CRIMINAL PROCEEDS CONFISCATION BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

Broadly speaking the purpose of the Bill is to deter criminal activity and confiscate the ill-gotten gains obtained through that criminal activity. The primary objective of the Bill is to introduce a civil confiscation scheme in which recovery action of the proceeds of criminal activity is not limited to the profits of a specific offence, but applies to all criminal proceeds accumulated by a person who has engaged in serious criminal activity during the previous six years. For this scheme it will not be necessary for the person to have been convicted of any offence. The civil scheme will be in addition to a conviction based scheme similar to the present conviction based scheme under the *Crimes (Confiscation) Act 1989*.

The two schemes will ensure that all those who benefit from criminal activity will have to account for all profits and assets they have derived from such activity. The use of a civil based scheme to complement the existing conviction based scheme will provide an effective strategy for undermining the profitability of organised and other serious crime and will allow the State to offset associated financial and social costs.

Reasons for the objectives and how they will be achieved

Under the *Crimes (Confiscation) Act 1989*, Queensland has an existing scheme to recover the proceeds of crime under which restraining orders may be obtained to prevent the dissipation of the proceeds of crime and forfeiture orders and pecuniary penalty orders obtained against a defendant on conviction. Under the conviction based scheme a forfeiture order deals with property used in (or in connection with) the commission of a serious offence, or property derived from such an offence. A pecuniary penalty order deals with benefits derived from the commission of an offence.

The existing conviction based scheme was introduced in 1989 in line with all other Australian jurisdictions which introduced similar schemes between 1985 and 1993. Other jurisdictions have found that conviction based schemes alone have failed to meet the key objective of such legislation, namely, to deprive criminals of the assets gained through their criminal activities. As a result, most other Australian jurisdictions including the Commonwealth, New South Wales, Victoria, Western Australia, the Northern Territory and the Australian Capital Territory have introduced, or are introducing, civil confiscation laws to either replace or complement existing conviction based confiscation laws. These civil confiscation schemes are not dependent on a conviction being obtained in order for recovery action to be instituted. The civil confiscation schemes are based on the general principle that a person is not entitled to become unjustly enriched as a result of unlawful conduct.

The Bill repeals the existing *Crimes (Confiscation) Act 1989*.

The way in which policy objectives are to be achieved by the Bill

The policy objectives will be achieved through a range of core provisions in the Bill:

The Bill will incorporate a conviction based scheme similar to the existing Queensland scheme with a new civil based confiscation scheme modelled on the *Criminal Assets Recovery Act 1990* (NSW). The essential difference between the conviction based scheme and the new civil confiscation scheme is that, under the latter, forfeiture and proceeds assessment orders will be made even if a person is not charged or convicted of any criminal offence. The court orders will result in the recovery by the State of the proceeds of the criminal activity.

Once it is proved to the civil standard of proof that a person is or has been involved in serious criminal activity during the previous six years, the onus will shift to the property holder to show, again to the civil standard, that the property in question was lawfully acquired. Unlike the conviction based scheme, recovery action will not be limited to the profits of a specific offence but apply to all criminal proceeds accumulated by a person who has engaged in the serious criminal activity during the specified period.

The scheme ensures that all those who benefit from criminal activity will have to account for all profits and assets they have derived from such activity. By not being limited to a specific offence, civil confiscation will be more effective in targeting the assets of those who make a living from organised crime.

The Bill provides for the standard of proof for obtaining forfeiture and pecuniary penalty orders under both types of schemes to be the civil standard, that is, the balance of probabilities.

The civil confiscation scheme under the Bill would operate independently of, but parallel to, the conviction based scheme. Under the Bill the Crime and Misconduct Commission (CMC) will institute proceedings under the civil scheme on behalf of the State. A police officer will also be able to institute proceedings with the approval of the CMC. The Director of Public Prosecutions (DPP) will have carriage of legal proceedings under the civil scheme as solicitor on the record. All proceedings will be conducted before a Supreme Court judge.

The Bill also provides for a conviction based confiscation scheme modelled on the existing scheme in the *Crimes (Confiscation) Act 1989*. It is intended that this scheme operate in a manner similar to, and consistent with, the previous scheme under the repealed Act. In order for a forfeiture order or a pecuniary penalty order to be obtained under this scheme the defendant must have been convicted of an applicable offence or fall into a category which is treated as equivalent to conviction. In relation to a forfeiture order under this scheme, forfeiting property to the State, it is necessary for the property to be "tainted" that is either used in, or derived from, the commission of the offence.

The scheme also allows as an initial step the obtaining of a restraining order preventing a defendant and others from dealing with property in contravention to what is ordered. A pecuniary penalty order requires a defendant to pay to the State an amount representing the benefits derived from the commission of the offence.

The previous conviction based scheme is enhanced under the Bill by expanding the range of predicate offences attracting automatic forfeiture to cover all indictable offences punishable by imprisonment for five years or more. The need for a physical and temporal link between the offence charged and property available for forfeiture under the automatic (statutory) forfeiture provisions is removed in relation to serious drug offences.

The Bill also incorporates recommendations made in the Australian Law Reform Commission's 1999 Report No 87 *Confiscation That Counts.*

The Bill adopts a superior approach to some other jurisdictions by placing all confiscation matters, both the civil scheme and the conviction based scheme, in the one Act. This will ensure that the two schemes are

compatible and thus importantly that the civil scheme will complement and not jeopardise criminal prosecutions.

Administrative cost to Government of implementation

The Government has provided $0.547M output funding to the Department of Justice and Attorney General in 2002/2003 to cover the cost of the Department's role in administering the Bill with $0.5M to be provided in 2003/2004 and $0.514M thereafter.

The cost to the Crime and Misconduct Commission will be provided with funding from the carryover of the 2001/2002 funds and from savings achieved from the merger of the Criminal Justice Commission and the Queensland Crime Commission.

Consistency with Fundamental Legislative Principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Bill.

Does not reverse the onus of proof in criminal proceedings without adequate justification

Clause 252 of the Bill contains the offence of *Possession etc. of property suspected of being tainted property* currently contained in section 92 of the *Crimes (Confiscation) Act 1989*. The Bill does not alter the existing offence in section 92. Offences of this type, which relate to possession of property suspected of being tainted or stolen etc, have a long tradition in the criminal law. This offence may be thought to reverse the onus of proof because of the inclusion in subsection (2) of a defence in which the onus falls on the defendant. However, the Crown still bears the onus of proving the offence beyond reasonable doubt. The onus on the defendant, in proving the defence, must be satisfied to the civil standard. Placing the onus of satisfying the court in relation to the defence on the defendant is justified as it relates to matters that are peculiarly within the defendant's knowledge. It is also important to note that this offence has been in existence for over 10 years.

The Bill does reverse the onus of proving certain matters within the context of the civil proceedings under the civil confiscation scheme. The

Bill places the onus of proving that property is not illegally obtained property on the owner of the property. The reversal of the onus only occurs once the State has satisfied the Supreme Court that the person has been involved in some criminal activity of a specified kind within the previous six years. To remove the property from the operation of the scheme the person must show it was lawfully obtained. This should be an easy task for the owner who has acquired property, particularly valuable property, legitimately. In that context it is not unfair to place the onus of proving property has been lawfully acquired on the person who has the best or exclusive knowledge of the source of the property.

Provides appropriate protection against self-incrimination

The Bill in clauses 40 and 132 provides that, in an examination conducted to ascertain the nature and location of property of a person, the person is not excused from answering a question or producing a document, on the ground that answering the question or producing the document may tend to incriminate the person or make the person liable to a forfeiture or penalty.

The examination provisions were included in the original confiscation legislation and were introduced because normal powers were considered inadequate to obtain complete information about the affairs of a person subject to a confiscation application. The justification for the power is that it enables investigators to obtain full details of a person's property and financial dealings which in turn would allow appropriate action to be taken under the Bill to forfeit illegally obtained property or release legitimate property from restraint. The information sought could include information which is exclusively within the knowledge of the person concerned. The Bill reflects similar provisions in the *Proceeds of Crime Act 2002* (Cth) and the *Criminal Assets Recovery Act 1990* (NSW). It is also consistent with the immunity given to witnesses at criminal investigation hearings conducted by the CMC.

The Bill confers use immunity on the person in return for removing the privilege against self-incrimination. Protection is given to the person by providing that any information given during the examination may not be used for any criminal proceedings except for proceedings about the false or misleading nature of the statement or disclosure. Further protection against civil penalty is provided by making the evidence inadmissible in civil proceedings except in relation to proceedings related to the confiscation of property under the Bill or, if the disclosure is a document or thing, related to a right or liability conferred by it.

However the Bill does not confer derivative use immunity. The evidence can be used as the basis for investigations that could lead to further evidence, which is then admissible in criminal proceedings against the person who gave the answer or produced the document. The inclusion of derivative use immunity could potentially thwart prosecutions by allowing the defendant to seek the exclusion of evidence on the basis that it derived indirectly from evidence given at the examination. Such a contention could be difficult to refute by the prosecution in relation to a criminal investigation without disclosing confidential sources or informants. Equally from the defendant's viewpoint, if derivative use immunity is provided, its protection could be largely illusory because of the inherent difficulty in proving that evidence adduced by the prosecution was derived from the examination testimony.

The examination power may only be used to advance the purposes of the legislation and its use for any other purpose unrelated to confiscation proceedings would be improper. Thus a question asked purely for the purpose of obtaining information to assist a criminal investigation would be unlawful and any use of such unlawfully obtained material at a subsequent criminal proceeding would be open to objection on the basis of the principle in *Bunning v Cross* (1978) 141 CLR 54 (that a court has a discretion to reject evidence that is illegally obtained). As a further safeguard to ensure the power is exercised properly the Attorney-General will be able to issue guidelines to regulate the conduct of examinations by the DPP. The guidelines will cover such practical topics as the type of questions which may be asked, the conduct of the examination itself and the use which may be made of the material obtained.

Does not adversely affect rights and liberties, or impose obligations, retrospectively

Upon commencement, although applications under the Bill may only be made prospectively, the scheme will capture serious crime related activity which occurred in the six years prior to its enactment. Provided the criteria are met, applications will be able to be made in relation to persons convicted of relevant offences during that period and also potentially, in relation to persons who have not been charged or who, having been prosecuted, have been found not guilty. The application of the Bill to illegal activity occurring prior to enactment is justified on the general principle that a person should not be allowed to become unjustly enriched, at the expense of other individuals or society generally, as a

result of unlawful conduct. Under this principle the law does not recognise any right by a person to retain the proceeds of unlawful acts. The approach in the Bill is consistent with the approach adopted when the New South Wales legislation, on which the civil scheme is to a large extent based, was enacted.

Whether the legislation authorises the amendment of an Act only by another Act

Clause 26(f) allows the Executive, where merited, to make a regulation to prescribe further circumstances in which illegally acquired property or serious crime derived property stops being property of that character. Although Parliament has the power to disallow a regulation, the provision may be thought to usurp the power of Parliament. Its inclusion is justified on the basis that it operates in favour of property holders by removing property from the definitions and hence from the operation of the Bill. The inclusion of the regulation making power allows the Executive to take swift remedial action where situations arise that warrant the extension of the scope of clause 26.

Provides for the compulsory acquisition of property only with fair compensation

The provisions under the Bill result in the forfeiture to the Crown of property which is the proceeds of illegal activity. Such action is justified by the policy against unjust enrichment. The Bill provides for a person to be able to apply to exclude property from the making of an order if it is shown that the person's interest in the property is not illegally acquired.

