



Queensland

Criminal Proceeds Confiscation and Other Acts Amendment Act 2009

Act No. 2 of 2009



Queensland

Criminal Proceeds Confiscation and Other Acts Amendment Act 2009

Contents

Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Criminal Proceeds Confiscation Act 2002	
3	Act amended in pt 2	8
4	Insertion of new s 5A	8
	5A Territorial application of Act	8
5	Amendment of s 16 (Meaning of serious crime related activity) . .	9
6	Amendment of s 17 (Meaning of serious criminal offence)	9
7	Amendment of s 20 (Meaning of effective control of property) . .	10
8	Amendment of s 28 (Application for restraining order)	10
9	Amendment of s 29 (Affidavit)	10
10	Amendment of s 37 (Supreme Court may make other orders) . .	11
11	Insertion of new s 37A	12
	37A Hearing of application.	12
12	Replacement of s 38 (Particular orders Supreme Court may make)	13
	38 Administration orders Supreme Court may make. . . .	13
13	Insertion of new s 38A	14
	38A Investigation orders Supreme Court may make	14
14	Omission of ch 2, pt 3, div 4, sdiv 1, s 38A (Meaning of judicial registrar for subdiv 1)	15
15	Replacement of s 39 (Judicial registrar's power to conduct examinations)	16
	39 Court officer's power to conduct examinations.	16
16	Amendment of s 39B (Examination to take place in private)	16
17	Amendment of s 39C (Role of the examinee's lawyer)	16
18	Amendment of s 39D (Recording evidence)	16

Contents

19	Amendment of s 41 (Offence to contravene examination order) .	17
20	Insertion of new s 41A	17
	41A Use and dissemination of examination information . .	17
21	Insertion of new s 42A	18
	42A Offence to contravene property particulars order. . . .	18
22	Amendment of s 45 (Notice of restraining order and other orders)	18
23	Amendment of s 47 (Supreme Court may exclude prescribed respondent's property from restraining order)	19
24	Amendment of s 49 (Supreme Court may exclude other property from restraining order)	19
25	Insertion of new of s 58A	20
	58A Forfeiture order relating to external serious crime related activity	20
26	Amendment of s 65 (Exclusion of property from forfeiture order application)	21
27	Amendment of s 66 (Exclusion of property from forfeiture order).	21
28	Amendment of s 71 (Exclusion of value of innocent interest from forfeiture order)	22
29	Amendment of s 78 (Making of proceeds assessment order)	22
30	Amendment of s 80 (Proceeds assessment order increase if forfeiture order discharged)	23
31	Amendment of s 83 (How particular amounts may be treated)	24
32	Amendment of s 88 (Charge on property)	24
33	Amendment of s 103 (Meaning of effective control)	25
34	Amendment of s 126 (Conditions about particular payments out of restrained property)	26
35	Amendment of s 129 (Supreme Court may make other orders)	26
36	Insertion of new s 129A	27
	129A Hearing of application.	27
37	Replacement of s 130 (Particular orders Supreme Court may make)	27
	130 Administration orders Supreme Court may make.	28
38	Insertion of new s 130A	29
	130A Investigation orders Supreme Court may make	29
39	Omission of ch 3, pt 3, div 5, sdiv 1, s 130A (Meaning of judicial registrar for subdiv 1)	30
40	Replacement of s 131 (Judicial registrar's power to conduct examinations)	30

	131	Court officer's power to conduct examinations	30
41		Amendment of s 131B (Examination to take place in private) . . .	30
42		Amendment of s 131C (Role of the examinee's lawyer).	31
43		Amendment of s 131D (Recording evidence).	31
44		Amendment of s 133 (Offence to contravene examination order)	31
45		Insertion of new s 133A	31
	133A	Use and dissemination of examination information . .	32
46		Insertion of new s 134A	32
	134A	Offence to contravene property particulars order. . . .	33
47		Amendment of s 135 (Notice of restraining order)	33
48		Amendment of s 139 (Supreme Court may exclude prescribed respondent's property from restraining order)	33
49		Amendment of s 140 (Supreme Court may exclude other property from restraining order)	33
50		Insertion of new ch 3, pt 4, div 2A	34
	Division 2A	Tainted property substitution declaration	
	153A	Definitions for div 2A.	34
	153B	References to property that is not available for forfeiture	34
	153C	Application for tainted property substitution declaration	34
	153D	Court may make tainted property substitution declaration	35
	153E	Restraining order for property that may become subject to a tainted property substitution declaration .	36
51		Amendment of s 158 (Making an innocent interest exclusion order)	38
52		Amendment of s 186 (Pecuniary penalty order increase if forfeiture order discharged)	38
53		Amendment of s 236 (Cancellation of filing).	39
54		Insertion of new ch 8, pt 2, div 1, hdg and div 2, hdg.	39
55		Amendment of s 249 (Communication of information by financial institutions to particular officers).	39
56		Insertion of new ch 8, pt 2, div 3.	40
	Division 3	Notices to financial institutions	
	249A	Definition for div 3.	40
	249B	Giving notice to financial institution	40
	249C	Prohibition on disclosure	41

Contents

	249D	Protection from suits etc. in relation to action taken under s 249B	41
	249E	Financial institution must comply with a notice.	42
57		Amendment of s 250 (Money laundering)	42
58		Insertion of new s 256A	43
	256A	Consent orders.	43
59		Replacement of s 257 (Restriction on functions)	44
	257	Restriction on functions	44
60		Omission of s 266 (Review of Act)	44
61		Amendment of ch 12, hdg (Transitional provisions, repeal and amendments)	44
62		Amendment of ch 12, pt 1, hdg (Transitional provisions)	44
63		Insertion of new ch 12, pt 3	44
	Part 3	Transitional provisions for the Criminal Proceeds Confiscation and Other Acts Amendment Act 2009	
	283	Definition for this part	45
	284	Property controlled by public trustee	45
	285	Proceeds assessment order relating to an external serious crime related activity	45
	286	Charges on property	45
	287	Orders under ss 37 and 129.	45
	288	Exclusion of property from orders	46
	289	Transitional provision for amendment of definition of dealing	46
64		Amendment of schedule 1 (Examples)	47
65		Amendment of schedule 1 (Examples)	47
66		Amendment of sch 6 (Dictionary)	47
	Part 3	Amendment of Fair Trading Act 1989	
67		Act amended in pt 3.	49
68		Amendment of s 71A (Exemptions from division for particular contracts or types of contract)	49
69		Insertion of new pt 9.	50
	Part 9	Transitional provision for Criminal Proceeds Confiscation and Other Acts Amendment Act 2009	
	118	Existing exemptions and applications for exemptions for section 63	50

