trustee controls property under this Act, the public trustee may charge and receive, for controlling the property and any income from it, the fees or charges the public trustee may charge an estate under administration under the *Public Trustee Act 1978*.

**224 Public trustee's liability for rates etc.**

- (1) On taking control of property under a restraining order, the public trustee becomes liable, to the extent of the rents and profits received by the public trustee from the property on or after that date, to pay any rates, land tax or municipal or other statutory charges that—
  - (a) are imposed under a law of the State on or in relation to the restrained property; and
  - (b) become payable on or after the date of the restraining order.
- (2) Also, if the public trustee takes control of a person's business under a restraining order and carries on that business, the public trustee is not personally liable for—
  - (a) any payment for long service leave for which that person was liable; or
  - (b) any payment for long service leave to which a person employed by the public trustee to manage the business, or the legal personal representative of that person, becomes entitled after the date of the restraining order; or
  - (c) any debts incurred by the person in relation to the business that the person was liable to pay.

**225 Agents for public trustee**

- (1) If the public trustee controls property under a restraining order, the public trustee may appoint a person as agent of the public trustee for this Act only with the leave of the Supreme Court.

- (2) The appointment must specify the powers of the public trustee that the agent may perform in relation to property.
- (3) This section applies despite the *Public Trustee Act 1978*.

## **226 Obstruction**

- (1) A person must not hinder or obstruct the public trustee or an officer of the public trustee in the performance of the public trustee's functions under a restraining order.

Maximum penalty—25 penalty units or 6 months imprisonment.

- (2) In this section—

*officer*, of the public trustee, means a public service employee whose duties include performing functions for the public trustee under this Act.

## **Part 2 Legal aid**

### **227 Legal Aid Act**

- (1) This part applies despite the Legal Aid Act.
- (2) Also, this part applies only to an application for legal assistance under the Legal Aid Act in relation to—
  - (a) a proceeding under this Act; or
  - (b) a criminal proceeding, including any proceeding on appeal against conviction or sentence.

### **228 Matters not to be taken into account in deciding application for legal assistance**

- (1) This section applies to an application for legal assistance under the Legal Aid Act by a person whose property is restrained under a restraining order under this Act.

- (2) In applying the criteria under the Legal Aid Act to the application for legal assistance, Legal Aid must not take the restrained property into account.

### **229 Legal Aid may require charge over property**

- (1) It is not a contravention of a restraining order for Legal Aid to impose a condition on an approval to give legal assistance requiring the person to be assisted to give Legal Aid a charge over restrained property.
- (2) If Legal Aid takes a charge over restrained property, Legal Aid must give the DPP notice of the charge.

### **230 Effect of forfeiture on charge**

On the forfeiture of property under this Act, a charge that is enforceable under the Legal Aid Act continues to have effect and may be satisfied out of the proceeds of the disposal of the forfeited property.

*Note—*

The Legal Aid Act contains provisions allowing Legal Aid to enforce charges over property that is not forfeited under this Act.

## **Chapter 7 Interstate orders and warrants**

### **Part 1 Interpretation**

#### **231 Definitions for ch 7**

In this chapter—

*relevant order* means—

- (a) an interstate forfeiture order that expressly applies to stated property in Queensland; or



**233 Interim filing of facsimile copies**

- (1) This section applies if—
  - (a) an appropriate person mentioned in section 232 files in the Supreme Court a facsimile copy of a sealed copy of a relevant order or an amendment made to a relevant order; and
  - (b) the facsimile copy otherwise complies with any requirements for filing orders under the *Uniform Civil Procedure Rules 1999*.
- (2) The Supreme Court must treat the facsimile copy as a sealed copy of the relevant order or the amendment made to the relevant order.
- (3) However, if the sealed copy of the relevant order or amendment is not filed within 10 days after the facsimile copy is filed, the effect of filing the facsimile copy ends.
- (4) If the sealed copy of the relevant order or amendment is filed within 10 days after the facsimile copy is filed, the sealed copy is taken to have been filed on the day the facsimile copy was filed.
- (5) Despite the effect of filing a facsimile copy of a relevant order or amendment ending in circumstances mentioned in subsection (3), any forfeiture already made in relation to the order is not affected.

**234 Effect of filing interstate forfeiture order**

- (1) An interstate forfeiture order that is filed under this chapter is taken for this Act to be a forfeiture order under this Act until—
  - (a) it ceases to be in force in the State in which it was made; or
  - (b) its filing is cancelled under this Act.
- (2) However—
  - (a) a person may not apply for, and a court may not make the following orders under this Act in relation to the property—

- (i) an exclusion order;
- (ii) an innocent interest exclusion order;
- (iii) a third party order;
- (iv) a buy-back order;
- (v) a release order;
- (vi) an order under section 176;<sup>41</sup> and
- (b) the order may not be discharged under this Act; and
- (c) the DPP is not required to give notice as required under section 174;<sup>42</sup> and
- (d) the State may not dispose of the property under this Act; and
- (e) the Attorney-General may not give directions under this Act about the disposal of forfeited property; and
- (f) an appeal against the order does not lie under this Act.

### **235 Effect of filing interstate restraining order**

- (1) An interstate restraining order that is filed under this chapter is taken for this Act to be a restraining order made under this Act until—
  - (a) it ceases to be in force in the State in which it was made; or
  - (b) its filing is cancelled under this Act.
- (2) However—
  - (a) a condition may not be imposed on the restraining order under this Act; and
  - (b) the public trustee can not be directed under this Act to take control of the property; and
  - (c) notice of the making of the restraining order is not required to be given under this Act; and

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41 Section 176 (If application for order declaring value of property)

42 Section 174 (Notice after conviction quashed or forfeiture order discharged)

- (d) a person may not apply to a court for, and a court may not make, an order under this Act excluding the property from the interstate restraining order; and
  - (e) a person may not apply for, and the Supreme Court may not make, an order under this Act that the property be sold; and
  - (f) a court may not make any other orders in relation to the restrained property; and
  - (g) the duration of the restraining order must not be decided under this Act; and
  - (h) the property is not charged in favour of the State; and
  - (i) the public trustee may not apply under chapter 6, part 1, division 1 for orders about satisfying a person's liability under this Act; and
  - (j) an appeal does not lie against the order under this Act.
- (3) Subsection (2)(h) is subject to section 237.<sup>43</sup>

### **236 Cancellation of filing**

- (1) The Supreme Court or a judicial registrar may cancel the filing of a relevant order if the court or judicial registrar is satisfied—
- (a) filing was improperly obtained; or
  - (b) particulars of any amendments made to the order, or of any ancillary orders or directions made by a court, are not given to the Supreme Court under the *Uniform Civil Procedure Rules 1999*.
- (2) Also, the Supreme Court may cancel the filing of a relevant order to the extent that the order is not capable of enforcement in Queensland.

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<sup>43</sup> Section 237 (Charge on property subject to filed interstate restraining order)

**237 Charge on property subject to filed interstate restraining order**

- (1) This section applies if—
  - (a) an interstate restraining order is made on the basis of the charging or proposed charging of a person with an interstate confiscation offence; and
  - (b) an interstate pecuniary penalty order is made based on the conviction of the person of the interstate confiscation offence; and
  - (c) either of the following happens—
    - (i) the interstate restraining order is filed under this Act;
    - (ii) the interstate pecuniary penalty order is filed under the *Service and Execution of Process Act 1992* (Cwlth).
- (2) On the filing of the interstate restraining order or the pecuniary penalty order, a charge on the property restrained under the restraining order is created to secure the payment of the pecuniary penalty.
- (3) The charge ceases to have effect when under the relevant corresponding law the charge created on the making of the pecuniary penalty order ceases to have any effect.
- (4) Section 196(4), (5) and (6) apply to the charge in the same way and to the same extent as they apply to a charge created by section 196(2).<sup>44</sup>

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<sup>44</sup> Section 196 (Charge on restrained property under restraining order if pecuniary penalty order made)



**240 Order about property seized in another State for which court refuses to make forfeiture order**

- (1) This section applies if—
  - (a) property has been seized in another State under a search warrant issued under a corresponding law in reliance on the commission of a confiscation offence; and
  - (b) an application has been made to a court for a forfeiture order in relation to the property; and
  - (c) the court refuses to make the forfeiture order.
- (2) The court must make an order directing that the property be returned to the person from whose possession it was seized.
- (3) In this section—

*property* seized under a search warrant does not include—

  - (a) property used or intended to be used in, or in connection with, the commission of an interstate confiscation offence; or
  - (b) property derived by anyone from the commission of an interstate confiscation offence.