CONSULTATION

Community

Community stakeholders consulted on the Bill include the Queensland Law Society, the Bar Association of Queensland, the Queensland Council for Civil Liberties, the Chief Justice of Queensland, the Chief Judge of the District Court of Queensland, and the Chief Magistrate.

Government

There has been consultation with the following government agencies during the preparation of the Bill-

- Department of the Premier and Cabinet
- Crime and Misconduct Commission
- Queensland Treasury
- Queensland Police Service
- Office of the Director of Public Prosecutions
- Public Trustee
- Legal Aid Queensland
- Department of Natural Resources
- Office of Fair Trading
- Department of Education

NOTES ON PROVISIONS

CHAPTER 1—INTRODUCTION

Clause 1 describes the short title of the Act as being the *Criminal Proceeds Confiscation Act 2002.*

Clause 2 provides that the Bill other than Schedule 3, items 49 and 50, is to commence on 1 January 2003. Schedule 3, items 49 and 50 are taken to have commenced on 1 January 2002.

Clause 3 provides that certain terms used in the Bill are defined in the dictionary in Schedule 5 of the Bill (located at the end of the Bill).

Clause 4 provides for the purposes of the Bill. The main purpose is, regardless of whether or not a particular person has been convicted of an offence in relation to illegal activity, to remove the financial gain and increase the financial loss associated with the illegal activity. Other purposes include ensuring property rights are affected by orders under the Bill only through just procedures with a right to be heard afforded to

persons who may be affected by the orders and with safeguards to protect lawfully acquired property. A further purpose is to enable the corresponding laws of other States to be enforced in Queensland.

The Bill achieves its purposes by providing for two separate schemes. One scheme is a conviction based scheme and is administered by the Director of Public Prosecutions (DPP). The other scheme is not dependent on the prosecution or conviction for a criminal offence and is administered by the Crime and Misconduct Commission. Each scheme is distinctly separate and neither limits the other scheme.

Clause 5 provides the application of the Bill to persons. *Subclause (1)* provides that the Bill binds all persons including the State of Queensland and, as far as the legislative power of the Parliament permits, also binds the Commonwealth and the other States of Australia. *Subclause (2)* provides that the Bill does not make the State of Queensland, the Commonwealth or the other States liable to be prosecuted for an offence.

Clause 6 clarifies that a note located in the text is a part of the Bill.

Clause 7 explains the examples in schedule 1 of the Bill. *Subclause (1)* provides that an example in schedule 1 part 1 demonstrates the operation of the term "illegally acquired property". *Subclause (2)* provides that an example in schedule 1 part 2 demonstrates the operation of chapter 2, part 5. *Subclause (3)* provides that an example in schedule 1 part 3 demonstrates the operation of the term "tainted property". *Subclause (4)* provides that an example in schedule 1 part 4 demonstrates the operation of chapter 3, part 7, division 3.

Clause 8 makes it clear that except in relation to the offence provisions all proceedings under the Bill are civil proceedings. Except for the offence provisions contained in the Act:

- the proceeding is not a criminal proceeding
- questions of fact which are to be determined by a court are to be decided to the civil standard (the balance of probabilities);
- the rules of evidence applicable to civil eases apply to the proceedings under the Bill; and
- the rules of construction applicable only to criminal cases do not apply to the interpretation of the Bill for the proceeding.

Clause 9 makes it clear that an order in a civil proceeding under the Bill is not part of a punishment or sentence for an offence.

Clause 10 makes it clear that the operation of any other law providing for the forfeiture of property is not affected by this Bill.

Clause 11 facilitates the registration of orders under the corresponding law of another State so as to enable property located in another State to be restrained or forfeited under the Bill.

Clause 12 provides who may commence a proceeding under the Bill on behalf of the State. The Crime and Misconduct Commission may start a proceeding under Chapter 2 and may approve of a police officer starting a proceeding under Chapter 2. An appropriate officer may start a proceeding under Chapter 3 or 4. Also, an appropriate officer may start a proceeding under Chapter 10, Part 1. *Subclause (2)* provides that all proceedings are to be taken under the title "State of Queensland". The Director of Public Prosecutions is the solicitor on the record for all proceedings under this Bill. *Subclause (4)* enables an appropriate officer to sign any document for the proceeding. *Subclause (5)* defines "appropriate officer" for the purposes of the Bill.

CHAPTER 2—CONFISCATION WITHOUT CONVICTION

PART 1—PRELIMINARY

Chapter 2 contains the scheme which is not dependent on a charge or conviction for confiscation to occur.

Clause 13 explains the operation of the chapter and gives a basic outline of the non-conviction based confiscation provisions contained in this chapter of the Bill. It is made clear that, regardless of whether or not a person has been convicted of any offence, proceedings may be commenced to confiscate property derived from illegal activity. The chapter also allows for the forfeiture of property which it is more probable than not within the previous six years was the proceeds of a serious crime related activity even if the person who engaged in the activity has not been identified. As an initial step a restraining order may be obtained from the Supreme Court preventing property from being dealt with. The chapter provides for the forfeiture of property of a person who it is more probable than not, at any time within the previous six years, has engaged in a serious crime related

activity. Serious crime derived property belonging to either another person or to an unidentified person is also able to be forfeited under the chapter. The chapter also provides for the person to be ordered to pay to the State an amount which represents the value of the proceeds derived by the person from the illegal activity that took place in the previous six years. It is a pre-condition to a forfeiture order that there be a restraining order in relation to the property of the person. This requirement does not apply to an application for a proceeds assessment order. The chapter is not intended to apply to lawfully acquired property and it also contains provisions to provide for the exclusion of lawfully obtained property from the operation of orders made under the chapter.

PART 2—INTERPRETATION

Division 1—References to relevant offences

Clause 14 makes it clear that the Bill applies to illegal activity or serious crime related activity which occurred before or after the commencement of this Bill subject to the limitation period under clause 58.

Clause 15 explains the meaning of "illegal activity" as used in the Bill. The definition of illegal activity applies to a broader range of illegal conduct than does "serious crime related activity".

Clause 16 explains the meaning of "serious crime related activity" as used in the Bill.

Clause 17 explains the meaning of "serious criminal offence" as used in the Bill.

Division 2—References to proceeds, property and benefits

Clause 18 explains the meaning of "proceeds" as used in the Bill.

Clause 19 explains the meaning of "property" as used in the Bill.

Clause 20 explains the meaning of "effective control" as used in the Bill in relation to property.

Clause 21 explains the meaning of "benefit" and "benefit derived" as used in the Bill.

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

Subdivision 1—Meaning of particular property related terms

Clause 22 explains the meaning of "illegally acquired property" as used in the Bill.

Clause 23 explains the meaning of "serious crime derived property" as used in the Bill.

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

Clause 24 contains the definitions for the purposes of the subdivision.

Clause 25 makes it clear that illegally acquired property remains illegally acquired property unless it stops being illegally acquired property under section 26. The clause also makes it clear that serious crime derived property remains serious crime derived property unless it stops being serious crime derived property under clause 26.

Clause 26 explains when property ceases to be illegally acquired property or serious crime derived property. The dealing with either illegally acquired property or serious crime derived property does not mean that it ceases to be illegally acquired property or serious crime derived property respectively except in the particular circumstances described in the clause.

Clause 27 explains when previous illegally acquired property again becomes illegally acquired property. The clause also explains when previous serious crime derived property again becomes serious crime derived property.

PART 3—RESTRAINING ORDERS

Division 1—Application for restraining orders

Clause 28 enables the State to apply to the Supreme Court for a restraining order preventing particular property from being dealt with by any person except in particular ways. The application may be made without giving notice to the person to whom it relates but must be accompanied by an affidavit made by an authorised commission officer or a police officer. The restraining order may cover all property of a person suspected of having engaged in serious crime related activities (known as the prescribed respondent) or specified parts or classes of that property and may extend to property acquired after the making of the order. In addition, the order can extend to specified parts or classes of property of another person or to property suspected itself of being the proceeds of serious crime related activity. The court may require additional information to be given by the State before considering the application.

Clause 29 provides the requirements for the affidavit accompanying the application. There are different requirements depending upon the ownership of the property and the nature of the serious crime related activity. *Subclause (a)* provides that for property of the prescribed respondent where the serious crime related activity involves an offence set out in Schedule 2 Part 1 of the Bill (offences which are intrinsically "proceeds orientated" offences and generally associated with organised crime) the officer must state a suspicion that the person has engaged in 1 or more serious crime related activities and the reason for the suspicion.

Subclause (b) provides that where the activity of the prescribed respondent involves any other indictable offence punishable by 5 years or more, an additional element will be added to the restraining order test. In these cases, the officer will be additionally required to state that they have a reasonable suspicion that the person who has engaged in one or more serious crime related activities has derived proceeds from at least one activity.

Subclause (c) provides that where the property is the property of someone other than the prescribed respondent the officer must state a suspicion that the property itself is serious crime derived property because of the serious crime related activity of a prescribed respondent.

Subclause (d) provides that where the property sought to be restrained is property which is itself suspected of being serious crime derived property because of the activity of a person who may not be able to be identified the officer must state a suspicion that the property itself is serious crime derived property and the reason for the suspicion.

Division 2—Making restraining orders

Clause 30 provides who may be present at the hearing of an application for a restraining order which is made without notice.

Clause 31 provides for the making of a restraining order. *Subclause (1)* provides that a court must make a restraining order if after considering the application including the relevant affidavit it is satisfied there are reasonable grounds for the suspicions required by clause 29. *Subclause (2)* provides for the circumstances in which the court may refuse an application even if it is satisfied as required by subclause (1). The ability for the court to require a damages or costs undertaking will act to ensure the State only makes applications in appropriate cases or risk a payment under the undertaking. *Subclause (3)* enables the CMC or the commissioner of the police service to give an undertaking for the payment of damages or costs, or both, in relation to the making and operation of the order, if required by the court as a condition of making the order. *Subclause (4)* contains a condition that a restraining order may only operate in relation to property not yet in a person's possession if the order expressly directs that it does. *Subclause (5)* provides that a restraining order does not prevent a person from giving Legal Aid a charge over their restrained property as a condition for a grant of legal assistance in certain circumstances.

Clause 32 contains provisions about the conditions of a restraining order. *Subclause (1)* provides that every restraining order must include a condition that the owner of restrained property must preserve the property. *Subclause (2)* enables the Supreme Court to include other conditions in a restraining order.

Clause 33 allows the inclusion of a condition permitting the CMC, or in appropriate cases the commissioner of the police service, to agree to the owner of the property either disposing of the restrained property or applying the property itself in order to satisfy either a pecuniary penalty order or a proceeds assessment order. This clause facilitates the use of the

restrained property by its owner voluntarily to satisfy orders for the payment of money to the State without the need for further court sanction.

Clause 34(1) provides that property that is the subject of a restraining order may be used to meet certain expenses or debts. The amount of the expenses that may be met from the restrained assets is fettered in each instance by the term "reasonable". *Subclause (2)* makes it clear that subclause (1) is the only provision in the chapter under which restrained funds may be released to pay the type of expenses mentioned. *Subclause (3)* contains conditions on the operation of subclause (1). It is made clear that a person must use unrestrained property first to meet expenses and that property which is shown to be illegally acquired cannot be released for expenses or to pay a debt. *Subclause (4)* makes clear that payment for legal expenses incurred defending a criminal charge or as a party to a confiscation proceeding may not be made from restrained funds.