Part 4	Amendment of Security Providers Act 1993	
70	Act amended in pt 4	51
71	Amendment of s 10 (Application)	51
72	Amendment of s 11 (Entitlement to licences—individuals)	51
73	Amendment of s 13 (Entitlement to licences—corporations or firms)	51
74	Amendment of s 21 (Grounds for suspension, cancellation or refusal to renew)	52
75	Insertion of new s 21A	53
	21A Approved security industry association must give notice of persons whose membership of the association ends.	53
76	Insertion of new s 25B	53
	25B Approval of security industry associations	53
77	Amendment of pt 2, div 6, hdg (Appeals against licence decisions)	53
78	Amendment of s 26 (Right to appeal to the Court)	54
79	Amendment of sch 2 (Dictionary)	54
Part 5	Amendment of Trusts Act 1973	
80	Act amended in pt 5	55
81	Amendment of s 5 (Definitions)	55
82	Amendment of s 67 (Protection of trustees by means of advertisements)	55
83	Renumbering of pts 9 and 10 and ss 107 to 115	55
84	Insertion of new pt 9	55
	Part 9 Gifts by particular trusts for philanthropic purposes	
	107 Definitions for pt 9	56
	108 Prescribed trust—trust instrument containing express power to give to eligible recipients	56
	109 Prescribed trust—trust instrument not containing express power to give to eligible recipients	56
	110 Ancillary provisions	57
85	Amendment of pt 11 hdg as renumbered	58
86	Insertion of new pt 12	58
	Part 12 Transitional provisions for Criminal Proceeds Confiscation and Other Acts Amendment Act 2009	
	120 Definitions for pt 12	59

Contents

121	Application of pt 9 to existing trusts	59
122	Validation	59



Queensland

Criminal Proceeds Confiscation and Other Acts Amendment Act 2009

Act No. 2 of 2009

An Act to amend the Criminal Proceeds Confiscation Act 2002, the Fair Trading Act 1989, the Security Providers Act 1993 and the Trusts Act 1973 for particular purposes

[Assented to 23 February 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Criminal Proceeds Confiscation Act 2002

3 Act amended in pt 2

This part amends the *Criminal Proceeds Confiscation Act 2002*.

4 Insertion of new s 5A

After section 5—

insert—

‘5A Territorial application of Act

- ‘(1) This Act applies both within and outside Queensland.
- ‘(2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.’.

5 Amendment of s 16 (Meaning of *serious crime related activity*)

- (1) Section 16, heading, after ‘*activity*’—

insert—

‘and *external serious crime related activity*’

- (2) Section 16—

insert—

- ‘(3) An *external serious crime related activity* is a serious crime related activity arising out of an offence under the law of the Commonwealth or a place outside Queensland, including outside Australia, that, if the offence had been committed in Queensland, would be a serious criminal offence.’

6 Amendment of s 17 (Meaning of *serious criminal offence*)

- (1) Section 17(1)(c)—

renumber as section 17(1)(d).

- (2) section 17(1)—

insert—

‘(c) an offence under the law of the Commonwealth or a place outside Queensland, including outside Australia, that, if the offence had been committed in Queensland, would be an offence mentioned in paragraph (a) or (b); or’.

- (3) Section 17(1)(d) as renumbered—

omit, insert—

‘(d) an ancillary offence to an offence mentioned in paragraph (a), (b) or (c) including an offence that would be an ancillary offence to an offence mentioned in paragraph (c) if the offence had been committed in Queensland.’

[s 7]

7 Amendment of s 20 (Meaning of *effective control of property*)

Section 20—

insert—

- ‘(5) Subsection (6) applies if—
- (a) a restraining order is made for particular property because a person to whom the restraining order relates has effective control of the property; and
 - (b) the restraining order directs the public trustee to take control of the property.
- ‘(6) For the purposes of the Supreme Court’s power to make further orders under this chapter in relation to the property in reliance, directly or indirectly, on a provision of this Act that mentions property that is, or is not, under the effective control of the person, the property is taken to continue to be under the effective control of the person.’.

8 Amendment of s 28 (Application for restraining order)

- (1) Section 28(4)—

renumber as section 28(5).

- (2) Section 28—

insert—

- ‘(4) An application for a restraining order that relates to property derived from external serious crime related activity may be made only if the person whose property it is lives in Queensland or the property is situated in Queensland.’.

9 Amendment of s 29 (Affidavit)

Section 29—

insert—

- ‘(2) Also, for property derived from external serious crime related activity, the affidavit must state that the authorised

commission officer or police officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against property of the prescribed respondent that is the subject of the application as a result of the external serious crime related activity.’.

10 Amendment of s 37 (Supreme Court may make other orders)

- (1) Section 37(1), ‘section 38.’—
omit, insert—
‘sections 38 and 38A.’.
- (2) Section 37(2), ‘section 38(h)’—
omit, insert—
‘section 38(1)(f)’.
- (3) Section 37(4), after ‘an order’—
insert—
‘, other than an investigation order,’.
- (4) Section 37(5) to (7)—
omit, insert—
‘(5) Another person may apply for an order, other than an investigation order, under this section with the Supreme Court’s leave.
‘(6) An applicant under subsection (4) 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) An applicant under subsection (5) must give notice of the making of the application to each person who may apply under subsection (4) for an order under this section.
‘(8) The State may apply for an investigation order.
‘(9) The State must give notice of an application under subsection (8)—

[s 11]

- (a) to the person to whom the order is to be directed if the order is to be made under section 38A(1)(a), (b), or (c);
or
 - (b) to the person whose property is to be seized if the order is made under section 38A(1)(d).
- ‘(10) Subsections (6), (7) and (9) do 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.
- ‘(11) Also, subsection (9) does not apply to an application for an investigation order of which notice does not have to be given because of section 37A(2).’.

11 Insertion of new s 37A

After section 37—

insert—

‘37A Hearing of application

- ‘(1) The Supreme Court must not hear an application for an order under section 37 unless satisfied the person who is, or whose property is, the subject of the application has received reasonable notice of the application.
- ‘(2) Despite subsection (1), the court must consider an application for an investigation order 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 who is, or 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.’.

12 Replacement of s 38 (Particular orders Supreme Court may make)

Section 38—

omit, insert—

‘38 Administration orders Supreme Court may make

- ‘(1) The court may make any of the following orders under section 37 (each an *administration order*)—
- (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 about the performance of an undertaking given in relation to the restraining order for the payment of damages or costs;
 - (d) 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;
 - (e) an order requiring a person whose property is restrained under the restraining order to do anything necessary or convenient to bring the property within the State;
 - (f) 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.

[s 13]

‘(2) A person must not contravene an order mentioned in subsection (1)(e).

Maximum penalty—100 penalty units or 2 years imprisonment.’

13 Insertion of new s 38A

Chapter 2, part 3, division 3—

insert—

‘38A Investigation orders Supreme Court may make

‘(1) Also, the court may make any of the following orders under section 37 (each an *investigation order*)—

- (a) 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 court officer 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;
- (b) 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 court officer about the spouse’s affairs, including the nature and location of property in which the spouse or the person has an interest;
- (c) an order (*property particulars order*) directing any of the following to give to the commission within a stated time a sworn statement of particulars of, or of dealings

with, any property (whether or not the restrained property) as the court considers appropriate—

- (i) a person whose property is restrained under the restraining order;
 - (ii) a person whose property the restrained property was at any time before the restraining order was made;
 - (iii) if the person mentioned in subparagraph (i) or (ii) is or was a corporation—an executive officer of the corporation;
- (d) an order (*property seizure order*) requiring or authorising a commission officer or a police officer to seize property restrained under the restraining order.