**241 Application by person for return of property seized in another State**

- (1) This section applies if property has been seized in another State under a search warrant issued under a corresponding law in reliance on the commission of a confiscation offence.
- (2) The person from whose possession the property was seized may apply to a Magistrates Court for an order—
  - (a) directing that the property be returned to that person; or
  - (b) directing that the person be allowed access to the property.
- (3) The applicant must give notice of the application and when and where the application will be heard to the Attorney-General and the commissioner of the police service.
- (4) The court may make the order on the conditions the court considers appropriate.

(5) In this section—

*property* seized under a search warrant does not include—

- (a) property used or intended to be used in, or in connection with, the commission of an interstate confiscation offence; or
- (b) property derived by anyone from the commission of an interstate confiscation offence.

## **Part 4                      Other provisions**

### **242      Public trustee may act as agent**

The public trustee may enter into an agreement to act as the agent of a person directed by an interstate restraining order to take control of property.

## **Chapter 8                  Obligations of financial institutions**

### **Part 1                      Interpretation**

#### **243      Meaning of *customer-generated financial transaction document***

A *customer-generated financial transaction document*, of a financial institution, is a financial transaction document of the institution—

- (a) that relates to—
  - (i) the opening or closing by a person of an account with the institution; or

- (ii) the operation by a person of an account with the institution; or
  - (iii) the opening or use by a person of a deposit box held by the institution; or
  - (iv) the telegraphic or electronic transfer of funds by the institution for a person to another person; or
  - (v) the transmission of funds between Australia and a foreign country or between foreign countries for a person; or
  - (vi) an application by a person for a loan from the institution (if a loan is made to the person under the application); and
- (b) that is given to the institution by or for the person, whether or not the document is signed by or for the person.

**244 Meaning of *essential customer-generated financial transaction document***

An *essential customer-generated financial transaction document*, of a financial institution, is a customer-generated financial transaction document other than a document that relates to the operation of an account held with the institution.

**245 Meaning of *financial transaction document***

A *financial transaction document*, of a financial institution, is a document, other than a cheque or payment order, that relates to a financial transaction carried out by the institution in its capacity as a financial institution, including, but not limited to, a document relating to—

- (a) the opening, operating or closing of an account held with the institution; and
- (b) the opening or use of a deposit box held by the institution.

**246 Meaning of *minimum retention period***

The *minimum retention period*, for a financial transaction document of a financial institution, is—

- (a) if the document relates to the opening of an account with the institution—the 7 years after the day the account is closed; or
- (b) if the document relates to the opening by a person of a deposit box held by the institution—the 7 years after the day the deposit box ceases to be used by the person; or
- (c) otherwise—the 7 years after the day the transaction takes place.

**Part 2 Provisions applying to financial institutions****247 Retention of records by financial institutions**

- (1) A financial institution must, subject to section 248, keep each essential customer-generated financial transaction document in its original form for the minimum retention period for the document.

Maximum penalty—200 penalty units.

- (2) A financial institution must keep the following documents, or a copy of the following documents, for the minimum retention period for the relevant documents—
  - (a) each customer-generated financial transaction document that is not an essential customer-generated financial transaction document;
  - (b) each financial transaction document—
    - (i) that is not a customer-generated financial transaction document; and
    - (ii) whose retention is necessary to preserve a record of the financial transaction concerned.

Maximum penalty—200 penalty units.

- (3) Subsection (2) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money of not more than \$200 or a higher amount prescribed under a regulation for this subsection.
- (4) A financial institution must retain and store documents required to be kept under subsection (1) and (2) in a way that makes retrieval of the documents reasonably practicable.  
Maximum penalty—200 penalty units.
- (5) This section does not limit any other obligation of a financial institution to retain documents.

#### **248 Register of original documents**

- (1) If a financial institution is required by law to release an original of an essential customer-generated financial transaction document before the minimum retention period for the document ends, the institution must keep a complete copy of the document until the period has ended or the original is returned, whichever happens first.  
Maximum penalty—200 penalty units.
- (2) The financial institution must keep a register of documents released under subsection (1).  
Maximum penalty—200 penalty units.

#### **249 Communication of information by financial institutions to particular officers**

- (1) This section applies if a financial institution has information about an account held, or a transaction conducted, with the institution and the institution has reasonable grounds for believing that—
  - (a) the information may be relevant to—
    - (i) an investigation of, or the prosecution of a person for, an offence against a law of the State; or
    - (ii) an investigation of a serious crime related activity or another matter for which an order may be made under chapter 2; or

- (b) the information would otherwise be of assistance in the enforcement of this Act.
- (2) The institution may give the information to a police officer.
- (3) If the information relates to an investigation of a serious crime related activity or another matter for which an order may be made under chapter 2, the institution may give the information to a commission officer.
- (4) No action, suit or proceeding lies against—
  - (a) a financial institution; or
  - (b) an officer or agent of the institution acting in the course of the person's employment or agency;
 in relation to any action taken by the institution or person under subsection (2) or (3).
- (5) If a financial institution, or an officer or agent of the institution, gives information under subsection (2) or (3) as soon as practicable after forming the belief mentioned in subsection (1), the institution or person is taken, for the purposes of sections 250 and 252, not to have been in possession of that information at any time.
- (6) In this section—
 

*officer* includes director, secretary, executive officer or employee.

## Chapter 9      Offences

### 250      Money laundering

- (1) A person who engages in money laundering commits a crime.  
Maximum penalty—3000 penalty units or 20 years imprisonment.
- (2) A person engages in money laundering if—
  - (a) the person—

- (i) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or
    - (ii) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or
    - (iii) conceals or disguises the source, existence, nature, location, ownership or control of tainted property; and
  - (b) the person knows, or ought reasonably to know, that the property is tainted property or is derived from some form of unlawful activity.
- (3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order or a suspension order must be disregarded.
- (4) In this section—  
*tainted property* includes property that is tainted property because of an interstate confiscation offence.

## **251 Charging of money laundering**

- (1) This section applies to a proceeding against a person for money laundering, including a committal proceeding.
- (2) The Attorney-General's written consent must be obtained before a proceeding is started by complaint under the *Justices Act 1886*.
- (3) If the proceeding is not started by complaint under the *Justices Act 1886*, the Attorney-General's written consent must be obtained before the proceeding progresses to a hearing and decision.
- (4) A charge of money laundering may be about—
  - (a) an act, or 2 or more acts committed at the same time or different times; or
  - (b) tainted property relating to an offence, or 2 or more offences committed by the same person or different persons.

- (5) A person may be convicted of money laundering even though the tainted property concerned related to an offence committed by the person.

## **252 Possession etc. of property suspected of being tainted property**

- (1) A person must not receive, possess, dispose of, bring into Queensland, conceal or disguise property that may reasonably be suspected of being tainted property.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) If a person is charged with an offence against this section, it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting that the property mentioned in the charge was either tainted property or derived from any form of unlawful activity.

- (3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order or a suspension order must be disregarded.

- (4) In this section—

*tainted property* includes property that is tainted property because of an interstate confiscation offence.

## **253 Responsibility for acts or omissions of representatives**

- (1) This section applies to a proceeding for an offence against this Act.

- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken also to have been done or omitted to be done also by the person,

unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

*representative* of a person means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## Chapter 10      **Miscellaneous provisions**

### Part 1                      **Arrangements to defeat operation of act**

#### 254      **Definitions for part 1**

In this part—

*defeat* the operation of this Act includes avoid, prevent and impede.