Clause 35 provides for the Supreme Court to direct the public trustee to take control of some or all of the restrained property.

Clause 36 deals with the continued operation of a restraining order after the period of 28 days has elapsed since the making of the order. For the restraining order to remain in force one of four specific situations must apply.

Division 3—Making other orders

Clause 37(1) enables the Supreme Court to make orders ancillary to the restraining order. *Subclause (2)* makes clear that *clause 38(h)* is the only clause under which payment for legal expenses incurred defending a criminal charge or as a party to a confiscation proceeding may be made from restrained funds. *Subclause (3)* provides that an order under the clause may be made at either the time the restraining order is made, or at a later time. It is not necessary for the ancillary order to affect a person whose property is restrained under the relevant order for it to be able to be made. *Subclause* (4) specifies who may apply for an ancillary order. *Subclause (5)* enables a person not falling within 37(4) to also apply for an ancillary order with the leave of the court. *Subclause (6)* specifies who must be given notice of an application for an ancillary order and ensures that each party who is entitled to make an application for an ancillary order is given notice of any order which is sought. *Subclause (7)* provides that the notice provisions do not apply where an application is made in

conjunction with an application for a restraining order which is made without notice.

Clause 38 sets out the types of ancillary orders that the court may make however, the court is not restricted to only those ancillary orders. Some of the particular orders able to be made include:

Clause 38(a) enables a court to make an order varying the property covered by the restraining order. For example the court may order the inclusion of property whose existence is discovered in an oral examination.

Clause 38(c) authorises the court to order the examination of a person whose property is restrained under the restraining order or another named person. Those persons can be examined about the "affairs" (for example the interests, transactions and ventures) of any person who owns restrained property and also about the nature and location of various property.

Clause 38(d) authorises the court to order the examination of the spouse of a person whose property is restrained under the restraining order. The spouse can be examined about the spouse's affairs including the nature and location of the spouse's property.

Clause 38(h) allows the payment to Legal Aid from restrained funds of the legal costs incurred by the person whose property is restrained defending a criminal charge or as a party to a confiscation proceeding.

Division 4—Provisions about particular orders

Subdivision 1—Examination orders

Clause 39 enables a judicial registrar to preside at an examination conducted under an examination order and to exercise the powers of the court for that purpose. *Subclause (3)* makes it clear that the judicial registrar may not exercise the powers of the court in relation to punishment of contempt.

Clause 40 contains provisions about privilege at an examination. The clause confers use immunity on the person in return for removing the privilege against self-incrimination. Protection is given to the person by providing that any information given during the examination may not be used for any criminal proceedings except for proceedings about the false or misleading nature of the statement or disclosure. Further protection against civil penalty is provided by making the evidence inadmissible in civil

proceedings except in relation to proceedings related to the confiscation of property under the Bill or, if the disclosure is a document or thing, related to a right or liability conferred by it.

Clause 41 creates a number of offences in relation to contravening an examination order. The maximum penalty that may be imposed for an offence under this clause is a fine of 100 penalty units or a term of imprisonment of 2 years.

Subdivision 2—Property particulars orders

Clause 42 contains provisions about privilege relating to a statement given under a property particulars order. The clause confers use immunity on the person in return for removing the privilege against self-incrimination. Protection is given to the person by providing that the statement may not be used for any criminal proceedings except for proceedings about the false or misleading nature of the statement.

Subdivision 3—Property seizure orders

Clause 43 contains provisions about a property seizure order made under clause 38 and directed to a commission officer. The clause applies certain provisions of the *Crime and Misconduct Act 2001* to the order.

Clause 44 contains provisions about a property seizure order made under clause 38 and directed to a police officer. The clause applies certain provisions of the *Police Powers and Responsibilities Act 2000* to the order.

Division 5—Notice of restraining order and other orders

Clause 45 provides for the giving of notice of the making of a restraining order or another order made under division 3. In each case the CMC must give a person whose property is restrained under the order or who is affected by the order a copy of the order. If the public trustee is directed to take control of restrained property the CMC must also give the public trustee a copy of the order. If however the application was made by a police officer, the commissioner of the police service must give a copy of the order to the CMC and must give the other notices required to be given

in place of the CMC. *Subclause (5)* makes clear that a restraining order does not cease to have effect just because a person has not been served with a copy of the order.

Division 6—Sale of restrained property

Clause 46 enables the Supreme Court to direct the public trustee to sell restrained property that is the subject of an application for a forfeiture order which has not been decided. Such a direction would be given only in a special case such as rapid deterioration of the property. The proceeds of such a sale are also taken to be restrained under the restraining order.

Division 7—Exclusion of property from restraining order

Subdivision 1—Application by prescribed respondent

Clause 47 provides a procedure for a prescribed respondent to apply for the exclusion of particular property from a restraining order. The application must be made before the State has made an application for a forfeiture order for the property. (Once such a forfeiture application is made a different clause of the Bill may be used to apply for exclusion.) However an application once made would continue even if the State applied for a forfeiture order. In that case it would also be necessary to apply at the same time for exclusion under clause 65 or clause 66.

Clause 48 provides for the making by the Supreme Court of an order excluding the prescribed respondent's property from a restraining order.

Subdivision 2—Application by person other than prescribed respondent

Clause 49 provides a procedure for a person other than the prescribed respondent to apply for the exclusion of their property from a restraining order. Unlike an application by a prescribed respondent the right to make an application does not cease once the State has made an application for a forfeiture order for the property. However if the State does apply for a forfeiture order it would be necessary to also apply for exclusion under clause 65 or clause 66.

Clause 50 provides for the making by the Supreme Court of an order excluding the property, of the applicant under clause 49, from a restraining order.

Division 8—Other provisions about restraining orders

Clause 51 provides that where a restraining order applies to property of a particular kind, in which title to or an interest in or charge over the property, is able to be registered under a law whether of the State or elsewhere, then the CMC may apply to register the restraining order in the register. Similarly the commissioner of the police service may apply in appropriate cases. Once registration is effected, any person who deals with the property is taken to have notice of the relevant order unless the contrary is proved. The clause also allows a caveat under the *Land Title Act 1994* to be registered over restrained real property. The most likely property to be registered will be real property. However various types of personal property, for example motor vehicles, also have relevant registration systems.

Clause 52 creates an offence in relation to contravening a restraining order. The maximum penalty that may be imposed for an offence under this clause is a fine of 350 penalty units or a term of imprisonment of 7 years. *Subclause (2)* creates a defence to the offence if the person had no notice that the property was restrained and no reason to suspect it was. *Subclause (3)* provides that a disposition of restrained property in contravention of a restraining order is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

Clause 53 makes it clear that the existence of a restraining order in relation to restrained property does not prevent the enforcement of any other order made under the Bill in relation to the restrained property.

Clause 54 enables the Supreme Court to make orders relating to the duration of a restraining order and other matters if the court does not make a forfeiture order in relation to the property or a proceeds assessment order.

Clause 55 empowers anyone to whom a restraining order is directed to take the steps necessary for the operation of the order.

PART 4—FORFEITURE ORDERS

Division 1—Making and effect of forfeiture orders

Clause 56 enables the State to apply to the Supreme Court for a forfeiture order forfeiting to the State interests in property which are the subject of a restraining order. *Subclause (2)* allows the application to include details of encumbrances which an appropriate officer considers were entered into bone fide in the ordinary course of business.

Clause 57 provides for the giving of notice of the application to the owner of the property and anyone else with an interest in the property. A person given notice has a right of appearance at the hearing of the application as does anyone else who claims any of the property. *Subclause (4)* makes it clear that the court may still make a forfeiture order if a person given notice is not present at the hearing.

Clause 58 provides for the making of the forfeiture order. The Supreme Court must make a forfeiture order if satisfied, on the balance of probabilities, that:

- the person, whose suspected serious crime related activities formed the basis of the relevant restraining order, was involved in the previous six years in a serious crime related activity; or (where the property itself was the subject of the restraining order application)
- the property restrained under the restraining order was in the limitation period the proceeds of a serious crime related activity.

Subclause (2) makes it clear that in the latter case it is not necessary for the identity of the person involved in the serious crime related activity to be known. However under *Subclause (3)* the court must be satisfied the applicant has made reasonable attempts to identify and notify anyone with an interest in the property. *Subclause (4)* provides for the circumstances in which the court may refuse an application even if it is satisfied as required by subclause (1). *Subclause (5)* provides that it is not necessary for the court to make a finding about the commission of a particular offence in order to make a forfeiture order. *Subclause (6)* makes it clear that a forfeiture order may still be made even if there is a doubt whether a person engaged in serious crime related activity. *Subclause (7)* provides that the property to be forfeited must be stated in the order. *Subclause (8)* enables the court to make any ancillary orders the court thinks necessary either

when it makes a forfeiture order or at a later time. *Subclause (9)* defines the limitation period for the purposes of the clause to mean the six years preceding the day the application was made including periods before and after the commencement of the Bill.

Clause 59 provides for the vesting in the State of Queensland of forfeited property subject to any other orders the Supreme Court may have made about the forfeited property.

Clause 60 creates an offence in relation to concealing or dealing with forfeited property with the intention of defeating the operation of the forfeiture order. The maximum penalty that may be imposed for an offence under this clause is a fine of 350 penalty units or a term of imprisonment of 7 years. *Subclause (2)* creates a defence to the offence if the person had no notice that the property was subject to a forfeiture order and no reason to suspect it was. *Subclause* (3) provides that a dealing with forfeited property in contravention of subclause (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

Clause 61 makes it clear that a forfeiture order is not affected by the quashing of a conviction for the serious crime related activity which formed the basis for the making of the forfeiture order.

Division 2—Other orders

Subdivision 1—Orders for relief from hardship

Clause 62 allows the Supreme Court to mitigate the harshness of a forfeiture order to prevent hardship to spouses, children and other dependants of persons who forfeit property. To receive relief from hardship an adult dependant must not have had knowledge of the serious crime related activity of the person who forfeited the property.

Subdivision 2—Orders about encumbrances

Clause 63 allows the Supreme Court to make orders about encumbrances in certain circumstances.

Subdivision 3—Releasing property from effect of forfeiture order

Clause 64 enables the Supreme Court to make a release order providing for a particular interest in property to be released from a forfeiture order upon payment to the State of an amount representing its value.

Subdivision 4—Exclusion of property from forfeiture under exclusion order

Clause 65 provides a procedure for applying for the exclusion of an interest in property from a forfeiture order that has been applied for but not made.

Clause 66 provides a procedure for applying for the exclusion of an interest in property from a forfeiture order that has been made.

Clause 67 provides when the Supreme Court may give leave for an application for an exclusion order that is out of time or made by a person who was given notice of, or appeared at the hearing for the forfeiture order.

Clause 68 provides for the making by the Supreme Court of an exclusion order.

Clause 69 states the matters required to be contained in an exclusion order.

Clause 70 states that on the making of an exclusion order the restraining order ceases its effect in relation to the excluded interest.

Subdivision 5—Exclusion of interest from forfeiture under innocent interest exclusion order

Clause 71 provides a procedure for applying for the exclusion of a proportion of an interest in property from a forfeiture order that has taken effect.

Clause 72 provides when the Supreme Court may give leave for an application for an innocent interest exclusion order that is out of time or made by a person who was given notice of, or appeared at the hearing for the forfeiture order.