Note—

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

- ‘(2) An order mentioned in subsection (1)(d) may state the powers the commission officer or police officer may exercise for giving effect to the order.
- ‘(3) Subsection (4) applies if an examination order is made without notice of the application for the order being given to a person required to attend for examination.
- ‘(4) The examination must not be conducted less than 7 days after the day on which the examination order is made, unless the court considers it appropriate for the examination to be conducted at an earlier time.’.

14 Omission of ch 2, pt 3, div 4, sdiv 1, s 38A (Meaning of *judicial registrar* for subdiv 1)

Chapter 2, part 3, division 4, subdivision 1, section 38A—
omit.

[s 15]

15 Replacement of s 39 (Judicial registrar’s power to conduct examinations)

Section 39—

omit, insert—

‘39 Court officer’s power to conduct examinations

- ‘(1) This section applies if a court officer conducts an examination under an examination order.
- ‘(2) The court officer constitutes, and may exercise all the jurisdiction and powers of, the court.
- ‘(3) However, the court officer may not exercise any power of the court to punish for contempt.’.

16 Amendment of s 39B (Examination to take place in private)

Section 39B(2), ‘or judicial registrar’—

omit, insert—

‘or court officer’.

17 Amendment of s 39C (Role of the examinee’s lawyer)

Sections 39C, ‘or judicial registrar’—

omit, insert—

‘or court officer’.

18 Amendment of s 39D (Recording evidence)

- (1) Section 39D, ‘or judicial registrar’—

omit, insert—

‘or court officer’.

- (2) Section 39D(3)(b), ‘in the court’s or judicial registrar’s presence’—

omit, insert—

‘in the court’s and court officer’s presence’.

19 Amendment of s 41 (Offence to contravene examination order)

Section 41(d), ‘or judicial registrar’—

omit, insert—

‘or court officer’.

20 Insertion of new s 41A

Chapter 2, part 3, division 4, subdivision 1—

insert—

‘41A Use and dissemination of examination information

- ‘(1) This section applies to a statement, disclosure, document or other thing mentioned in section 40(2) (*examination information*).
- ‘(2) The DPP or the commission may give the examination information to—
 - (a) a corresponding entity to help the entity to obtain other evidence or other information (*derived evidence*) that may be relevant to the enforcement of a corresponding law; or
 - (b) an entity of the State, another State or the Commonwealth that has a function of investigating or prosecuting offences to help the entity to obtain other evidence or other information (*derived evidence*) that may be relevant to the investigation or prosecution of an offence.
- ‘(3) The giving of examination information under subsection (2), its use to obtain derived evidence or the admissibility of the derived evidence in a proceeding, including a prosecution for an offence, is unaffected by—

[s 21]

- (a) the fact that the examination information was obtained because of section 40 and subject to section 39B; or
- (b) any duty of confidentiality owed to the person from whom the examination information was obtained; or
- (c) the objects of this Act or the particular purpose for which the examination information was obtained.

‘(4) In this section—

entity of the State, another State or the Commonwealth includes a law enforcement agency established under a law of the State, another State or the Commonwealth.’.

21 Insertion of new s 42A

Chapter 2, part 3, division 4, subdivision 3, after section 42—
insert—

‘42A Offence to contravene property particulars order

‘A person directed under a property particulars order to give a statement to the commission within a stated period of time—

- (a) must comply with the direction unless the person has a reasonable excuse; and
- (b) must not make a statement that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.’.

22 Amendment of s 45 (Notice of restraining order and other orders)

Section 45—

insert—

- ‘(2A) However, under subsection (2) the commission is not required to give a person whose property is restrained under a restraining order a copy of, or notice of, an investigation order

made under section 38A(1)(a), (b) or (c) directed to another person.’.

23 Amendment of s 47 (Supreme Court may exclude prescribed respondent’s property from restraining order)

(1) Section 47(3)—

omit, insert—

‘(3) The prescribed respondent must give a written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.

‘(3A) The grounds for the application and the facts relied on must be stated fully in the notice.’.

(2) Section 47(8), after ‘applicant’—

insert—

‘or a relevant person’.

(3) Section 47—

insert—

‘(9) In this section—

relevant person means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application.’.

24 Amendment of s 49 (Supreme Court may exclude other property from restraining order)

(1) Section 49(2)—

omit, insert—

‘(2) The applicant must give a written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.

[s 25]

‘(2A) The grounds for the application and the facts relied on must be stated fully in the notice.’.

(2) Section 49(7), after ‘applicant’—

insert—

‘or a relevant person’.

(3) Section 49—

insert—

‘(8) In this section—

relevant person means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application.’.

25 Insertion of new of s 58A

After section 58—

insert—

‘58A Forfeiture order relating to external serious crime related activity

‘(1) An application for a forfeiture order that relates to property derived from external serious crime related activity may be made only if the prescribed respondent lives in Queensland or the property is situated in Queensland.

‘(2) The Supreme Court may not make the forfeiture order unless it is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against the property of the prescribed respondent that is the subject of the application as a result of the external serious crime related activity.

‘(3) For subsection (2), an affidavit of an appropriate officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against property of the prescribed respondent that is the subject of the application as a result of

the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.’.

26 Amendment of s 65 (Exclusion of property from forfeiture order application)

(1) Section 65(3)—

omit, insert—

‘(3) The applicant must give a written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.

‘(3A) The grounds for the application and the facts relied on must be stated fully in the notice.’.

(2) Section 65(8), after ‘applicant’—

insert—

‘or a relevant person’.

(3) Section 65—

insert—

‘(9) In this section—

relevant person means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application for the exclusion order.’.

27 Amendment of s 66 (Exclusion of property from forfeiture order)

(1) Section 66(3)—

omit, insert—

‘(3) For each application made under this section, including an application for leave, the applicant must give a written notice of the making of the application, the grounds for the

[s 28]

application and the facts relied on to the State and anyone else who has an interest in the property.

‘(3A) The grounds for the application and the facts relied on must be stated fully in the notice.’.

(2) Section 66(8), after ‘applicant’—

insert—

‘or a relevant person’.

(3) Section 66—

insert—

‘(9) In this section—

relevant person means a person other than the applicant who, on examination under an examination order, may be able to give evidence relevant to the application for the exclusion order.’.

28 Amendment of s 71 (Exclusion of value of innocent interest from forfeiture order)

Section 71(3)—

omit, insert—

‘(3) For each application made under this section, including an application for leave, the applicant must give a written notice of the making of the application, the grounds for the application and the facts relied on to the State and anyone else who has an interest in the property.

‘(3A) The grounds for the application and the facts relied on must be stated fully in the notice.’.

29 Amendment of s 78 (Making of proceeds assessment order)

(1) Section 78(1), after ‘activity’—

insert—

‘(a ***finding of serious crime related activity***)’.