*scheme* means—

- (a) any agreement, arrangement, promise, understanding or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any action, course of action, course of conduct, plan or proposal.

**255 Arrangements to defeat operation of Act**

- (1) The State may apply to the Supreme Court for an order declaring that a scheme carried out by a particular person was carried out for the purpose of directly or indirectly defeating the operation of this Act.
- (2) The State must give written notice of the application to the person against whom the order is sought and anyone else the appropriate officer making the application for the State considers has an interest in the property to which the scheme relates.
- (3) At any time before it finally decides the application, the Supreme Court may direct the State to give notice of the application to the persons, in the way and within the time, the court considers appropriate.

**256 Orders for defeating arrangements**

- (1) If the Supreme Court is satisfied the person carried out a scheme for the purpose of directly or indirectly defeating the operation of this Act in any way, the court may for defeating that purpose—
  - (a) make an order declaring all or part of the scheme void; or
  - (b) make an order varying the operation of all or part of the scheme.
- (2) The court may make the other orders the court considers appropriate in the circumstances for a consequential or related matter or for giving effect to any order of the court under this section, including, for example, orders about the following—
  - (a) any disposal of property;
  - (b) the payment of money;
  - (c) the sale or other realisation of property and the disposal of the proceeds;
  - (d) the creation of a charge on property in favour of any person and the enforcement of the charge created;

- (e) the rights of a person who acquired an interest in the property after the scheme was carried out and before the declaration was made.

## **Part 2                      Other provisions**

### **257      Restriction on functions**

- (1) A proceeds assessment order and a pecuniary penalty order may not both be made in relation to the same serious crime related activity.
- (2) A restraining order under chapter 2 and a restraining order under chapter 3 may not both be made to be in force in relation to the same property at the same time.

### **258      Publication of proceedings**

If a proceeding is started under this Act, the Supreme Court may make the orders it considers appropriate about the publication of any matter arising under this Act.

### **259      Requirements to give notice**

- (1) A regulation may prescribe the way a notice authorised or required by this Act to be given to a person must be given, including by substituted service.
- (2) A person must be considered to have been given notice if all reasonable efforts were made to give the notice whether or not the person actually received notice.

### **260      Sentencing court not to have regard to property forfeiture or pecuniary penalty**

In deciding the sentence to be imposed on a person (the *defendant*) for a confiscation offence, the court must not have regard to the question of whether or not—

- (a) the defendant's property is, or may become, the subject of a forfeiture order or automatic forfeiture; or
- (b) the defendant has been or may be ordered to pay an amount under a pecuniary penalty order or a proceeds assessment order or to forfeit an amount to the State under a special forfeiture order.

**261 Costs incurred on variation of forfeiture or restraining orders on application by third parties**

- (1) This section applies if—
  - (a) the Supreme Court makes an order under this Act varying a forfeiture order or restraining order that is registered under a corresponding law; and
  - (b) the variation is made on the application of a third party and affects the interests of the third party in relation to property in the other State.
- (2) The Supreme Court may, in relation to the costs the third party incurred in applying for and obtaining the variation—
  - (a) order that the third party's actual costs be paid to the third party; or
  - (b) if it is satisfied special circumstances exist, order that part only of the third party's costs be paid to the third party.
- (3) The costs must be paid by a person or authority specified by the Supreme Court.
- (4) The Supreme Court may direct how the costs are to be decided.
- (5) This section does not limit the powers of the Supreme Court to award costs under any other law.
- (6) In this section—

*third party*, in relation to a forfeiture order or restraining order, means a person who is not the subject of the order.

*vary* includes limit the way in which an order applies.

**262 Costs**

If—

- (a) a person brings, or appears at, a proceeding under this Act, other than under chapter 2;<sup>46</sup> and
- (b) the person is successful in the proceeding; and
- (c) the court is satisfied that the person was not involved in any way in the commission of the offence to which the proceeding related;

the court may order the State to pay all costs incurred by the person in connection with the proceeding or the part of the costs decided by the court.

*Note—*

In civil proceedings, the court decides costs and the costs are assessed under the *Uniform Civil Procedure Rules 1999*.

**263 Appeals**

Without affecting any other right of appeal, any person aggrieved by an order or the refusal of a court to make an order under this Act may appeal against the order or refusal to the Court of Appeal.

**264 Registration fees**

- (1) No fee is payable by the State for—
  - (a) filing in a registry any order or instrument under this Act or any instrument filed to transfer property to the State under this Act; or
  - (b) anything else for which registry fees are fixed.

*Example of paragraph (b)—*

If fees are fixed for register searches or copies of anything in a register, the State need not pay the fees.

- (2) In this section—

***register*** means a register kept at a registry.

*registry* means—

- (a) the land registry; or
- (b) the office of anybody required or authorised under an Act to keep a register about dealings with property.

## Chapter 11      **General**

### 265      **Evidentiary provision**

- (1) For this Act, each of the following certificates is evidence of what it states—
  - (a) a certificate apparently signed by the chairperson and stating a stated person was or was not an authorised commission officer or a commission officer at a stated time;
  - (b) a certificate apparently signed by the public trustee and stating—
    - (i) the public trustee is in control of stated property under a direction in a restraining order or another order made under chapter 2 or chapter 3 that is in force; and
    - (ii) the terms of the relevant order;
  - (c) a certificate (*forfeiture certificate*) apparently signed by any of the following about a forfeiture order made under chapter 2 or chapter 3 or the automatic forfeiture of property and identifying the property to which the forfeiture order or forfeiture relates—
    - (i) the registrar or a deputy registrar of the Supreme Court;
    - (ii) a registrar or a deputy registrar of the District Court;
    - (iii) a registrar or a deputy registrar of the Childrens Court constituted by a judge;

- (iv) the clerk of the court at the place where a Magistrates Court, or the Childrens Court constituted by a magistrate, makes the order.
- (2) Also, in a proceeding on an application for an order under this Act—
- (a) a certificate under the *Drugs Misuse Act 1986*, section 128<sup>47</sup> is evidence of the matters of which it is evidence in a proceeding under that Act, without proof of the signature, employment or appointment of the person who apparently signed the certificate; and
  - (b) a certificate under the Criminal Code, section 635<sup>48</sup> of a conviction of an offence is evidence of the commission of the offence by the person to whom it relates; and
  - (c) the court may, in deciding an application, have regard to the transcript of any proceeding against a person for an offence to which the application relates and to the evidence given in that proceeding; and
  - (d) the transcript of an examination under an examination order is evidence of the answers given by a person to a question put to the person in the examination.

## **266 Review of Act**

The Minister must ensure the operation of this Act is reviewed as soon as practicable after 1 January 2006.

## **267 Regulation-making power**

The Governor in Council may make regulations under this Act.

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47 *Drugs Misuse Act 1986*, section 128 (Analyst's certificate)

48 Criminal Code, section 635 (Evidence of previous conviction)

## Chapter 12 Transitional provisions, repeal and amendments

### Part 1 Transitional provisions

#### 268 Definitions for ch 12

In this chapter—

***new forfeiture order*** means a forfeiture order made under chapter 3.

***new order*** means each of the following orders—

- (a) a new forfeiture order;
- (b) a new pecuniary penalty order;
- (c) a new restraining order;
- (d) a new special forfeiture order.

***new pecuniary penalty order*** means a pecuniary penalty order made under chapter 3.

***new restraining order*** means a restraining order made under chapter 3.

***new special forfeiture order*** means a special forfeiture order made under chapter 3.

***old Act*** means the repealed *Crimes (Confiscation) Act 1989*.

***old forfeiture order*** means a forfeiture order made under the old Act and in force immediately before the commencement of this part.

***old order*** means any of the following orders—

- (a) an old forfeiture order;
- (b) an old pecuniary penalty order;
- (c) an old restraining order;
- (d) an old special forfeiture order.