Clause 73 provides for the making by the Supreme Court of an innocent interest exclusion order which excludes a proportion of an interest in forfeited property from a forfeiture order if the proportion is not attributable to illegal activity.

Clause 74 states the matters required to be contained in an innocent interest exclusion order.

Division 3—Release and buying back interests

Clause 75 states the effect of making a payment under a release order. After the amount is paid the Attorney-General must arrange for the interest to be transferred to the person who owned the interest immediately before it was forfeited.

Clause 76 provides a procedure to enable a person who is to receive back an interest in forfeited property, which is not the only interest in the property, to buy the other interests provided the other previous owners do not lodge an objection.

PART 5—PROCEEDS ASSESSMENT ORDERS

Division 1—Application for, and making of, proceeds assessment orders

Clause 77 enables the State to apply to the Supreme Court for a proceeds assessment order. The effect of a proceeds assessment order is to require the person against whom it is made to pay to the State an amount assessed by the court as the value of the benefit derived by the person from the person's illegal activity that took place within the previous six years. *Subclause (2)* provides for the giving of notice of the application to the person against whom the order is sought. A person given notice has a right of appearance at the hearing of the application. *Subclause (4)* makes it clear that the court may still make a proceeds assessment order if a person given notice is not present at the hearing. *Subclause (5)* provides that for subclause (1) the six years preceding the day the application was made includes periods before and after the commencement of the Bill.

Clause 78 provides for the making of the proceeds assessment order. The Supreme Court must make a proceeds assessment order if satisfied, on the balance of probabilities, that in the previous six years the person was involved in a serious crime related activity. *Subclause (2)* provides for the circumstances in which the court may refuse an application even if it is satisfied as required by subclause (1). *Subclause (3)* provides that it is not necessary for the court to make a finding about the commission of a particular offence in order to make a proceeds assessment order. *Subclause (4)* allows the court to make any ancillary orders the court thinks necessary.

Clause 79 provides that the amount required to be paid under a proceeds assessment order must be the amount of the proceeds derived from the illegal activity of the person as assessed under division 2. *Subclause (3)* allows the Supreme Court a discretion to deduct the value of forfeited property from the amount to be paid. *Subclause (4)* makes it clear that in making the assessment of the value of the proceeds the Supreme Court is not limited to merely assessing the proceeds from the illegal activity which formed the basis of the application but must assess the value of the proceeds from all illegal activity of the person during the relevant period.

Clause 80 allows the State to apply for an increase in a proceeds assessment order if the value of forfeited property has been deducted and the forfeiture order is later discharged.

Division 2—Assessment of value of proceeds

Clause 81 provides for the application of the division in assessing the value of the proceeds of illegal activity of a person.

Clause 82 requires the Supreme Court to have regard to certain specified matters when making the assessment referred to in clause 81.

Clause 83 makes provision for the treatment of an increase in the value of a person's property and the amount of a person's expenditure in making the assessment for clause 81.

Clause 84 provides that in assessing the benefits accrued by the person the court must not reduce the value of the benefits by the expenses or outgoings that the person incurred in relation to the illegal activity.

Clause 85 provides for certain persons experienced in the investigation of illegal activities involving dangerous drugs to give admissible evidence about the market value of particular dangerous drugs and the amount usually paid for doing something in relation to dangerous drugs.

Division 3—Other provisions about proceeds assessment orders

Clause 86 provides that an amount required to be paid under a proceeds assessment order is a debt payable to the State and may be enforced as a money order of the Supreme Court in a civil proceeding taken by the State.

Clause 87 enables the Supreme Court to declare that property, under the effective control of a person against whom a proceeds assessment order has been made, is available to satisfy the debt created by the order. *Subclause (5)* makes provision for the enforcement of the order against the property after the court makes a declaration under subclause (4).

Clause 88 provides for a charge on the property of the person against whom a proceeds assessment order has been made to secure the payment of the amount of the order.

Clause 89 makes it clear that a proceeds assessment order is not affected by the quashing of a conviction for the serious crime related activity which formed the basis for the making of the proceeds assessment order. *Subclause (2)* makes provision for the effect of an order made against a deceased person.

PART 6—GENERAL

Clause 90 makes it clear that the same serious crime related activity can form the basis for a number of orders including both a forfeiture order and a proceeds assessment order.

Clause 91 makes provision for what happens if an order is sought against a person who is dead.

Clause 92 makes provision for what happens if the joint owner of restrained property dies.

Clause 93 makes it clear that the fact a criminal proceeding has been started against a person who is the subject of an application under this chapter is not a reason on which the Supreme Court may stay a civil application under the chapter.

CHAPTER 3—CONFISCATION AFTER CONVICTION

This Chapter is based on Parts 1, 2 and 3 of the *Crimes (Confiscation) Act 1989*.

PART 1—PRELIMINARY

Clause 94 contains the explanation of the confiscation scheme which is available after conviction. The scheme is based on the previous scheme under the *Crimes (Confiscation) Act 1989*. The chapter allows proceedings to be taken against a person who has been convicted of a confiscation offence to recover property and benefits derived from, or used for or in, the commission of that offence. As an initial step, a court may make a restraining order preventing the property being dealt with without the court's leave.

Clause 95 is the application clause and makes it clear that the chapter applies to a conviction before or after the commencement of the Bill and to a confiscation offence committed before or after the commencement of the Bill. The clause is subject to clause 96.

Clause 96 (1) provides that the chapter does not apply to a conviction before 12 May 1989. *Subclause (2)* makes it clear that subclause (1) does not apply to interstate orders.

Clause 97 makes it clear that an application for a forfeiture order and a pecuniary penalty order may be heard at the same time and also that a similar application under a Commonwealth law may also be heard with an application under this chapter.

Clause 98 makes provisions for the constitution of the Court for applications under this chapter.

PART 2—INTERPRETATION

Division 1—References to relevant offences

Clause 99 explains the meaning of "confiscation offence" as used in the Bill.

Clause 100 explains that "serious criminal offence" has the same meaning as used in clause 17 of the Bill.

Division 2—References to property and benefits

Clause 101 explains the meaning of "benefit" as used in the Bill.

Clause 102 explains the meaning of "benefit derived" as used in the Bill.

Clause 103 explains that "effective control" has the same meaning as used in clause 20 of the Bill.

Clause 104 explains the meaning of "tainted property" as used in the Bill.

Division 3—References to relevant criminal proceedings

Clause 105 explains the meaning of "charge" as used in the Bill in relation to the commencement of a proceeding for an offence.

Clause 106 explains when a person must be treated as having been convicted of an offence for the purposes of the Bill.

Clause 107 explains the meaning of "quash" a conviction as used in the Bill.

Clause 108 explains the meaning of "related offences" as used in the Bill.

Clause 109 explains the meaning of "unamenable to justice" as used in the Bill.

Clause 110 explains when a person who has absconded is to be taken to be unamenable to justice for the purposes of the Bill.

Clause 111 explains when a person who has died is to be taken to be unamenable to justice for the purposes of the Bill.

Clause 112 explains when a person who is not fit for trial under the *Mental Health Act 2000,* chapter 7, part 6 is to be taken to be unamenable to justice for the purposes of the Bill.

Clause 113 explains when a person in relation to whom a warrant for arrest has been issued is to be taken to be unamenable to justice for the purposes of the Bill.

Clause 114 explains when a person who has been the subject of extradition is to be taken to be unamenable to justice for the purposes of the Bill.

Clause 115 explains when a person is to be taken to be unamenable to justice for another reason for the purposes of the Bill.

PART 3—RESTRAINING ORDERS

Division 1—Definitions

Clause 116 contains the definitions for the purposes of Part 3.

Division 2—Application for restraining order

Clause 117 enables the State to apply to the Supreme Court for a restraining order preventing particular property from being dealt with by any person except in particular ways. In urgent circumstances, or where the prescribed respondent is about to be charged with a relevant offence, the application may be made without giving notice to the person to whom it relates. The application must be accompanied by an affidavit made by a police officer. The restraining order may cover all property of a person who is about to be, or has been charged, with a confiscation offence or has been convicted of the relevant offence (known as the prescribed respondent) or specified parts or classes of that property and may extend to property acquired after the making of the order. In addition, the order can extend to specified parts or classes of property of another person. The court

may require additional information to be given by the State before considering the application.

Clause 118 provides the general requirements for the affidavit accompanying the application. There are different requirements depending upon the basis of the application and the nature of the confiscation offence. The police officer must state a suspicion that the property is tainted property or that the prescribed respondent derived the benefit from the commission of the offence and the reason for the suspicion, unless the offence is a serious drug offence. In all cases, details of the conviction or of the suspicion that the prescribed respondent committed an offence must be stated, as must details of the property and the ownership of the property.

Clause 119 contains particular requirements where the affidavit of the police officer relates to the property of a person other than the prescribed respondent.

Clause 120 provides for the giving of notice of the making of the application for a restraining order. *Subclause (4)* makes it clear that the clause does not apply where the application is to be made without notice.

Clause 121 provides who may be present at the hearing of an application for a restraining order which is made without notice.

Division 3—Making restraining orders and other orders

Clause 122 provides for the making of a restraining order. *Subclause (1)* provides that a court may make a restraining order, if after considering the application, including the relevant affidavit, it is satisfied that the person, the subject of the application, has been convicted or is about to be or has been charged with a relevant confiscation offence and that there are reasonable grounds for the suspicions required by clause 118 and, if it applies, clause 119. *Subclause (2)* makes it mandatory for the court to make a restraining order where the confiscation offence is a serious criminal offence unless the court is satisfied it is not in the public interest to make the order. *Subclause (3)* makes it clear that where the prescribed respondent has not yet been charged with the confiscation offence, the court may only make the restraining order if it is satisfied the charge will be laid against the prescribed respondent within 48 hours. *Subclause (4)* provides for the circumstances in which the court may refuse an application even if it is satisfied as required by subclause (1). The ability for the court to require a damages or costs undertaking will act to ensure the State only makes applications in appropriate cases or risk a payment

under the undertaking. *Subclause (5)* enables the DPP to give an undertaking for the payment of damages or costs, or both, in relation to the making and operation of the order, if required by the court as a condition of making the order. *Subclause (6)* provides that a restraining order does not prevent a person from giving Legal Aid a charge over their restrained property as a condition for a grant of legal assistance in certain circumstances.

Clause 123 makes it clear that a restraining order may be made whether or not the property, the subject of the order, is at risk of being dealt with to defeat the operation of this Bill.

Clause 124 contains provisions about the conditions of a restraining order. Subclause (1) provides that every restraining order must include a condition that the owner of restrained property must preserve the property. *Subclause (2)* enables the Supreme Court to include other conditions in a restraining order.

Clause 125 allows the inclusion of a condition permitting the DPP to agree to the owner of the property either disposing of the restrained property or applying the property itself in order to satisfy either a pecuniary penalty order or a proceeds assessment order. This clause facilitates the use of the restrained property by its owner voluntarily to satisfy orders for the payment of money to the State without the need for further court sanction.

Clause 126 provides that property that is the subject of a restraining order may be used to meet certain expenses or debts. The amount of the expenses that may be met from the restrained assets is fettered in each instance by the term "reasonable". *Subclause (2)* makes it clear that subclause (1) is the only provision in the chapter under which restrained funds may be released to pay the type of expenses mentioned. *Subclause (3)* contains conditions on the operation of subclause (1). It is made clear that a person must use unrestrained property first to meet expenses and that tainted property cannot be released for expenses or to pay a debt. *Subclause (4)* makes clear that payment for legal expenses incurred defending a criminal charge or as a party to a confiscation proceeding may not be made from restrained funds.