(2) Section 78—

insert—

- ‘(5) The Supreme Court may not make a proceeds assessment order on an application that relates wholly to external serious crime related activity, unless it is satisfied that no action has been taken under a law of the Commonwealth or any other place outside Queensland, including outside Australia, in relation to the proceeds of the external serious crime related activity.
- ‘(6) For subsection (5), an affidavit by an appropriate officer that includes a statement that the officer has made due enquiry and is satisfied that no action has been taken under a law of the Commonwealth or any place outside Queensland, including outside Australia, against any property in relation to the proceeds of the external serious crime related activity is proof, in the absence of evidence to the contrary, of the matters contained in the affidavit.
- ‘(7) The court may make a pecuniary penalty order and a proceeds assessment order in relation to the same serious crime related activity.
- ‘(8) However, the court must take the amount of a pecuniary penalty order into account when making a later proceeds assessment order in relation to the same serious crime related activity.’.

30 Amendment of s 80 (Proceeds assessment order increase if forfeiture order discharged)

Section 80(1)(c)—

omit, insert—

- ‘(c) after the proceeds assessment order is made—
- (i) the forfeiture ends because of an appeal; or
 - (ii) an exclusion order or an innocent interest exclusion order is made in relation to any property forfeited under the forfeiture order.’.

[s 31]

31 Amendment of s 83 (How particular amounts may be treated)

- (1) Section 83(1), from ‘if, at the hearing’ to ‘activity; or’—
omit, insert—
‘if the court makes a finding of serious crime related activity in relation to a person under section 78(1) and—
 - (a) evidence is given that the value of the relevant person’s property at the end of the period of 6 years mentioned in section 78(1) was more than the value of the relevant person’s property at the start of the period; or’.
- (2) Sections 83(1)(b), ‘the person’s’—
omit, insert—
‘the relevant person’s’.
- (3) Sections 83(2) and (3), ‘the person’—
omit, insert—
‘the relevant person’.
- (4) Section 83(2), ‘the activity’—
omit, insert—
‘an illegal activity’.

32 Amendment of s 88 (Charge on property)

- (1) Section 88(3)(c), ‘person against whom the order is made’—
omit, insert—
‘relevant person’.
- (2) Section 88—
insert—
(5) For subsection (4), it is declared that the charge may be registered under the *Land Act 1994* or the *Land Title Act 1994* over the property of the relevant person.

-
- ‘(6) The public trustee or the appropriate officer may lodge a request with the registrar for the registration of the charge.
- ‘(7) The request must be in the appropriate form.
- ‘(8) The registrar must register the charge over the land on lodgement of—
- (a) the request; and
 - (b) a certificate of the public trustee or the appropriate officer stating there is a charge over the land under this section for the amount payable under the proceeds assessment order that is unpaid.
- ‘(9) As soon as practicable after the amount payable under the proceeds assessment order has been paid, the public trustee or the appropriate officer must lodge a request with the registrar in the appropriate form to release the charge.
- ‘(10) The registrar must register the release of the charge over the land.
- ‘(11) In this section—
- appropriate form*** means the appropriate form under the Land Act 1994 or the Land Titles Act 1994.
- registrar*** means—
- (a) for registration under the *Land Act 1994*—the chief executive under that Act; or
 - (b) for registration under the *Land Title Act 1994*—the registrar of titles.
- relevant person*** means the person against whom the proceeds assessment order is made.’.

33 Amendment of s 103 (Meaning of *effective control*)

Section 103—

insert—

- ‘(2) For subsection (1), a reference in section 20 to chapter 2 is taken to be a reference to this chapter.’.

[s 34]

34 Amendment of s 126 (Conditions about particular payments out of restrained property)

Section 126(3)(b) after ‘tainted property’—

insert—

‘and is not available substitute property’.

35 Amendment of s 129 (Supreme Court may make other orders)

(1) Section 129(1), ‘section 130’—

omit, insert—

‘sections 130 and 130A’.

(2) Section 129(2), ‘section 130(h)’—

omit, insert—

‘section 130(1)(f)’.

(3) Section 129(4), after ‘an order’—

insert—

‘, other than an investigation order,’.

(4) Section 129(5) to (7)—

omit, insert—

‘(5) Another person may apply for an order, other than an investigation order, under this section with the Supreme Court’s leave.

‘(6) An applicant under subsection (4) 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) An applicant under subsection (5) must give notice of the making of the application to each person who may apply under subsection (4) for an order under this section.

‘(8) The State may apply for an investigation order.

‘(9) The State must give notice of an application under subsection (8) to the person to whom the order is to be directed.

-
- ‘(10) Subsections (6), (7) and (9) do 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.
- ‘(11) Also, subsection (9) does not apply to an application for an investigation order of which notice does not have to be given because of section 129A(2).’.

36 Insertion of new s 129A

After section 129—

insert—

‘129A Hearing of application

- ‘(1) The Supreme Court must not hear an application for an order under section 129 unless satisfied the person who is, or whose property is, the subject of the application has received reasonable notice of the application.
- ‘(2) Despite subsection (1), the court must consider an application for an investigation order 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 who is, or 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.’.

37 Replacement of s 130 (Particular orders Supreme Court may make)

Section 130—

omit, insert—

[s 37]

‘130 Administration orders Supreme Court may make

‘(1) The court may make any of the following orders under section 129, (each an *administration order*)—

- (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 about the performance of an undertaking for the payment of damages or costs given for the restraining order;
- (d) if the restraining order directs the public trustee to take control of the 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;
- (e) an order requiring a person whose property is restrained under the restraining order to do anything necessary or convenient to bring the property within Queensland;
- (f) 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.

‘(2) A person must not contravene an order made under subsection (1)(e).

Maximum penalty—100 penalty units or 2 years imprisonment.’

38 Insertion of new s 130A

Chapter 3, part 3, division 4—

insert—

‘130A Investigation orders Supreme Court may make

- ‘(1) Also, the court may make any of the following orders under section 130 (each an *investigation order*)—
- (a) 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 court officer 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;
 - (b) 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 court officer about the spouse’s affairs, including the nature and location of property in which the spouse or the person has an interest;
 - (c) an order (*property particulars order*) directing any of the following to give to the DPP within a stated time a sworn statement of particulars of, or of dealings with, any property (whether or not the restrained property) as the court considers appropriate—
 - (i) a person whose property is restrained under the restraining order;
 - (ii) a person whose property the restrained property was at any time before the restraining order was made;

[s 39]

(iii) if the person mentioned in subparagraph (i) or (ii) is or was a corporation—an executive officer of the corporation.

‘(2) Subsection (3) applies if an examination order is made without notice of the application for the order being given to a person required to attend for examination.

‘(3) The examination must not be conducted less than 7 days after the day on which the examination order is made, unless the court considers it appropriate for the examination to be conducted at an earlier time.’.

39 Omission of ch 3, pt 3, div 5, sdiv 1, s 130A (Meaning of judicial registrar for subdiv 1)

Chapter 3, part 3, division 5, subdivision 1, section 130A—
omit.

40 Replacement of s 131 (Judicial registrar’s power to conduct examinations)

Section 131—
omit, insert—

‘131 Court officer’s power to conduct examinations

‘(1) This section applies if a court officer conducts an examination under an examination order.

‘(2) The court officer constitutes, and may exercise all the jurisdiction and powers of, the court.

‘(3) However, the court officer may not exercise any power of the court to punish for contempt.’.

41 Amendment of s 131B (Examination to take place in private)

Section 131B(2), ‘or judicial registrar’—

omit, insert—
'or court officer'.