***old pecuniary penalty order*** means a pecuniary penalty order made under the old Act and in force immediately before the commencement of this part.

***old restraining order*** means a restraining order made under the old Act and in force immediately before the commencement of this part.

***old special forfeiture order*** means a special forfeiture order made under the old Act and in force immediately before the commencement of this Act.

## **269 Incomplete proceedings for old orders**

- (1) A proceeding started under the old Act for an old order and not finally decided immediately before the commencement of this section may be continued and decided under this Act as if it were a proceeding started under this Act for a corresponding new order.
- (2) Any step taken in the proceeding for the old order is as valid and effective as if it had been taken in a proceeding for the new order.
- (3) The court hearing the proceeding may make the orders under this Act the court considers appropriate.
- (4) However, if the proceeding was started in a court other than the Supreme Court and the proceeding is a proceeding that may only be started in the Supreme Court under this Act, the proceeding may be continued under the old Act as if this Act had not been enacted.

## **270 Incomplete rehearing proceedings**

- (1) A rehearing started under section 39 of the old Act in relation to an old forfeiture order and not finally decided immediately before the commencement of this Act may be continued and decided under this Act as if it were a proceeding for a rehearing started under section 177 of this Act.<sup>49</sup>

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49 Section 177 (Rehearing)

- (2) A rehearing started under section 39 of the old Act in relation to an old pecuniary penalty order and not finally decided immediately before the commencement of this Act may be continued and decided under this Act as if it were a proceeding for a rehearing started under section 199 of this Act.<sup>50</sup>
- (3) A court rehearing a proceeding mentioned in subsection (1) or (2) may make the orders a court rehearing a proceeding of the same kind may make under this Act.

### **271 Interstate orders**

- (1) An interstate forfeiture order registered under the old Act continues to have effect as if it had been filed under this Act and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.
- (2) An interstate pecuniary penalty order registered under the old Act continues to have effect as if it had been filed under this Act and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.
- (3) An interstate restraining order registered under the old Act continues to have effect as if it had been filed under this Act and, to the extent it has not been enforced under the old Act, may be enforced under this Act according to its terms.

### **272 Automatic forfeiture**

- (1) Property that is liable to automatic forfeiture under the old Act is taken to be liable to automatic forfeiture under this Act and any step necessary to be taken for enforcing the forfeiture may be taken under this Act.
- (2) For working out when property liable to automatic forfeiture under the old Act is forfeited to the State, section 163<sup>51</sup> of this Act applies to the property as if it had commenced on the day section 25 of the old Act first applied to the property.

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50 Section 199 (Rehearing)

51 Section 163 (Automatic forfeiture of restrained property)

- (3) However, if, before the commencement of this section, the forfeiture period under the old Act has been extended and the extended forfeiture period ends after the commencement of this section—
- (a) the property is forfeited to the State when the forfeiture period as extended under the old Act ends; and
  - (b) the person may not apply for an extension of the forfeiture period under this Act; and
  - (c) the Supreme Court may not extend the forfeiture period under this Act.

### **273 Old forfeiture orders**

- (1) An old forfeiture order in force immediately before the commencement of this section is taken to be a new forfeiture order and any step necessary to be taken for enforcing the order may be taken under this Act.
- (2) Any proceeding, including an appeal, that may be started by a person because of the making of an old forfeiture order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old forfeiture order was made.

### **274 Old pecuniary penalty orders**

- (1) An old pecuniary penalty order is taken to be a new pecuniary penalty order made by the court that made the old pecuniary penalty order on the conditions stated in the old pecuniary penalty order and may be enforced under this Act.
- (2) Any proceeding, including an appeal, that may be started by a person because of the making of an old pecuniary penalty order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old pecuniary penalty order was made.

### **275 Old restraining orders**

- (1) An old restraining order is taken to be a new restraining order made by the court that made the old restraining order on the

conditions stated in the old restraining order and may be enforced under this Act.

- (2) The new restraining order has effect only for the balance of the term for which the old restraining order would have had effect if this Act had not been enacted.
- (3) Any proceeding, including an appeal, that may be started by a person because of the making of an old restraining order may, if the time for starting the proceeding has not ended, be started under this Act as if this Act had commenced on the day the old restraining order was made.
- (4) If the old restraining order was made in a court other than the Supreme Court, the Supreme Court may extend the period for which the restraining order is to remain in force as if the order had been made under this Act.

## **276 Particular orders about buying back interests in property**

- (1) An order made under section 24 of the old Act and not given effect immediately before the commencement of this section is taken to be a release order made under section 154 of this Act.<sup>52</sup>
- (2) An order made under section 29(11) of the old Act and not given effect immediately before the commencement of this section is taken to be a buy-back order made under section 169 of this Act.<sup>53</sup>
- (3) Anything remaining to be done to give effect to an order mentioned in subsection (1) or (2) may be done in accordance with this Act after the commencement.

## **277 Property under the control of the public trustee**

Property under the control of the public trustee because of a direction in an old restraining order is taken to be under the control of the public trustee because of a direction in a new restraining order and may be dealt with under this Act.

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52 Section 154 (Order for release of property from forfeiture order)

53 Section 169 (When Supreme Court may make buy-back order)

**278 Persons unamenable to justice under old Act**

- (1) If a person who was unamenable to justice under the old Act becomes amenable to justice after the commencement of this section, a provision of this Act applying to a person who later becomes amenable to justice applies to the person.
- (2) Also, a person who, immediately before the commencement of this section, was unamenable to justice under the old Act because the person was found unfit for trial under the repealed *Mental Health Act 1974*, part 4 is taken to be unamenable to justice because of section 109 of this Act.<sup>54</sup>
- (3) In addition, if a proceeding under the old Act had not been started against a person who became unamenable to justice before the commencement of this section, a proceeding may be started against the person under this Act.

**279 Application for chapter 2 restraining order if property restrained under old restraining order**

- (1) This Act does not prevent the State from applying to the Supreme Court for a chapter 2 restraining order in relation to property that includes property that is restrained under an old restraining order.
- (2) If the Supreme Court makes a chapter 2 restraining order in relation to the property to which the application relates, the Supreme Court must also set aside the old restraining order.
- (3) In this section—  
*chapter 2 restraining order* means a restraining order under chapter 2 of this Act.

**280 Other directions, orders and requirements**

- (1) A direction given, or an order or requirement made, in a proceeding under the old Act, that has not yet been complied with or given effect continues to have effect under this Act as if it were given or made under this Act.

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54 Section 109 (Meaning of *unamenable to justice*)

- (2) If a time was specified for compliance with the direction, order or requirement, the time for complying with the requirement starts when the direction, order or requirement was given or made under the old Act.
- (3) This section does not apply to an order for which provision is otherwise made under this part.

**281 References to Crimes (Confiscation) Act 1989**

In an Act or document, a reference to the *Crimes (Confiscation) Act 1989* may, if the context otherwise permits, be a reference to this Act.

**Part 2 Repeal****282 Repeal of Crimes (Confiscation) Act 1989**

The Crimes (Confiscation) Act 1989 No. 60 is repealed.

## **Schedule 1      Examples**

section 7

### **Part 1                      Illegally acquired property examples**

#### **1            Example 1**

- (1) A acquires \$40000 as the proceeds of an illegal activity.
- (2) A uses the \$40000 to buy land from B.
- (3) The land is illegally acquired property.
- (4) The money paid to B for the property continues to be illegally acquired property.
- (5) A sells the land to C for \$50000.
- (6) The land continues to be illegally acquired property.
- (7) The \$50000 C paid for the land is illegally acquired property.
- (8) A uses the \$50000 paid for the land by C to buy a car from D.
- (9) The car becomes illegally acquired property and the \$50000 A used to buy it continues to be illegally acquired property, unless the purchase was for sufficient consideration from an innocent person.