Clause 127 provides for the Supreme Court to direct the public trustee to take control of some or all of the restrained property.

Clause 128 provides for the duration of a restraining order under the chapter. Subclause 1 makes it clear that a restraining order made without notice, or in urgent circumstances, may only last for seven days. *Subclause*

(2) provides that a restraining order made prior to the charging of a prescribed respondent with a relevant offence lapses if the prescribed respondent is not charged with a relevant offence within 48 hours of the making of the order. *Subclause (3)* provides that in all other cases, a restraining order will have effect for one year or if a period is specifically stated in the order for that period.

Division 4—Making other orders

Cause 129 enables the Supreme Court to make orders ancillary to the restraining order. *Subclause (2)* makes clear that Clause 130(h) is the only clause under which payment for legal expenses incurred defending a criminal charge or as a party to a confiscation proceeding may be made from restrained funds. *Subclause (3)* provides that an order under the clause may be made at either the time the restraining order is made, or at a later time. It is not necessary for the ancillary order to affect a person whose property is restrained under the relevant order for it to be able to be made. *Subclause (4)* specifies who may apply for an ancillary order. *Subclause (5)* enables a person not falling within subclause (4) to also apply for an ancillary order with the leave of the court. *Subclause (6)* specifies who must be given notice of an application for an ancillary order and ensures that each party who is entitled to make an application for an ancillary order is given notice of any order which is sought. *Subclause (7)* provides that the notice provisions do not apply where an application is made in conjunction with an application for a restraining order which is made without notice.

Clause 130 sets out the types of ancillary orders that the court may make however, the court is not restricted to only those ancillary orders. Some of the particular orders able to be made include:

Clause 130(a) enables a court to make an order varying the property covered by the restraining order. For example the court may order the inclusion of property whose existence is discovered in an oral examination.

Clause 130(c) authorises the court to order the examination of a person whose property is restrained under the restraining order or another named person. Those persons can be examined about the "affairs" (for example the interests, transactions and ventures) of any person who owns restrained property and also about the nature and location of various property.

Clause 130(d) authorises the court to order the examination of the spouse of a person whose property is restrained under the restraining order.

The spouse can be examined about the spouse's affairs including the nature and location of the spouse's property.

Clause 130(h) allows the payment to Legal Aid from restrained funds of the legal costs incurred by the person whose property is restrained defending a criminal charge or as a party to a confiscation proceeding.

Division 5—Provisions about particular orders

Subdivision 1—Examination orders

Clause 131 enables a judicial registrar to preside at an examination conducted under an examination order and to exercise the powers of the court for that purpose. *Subclause (3)* makes it clear that the judicial registrar may not exercise the powers of the court in relation to punishment of contempt.

Clause 132 contains provisions about privilege at an examination. The clause confers use immunity on the person in return for removing the privilege against self-incrimination. Protection is given to the person by providing that any information given during the examination may not be used for any criminal proceedings except for proceedings about the false or misleading nature of the statement or disclosure. Further protection against civil penalty is provided by making the evidence inadmissible in civil proceedings except in relation to proceedings related to the confiscation of property under the Bill or, if the disclosure is a document or thing, related to a right or liability conferred by it.

Clause 133 creates a number of offences in relation to contravening an examination order. The maximum penalty that may be imposed for an offence under this clause is a fine of 100 penalty units or a term of imprisonment of 2 years.

Subdivision 2—Property particulars orders

Clause 134 contains provisions about privilege relating to a statement given under a property particulars order. The clause confers use immunity on the person in return for removing the privilege against self-incrimination. Protection is given to the person by providing that the

statement may not be used for any criminal proceedings except for proceedings about the false or misleading nature of the statement.

Division 6—Notice of restraining orders

Clause 135 provides for the giving of notice of the making of a restraining order or another order made under division 4. In each case the DPP must give a person whose property is restrained under the order or who is affected by the order a copy of the order. If the public trustee is directed to take control of restrained property the DPP must also give the public trustee a copy of the order. The DPP must also give a copy of the order to the commissioner of the police service. *Subclause (5)* makes clear that a restraining order does not cease to have effect just because a person has not been served with a copy of the order.

Division 7—Extension and setting aside of restraining orders

Clause 136 provides for the extension of a restraining order on the application of the State and makes provision for the giving of notice of the application and a right of appearance.

Clause 137 enables the Supreme Court to set aside a restraining order on the application of the State, a prescribed respondent or another person whose property is restrained or who has an interest in the property. The clause makes provision for the giving of notice of the application and a right of appearance.

Division 8—Sale of restrained property

Clause 138 enables the Supreme Court to direct the public trustee to sell restrained property that is the subject of an application for a forfeiture order which has not been decided. Such a direction would be given only in a special case such as rapid deterioration of the property. The proceeds of such a sale are also taken to be restrained under the restraining order.

Division 9—Exclusion of particular property from restraining order

Clause 139 provides a procedure for a prescribed respondent to apply for the exclusion of particular property from a restraining order. The clause provides two separate bases for the making by the Supreme Court of an order, excluding property from the operation of the restraining order.

Clause 140 provides a procedure for a person other than a prescribed respondent to apply for the exclusion of their property from a restraining order. The clause contains two general bases on which the Supreme Court may make an order excluding the applicant's property. The clause also contains two other bases on which an exclusion order may be made, depending on whether the relevant offence is a serious criminal offence or not.

Clause 141 enables the Supreme Court to make a declaration that automatic forfeiture does not apply to the property of a prescribed respondent.

Division 10—Other provisions about restraining orders

Clause 142 provides that where a restraining order applies to property of a particular kind, in which title to or an interest in or charge over the property, is able to be registered under a law whether of the State or elsewhere, then the DDP may apply to register the restraining order in the register. Once registration is effected, any person who deals with the property is taken to have notice of the relevant order unless the contrary is proved. The clause also allows a caveat under the *Land Title Act 1994* to be registered over restrained real property. The most likely property to be registered will be real property. However various types of personal property, for example motor vehicles, also have relevant registration systems. *Subclauses (6) and (7)* make provision for the cancellation of any record made if a restraining order ceases to have effect.

Clause 143 creates an offence in relation to contravening a restraining order. The maximum penalty that may be imposed for an offence under this clause is a fine of 350 penalty units or a term of imprisonment of 7 years. *Subclause (2)* creates a defence to the offence if the person had no notice that the property was restrained and no reason to suspect it was. *Subclause (3)* provides that a disposition of restrained property in contravention of a

restraining order is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

Clause 144 makes it clear that the existence of a restraining order in relation to restrained property does not prevent the enforcement of any other order made under the Bill in relation to the restrained property.

Clause 145 empowers anyone to whom a restraining order is directed to take the steps necessary for the operation of the order.

PART 4—FORFEITURE ORDERS

Division 1—Applications for forfeiture orders

Clause 146 enables the State to apply to the Supreme Court or the court before which a person is convicted for a forfeiture order forfeiting to the State particular interests in property. *Subclause (1)* makes it clear that the clause only applies if a person is convicted of a confiscation offence. *Subclause (2)* allows the application to include details of encumbrances which an appropriate officer considers were entered into bone fide in the ordinary course of business. *Subclause (4)* provides that an application must be made within six months of the conviction. *Subclauses (5) and (6)* provide what is to happen if a further application is made in relation to the same conviction.

Clause 147 provides for the giving of notice of the application to the person whose conviction is the basis of the application and anyone else with an interest in the property. A person given notice has a right of appearance at the hearing of the application as does anyone else who claims any of the property. *Subclause (4)* makes it clear that the court may still make a forfeiture order if a person given notice is not present at the hearing.

Division 2—Making and effect of forfeiture orders

Clause 148 explains what is to happen if the application for the forfeiture order is to be amended.

Clause 149 explains the procedure on the application.

Clause 150 limits the jurisdiction of Magistrates Courts when making a forfeiture order.

Clause 151 explains when a forfeiture order may be made and recasts the *Crimes (Confiscation) Act 1989* (CCA) s23.

Clause 152 allows the court to make orders about encumbrances in certain circumstances when making a forfeiture order.

Clause 153 provides for the vesting in the State of Queensland of forfeited property subject to any other orders the Supreme Court may have made about the forfeited property. The court may make ancillary orders to give effect to the forfeiture.

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

Clause 154 recasts CCA s24 and enables the court that makes a forfeiture order to make a release order providing for a particular interest in property to be released from a forfeiture order upon payment to the State of an amount representing its value.

Clause 155 provides a procedure for a person other than the person whose conviction is the basis for the forfeiture application to apply for the exclusion of an interest in property from a forfeiture order that has been applied for but not made. The order applied for is known as an innocent interest exclusion order.

Clause 156 provides a procedure for a person other than the person whose conviction is the basis for the forfeiture application to apply for the exclusion of an interest in property from a forfeiture order that has been made. The order applied for under this clause is also known as an innocent interest exclusion order.

Clause 157 provides when the court may give leave for an application for an innocent interest exclusion order that is out of time or made by a person who was given notice of, or appeared at the hearing for the forfeiture order.

Clause 158 provides for the making by the court of an innocent interest exclusion order.

Clause 159 states the matters required to be contained in an innocent interest exclusion order.

Division 4—Discharge of forfeiture orders

Clause 160 sets out when a forfeiture order is discharged.

PART 5—AUTOMATIC FORFEITURE

Clause 161 contains the definitions for the purposes of Part 5.

Clause 162 explains when automatic forfeiture applies to the property of a prescribed respondent convicted of a serious criminal offence.

Clause 163 provides for the automatic forfeiture of particular restrained property when the forfeiture period ends. *Subclause (1)* provides that property acquired by a prescribed respondent during the six years preceding the commission of the serious criminal offence is liable to automatic forfeiture at the end of the forfeited period. *Subclause (2)* provides that the restrained property of another person is liable to automatic forfeiture at the end of the forfeited period. *Subclause (3)* makes it clear that the six year period applies whether it falls before and after the commencement of this section. *Subclauses (4) and (5)* contain a procedure for extending the forfeiture period for up to three months.

Clause 164 provides for the vesting in the State of Queensland of automatically forfeited property. The Supreme Court is able to make directions to give effect to the forfeiture.

Clause 165 provides a procedure for a person, other the prescribed respondent, to apply for the exclusion of their property from automatic forfeiture (third party order), or to have their interest transferred back to them (buy-back order).

Clause 166 provides when the Supreme Court may give leave for an application for a third party order or a buy-back order that is out of time or made by a person who was given notice of, or appeared at the hearing for the relevant restraining order.

Clause 167 provides for the making by the Supreme Court of a third party order.

Clause 168 states the matters required to be contained in a third party order.

Clause 169 provides for the making by the Supreme Court of a buy-back order.

Clause 170 states the matters required to be contained in a buy-back order.

PART 6—OTHER PROVISIONS ABOUT FORFEITURE

Clause 171 creates an offence in relation to concealing or dealing with forfeited property with the intention of defeating the operation of the forfeiture order. The maximum penalty that may be imposed for an offence under this clause is a fine of 350 penalty units or a term of imprisonment of 7 years. *Subclause (2)* creates a defence to the offence if the person had no notice that the property was subject to a forfeiture order and no reason to suspect it was. *Subclause (3)* provides that a dealing with forfeited property in contravention of subclause (1) is void unless it was either for sufficient consideration or in favour of a person who acted in good faith.