42 Amendment of s 131C (Role of the examinee's lawyer)

Sections 131C, 'or judicial registrar'—

omit, insert—
'or court officer'.

43 Amendment of s 131D (Recording evidence)

(1) Section 131D, 'or judicial registrar'—

omit, insert—
'or court officer'.

(2) Section 131D(3)(b), 'in the court's or judicial registrar's presence'—

omit, insert—
'in the court's or court officer's presence'.

44 Amendment of s 133 (Offence to contravene examination order)

Section 133(d), 'or judicial registrar'—

omit, insert—
'or court officer'.

45 Insertion of new s 133A

Chapter 3, part 3, division 5, subdivision 1—

insert—

[s 46]

‘133A Use and dissemination of examination information

- ‘(1) This section applies to a statement, disclosure, document or other thing mentioned in section 132(2) (*examination information*).
- ‘(2) The DPP or the commission may give the examination information to—
- (a) a corresponding entity to help the entity to obtain other evidence or other information (*derived evidence*) that may be relevant to the enforcement of a corresponding law; or
 - (b) an entity of the State, another State or the Commonwealth that has a function of investigating or prosecuting offences to help the entity to obtain other evidence or other information (*derived evidence*) that may be relevant to the investigation or prosecution of an offence.
- ‘(3) The giving of examination information under subsection (2), its use to obtain derived evidence or the admissibility of the derived evidence in a proceeding, including a prosecution for an offence is unaffected by—
- (a) the fact that the examination information was obtained because of section 132 and subject to section 131B; or
 - (b) any duty of confidentiality owed to the person from whom the examination information was obtained; or
 - (c) the objects of this Act or the particular purpose for which the examination information was obtained.
- ‘(4) In this section—
- entity* of the State, another State or the Commonwealth includes a law enforcement agency established under a law of the State, another State or the Commonwealth.’

46 Insertion of new s 134A

Chapter 3, part 3, division 5, subdivision 2, after section 134—

insert—

‘134A Offence to contravene property particulars order

‘A person directed under a property particulars order to give a statement to the DPP within a stated period of time—

- (a) must comply with the direction unless the person has a reasonable excuse; and
- (b) must not make a statement that is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.’.

47 Amendment of s 135 (Notice of restraining order)

Section 135—

insert—

- ‘(2A) However, under subsection (2), the DPP is not required to give a person whose property is restrained under a restraining order a copy of, or notice of, an investigation order directed to another person.’.

48 Amendment of s 139 (Supreme Court may exclude prescribed respondent’s property from restraining order)

Section 139(2)(a), after ‘tainted property’—

insert—

‘and is not available substitute property’.

49 Amendment of s 140 (Supreme Court may exclude other property from restraining order)

- (1) Section 140(2)(a), after ‘tainted property’—

insert—

‘and is not available substitute property’.

[s 50]

- (2) Section 140(3)(a), after ‘tainted property’—
insert—
‘and is not available substitute property’.

50 Insertion of new ch 3, pt 4, div 2A

Chapter 3, part 4—

insert—

‘Division 2A Tainted property substitution declaration

‘153A Definitions for div 2A

‘In this division—

applicant means a person who may apply for—

- (a) a forfeiture order; or
- (b) a restraining order for the purposes of forfeiture.

convicted person means a person convicted of a confiscation offence.

prescribed respondent see section 116.

unavailable property means property that is not available for forfeiture.

‘153B References to property that is not available for forfeiture

‘For this division, property is not available for forfeiture if the convicted person does not have an interest in the property.

‘153C Application for tainted property substitution declaration

- ‘(1) If a person is convicted of a confiscation offence, the State may apply for a tainted property substitution declaration to the

Supreme Court or the court before which the convicted person is convicted.

- ‘(2) The application under subsection (1) must—
- (a) be made in conjunction with an application for a forfeiture order; and
 - (b) state the details of property that the convicted person used or intended to use in, or in connection with, the commission of the confiscation offence; and
 - (c) state the details of property that is to be substituted for the property mentioned in paragraph (b) that—
 - (i) is property in which the person had an interest at the time the confiscation offence was committed; and
 - (ii) is of the same nature or description as the property mentioned in paragraph (b).

Example—

A person is convicted of a confiscation offence involving growing cannabis in a rented home unit. The prosecution may apply to the court for a declaration that a home unit owned by the person is tainted property even though the rented home unit and the defendant’s home unit are not of equal value.

‘153D Court may make tainted property substitution declaration

- ‘(1) Subject to subsection (2), a court may make a tainted property substitution declaration if the court is satisfied—
- (a) that the convicted person used, or intended to use, particular property in, or in connection with, the commission of the confiscation offence; and
 - (b) that the property mentioned in paragraph (a) is unavailable property; and
 - (c) that the property that is to be substituted for the property mentioned in paragraph (a)—

[s 50]

- (i) is property in which the convicted person had an interest at the time that the confiscation offence was committed; and
 - (ii) is of the same nature or description as the property mentioned in paragraph (a).
- ‘(2) The court may make a tainted property substitution declaration whether or not the value of the unavailable property is equal to the value of the property that is to be substituted for the unavailable property.
- ‘(3) If the court makes a tainted property substitution declaration for property, the property—
 - (a) is substituted for the unavailable property; and
 - (b) is taken to be tainted property for this chapter.

‘153E Restraining order for property that may become subject to a tainted property substitution declaration

- ‘(1) The State may apply under section 117 for a restraining order for available substitute property.
- ‘(2) The application under subsection (1) must—
 - (a) state the details of property that the prescribed respondent used or intended to use in, or in connection with, the commission of the confiscation offence; and
 - (b) state the details of the property that may be substituted for the property mentioned in paragraph (a) under a tainted property substitution order that—
 - (i) is property in which the prescribed respondent had an interest at the time the confiscation offence was committed; and
 - (ii) is of the same nature or description as the property mentioned in paragraph (a).
- ‘(3) For subsection (1), chapter 3, part 3 and any other provisions of this Act that relate to the operation of that part apply with necessary changes and changes prescribed by this section.

-
- ‘(4) For subsection (3)—
- (a) section 126 does not apply; and
 - (b) for section 118(b)(i), the affidavit of the police officer must state instead—
 - (i) the police officer suspects that—
 - (A) stated property of the prescribed respondent is tainted property; and
 - (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
 - (ii) the reason for the suspicion; and
 - (c) for section 119(3)(a), the affidavit of the police officer must state instead—
 - (i) the police officer suspects that—
 - (A) stated property of the other person is tainted property; and
 - (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
 - (ii) the reason for the suspicion; and
 - (d) for section 119(4)(a), the affidavit of the police officer must state instead—
 - (i) the police officer suspects that—
 - (A) stated property of the other person is tainted property; and
 - (B) other stated property of the prescribed respondent, that is the subject of the application, is available substitute property; and
 - (ii) the reason for the suspicion; and

[s 51]

- (e) for section 130A(1)(a)(iii), the reference to tainted property is taken to be a reference to available substitute property; and
- (f) for section 139(2)(a), the court must instead be satisfied that either—
 - (i) the prescribed respondent's property is not available substitute property; or
 - (ii) the property for which the available substitute property may be substituted under a tainted property substitution declaration is not tainted property; and
- (g) for section 140(2)(a) and section 140(3)(a), the court must instead be satisfied that either—
 - (i) the prescribed respondent's property is not available substitute property; or
 - (ii) the property for which the available substitute property may be substituted under a tainted property substitution declaration is not tainted property.’.