#### **2            Example 2**

- (1) A acquires \$25000 as the proceeds of an illegal activity.
- (2) A uses the \$25000 to buy a car.
- (3) The car is illegally acquired property.
- (4) A sells the car to B for its market value of \$22000.
- (5) B does not know, and has no reason to suspect, the car is illegally acquired property.
- (6) The car, now in the hands of B, stops being illegally acquired property.

**Schedule 1 (continued)**

- (7) The money B paid to A for the car is illegally acquired property.
- (8) B sells the car to C, a used car dealer, who then sells it to A.
- (9) When A buys the car from C, the car again becomes illegally acquired property.

**Part 2                      Proceeds assessment example****3                      Example 1**

- (1) A is found to have engaged in the serious crime related activity of procuring another person to engage in prostitution over 5 years.
- (2) Money from engaging in the serious crime related activity was used by A—
  - (a) to lead a flamboyant lifestyle costing, on average, \$60000 for each year; and
  - (b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.
- (3) The mansion and home units were bought in the 5 years.
- (4) A—
  - (a) had no assets at the start of the 5 years; and
  - (b) can not show a source of property gained in the 5 years other than income from the units, which produced an annual net income of \$20000.
- (5) The mansion and units are worth \$1000000.

**Schedule 1 (continued)**

- (6) Under section 82(1) and 83<sup>55</sup>—
- (a) the \$1000000 current value of the mansion and units is derived proceeds; and
  - (b) the amount of \$200000, made up of the \$60000 mentioned in subsection (2)(a) less the \$20000 mentioned in subsection (4)(b) for each year is derived proceeds.

**Part 3 Tainted property examples****4 Example 1**

- (1) A is convicted of the confiscation offences of producing and possessing a dangerous drug.
- (2) A owned lot 1 and grew the dangerous drug on adjacent lot 2. A gained access to lot 2 through lot 1.
- (3) A camped on lot 1 while working at growing the dangerous drug and was found on lot 1 in possession of 5kg of the dangerous drug.
- (4) Lot 1 was used in connection with the commission of the confiscation offence of producing a dangerous drug.
- (5) Lot 1 is tainted property under section 104(1)(a).<sup>56</sup>
- (6) Lot 2 was used in the commission of the confiscation offence of producing a dangerous drug.
- (7) Lot 2 is also tainted property under section 104(1)(a).

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55 Sections 82 (Matters to which Supreme Court must have regard) and 83 (How particular amounts may be treated)

56 Section 104 (Meaning of *tainted property*)

**Schedule 1 (continued)****5 Example 2**

- (1) A is convicted of the confiscation offences of—
  - (a) supplying a dangerous drug; and
  - (b) carrying on the business of unlawfully trafficking in a dangerous drug.
- (2) A used a motor vehicle to transport the drug to a proposed buyer.
- (3) Whether the drug was on A or in A's motor vehicle, the motor vehicle was used in connection with the commission of each offence mentioned in subsection (1).
- (4) The motor vehicle is tainted property under section 104(1)(a).

**6 Example 3**

- (1) A is convicted of the confiscation offence of official corruption.
- (2) A gave B, an officer of the public service, a race horse valued at \$150000 for B to destroy an official file.
- (3) Because of the destruction of the file, A was able to have A's lawfully acquired land rezoned.
- (4) Before the rezoning the land was valued at \$200000. After the rezoning the land was valued at \$1000000.
- (5) The race horse is derived by B from the commission of the confiscation offence of official corruption.
- (6) The race horse is tainted property under section 104(1)(a) or (c).
- (7) If the land is sold by A for \$1000000, \$800000 is tainted property under section 104(1)(c).

**7 Example 4**

- (1) A is convicted of the confiscation offence of concealing property reasonably suspected of being tainted property.

**Schedule 1 (continued)**

- (2) A came into possession of motor vehicle parts (the *stolen parts*) that A knew or had reason to suspect were stolen.
- (3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.
- (4) All parts were used in, or in connection with, the commission of the confiscation offence of which A was convicted.
- (5) Before A was charged with the offence, A sold 1 motor vehicle for \$30000 and banked the money.
- (6) A was still in possession of the other motor vehicle.
- (7) The motor vehicle kept in A's possession is derived from property used in, or in connection with, the commission of the confiscation offence and is tainted property under section 104(1)(b).
- (8) The vehicle is also derived directly from the commission of the confiscation offence and is tainted property under section 104(1)(c).
- (9) The banked \$30000 and its accrued interest is property derived by A from property used in, or in connection with, the commission of the confiscation offence and is tainted property under section 104(1)(b).
- (10) The \$30000 (and interest) is also derived from the commission of the confiscation offence and is tainted property under section 104(1)(c).
- (11) If A uses the \$30000 (and interest) to buy another vehicle, the other vehicle is derived from the commission of the confiscation offence and is tainted property under section 104(1)(c).

**8 Example 5**

- (1) A is convicted of the confiscation offence of producing a dangerous drug.
- (2) A used A's warehouse to produce the dangerous drug.
- (3) A sells the warehouse and uses the proceeds to buy a house.

**Schedule 1 (continued)**

- (4) The house is property derived by A from property used in, or in connection with, the commission of the confiscation offence of producing a dangerous drug.
- (5) The house is tainted property under section 104(1)(b).

**9 Example 6**

- (1) A is convicted of the confiscation offence of carrying on the business of trafficking in a dangerous drug.
- (2) On A's arrest, police seized \$100000 in cash derived by A from the commission of the serious offence.
- (3) The police deposit the \$100000 in a bank account in the name of the commissioner of the police service pending the outcome of the trial.
- (4) The banked \$100000 and its accrued interest is derived from the commission of the confiscation offence.
- (5) The property is tainted property under section 104(1)(c).

**Part 4 Assessment of benefits examples****10 Example 1**

- (1) A and B are separately convicted of confiscation offences of carrying on the business of unlawfully trafficking in a dangerous drug.
- (2) C bought the dangerous drug from B on 5 occasions for \$2000—a total of \$10000.
- (3) B gave the money to A.
- (4) A paid B a total of \$1000.
- (5) B acted solely as an agent or courier of A.

**Schedule 1 (continued)**

- (6) A is—
  - (a) the supplier of the dangerous drug; and
  - (b) the principal with whom C, through B, dealt.
- (7) Under section 187(1)(a) and (b) and 193,<sup>57</sup> the benefit derived by A is \$10000.
- (8) Under section 187(1)(a), the benefit derived by B is \$1000.

**11 Example 2**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) In the 5 years, A—
  - (a) received a total of \$1000000 from punters placing bets; and
  - (b) paid a total of \$400000 to winning punters.
- (3) Under section 187(1)(a) and 193, the benefit derived by A is \$1000000.

**12 Example 3**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) Money from the business of unlawful bookmaking was used by A—
  - (a) to lead a flamboyant lifestyle costing, on average, \$60000 for each year; and
  - (b) to pay off a mortgage on the mansion A lives in and a block of income producing home units.
- (3) The mansion and home units were bought in the 5 years.
- (4) A—
  - (a) had no assets at the start of the 5 years; and

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<sup>57</sup> Sections 187 (Assessment of benefits) and 193 (Expenses and outgoings)

**Schedule 1 (continued)**

- (b) can not show a source of property gained in the 5 years other than income from the units, which produced an annual net income of \$20000.
- (5) The mansion and units are worth \$1000000.
- (6) Under section 187(1), 188, 189 and 190<sup>58</sup>—
  - (a) the \$1000000 current value of the mansion and units is a derived benefit; and
  - (b) the amount of \$200000, made up of the \$60000 mentioned in subsection (2)(a) less the \$20000 mentioned in subsection (4)(b) for each year is a derived benefit.

**13 Example 4**

- (1) A is convicted of the confiscation offence of carrying on unlawful bookmaking over 5 years.
- (2) A carried on the business by—
  - (a) taking all bets on credit; and
  - (b) paying all winning bets and receiving all losing bets at the end of each week.
- (3) The total value of all bets placed with A in the 5 years was \$1000000.
- (4) The total value of all losing bets received by A in the 5 years was \$600000.
- (5) Under section 187(1)(a), the benefit derived by A is \$600000.