Clause 172 recasts CCA s31 and states the effect of making a payment under a buy-back order or a release order where the interest is still vested in the State. After the amount is paid the Attorney-General must arrange for the interest to be transferred to the person who owned the interest immediately before it was forfeited.

Clause 173 recasts CCA s32 and provides a procedure to enable a person who is to receive back an interest in forfeited property, which is not the only interest in the property, to buy the other interests provided the other previous owners do not lodge an objection.

Clause 174 makes provision for the giving of notice by the DPP if a forfeiture order is discharged, or if a conviction is quashed which was the basis for either a forfeiture order or automatic forfeiture. The DPP is required to give notice to each person who may have had an interest in the forfeited property prior to its vesting in the State. *Subclauses (4) and (5)* make provision for the matters required to be included in the notice.

Clause 175 allows a person, who is given notice under Clause 174, while the property is still vested in the State, to request the Attorney-General to transfer the property to them or someone nominated by them.

Clause 176 allows a person, who is given notice under Clause 174, once the property is no longer still vested in the State, to seek an order declaring the value of their forfeited property. Once an order is obtained, the person may request the Attorney-General to pay the amount declared by the Court to be the value of the property and the Attorney-General must arrange for payment of that amount to the applicant less any amounts which are deducted because of the making of an innocent interest exclusion order or a third party order.

Clause 177 makes provision for the setting aside of a forfeiture order and the re-hearing of the application for the forfeiture order in certain circumstances.

PART 7—PECUNIARY PENALTY ORDERS

Division 1—Application for pecuniary penalty order

Clause 178 enables the State to apply to the Supreme Court or the court before which a person is convicted for a pecuniary penalty order. The effect of a pecuniary penalty order is to require the person against whom it is made to pay to the State an amount assessed by the court as the value of the benefit derived by the person from the commission of the confiscation offence. *Subclause (2)* provides that an application must be made within six months of the conviction. *Subclauses (3) and (4)* provide what is to happen if a further application is made in relation to the same conviction.

Clause 179 provides for the giving of notice of the application to the person against whom the order is sought.

Clause 180 provides that the person named in the application has a right of appearance at the hearing of the application.

Clause 181 explains what is to happen if the application for the pecuniary penalty order is to be amended.

Clause 182 explains the procedure on the application.

Clause 183 limits the jurisdiction of Magistrates Courts when making a pecuniary penalty order.

Division 2—Making of pecuniary penalty order

Clause 184 provides for the making of the pecuniary penalty order. The court may, and if the relevant offence was a serious drug offence must, assess under division 3 the value of the benefits gained by the person from the commission of the offence, make any necessary deductions and order the person to pay that amount to the State. *Subclauses (2) and (3)* provide for the deduction of certain amounts from the amount to be paid. The value of forfeited property arising from the same conviction must be deducted from the amount to be paid. Other deductions are discretionary. *Subclauses (4) and (5)* provide that an amount required to be paid under a pecuniary penalty order is a debt payable to the State and may be enforced as a money order of the court in a civil proceeding taken by the State.

Clause 185 makes provision for the discharge of a pecuniary penalty order which has been made against a person who has been convicted of a serious criminal offence and who has had property automatically forfeited to the State. The proceeds of the sale of the property, or where the property is not sold, the amount the Attorney-General decides is the value of the property, is to be deducted from the amount payable under the pecuniary penalty order.

Clause 186 allows the State to apply for an increase in a pecuniary penalty order if the value of forfeited property has been deducted from the amount payable under the order and the forfeiture of the property ends because of an appeal.

Division 3—Assessment of benefits

Clause 187 requires the court to have regard to certain specified matters, when making the assessment of the value of the benefits derived by a person from the commission of a confiscation offence.

Clause 188 makes provision for the treatment of an increase in the value of a person's property, where the application for the pecuniary order relates to one confiscation offence.

Clause 189 makes provision for the treatment of an increase in the value of a person's property, where the application for the pecuniary order relates to more than one confiscation offence.

Clause 190 presumes certain property to be property that came into the person's possession because of the commission of the offence, unless the contrary is proved.

Clause 191 provides that the court, when making an assessment of the value of benefits, may treat property, under the person's effective control, as the person's property.

Clause 192 makes it clear that if a pecuniary penalty has already been imposed on a person under another law, it must not be taken into account when making an assessment for another pecuniary penalty order.

Clause 193 provides that in assessing the benefits accrued by the person the court must not reduce the value of the benefits by the expenses or outgoings that the person incurred in relation to the illegal activity.

Clause 194 provides for certain persons experienced in the investigation of illegal activities involving dangerous drugs to give admissible evidence about the market value of particular dangerous drugs and the amount usually paid for doing something in relation to dangerous drugs.

Division 4—Other provisions

Clause 195 provides for the discharge of a pecuniary penalty order in certain circumstances.

Clause 196 provides for a charge on the restrained property of the person against whom a pecuniary penalty order has been made to secure the payment of the amount of the order.

Clause 197 makes provision for the registration of a pecuniary penalty order on a register relating to property.

Clause 198 enables the court to declare that property, under the effective control of a person against whom a pecuniary penalty order has been made, is available to satisfy the debt created by the order. *Subclause (5)* makes provision for the enforcement of the order against the property after the court makes a declaration under subclause (4).

Clause 199 makes provision for the setting aside of a pecuniary penalty order and the re-hearing of the application for the pecuniary penalty order in certain circumstances.

CHAPTER 4—SPECIAL FORFEITURE ORDERS

This chapter recasts Part 7 of the *Crimes (Confiscation) Act 1989(CCA).*

PART 1—SPECIAL FORFEITURE ORDER APPLICATION

Clause 200 enables the State to apply to the Supreme Court for a special forfeiture order that a person convicted of a confiscation offence (prescribed respondent) forfeit to the State an amount equal to the benefits derived under a contract made after 12 May 1989 relating to a depiction of the offence in the media, or an expression of the prescribed respondent's thoughts about the offence. *Subclause (3)* applies the clause to a contract made anywhere and before or after the defendant's conviction.

Clause 201 provides for the giving of notice of the application for a special forfeiture order.

Clause 202 allows the Supreme Court to make a special forfeiture order if satisfied that under the relevant contract benefits will be derived by the prescribed respondent. *Subclause (2)* provides the matters that must be stated in the order, including the amount as assessed under Part 2, to be paid to the State.

PART 2—ASSESSMENT OF BENEFITS

Clause 203 sets out the range of factors that the Supreme Court must consider when making an assessment of the value of the benefits derived or to be derived under a relevant contract.

Clause 204 provides how particular values must be treated when making an assessment.

Clause 205 contains certain rebuttable presumptions that apply when making an assessment.

Clause 206 enables the court to treat as the property of the person subject to an assessment any property of another that is under the effective control of the person who derived the benefit.

Clause 207 provides that any expenses or outgoings associated with the relevant contract must be disregarded for the purpose of making an assessment.

PART 3—OTHER PROVISIONS

Clause 208 enables the Supreme Court to declare that property, under the effective control of a person against whom a special forfeiture order has been made, is available to satisfy the debt created by the order. *Subclause (5)* makes provision for the enforcement of the order against the property after the court makes a declaration under subclause (4).

Clause 209 recasts CCA s88, and provides that an amount required to be paid under a special forfeiture order is a debt payable to the State and may be enforced as a money order made by the Supreme Court in a civil proceeding taken by the State. *Subclause (3)* provides for the discharge of a person from the terms of the relevant contract upon payment of money to the State under a special forfeiture order.

Clause 210 recasts CCA s89, and provides for the application of amounts paid under a special forfeiture order to meet orders made under the *Penalties and Sentences Act 1992* for restitution or compensation or orders made by a court for damages for injury suffered by a person because of confiscation offence to which the relevant contract relates.

Clause 211 recasts CCA s101, as it applied to special forfeiture orders and provides for the registration of such orders.

CHAPTER 5—PARTICULAR PROVISIONS ABOUT FORFEITURE OF PROPERTY

Clause 212 stipulates the property to which this Chapter does not apply. Property that may be dealt with under the *Police Powers and Responsibilities Act 2000*, Chapter 11, Part 3, Division 7 is not able to be dealt with under this Chapter.

Clause 213 recasts CCA ss26(3), (4) (part) and (6) and extends the provisions to the non-conviction based confiscation scheme. The clause provides that property forfeited under the Bill must not be disposed of before the appeal period has expired, unless the court gives leave. Once the appeal period has ended, the State may dispose of the forfeited property provided the order under which the property was forfeited has not been discharged or if the property was automatically forfeited the conviction for the offence has not been quashed.

Clause 214 recasts CCA ss26(4) (part) and (5) and provides for the disposal by the State of forfeited property. When property is forfeited under Chapter 2 relating to the non-conviction based confiscation scheme, the net proceeds must be paid into the consolidated fund.

Clause 215 recasts CCA ss27(1)-(4) and provides for procedural matters relating to possession of forfeited property or the documents of title to such property. *Subclauses (3) and (4)* enable the registrar of titles and other keepers of registers relating to dealings with property to record the forfeiture to the State and, if the Attorney-General has made such a direction, the public trustee as the holder of the property on trust for the State.

Clause 216 recasts CCA ss27(6) and (7) and provides for the filing in the Supreme Court of a forfeiture certificate. The clause enables proceedings to be taken by the State to recover forfeited property.

CHAPTER 6—PROVISIONS ABOUT PARTICULAR GOVERNMENT ENTITIES

PART 1—POWERS OF PUBLIC TRUSTEE

Division 1—Provisions for satisfying particular orders

Clause 217 contains the definition of relevant court for division one.

Clause 218 explains when the division applies. It applies when restrained property is under the control of the Public Trustee and either a confiscation order is made against the person who owns the property under control or the property itself is automatically forfeited.

Clause 219 provides a procedure for the Public Trustee to be directed to pay certain amounts to the consolidated fund out of the property controlled by the Public Trustee. Under the clause, the Public Trustee is able to apply to the relevant court for an order, the effect of which would allow the Public Trustee to satisfy a forfeiture order, a proceeds assessment order or a pecuniary penalty order out of property under the Public Trustee's control. The clause also enables the relevant court to make appropriate ancillary orders either when it makes the initial order or at a later time on the application of the Public Trustee.

Clause 220 explains the priority of payment of proceeds realised by the Public Trustee as a result of an order made under clause 219.

Clause 221 makes it clear that a payment by the Public Trustee discharges the liability of the person who had an interest in the restrained property under the confiscation order or because of the automatic forfeiture.

Division 2—Other provisions

Clause 222 makes it clear that the Public Trustee has authority to do anything necessary or convenient to give effect to a direction in a restraining order to take control of restrained property.

Clause 223 makes provision for the payment of the Public Trustee's fees and charges incurred in relation to the control of property under the Bill.

Clause 224 makes it clear that the Public Trustee, on taking control of property, is only liable for the payment of rates and other statutory charges in relation to the property to the extent of amounts received by the Public Trustee from the property. Also, the Public Trustee is not liable to pay any such charges incurred prior to the date of the direction to take control. These would remain the responsibility of the owner of the property. It is also made clear that the Public Trustee is not personally liable for payment of long service leave if a person's business is carried on by the Public Trustee under a direction in a restraining order. The Public Trustee is also not personally liable for any business debts incurred by the person who owns the business which that person was liable to pay. The Public Trustee is personally liable for debts incurred by the Public Trustee in relation to the carrying on of the business by the Public Trustee.