51 Amendment of s 158 (Making an innocent interest exclusion order)

Section 158(2)(c)(ii), after ‘tainted property’—

insert—

‘or could become tainted property under a tainted property substitution declaration’.

52 Amendment of s 186 (Pecuniary penalty order increase if forfeiture order discharged)

Section 186(1)(c)—

omit, insert—

‘(c) after the pecuniary penalty order is made—

-
- (i) the forfeiture ends because of an appeal against the forfeiture order; or
 - (ii) an innocent interest exclusion order is made in relation to any property forfeited under the forfeiture order.’.

53 Amendment of s 236 (Cancellation of filing)

- (1) Section 236(1), ‘or a judicial registrar’—
omit.
- (2) Section 236(1), ‘or judicial registrar’—
omit.

54 Insertion of new ch 8, pt 2, div 1, hdg and div 2, hdg

- (1) Before section 247—
insert—

‘Division 1 Records’.

- (2) After section 248—
insert—

‘Division 2 Information volunteered by financial institutions’.

55 Amendment of s 249 (Communication of information by financial institutions to particular officers)

- (1) Section 249(6)—
renumber as 249(7).
- (2) Section 249—
insert—
- ‘(6) A person must not, other than as permitted under subsection (2) or (3), disclose to anyone—

[s 56]

- (a) that a financial institution, or an officer of a financial institution, intends to give or has given information to a police officer under subsection (2); or
- (b) that a financial institution, or an officer of a financial institution, intends to give or has given information to a commission officer under subsection (3); or
- (c) the nature of any information given under subsection (2) or (3).

Maximum penalty—10 penalty units.’.

56 Insertion of new ch 8, pt 2, div 3

After section 249—

insert—

‘Division 3 Notices to financial institutions

‘249A Definition for div 3

‘In this division—

officer includes director, secretary, executive officer or employee.

‘249B Giving notice to financial institution

- ‘(1) A police officer of or above the rank of inspector, or an authorised commission officer, may give a written notice to a financial institution requiring the financial institution to advise a police officer or commission officer whether a stated person holds an account with the financial institution.
- ‘(2) The notice must state that—
 - (a) the police officer or commission officer reasonably believes that the notice is required—
 - (i) to decide whether to take any action under this Act;
or

- (ii) in relation to proceedings under this Act; and
 - (b) the advice must be given within 14 days after the notice is given.
- ‘(3) The police officer or commission officer must not give the notice unless the police officer or commission officer reasonably believes that giving the notice is required—
- (a) to decide whether to take any action under this Act; or
 - (b) in relation to proceedings under this Act.

‘249C Prohibition on disclosure

‘A person must not, other than as required under section 249B, disclose to anyone that—

- (a) a financial institution, or an officer of a financial institution, intends to give or has given information to a police officer, or commission officer, under section 249B; or
- (b) a financial institution is required to give information to a police officer, or commission officer, under section 249B.

Maximum penalty—100 penalty units.

‘249D Protection from suits etc. in relation to action taken under s 249B

- ‘(1) 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 officer’s or agent’s employment or agency;
- in relation to any action taken by the institution, officer or agent under a notice under section 249B or in the mistaken belief that action was required under the notice.
- ‘(2) If a financial institution, or an officer or agent of the institution, gives information under section 249B, the

[s 57]

institution, officer or agent is taken, for the purposes of sections 250 and 252, not to have been in possession of that information at any time.

'249E Financial institution must comply with a notice

'A financial institution must comply with a notice given to it under section 249B.

Maximum penalty—100 penalty units.'

57 Amendment of s 250 (Money laundering)

(1) Section 250(1), penalty—

omit, insert—

'Maximum penalty—

- (a) for knowingly engaging in money laundering—3000 penalty units or 20 years imprisonment; or
- (b) for recklessly engaging in money laundering—1500 penalty units or 10 years imprisonment.'

(2) Section 250(2)—

omit, insert—

'(2) A person engages in money laundering if the person knowingly or recklessly—

- (a) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or
- (b) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or
- (c) conceals or disguises the source, existence, nature, location, ownership or control of tainted property.

'(2A) For subsection (2), a person knowingly does an act mentioned in subsection (2)(a), (b) or (c) in relation to property (***knowingly engaging in money laundering***) if the person knows, or ought reasonably to know, that the property is

tainted property or is derived from some form of unlawful activity.

- ‘(2B) For subsection (2), a person recklessly does an act mentioned in subsection (2)(a), (b) or (c) in relation to property (*recklessly engaging in money laundering*) if—
- (a) the person is aware there is a substantial risk the property is tainted property or derived from some form of criminal activity; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable for the person to take the risk.
- ‘(2C) The question whether taking a risk is unjustifiable is one of fact.’.

58 Insertion of new s 256A

Chapter 10, part 2, before section 257—

insert—

‘256A Consent orders

- ‘(1) Subject to subsection (2), the court may make an order in a proceeding under chapter 2 or chapter 3 with the consent of—
- (a) the applicant in the proceeding; and
 - (b) everyone whom the court has reason to believe has an interest in the property that is the subject of the proceeding.
- ‘(2) The court may make an order under subsection (1) if—
- (a) a person mentioned in subsection (1)(b) withholds consent but the court considers it appropriate to make the order; or
 - (b) the consent of a person mentioned in subsection (1)(b) could not be obtained but the court considers it appropriate to make the order.
- ‘(3) The order may be made without consideration of the matters the court would otherwise consider in the proceeding.

[s 59]

‘(4) This section does not apply to an order made on sentence for a criminal offence.’.

59 Replacement of s 257 (Restriction on functions)

Section 257—

omit, insert—

‘257 Restriction on functions

‘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.’.

60 Omission of s 266 (Review of Act)

Section 266—

omit.

61 Amendment of ch 12, hdg (Transitional provisions, repeal and amendments)

Chapter 12, heading, ‘, repeal and amendments’—

omit, insert—

‘and repeal provision’.

62 Amendment of ch 12, pt 1, hdg (Transitional provisions)

Chapter 12, part 1, heading, at the end—

insert—

‘for Act No. 68 of 2002’.

63 Insertion of new ch 12, pt 3

After section 282—

insert—

‘Part 3 **Transitional provisions for the
Criminal Proceeds
Confiscation and Other Acts
Amendment Act 2009**

‘283 **Definition for this part**

‘In this part—

amendment Act means the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*.

‘284 **Property controlled by public trustee**

‘This Act as amended by the amendment Act, section 7 applies in relation to property whether the public trustee was directed to take control of the property before or after the commencement of the section.

‘285 **Proceeds assessment order relating to an external serious crime related activity**

‘This Act as amended by the amendment Act, section 29 applies in relation to external serious crime related activity happening before or after the commencement of the section.

‘286 **Charges on property**

‘This Act as amended by the amending Act section 32, applies in relation to all proceeds assessment orders made after the commencement of the section.