**14 Example 5**

- (1) A is convicted of producing a dangerous drug, that is, cannabis.

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<sup>58</sup> Sections 187 (Assessment of benefits), 188 (Procedure if application relating to 1 confiscation offence), 189 (Procedure if application relating to more than 1 confiscation offence) and 190 (Property that may be taken into account for assessment)

**Schedule 1 (continued)**

- (2) A had grown and sold 1000 marijuana plants.
- (3) Each cannabis plant, on average, yielded 0.5kg of saleable material.
- (4) The market value of the cannabis in the form sold was \$2500 for 0.5kg.
- (5) Under section 187(1)(c)(i), the benefit derived by A was \$2500000.

**15 Example 6**

- (1) A is convicted of the confiscation offence of concealing property reasonably suspected of being tainted property.
- (2) A came into possession of motor vehicle parts (the *stolen parts*) that A knew or had reason to suspect were stolen.
- (3) A used the stolen parts to build 2 complete motor vehicles after later buying the rest of the necessary parts with the intention of combining them with the stolen parts.
- (4) Before A was charged with the offence, A sold 1 motor vehicle for \$30000 and banked the money.
- (5) A was still in possession of the other motor vehicle.
- (6) Under section 187(1)(a) and 192, the benefit derived by A is—
  - (a) the banked \$30000 and its accrued interest; and
  - (b) the value of the motor vehicle still in A's possession.

## **Schedule 2      Offences**

sections 29 and 99

### **Part 1                      Section 29 offences**

- 1 Any offence punishable by imprisonment for 5 years or more and involving any of the following—
  - (a) murder;
  - (b) piracy;
  - (c) kidnapping for ransom;
  - (d) extortion;
  - (e) bribery;
  - (f) a secret commission;
  - (g) loss of revenue to the State;
  - (h) corruption;
  - (i) stealing, receiving, fraud or other dishonesty;
  - (j) conspiracy to obstruct, prevent, pervert or defeat the course of justice;
  - (k) money laundering;
  - (l) prostitution;
  - (m) gambling;
  - (n) child pornography;
  - (o) a dangerous drug as defined under the *Drugs Misuse Act 1986*;
  - (p) trafficking in weapons.
- 2 An ancillary offence, to an offence mentioned in item 1, punishable by imprisonment for 5 years or more.

## Schedule 2 (continued)

**Part 2                      Confiscation offences**

- 1 *Classification of Computer Games and Images Act 1995*
- 2 *Classification of Films Act 1991*
- 3 *Classification of Publications Act 1991*, other than part 2A
- 4 *Drugs Misuse Act 1986*, section 10A
- 5 *Fair Trading Act 1989*, part 3, divisions 1 and 2<sup>59</sup>
- 6 *Fisheries Act 1994*
- 7 *Health (Drugs and Poisons) Regulation 1996*
- 8 *Liquor Act 1992*, part 6, division 3<sup>60</sup>
- 9 *Nature Conservation Act 1992*
- 10 *Weapons Act 1990*

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59 *Fair Trading Act 1989*, part 3 (Trade practices), divisions 1 (General rules) and 2 (Unsolicited goods and services)

60 *Liquor Act 1992*, part 6 (Obligatory provisions and offences), division 3 (Provisions concerning sale of liquor by unlicensed persons or on unlicensed premises)

## Schedule 6      Dictionary

### section 3

**account** means a 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.

**activity** includes activities.

**ancillary**, offence to an offence, means—

- (a) an offence of conspiring to commit the offence; or
- (b) an offence of receiving or assisting someone else to enable the other person to escape punishment for the offence; or
- (c) an offence of attempting to commit the offence.

*Note for paragraph (b)—*

See the Criminal Code, section 10.

**appropriate officer** see section 12.

**authorised commission officer** means an authorised commission officer under the *Crime and Misconduct Act 2001*, section 272.<sup>61</sup>

**automatic forfeiture** means forfeiture to the State of property because of the conviction of a person for a serious criminal offence.

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61 *Crime and Misconduct Act*, section 272 (Authorised commission officer)

## Schedule 6 (continued)

**benefit**—

- (a) for chapter 2—see section 21; or
- (b) for chapter 3—see section 101.<sup>62</sup>

**benefit derived**—

- (a) for chapter 2—see section 21; or
- (b) for chapter 3—see section 102.<sup>63</sup>

**buy-back order** see section 170.<sup>64</sup>

**chairperson** means the chairperson of the commission.

**charge**, of an offence, see section 105.<sup>65</sup>

**civil jurisdiction** in relation to an amount that is the limit of a Magistrates Court's civil jurisdiction, means an amount equal to the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

**commission** means the Crime and Misconduct Commission.

**commission officer** means a commission officer under the *Crime and Misconduct Act 2001*.

**conceal** includes attempt to conceal.

**confiscation offence** see section 99.<sup>66</sup>

**confiscation order** means—

- (a) a forfeiture order; or
- (b) a pecuniary penalty order; or
- (c) a proceeds assessment order.

**control**, property under a direction under an order under this Act, includes manage property.

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62 Section 21 (Meaning of *benefit* and *benefit derived*) or 101 (Meaning of *benefit*)

63 Section 21 (Meaning of *benefit* and *benefit derived*) or 102 (Meaning of *benefit derived*)

64 Section 170 (What is a buy-back order)

65 Section 105 (Meaning of *charge* if complaint made)

66 Section 99 (Meaning of *confiscation offence*)

## Schedule 6 (continued)

**controlled substance** see the *Drugs Misuse Act 1986*.

**convicted**, of a confiscation offence, means convicted as defined under section 106<sup>67</sup> of a confiscation offence.

**corresponding law** means a law of another State that is prescribed under a regulation to be a law that corresponds to this Act.

**dangerous drug** see the *Drugs Misuse Act 1986*, section 4.<sup>68</sup>

**dealing** with property includes—

- (a) acquiring the property; and
- (b) disposing of the property; and
- (c) encumbering the property; and
- (d) if property is a debt—making a payment to anyone to reduce the amount of the debt; and
- (e) removing the property from Queensland; and
- (f) receiving or making a gift of the property; and
- (g) vesting the property in a person while administering the estate of a deceased; and
- (h) dealing with the property in another way; and
- (i) attempting to do a thing mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g) or to deal with property in another way.

**derived** includes—

- (a) directly or indirectly derived; and
- (b) realised.

**director** of a corporation—

- (a) includes—

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67 Section 106 (Meaning of *convicted* of offence)

68 *Drugs Misuse Act 1986*, section 4 (Definitions)

**Schedule 6 (continued)**

- (i) if the corporation is incorporated for a public purpose by a law of the Commonwealth or a State—a member of the body corporate; and
  - (ii) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or properly authorised to act in the position; and
  - (iii) other than as provided by paragraph (b), any person under whose directions or instructions the directors of the corporation are accustomed to act; but
- (b) does not include a person under whose directions or instructions the directors of the corporation are accustomed to act only because the directors act on advice given by that person in the proper performance of functions attaching to the person's professional capacity.

**DPP** means the director of public prosecutions under the *Director of Public Prosecutions Act 1984*.

**effective control** see section 20.<sup>69</sup>

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

**examination order** see—

- (a) for chapter 2—section 38(1)(c) or (d); or
- (b) for chapter 3—see section 130(c) or (d).<sup>70</sup>

**exclusion order** see section 69.<sup>71</sup>

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69 Section 20 (Meaning of *effective control* of property)

70 Section 38 (Particular orders Supreme Court may make) or 130 (Particular orders Supreme Court may make)

71 Section 69 (What is an exclusion order)

## Schedule 6 (continued)

***executive officer*** of a corporation means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

***file*** a document or order includes register the document or order.

***financial institution*** includes—

- (a) a corporation that is (or that, if it had been incorporated in Australia, would be) a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx); and
- (b) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming, betting or another purpose.