Clause 225 contains provisions in relation to the appointment by the Public Trustee of an agent to perform the functions of the Public Trustee under a restraining order.

Clause 226 creates an offence in relation to hindering or obstructing the Public Trustee or an officer of the Public Trustee in the performance of the Public Trustee's functions under a restraining order. The maximum penalty is 25 penalty units or 6 months imprisonment.

PART 2—LEGAL AID

Clause 227 explains when the Part applies. *Subclause 2* makes it clear that the Part only applies where the application to Legal Aid for legal assistance is made in relation to a proceeding under this Bill or a criminal proceeding.

Clause 228 makes it clear that when a person whose property is restrained, under a restraining order, applies for legal assistance to which the Part applies, the value of the restrained property must not be taken into account for the purpose of applying the criteria under the *Legal Aid Act* for determining legal assistance.

Clause 229 enables Legal Aid to impose a condition requiring a person who is to receive legal assistance to give Legal Aid a charge over restrained property despite the restraining order. Subclause (2) requires Legal Aid to give the DPP notice of any charge actually taken over restrained property.

Clause 230 makes it clear that a charge taken by Legal Aid over property continues after forfeiture of the property and is able to be satisfied out of the proceeds from disposing of the property.

CHAPTER 7—INTERSTATE ORDERS AND WARRANTS

This Chapter recasts Part 6 of the *Crimes (Confiscation) Act 1989.*

PART 1—INTERPRETATION

Clause 231 defines certain terms for the Chapter and provides which interstate forfeiture orders (IFO) and interstate restraining orders (IRO) the Chapter applies to. The IFO must expressly apply to specific property in Queensland, and the IRO must expressly apply to specific property in Queensland, or all property in Queensland of a specific person, including any after–acquired property.

PART 2—PROVISIONS ABOUT FILING INTERSTATE ORDERS

Clause 232 recasts CCA s77, and enables an interstate forfeiture order (IFO) or interstate restraining order (IRO) to be filed in Queensland. *Subclause (1)* permits the filing in Queensland of a sealed copy of the IFO and IRO. The filing may be effected by the applicant for the order, the Attorney-General or a prescribed person. *Subclause (2) and (3)* permit the filing of sealed amendments to an IFO or IRO and provide that such amendments do not have effect until filed. *Subclause (4)* permits the filing of an IFO or IRO to be refused by the Supreme Court to the extent that the order would not be able to be enforced in Queensland on filing.

Clause 233 provides for the interim filing of facsimile copies of sealed IFO and IRO and any amendments to such orders. *Subclause (3)* provides when filing of a facsimile copy stops having effect. Under this subclause, a sealed copy that is not a facsimile copy must be filed within ten (10) days. *Subclause (4)* provides that a sealed copy filed within the required period takes effect from the day the facsimile copy was filed. *Subclause (5)* provides that even if a facsimile copy ceases to have effect under subclause (3), this does not affect any forfeiture already made under the order.

Clause 234 provides that, on filing, an IFO is taken to be a forfeiture order under the Bill until it stops having effect in the State where it was made or it is cancelled under this Bill. *Subclause (2)* provides which provisions of the Bill do not apply to an IFO once filed.

Clause 235 provides that, on filing, an IRO is taken to be a restraining order under the Bill until it stops having effect in the State where it was made or it is cancelled under this Bill. Subclause (2) provides which provisions of the Bill do not apply to an IRO once filed.

Clause 236 recasts CCA s81, and provides when the Supreme Court or a judicial registrar may cancel the filing of a IFO or IRO.

Clause 237 recasts CCA s82, and provides for the creation of a charge on property restrained under an IRO to secure the payment of an interstate pecuniary penalty order (IPO). *Subclause (1)* provides the circumstances in which the clause applies and *subclause (2)* makes provision for the creation of the charge. The charge is created over the restrained property upon the filing of the IRO or the filing under the *Service and Execution of Process Act 1992 (Cth)*, whichever occurs last. *Subclause (3)* provides for the effect of the change to cease when the charge created on the making of the IPO ceases to have effect under the corresponding law. *Subclause (4)* applies provisions of the Bill in relation to the priority and registration of the charge.

PART 3—PROVISIONS ABOUT PROPERTY SEIZED UNDER INTERSTATE ORDERS AND SEARCH WARRANTS

Clause 238 makes it clear the division does not limit provisions of the *Crime and Misconduct Act 2001*, *Police Powers and Responsibilities Act 2000* and *Justices Act 1886*.

Clause 239 recasts CCA s84, (part) and makes provision for the treatment of property seized under a search warrant issued in reliance on the commission of an interstate confiscation offence.

Clause 240 makes provision for the treatment of property seized in another State under a search warrant issued under a corresponding law.

Clause 241 enables a person from whose possession the property was seized in another State to apply to a Magistrates Court for return of the property or access to the property. *Subclause (3)* provides for the giving of notice of the application to the Magistrates Court. *Subclause (4)* enables the Magistrates Court to make any order the court considers appropriate. *Subclause (5)* excludes certain property from the effect of the clause.

PART 4—OTHER PROVISIONS

Clause 242 recasts CCA s83, and enables the Public Trustee to take control of property in Queensland as agent for a person in control of the property under the IRO.

CHAPTER 8—OBLIGATIONS OF FINANCIAL INSTITUTIONS

This Chapter recasts Part 5 of the *Crimes (Confiscation) Act 1989.*

PART 1—INTERPRETATION

Clause 243 to *246* recast CCA s73, and contains definitions for the purpose of the Chapter.

PART 2—PROVISIONS APPLYING TO FINANCIAL INSTITUTIONS

Clause 247 recasts CCA s74, and makes provision for the period for which a financial institution must keep certain documents.

Clause 248 recasts CCA s75, and makes provisions for retention of a copy of any essential customer generated financial transaction document which is released, as required by law, before the end of the applicable minimum retention period. *Subclause (2)* requires a register of released documents under subclause (1) to be maintained and creates an offence in relation to a contravention of the subclause punishable by a maximum penalty of 200 penalty units.

Clause 249 recasts CCA s76, and allows a financial institution to convey information about an account held, or a transaction conducted, with the institution to a police officer in certain circumstances. *Subclause (3)* extends the operation of the section to enable information to be given to a commission officer if it relates to an investigation of a serious crime related activity or another matter for which an order under Chapter 2 may be made.

CHAPTER 9—OFFENCES

Clause 250 recasts CCA s90, and contains the crime money laundering punishable by a maximum penalty of 3,000 penalty units or 20 years imprisonment.

Clause 251 recasts CCA s91, and contains provisions about a proceeding against a person for the crime of money laundering, including a requirement that the Attorney-General's written consent to the bringing of a prosecution must be obtained .

Clause 252 recasts CCA s92, and contains the offence of Possession etc. of property suspected of being tainted property, punishable by a maximum of 100 penalty units or 2 years imprisonment.

Clause 253 recasts CCA s93, and makes provision for the state of mind of a representative to be attributed to a person in certain circumstances.

CHAPTER 10—MISCELLANEOUS PROVISIONS

PART 1—ARRANGEMENTS TO DEFEAT OPERATION OF ACT

Clause 254 contains the definitions for the purposes of Part 1.

Clause 255 recasts CCA s100 (part), and makes provision for an application to be made to the Supreme Court for an order that a scheme was entered into by a person to defeat the operation of the Act. *Subclauses (2) and (3)* provide for the giving of notice for the application.

Clause 256 recasts CCA s100 (part), and allows the Supreme Court to make an order to defeat a sham transaction.

PART 2—OTHER PROVISIONS

Clause 257 makes it clear that in relation to the same serious crime related activity it is not possible to obtain both a proceeds assessment order and a pecuniary penalty order. It also makes clear that in relation to particular property it is not possible to obtain a restraining order under both Chapter 2 and Chapter 3 at the same time.

Clause 258 makes provision for the Supreme Court to make orders about the publication of matters arising under the Bill in certain circumstances.

Clause 259 allows a regulation to be made in relation to the way notice under the Bill may be given.

Clause 260 recasts CCA s98, and makes it clear that a sentencing court is not to have regard to the forfeiture of property of a defendant or the imposition of a pecuniary penalty order or a proceeds assessment order on a defendant when determining the sentence to be imposed for a confiscation offence.

Clause 261 recasts CCA s103, and makes provision for the actual costs of a third party who is affected by an order under this Bill to be met by a person or authority determined by the Supreme Court.

Clause 262 recasts CCA s104, and makes provision for the State to pay the costs of a person who is successful in a proceeding under this Bill other than under Chapter 2. The court may make an order provided that the court is satisfied that the person was not involved in the commission of the offence to which the proceedings related. In civil proceedings conducted under the Bill the court has jurisdiction to determine the awarding of costs under the *Uniform Civil Procedures Rules 1999*.

Clause 263 recasts CCA s96, and provides a right of appeal to the Court of Appeal in respect of orders made under this Bill.

Clause 264 recasts CCA s105, and exempts the State from paying registry fees in respect of matters under this Bill.

CHAPTER 11—GENERAL

Clause 265 contains evidentiary provisions for the purposes of the Bill.

Clause 266 provides that the operation of the Bill is to be reviewed after 1 January 2006.

Clause 267 enables regulations to be made under this Bill by the Governor-in-Council.

CHAPTER 12—TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENTS

PART 1—TRANSITIONAL PROVISIONS

Clauses 268 to 281 contain transitional provisions arising from the commencement of this Bill and the repeal of the *Crimes (Confiscation) Act 1989*.

Clause 268 contains definitions for Chapter 12.

Clause 269 enables proceedings under the *Crimes (Confiscation) Act 1989* which have been commenced but not completed to be continued under this Bill.

Clause 270 enables a rehearing under section 39 of the *Crimes (Confiscation) Act 1989* which has been commenced but not completed to be continued under this Bill.

Clause 271 makes it clear that orders of a corresponding law which have been registered under the *Crimes (Confiscation) Act 1989* continue to have effect as if filed under this Bill and may be enforced under this Bill.

Clause 272 makes property that was liable to be automatically forfeited under the *Crimes (Confiscation) Act* 1989 liable to be automatically forfeited under the Bill. The clause also provides for the calculation of the applicable forfeiture period.

Clause 273 provides that a forfeiture order under the *Crimes (Confiscation) Act 1989* that is in force on commencement of the Bill is to be treated as a forfeiture order under the Bill. The clause makes it clear that the provisions of the Bill will apply to the order.

Clause 274 provides that a pecuniary penalty order under the *Crimes (Confiscation) Act 1989* that is in force on commencement of the Bill is to be treated as a pecuniary penalty order under the Bill. The clause makes it clear that the provisions of the Bill will apply to the order.

Clause 275 provides that a restraining order under the *Crimes (Confiscation) Act 1989* that is in force on commencement of the Bill is to be treated as a restraining order under the Bill. The restraining order is to have effect only for the remaining period for which it would have had effect under the *Crimes (Confiscation) Act 1989*. The clause makes it clear that the provisions of the Bill will apply to the order.

Clause 276 makes provision for the treatment of particular orders made under the *Crimes (Confiscation) Act 1989*. An order under section 24 of the *Crimes (Confiscation) Act 1989* is to be treated as a release order and an order under section 29(11) of the *Crimes (Confiscation) Act 1989* is to be treated as a buy-back order.