‘287 **Orders under ss 37 and 129**

‘(1) This section applies if a person makes an application for a particular type of order under section 37 or 129 before the commencement and the Supreme Court has not dealt with the application on the commencement.

[s 63]

- ‘(2) The application remains valid despite the amendment Act and the Supreme Court, on the application, may make an order of the same type after the commencement under the Act as amended by the amendment Act.

‘288 Exclusion of property from orders

- ‘(1) This section applies if—
- (a) a person gave a notice under old section 47(3), 49(2), 65(3), 66(3) or 71(3); and
 - (b) the Supreme Court has not made an order on the application of which notice was given in the notice.
- ‘(2) The person is taken to comply with the following provisions in relation to the application—
- if the notice was given under old section 47(3)—section 47(3) and (3A)
 - if the notice was given under old section 49(2)—section 49(2) and (2A)
 - if the notice was given under old section 65(3)—section 65(3) and (3A)
 - if the notice was given under old section 66(3)—section 66(3) and (3A)
 - if the notice was given under old section 71(3)—section 71(3) and (3A).
- ‘(3) In this section—
- old section 47(3), 49(2), 65(3), 66(3) or 71(3)* means section 47(3), 49(2), 65(3), 66(3) or 71(3) as in force immediately before the commencement of this section.

‘289 Transitional provision for amendment of definition of dealing

‘To remove doubt, it is declared that the transaction described in schedule 6, definition *dealing*, paragraph (da), inserted into the definition by the amendment Act, section 66, was, from

the commencement of the definition, always a dealing with property.’.

64 Amendment of schedule 1 (Examples)

Schedule 1, part 2, section 3, example 1, subsection (6)(b)—
omit, insert—

‘(b) the amount of \$400000, made up of the \$60000 mentioned in subsection (2)(a), and the \$20000 mentioned in subsection (4)(b), for each year, is derived proceeds.’.

65 Amendment of schedule 1 (Examples)

Schedule 1, part 4, section 12 example 3, subsection (6)(b)—
omit, insert—

‘(b) the amount of \$400000, made up of the \$60000 mentioned in subsection (2)(a), and the \$20000 mentioned in subsection (4)(b), for each year, is derived proceeds.’.

66 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definitions *property* and *property particulars order*—

omit.

(2) Schedule 6—

insert—

‘***applicant*** for chapter 4, part 4, division 2A, see section 153A.

available substitute property means property that may become substituted for other property under a tainted property substitution declaration.

convicted person for chapter 4, part 4, division 2A, see section 153A.

corresponding entity means an entity that has a function of enforcing a corresponding law.

court officer means an officer of the Supreme Court appointed by the principal registrar.

examination order see—

- (a) for chapter 2—section 38A(1)(a) or (b); or
- (b) for chapter 3—section 130A(1)(a) or (b).

external serious crime related activity see section 16(3).

finding of serious crime related activity see section 78(1).

investigation order see—

- (a) for chapter 2—section 38A(1); or
- (b) for chapter 3—section 130A(1).

officer, for chapter 8, part 2, division 3, see section 249A.

principal registrar means the person appointed as the principal registrar of the Supreme Court.

property includes—

- (a) generally—property whether situated in Queensland or elsewhere, including outside Australia; and
- (b) for chapter 2—see section 19.

Note—

For the meaning of property generally, see the *Acts Interpretation Act 1954*, sections 32AB (Terms defined both in this Act and another Act) and 36 (Meaning of commonly used words and expressions), which defines property 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.

property particulars order see—

- (a) for chapter 2—section 38A(1)(c); or
- (b) for chapter 3—section 130A(1)(c).

tainted property substitution declaration means a tainted property substitution declaration made under section 153C.

unavailable property for chapter 4, part 4, division 2A, see section 153A.’.

- (3) Schedule 6, definition *dealing*—
insert—
‘(da) engaging in a transaction that has the direct or indirect effect of changing the value of a person’s interest in the property; and’.
- (4) Schedule 6, definition *dealing*, paragraph (i), after ‘(d)’—
insert—
‘(da),’.
- (5) Schedule 6, definition *prescribed respondent*, paragraph (d)—
omit, insert—
(d) for chapter 4, other than part 4, division 2A—section 200; or
(e) for chapter 4, part 4, division 2A—section 116.

Part 3 **Amendment of Fair Trading Act 1989**

67 **Act amended in pt 3**

This part amends the *Fair Trading Act 1989*

68 **Amendment of s 71A (Exemptions from division for particular contracts or types of contract)**

Section 71A(1), after ‘division’—

[s 69]

insert—

‘, other than section 63.’

69 Insertion of new pt 9

After section 117—

insert—

‘Part 9 Transitional provision for Criminal Proceeds Confiscation and Other Acts Amendment Act 2009

‘118 Existing exemptions and applications for exemptions for section 63

‘(1) On the commencement—

- (a) any relevant exemption existing immediately before the commencement is revoked; and
- (b) any application for a relevant exemption existing immediately before the commencement ends; and
- (c) any entitlement or expectation that anyone has immediately before the commencement to apply for or to be given a relevant exemption is extinguished.

‘(2) In this section—

commencement means the commencement of the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*, section 68.

relevant exemption means an exemption given under section 71A for section 63.’

Part 4 Amendment of Security Providers Act 1993

70 Act amended in pt 4

This part amends the *Security Providers Act 1993*.

71 Amendment of s 10 (Application)

Section 10—

insert—

‘(3B) If the application is for carrying out the functions of a security firm, the application must include evidence that the applicant is a current member of an approved security industry association.’.

72 Amendment of s 11 (Entitlement to licences—individuals)

(1) Section 11(2)(c)—

renumber as section 11(2)(d).

(2) Section 11(2)—

insert—

‘(c) for an application for a security firm licence—is a current member of an approved security industry association; and’.

73 Amendment of s 13 (Entitlement to licences—corporations or firms)

Section 13(3)—

insert—

‘(c) the applicant is a current member of an approved security industry association.’.

[s 74]

74 Amendment of s 21 (Grounds for suspension, cancellation or refusal to renew)

(1) Section 21(1)(f)—

renumber as section 21(1)(g).

(2) Section 21(1)(d) and (e)—

omit, insert—

‘(d) if the licensee is an individual or a partnership—the individual, the partnership or any partner—

(i) has been convicted of an offence against the *Industrial Relations Act 1999*, section 666(1) relating to the under payment of wages; or

(ii) has contravened an order of the industrial commission or of the Industrial Magistrates Court to pay wages;

(e) if the licensee is a corporation—

(i) the licensee has been convicted of an offence against the *Workplace Relations Act 1996* (Cwlth), section 719 in relation to the payment of an amount to a person; or

(ii) the licensee has contravened an order of an eligible court under the *Workplace Relations Act 1996* (Cwlth), section 719(6) or (7) or 720 to pay an amount to or on behalf of the person;

(f) the licensee is not a member of an approved security industry association;’.

(3) Section 21—

insert—

‘(1A) However, subsection (1)(f) applies only if at least 60 days have passed since the later of the following—

(a) the licensee was last a member of an approved security industry association;

(b) the commencement of this subsection.’.