***forfeiture certificate*** see section 265.<sup>72</sup>

***forfeiture order*** means—

- (a) for chapter 2—a forfeiture order made under chapter 2; or
- (b) for chapter 3—a forfeiture order made under chapter 3; or
- (c) otherwise—a forfeiture order made under chapter 2 or chapter 3.

***gift***, of property includes a transfer for consideration considerably below the higher of—

- (a) the prevailing market price for the property; or
- (b) the consideration the transferor paid for the property.

***illegal activity*** see section 15.<sup>73</sup>

***illegally acquired property*** see section 22.<sup>74</sup>

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72 Section 265 (Evidentiary provision)

73 Section 15 (Meaning of *illegal activity*)

74 Section 22 (Meaning of *illegally acquired property*)

## Schedule 6 (continued)

***innocent interest exclusion order*** see—

- (a) for chapter 2—section 74; or
- (b) for chapter 3—section 159.<sup>75</sup>

***interstate confiscation offence*** means an offence against the law, including the common law, of another State, in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of that State.

***interstate forfeiture order*** means an order made under a corresponding law that is declared under a regulation to be an interstate forfeiture order for this definition.

***interstate pecuniary penalty order*** means an order made under a corresponding law that is declared under a regulation to be an interstate pecuniary penalty order for this definition.

***interstate restraining order*** means an order made under a corresponding law that is declared under a regulation to be an interstate restraining order for this definition.

***law enforcement agency*** means an agency that is a declared law enforcement agency under the *Police Powers and Responsibilities Act 2000*.

***Legal Aid*** means Legal Aid Queensland.

***Legal Aid Act*** means the *Legal Aid Queensland Act 1997*.

***money*** means money in the form of cash.

***money laundering*** means an offence against section 250.<sup>76</sup>

***money order*** see the *Supreme Court of Queensland Act 1991*, schedule 2.

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75 Section 74 (What is an innocent interest exclusion order) or 159 (What is an innocent interest exclusion order)

76 Section 250 (Money laundering)

## Schedule 6 (continued)

**monitoring order** means a monitoring order under either of the following—

- (a) the *Crime and Misconduct Act 2001*, section 119C;<sup>77</sup>
- (b) the *Police Powers and Responsibilities Act 2000*, section 116.<sup>78</sup>

**owner** of an interest in property includes a person who has effective control of the interest.

**pecuniary penalty order** see section 178.<sup>79</sup>

**prescribed respondent** see—

- (a) for chapter 2, part 3—section 28;<sup>80</sup> or
- (b) for chapter 3, part 3—section 116;<sup>81</sup> or
- (c) for chapter 3, part 5—section 161;<sup>82</sup> or
- (d) for chapter 4—section 200.<sup>83</sup>

**proceeds**, in relation to an activity, see section 18.<sup>84</sup>

**proceeds assessment order** see section 77.<sup>85</sup>

**property**, for chapter 2, see section 19.<sup>86</sup>

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77 *Crime and Misconduct Act 2001*, section 119C (Monitoring order applications)

78 *Police Powers and Responsibilities Act 2000*, section 116 (Monitoring order applications)

79 Section 178 (Pecuniary penalty order application)

80 Section 28 (Application for restraining order)

81 Section 116 (Definitions for pt 3)

82 Section 161 (Definitions for pt 5)

83 Section 200 (Application for special forfeiture order)

84 Section 18 (Meaning of *proceeds*)

85 Section 77 (Application for proceeds assessment order)

86 Section 19 (Meaning of *property*)

## Schedule 6 (continued)

*Note—*

For the meaning of property generally, see the *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions).<sup>87</sup>

***property particulars order*** see—

- (a) for chapter 2—section 38(1)(f); or
- (b) for chapter 3—section 130(f).<sup>88</sup>

***quash***, a conviction, see section 107.<sup>89</sup>

***reasonably suspect*** means suspect on grounds that are reasonable in the circumstances.

***related***, of an offence, see section 108.<sup>90</sup>

***release order*** see—

- (a) for chapter 2—section 64; or
- (b) for chapter 3—see section 154.<sup>91</sup>

***relevant contract*** see section 200.<sup>92</sup>

***relevant person*** see—

- (a) for chapter 2, part 4, division 2—section 81; or
- (b) for chapter 3, part 7, division 3—section 187.<sup>93</sup>

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87 The definition is as follows—

***property*** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

88 Section 38 (Particular orders Supreme Court may make) or 130 (Particular orders Supreme Court may make)

89 Section 107 (Meaning of *quash* a conviction)

90 Section 108 (Meaning of *related* offence)

91 Section 64 (Order for release of property from forfeiture order) or 154 (Order for release of property from forfeiture order)

92 Section 200 (Application for special forfeiture order)

93 Section 81 (Application of div 2) or 187 (Assessment of benefits)

## Schedule 6 (continued)

***restrained property*** means—

- (a) for chapter 2—property restrained under a restraining order under chapter 2; or
- (b) for chapter 3—property restrained under a restraining order under chapter 3; or
- (c) otherwise—property restrained under a restraining order made under chapter 2 or chapter 3.

***restraining order*** means—

- (a) for chapter 2—a restraining order made under chapter 2; or
- (b) for chapter 3—a restraining order made under chapter 3; or
- (c) otherwise—a restraining order made under chapter 2 or chapter 3.

***serious crime derived property*** see section 23.<sup>94</sup>

***serious crime related activity*** see section 16.<sup>95</sup>

***serious criminal offence*** see section 17.<sup>96</sup>

***serious drug offence*** means any of the following, whether dealt with on indictment or summarily—

- (a) an offence against the *Drugs Misuse Act 1986*, part 2 for which a person is liable on conviction to imprisonment for at least 20 years;
- (b) money laundering committed in relation to property that is tainted property in relation to an offence mentioned in paragraph (a);
- (c) an offence that is an ancillary offence to an offence mentioned in paragraph (a) or (b).

***special forfeiture order*** see section 200(2).<sup>97</sup>

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94 Section 23 (Meaning of *serious crime derived property*)

95 Section 16 (Meaning of *serious crime related activity*)

96 Section 17 (Meaning of *serious criminal offence*)

97 Section 200 (Application for special forfeiture order)

## Schedule 6 (continued)

**spouse** includes a former spouse.

**sufficient consideration** in relation to property means a consideration that, having regard solely to commercial considerations, reflects the value of the interest.

**suspects**, for chapters 2, 3 and 4, includes—

- (a) believes; and
- (b) knows.

**suspension order** means a suspension order under either of the following—

- (a) the *Crime and Misconduct Act 2000*, section 119I;<sup>98</sup>
- (b) the *Police Powers and Responsibilities Act 2000*, section 121A.<sup>99</sup>

**tainted property** see section 104.<sup>100</sup>

**third party order** see section 168.<sup>101</sup>

**transaction** in property includes any kind of dealing with property whether in Queensland or otherwise.

*Example—*

Receiving a gift.

**transfer** of property includes—

- (a) for an interest in land to be transferred from the State—grant; and
- (b) if the property is an object—give.

**unamenable to justice** see section 109.<sup>102</sup>

**weapon** see the *Weapons Act 1990*, schedule 2.

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98 *Crime and Misconduct Act 2001*, section 119I (Suspension order application)

99 *Police Powers and Responsibilities Act 2000*, section 121A (Suspension order application)

100 Section 104 (Meaning of *tainted property*)

101 Section 168 (What is a third party order)

102 Section 109 (Meaning of *unamenable to justice*)

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	197
3 Key . . . . .	197
4 Table of reprints . . . . .	198
5 Tables in earlier reprints . . . . .	198
6 List of legislation . . . . .	198
7 List of annotations . . . . .	199

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 December 2005. Future amendments of the Criminal Proceeds Confiscation Act 2002 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 January 2003	
1A rv	—	2 April 2003	provs exp 1 April 2003
2	2003 Act No. 55	18 September 2003	
2A	2003 Act No. 77	8 December 2003	
2B	2004 Act No. 43	18 November 2004	
2C	2004 Act No. 43	3 December 2004	
2D	2005 Act No. 70	8 December 2005	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## 6 List of legislation

### **Criminal Proceeds Confiscation Act 2002 No. 68**

date of assent 29 November 2002

ss 1–2 commenced on date of assent

sch 3 items 49, 50 commenced 1 January 2002 (see s 2(2))

ch 12 pt 4, s 283, s 339 sch 4 (to the extent the sch amends the Trustee Companies Act 1968) commenced on date of assent (see s 2(3))

remaining provisions commenced 1 January 2003 (see s 2(1))

amending legislation—

### **Evidence (Protection of Children) Amendment Act 2003 No. 55 pts 1, 8**

date of assent 18 September 2003

commenced on date of assent

### **Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 11**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 2003 (2003 SL No. 310)

### **Justice and Other Legislation Amendment Act 2004 No. 43 pts 1, 8, s 3 sch**

date of assent 18 November 2004

ss 1–2, 35, 36A commenced on date of assent (see s 2)

remaining provisions commenced 3 December 2004 (2004 SL No. 263)

**Justice and Other Legislation Amendment Act 2005 No. 70 ss 1, 166 sch**

date of assent 8 December 2005

commenced on date of assent

**7 List of annotations****Proceedings are civil, not criminal****prov hdg** sub 2004 No. 43 s 34(1)**s 8** amd 2004 No. 43 s 34(2)**Meaning of “property”****s 19** amd 2004 No. 43 s 35**CHAPTER 2—CONFISCATION WITHOUT CONVICTION****PART 3—RESTRAINING ORDERS****Division 2—Making restraining orders****div hdg** sub 2003 No. 55 s 44A**Notice of application****s 30** sub 2003 No. 55 s 44A**Hearing of application****s 30A** ins 2003 No. 55 s 44A**Particular orders Supreme Court may make****s 38** amd 2003 No. 55 s 45**Meaning of “judicial registrar” for subdiv 1****s 38A** ins 2003 No. 55 s 46**Time and place of examination****s 39A** ins 2004 No. 43 s 36**Examination to take place in private****s 39B** ins 2004 No. 43 s 36**Role of the examinee’s lawyer****s 39C** ins 2004 No. 43 s 36**Recording evidence****s 39D** ins 2004 No. 43 s 36**When Supreme Court may exclude prescribed respondent’s property****s 48** amd 2003 No. 55 s 46A**When Supreme Court may exclude applicant’s property****s 50** amd 2003 No. 55 s 46B**Division 7A—Revocation of restraining order****div 7A (ss 50A–50B)** ins 2003 No. 55 s 46C**Making of forfeiture order****s 58** amd 2004 No. 43 s 3 sch

**Making of exclusion order**

s 68            amd 2003 No. 77 s 48

**What is an exclusion order**

s 69            sub 2003 No. 77 s 49

**Making of innocent interest exclusion order**

s 73            amd 2003 No. 77 s 50

**What is an innocent interest exclusion order**

s 74            sub 2003 No. 77 s 51

**Application of div 2**

s 81 prov hdg amd 2003 No. 77 s 52

**Enforcement of order against property under effective control**

s 87            amd 2004 No. 43 s 36A

**Meaning of “tainted property”**

s 104           amd 2004 No. 43 s 37

**Notice of application for restraining order**

s 120           amd 2003 No. 55 s 46D

**Hearing of application**

s 121           sub 2003 No. 55 s 46E

**Particular orders Supreme Court may make**

s 130           amd 2003 No. 55 s 47

**Meaning of “judicial registrar” for subdiv 1**

s 130A          ins 2003 No. 55 s 48

**Time and place of examination**

s 131A          ins 2004 No. 43 s 38

**Examination to take place in private**

s 131B          ins 2004 No. 43 s 38

**Role of examinee’s lawyer**

s 131C          ins 2004 No. 43 s 38

**Recording evidence**

s 131D          ins 2004 No. 43 s 38

**Supreme Court may exclude prescribed respondent’s property from restraining order**

s 139           amd 2003 No. 55 s 48A

**Supreme Court may exclude other property from restraining order**

s 140           amd 2003 No. 55 s 48B

**Exclusion of property from forfeiture order application**

s 155           amd 2003 No. 77 s 53

**Making of innocent interest exclusion order**

s 158           amd 2003 No. 77 s 54

**What is an innocent interest exclusion order**

s 159 sub 2003 No. 77 s 55

**Third party protection from automatic forfeiture**

s 165 amd 2003 No. 77 s 56

**When Supreme Court may make third party order**

s 167 amd 2003 No. 77 s 57

**What is a third party order**

s 168 sub 2003 No. 77 s 58

**When Supreme Court may make buy-back order**

s 169 amd 2003 No. 77 s 59

**What is a buy-back order**

s 170 sub 2003 No. 77 s 60

**Dealing with forfeited property prohibited**

s 171 amd 2003 No. 77 s 61

**Notice after conviction quashed or forfeiture order discharged**

s 174 amd 2003 No. 77 s 62

**If application for order declaring value of property**

s 176 amd 2003 No. 77 s 63; 2004 No. 43 s 3 sch

**Discharge of pecuniary penalty order**

s 195 amd 2003 No. 77 s 64

**Application for special forfeiture order**

s 200 amd 2004 No. 43 s 39

**Property that may be taken into account for assessment**

s 205 amd 2005 No. 70 s 166 sch

**Application of proceeds to satisfy order**

s 220 amd 2004 No. 43 s 40

**Effect of filing interstate forfeiture order**

s 234 amd 2004 No. 43 s 3 sch

**Retention of records by financial institutions**

s 247 amd 2003 No. 77 s 65

**Publication of proceedings**

s 258 sub 2004 No. 43 s 41

**CHAPTER 12—TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENTS****PART 3—AMENDMENT OF CRIME AND MISCONDUCT ACT 2001**

pt 3 (ss 283–300) om R1 (see RA ss 7(1)(k) and 40)

**PART 4—AMENDMENT OF CRIMINAL CODE**

pt 4 (ss 301–310) om R1 (see RA ss 7(1)(k) and 40)

**PART 5—AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS  
ACT 1984**

pt 5 (ss 311–312) om R1 (see RA ss 7(1)(k) and 40)

**PART 6—AMENDMENT OF FINANCIAL TRANSACTION REPORTS ACT 1992**  
**pt 6 (ss 313–316)** om R1 (see RA ss 7(1)(k) and 40)

**PART 7—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES**  
**ACT 2000**

**pt 7 (ss 317–338)** om R1 (see RA ss 7(1)(k) and 40)

**PART 8—OTHER ACTS AMENDED**

**pt 8 (s 339)** om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 3—MINOR AMENDMENTS OF CRIME AND MISCONDUCT**  
**ACT 2001**

om R1 (see RA s 40)

**SCHEDULE 4—OTHER ACTS AMENDED**

om R1 (see RA s 40)

**SCHEDULE 5—DE FACTO PARTNER**

exp 1 April 2003 (see sch 5, s 1(6))

**SCHEDULE 6—DICTIONARY**

def “**ancillary**” amd 2004 No. 43 s 3 sch

def “**buy-back order**” sub 2003 No. 77 s 66(1)–(2)

def “**de facto partner**” exp 1 April 2003 (see sch 5, s 1(6))

def “**encumbrance**” amd 2004 No. 43 s 3 sch

def “**exclusion order**” sub 2003 No. 77 s 66(1)–(2)

def “**innocent interest exclusion order**” sub 2003 No. 77 s 66(1)–(2)

def “**money laundering**” amd 2004 No. 43 s 3 sch

def “**relevant person**” amd 2003 No. 77 s 66(3)

def “**special forfeiture order**” sub 2003 No. 77 s 66(1)–(2)

def “**spouse**” amd 2004 No. 43 s 3 sch

def “**third party order**” sub 2003 No. 77 s 66(1)–(2)

def “**weapon**” amd 2004 No. 43 s 3 sch