75 Insertion of new s 21A

After section 21—

insert—

‘21A Approved security industry association must give notice of persons whose membership of the association ends

‘An approved security industry association must, within 14 days after the end of each successive month after becoming an approved security industry association, give the chief executive written notice of—

- (a) each person whose membership of the association ended during the month; and
- (b) the date the membership ended.

Maximum penalty—20 penalty units.’.

76 Insertion of new s 25B

Part 2, division 5, after section 25A—

insert—

‘25B Approval of security industry associations

‘The chief executive may, under requirements prescribed under a regulation—

- (a) approve security industry associations for the purposes of this part; or
- (b) withdraw a security industry association’s approval under paragraph (a).’.

77 Amendment of pt 2, div 6, hdg (Appeals against licence decisions)

Part 2, division 6, heading, after ‘decisions’—

insert—

‘and decisions about approval of security industry associations’.

[s 78]

78 Amendment of s 26 (Right to appeal to the Court)

Section 26(3)—

omit, insert—

- ‘(3) A security industry association may appeal against a decision of the chief executive—
- (a) to refuse to approve the association for the purposes of this part; or
 - (b) to withdraw the association’s approval under section 25B(a).
- ‘(4) The appeal may be made—
- (a) for an appeal under subsection (1) or (2)—to the Magistrates Court nearest the place where the applicant or licensee resides or carries on, or proposes to carry on, business or employment under the licence; or
 - (b) for an appeal under subsection (3)—
 - (i) if the association’s principal place of business is in Queensland—to the Magistrates Court nearest that place; or
 - (ii) if the association’s principal place of business is outside Queensland—the Brisbane Magistrates Court.’.

79 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘approved security industry association means a security industry association approved under section 25B(a) whose approval under that section has not been withdrawn by the chief executive under section 25B(b).

security industry association means an association that represents the interests of security providers.’.

Part 5 Amendment of Trusts Act 1973

80 Act amended in pt 5

This part amends the *Trusts Act 1973*.

81 Amendment of s 5 (Definitions)

Section 5(1), definition *approved form*, ‘section 114.’ and footnote—

omit, insert—

‘section 118.’.

82 Amendment of s 67 (Protection of trustees by means of advertisements)

Section 67(4)(a), ‘section 109’—

omit, insert—

‘section 113’.

83 Renumbering of pts 9 and 10 and ss 107 to 115

(1) Parts 9 and 10—

renumber as parts 10 and 11.

(2) Sections 107 to 115—

renumber as sections 111 to 119.

84 Insertion of new pt 9

After section 106—

insert—

‘Part 9 Gifts by particular trusts for philanthropic purposes

[s 84]

‘107 Definitions for pt 9

‘In this part—

eligible recipient means a deductible gift recipient under the *Income Tax Assessment Act 1997* (Cwlth), whether or not the deductible gift recipient is a charity at law or (without limitation) is established for a charitable purpose or purposes.

prescribed trust means a trust—

- (a) that establishes and maintains a fund mentioned in item 2 of the table of the *Income Tax Assessment Act 1997* (Cwlth), section 30-15; or
- (b) that is established for charitable or philanthropic purposes and is of a class prescribed under a regulation.

trust instrument means the initial instrument establishing a prescribed trust, as modified by all validly executed amendments.

‘108 Prescribed trust—trust instrument containing express power to give to eligible recipients

‘The trust instrument of a prescribed trust may include an express power for the trustees to provide money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.

‘109 Prescribed trust—trust instrument not containing express power to give to eligible recipients

- ‘(1) The powers of the trustees of a prescribed trust, whose trust instrument does not contain an express power to do so, include a power to provide money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.
- ‘(2) Subsection (1)—
 - (a) applies despite any provision to the contrary in the trust instrument; but

-
- (b) does not apply in relation to a particular eligible recipient or a particular class of eligible recipients to the extent that there is an express prohibition in the trust instrument against the provision by the trustees of money, property or benefits—
 - (i) to or for that eligible recipient or class of eligible recipients; or
 - (ii) for the establishment of that eligible recipient or class of eligible recipients.
 - ‘(3) Subsection (1) does not apply to the trustees of a prescribed trust unless there is in force a declaration substantially to the effect of the approved form for the prescribed trust.
 - ‘(4) For the purpose of making a declaration under this section, the approved form may be modified so as to limit the application of the declaration to a stated eligible recipient or stated class of eligible recipients.
 - ‘(5) If the declaration made for a prescribed trust is so limited, subsection (1) in its application to the prescribed trust has effect only in relation to the stated eligible recipient or stated class of eligible recipients.
 - ‘(6) The trustees must ensure that the declaration, or a certified copy of it, is retained with the records of the prescribed trust.
 - ‘(7) The trustees are not under a duty to make a declaration under this section, nor are the trustees in breach of a duty in making a declaration under this section.

‘110 Ancillary provisions

- ‘(1) A reference in this section to *prescribed power*, in relation to a prescribed trust, means—
 - (a) a power referred to in section 108 included in the trust instrument; or
 - (b) the power referred to in section 109 as applying to the prescribed trust.

[s 85]

- ‘(2) This Act applies to a prescribed trust as if the prescribed power were a power exercisable for a charitable purpose.
- ‘(3) Without limiting subsection (2)—
- (a) neither the existence nor the exercise of the prescribed power affects the validity or status of a charitable trust as a charitable trust; and
 - (b) a prescribed trust is to be construed and given effect to as if—
 - (i) the prescribed power were a power exercisable for a charitable purpose; and
 - (ii) any payment or application of the trust property or the trust income, or any part of either of them, in the way allowed by the power were to or for a charitable purpose; and
 - (c) the existence or exercise of the prescribed power does not affect the control of a prescribed trust by the court in the exercise of the court’s general jurisdiction in relation to charitable trusts; and
 - (d) the jurisdiction mentioned in paragraph (c) extends to the prescribed power as if the power were exercisable for a charitable purpose.’.

85 Amendment of pt 11 hdg as renumbered

Part 11, as renumbered, heading, after ‘Transitional provision’—

insert—

‘for Trusts (Investments) Amendment Act 1999’.

86 Insertion of new pt 12

After section 119—

insert—

‘Part 12 **Transitional provisions for
Criminal Proceeds
Confiscation and Other Acts
Amendment Act 2009**

‘120 **Definitions for pt 12**

‘In this part—

commencement day means the date of assent of the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009*.

eligible recipient see section 107.

prescribed trust see sections 107 and 121.

‘121 **Application of pt 9 to existing trusts**

‘For part 9 and this part, a trust is a prescribed trust as defined under section 107 whether the trust was created before, on or after the commencement day.

‘122 **Validation**

- ‘(1) The provision, before the commencement day, by the trustees of a prescribed trust of money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient—
- (a) is taken to be, and always to have been, a provision for an authorised and valid purpose of the prescribed trust; and
 - (b) does not affect, and is taken never to have affected, the status of the prescribed trust as a charitable trust.
- ‘(2) Subsection (1) applies despite anything to the contrary in the trust instrument.

[s 86]

- ‘(3) The inclusion of a power referred to in section 108 in the trust instrument of a prescribed trust before the commencement day is taken to be, and always to have been, validly included.’

© State of Queensland 2009