Clause 277 makes provision for the continuation of the control of restrained property by the Public Trustee under a direction in a restraining order.

Clause 278 makes provision for the treatment of persons who were unamenable to justice under the *Crimes (Confiscation) Act 1989.*

Clause 279 makes it clear that the State may apply for a restraining order under Chapter 2 of the Bill even if the property was restrained under the *Crimes (Confiscation) Act 1989.* However if the Supreme Court makes a restraining order as a result of the application, the court must also set aside the previous restraining order.

Clause 280 makes provision for the continued operation of directions, orders and requirements made in a proceeding under the *Crimes (Confiscation) Act 1989* and for which provision is not already made.

Clause 281 provides that a reference in an Act or document to the *Crimes (Confiscation) Act 1989* is to be taken to be a reference to this Bill if the context allows.

PART 2—REPEAL

Clause 282 repeals the *Crimes (Confiscation) Act 1989.*

PART 3—AMENDMENT OF CRIME AND MISCONDUCT ACT 2001

Clause 283 provides that the *Crime and Misconduct Act 2001* is amended by the Part and schedule 3.

Clause 284 amends the *Crime and Misconduct Act 2001* to make it clear that that Act's purposes include enabling the commission to investigate confiscation related activity to allow enforcement of the Bill.

Clause 285 amends the *Crime and Misconduct Act 2001* to make it clear that the commission has particular powers for the purpose of investigations under its role in enforcing the Bill.

Clause 286 amends the *Crime and Misconduct Act 2001* to include a civil confiscation function as a function of the commission.

Clause 287 makes a consequential amendment to the heading of section 74 which makes provision for notices to produce for the purposes of a crime investigation.

Clause 288 inserts a new section 74A in the *Crime and Misconduct Act 2001* to allow the chairperson to give a person a notice to produce in relation to a confiscation related investigation. The clause creates a scheme by which the commission may serve a notice on a person to produce a document or thing. This power is limited to requiring the production of a thing that is relevant to a confiscation related investigation. The notice to produce may require the immediate production of the thing under certain circumstances. A person must comply with the notice unless the person has a reasonable excuse. However, a person who fails to comply with a notice does not commit an offence if the document or thing is subject to "privilege" as defined. Claims of privilege are dealt with under a subsequent clause.

Clause 289 inserts new chapter 3, part 1, division 3, subdivision 1A containing sections 78A, 78B and 78C in the *Crime and Misconduct Act 2001*. Section 78A provides the subdivision applies if a person claims privilege under section 74A in relation to a document or thing. Section 78B provides a commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the claim may be required to be established before the Supreme Court under section 195B. Section 78C provides a mechanism for the sealing up of documents or things the subject of a claim of privilege for safe keeping until the claim is dealt with and provides penalties for contravention.

Clause 290 makes an amendment to section 86 of the C*rime and Misconduct Act 2001* to extend the powers of the commission to obtain a search warrant. The power is extended to include obtaining evidence that may be confiscation related evidence in relation to a confiscation related activity.

Clause 291 makes an amendment to section 87 of the C*rime and Misconduct Act 2001* to include the issue of a search warrant in relation to confiscation related evidence.

Clause 292 makes an amendment to section 90 of the C*rime and Misconduct Act 2001* so that the section applies to search warrants for confiscation related evidence.

Clause 293 makes a consequential amendment to section 91 of the C*rime and Misconduct Act 2001* relating to the requirements for information within a search warrant.

Clause 294 makes a consequential amendment to section 92 of the C*rime and Misconduct Act 2001* relating to the powers under a search warrant.

Clause 295 inserts a new section 110A in the *Crime and Misconduct Act 2001*. Section 110A makes it clear that where a commission officer lawfully enters a place under a search warrant in the conduct of a confiscation related investigation and finds at that place evidence suspected of being confiscation related evidence in relation to a confiscation related activity being investigated by the commission or evidence of an indictable offence against the law of a State or the Commonwealth the evidence may be seized. The purpose of the section is to extend to a commission officer conducting a confiscation related investigation the "chance discovery" rule.

Clause 296 inserts a new Chapter 3, Part 5A in the *Crime and Misconduct Act 2001* which provides for the obtaining of monitoring and suspension orders. Part 5A contains new sections 119A to 119N.

Section 119A defines the meaning of "financial institution" for the purposes of the Part.

Section 119B makes it clear that the Part only applies for the purposes of enhancing the commission's powers under the Bill.

Section 119C is based on s116 of the *Police Powers and Responsibilities Act 2000* (PPRA) and provides that a commission officer can apply to a Supreme Court judge for a monitoring order to direct a financial institution to give information to a commission officer. Subsections (2) and (3) require that applications for orders are sworn, state the grounds for the order and include certain other information.

Section 119D is based on s117 PPRA and provides that a Supreme Court judge may make a monitoring order only if satisfied that there are reasonable grounds for suspecting that the person named in the application has been, or is about to be, involved in a serious crime related activity, or has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

Section 119E is based on s118 PPRA and provides that a monitoring order must direct a financial institution to give information obtained by the institution where the person has an account and must include certain other additional requirements.

Section 119F is based on s119 PPRA and provides that the monitoring order has effect from the start of the day when notice of the order is given to the financial institution.

Section 119G is based on s120 PPRA and provides that a financial institution given notice of a monitoring order must not knowingly contravene the order or provide false or misleading information in

purported compliance with the order. The maximum penalty provided is 1000 penalty units.

Section 119H is based on s121 PPRA and provides that a financial institution subject to a monitoring order must not disclose the existence or operation of the order to any person other than a commission officer, an officer or agent of the institution ensuring compliance, or a lawyer obtaining legal advice or providing representation.

Subsection (2) provides that a person to whom the existence of the order has been disclosed is similarly bound, with a commission officer only able to make a disclosure for the purpose of performing duties as a commission officer. Once the person ceases to be fall into the category of a person to whom a disclosure could be made, the person must not disclose the information in any circumstances.

Subsection (3) provides that subsection (2) does not prevent a commission officer disclosing the existence or operation of a monitoring order in relation to a legal proceeding or in a proceeding before a court.

Subsection (4) provides that a commission officer can not be required under any circumstances to disclose the existence or operation of a monitoring order to a court.

Subsection (5) provides that a person who contravenes subsections (1) and (2) commits a crime punishable by a maximum penalty of 350 penalty units or 7 years imprisonment.

Subsection (6) provides that a reference in this section to disclosing the existence or operation of a monitoring order includes a reference to disclosing information to persons who could reasonably be suspected to be able to infer the existence or operation of the monitoring order.

Subsection (7) defines "officer" for the purposes of the section.

Section 119I provides that a commission officer can apply to a Supreme Court judge for a suspension order to direct a financial institution to give information to a commission officer. Subsections (2) and (3) allow the application to be made without notice to any person and require that applications for orders are sworn, state the grounds for the order and include certain other information.

Section 119J provides that a Supreme Court judge may make a suspension order only if satisfied that there are reasonable grounds for suspecting that the person named in the application has been, or is about to be, involved in a serious crime related activity, or has acquired directly

or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

Section 119K provides that a suspension order must direct a financial institution to notify a commission officer immediately of any transaction which concerns an account held with the institution by the named person and must also notify the commission officer immediately if there are reasonable grounds to suspect that such a transaction is about to occur. In either case the financial institution must not complete or effect the transaction for a period of 48 hours unless a commission officer named in the order has given written consent to the immediate completion of the transaction. Subsection (2) contains certain other additional requirements for the suspension order.

Section 119L provides that the suspension order has effect from the time notice of the order is given to the financial institution.

Section 119M provides that a financial institution given notice of a suspension order must not knowingly contravene the order or provide false or misleading information in purported compliance with the order. The maximum penalty provided is 1000 penalty units.

Section 119N provides that a financial institution subject to a suspension order must not disclose the existence or operation of the order to any person other than a commission officer, an officer or agent of the institution ensuring compliance, or a lawyer obtaining legal advice or providing representation.

Subsection (2) provides that a person to whom the existence of the order has been disclosed is similarly bound, with a commission officer only able to make a disclosure for the purpose of performing duties as a commission officer. Once the person ceases to be fall into the category of person to whom a disclosure could be made, the person must not disclose the information in any circumstances.

Subsection (3) provides that subsection (2) does not prevent a commission officer disclosing the existence or operation of a suspension order in relation to a legal proceeding or in a proceeding before a court.

Subsection (4) provides that a commission officer can not be required under any circumstances to disclose the existence or operation of a suspension order to a court.

Subsection (5) provides that a person who contravenes subsections (1) and (2) commits a crime punishable by a maximum penalty of 350 penalty units or 7 years imprisonment.

Subsection (6) provides that a reference in this section to disclosing the existence or operation of a suspension order includes a reference to disclosing information to persons who could reasonably be suspected to be able to infer the existence or operation of the suspension order.

Subsection (7) defines "officer" for the purposes of the section.

Clause 297 makes an amendment to section 166 of the C*rime and Misconduct Act 2001* to allow an inspection of the register to be conducted in relation to an investigation into confiscation related activity.

Clause 298 makes it clear that the commission is not authorised by subsection (1) to conduct a hearing for a confiscation related investigation.

Clause 299 inserts a new chapter 4, part 2, division 4, subdivision 1A in the *Crime and Misconduct Act 2001*. Subdivision 1A contains sections 195A and 195B.

Section 195A provides that the subdivision applies only to a confiscation related investigation.

Section 195B provides a mechanism for the Supreme Court to decide a claim of privilege made under section 74A.

Clause 300 omits certain definitions from the dictionary in the *Crime and Misconduct Act 2001.* The clause also inserts additional definitions in the dictionary.

PART 4—AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984

Clause 301 provides that the *Director of Public Prosecutions Act 1984* is amended by the Part.

Clause 302 inserts a new section 10A which makes provision for the issue, by the Attorney-General, of guidelines with respect to examinations to be conducted under an examination order under the Bill. The section makes it clear that a guideline may not be issued in relation to a particular case. The section also makes provision for the gazettal and tabling in the Legislative Assembly of any guidelines which are issued.

PART 5—AMENDMENT OF FINANCIAL TRANSACTION REPORTS ACT 1992

Clause 303 provides that the *Financial Transactions Reports Act 1992* is amended by the Part.

Clause 304 makes a consequential amendment to section 6 of the *Financial Transactions Reports Act 1992* by deleting the reference to a previous Act and inserting the reference to the Bill.

Clause 305 makes a consequential amendment to section 7 of the *Financial Transactions Reports Act 1992* by deleting the reference to a previous Act and inserting the reference to the Bill.

Clause 306 makes a consequential amendment to section 8 of the *Financial Transactions Reports Act 1992* by deleting the reference to a previous Act and inserting the reference to the Bill.

PART 6—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

Clause 307 provides that the *Police Powers and Responsibilities Act 2000* is amended by the Part.

Clause 308 makes an amendment to section 68 of the *Police Powers and Responsibilities Act 20001* to extend the powers of a police officer to obtain a search warrant. The power is extended to include obtaining evidence that may be confiscation related evidence in relation to a confiscation related activity.

Clause 309 makes an amendment to section 69 of the *Police Powers and Responsibilities Act 2000* to include the issue of a search warrant in relation to confiscation related evidence.

Clause 310 makes an amendment to section 72 of the *Police Powers and Responsibilities Act 2000* so that the section applies to search warrants for confiscation related evidence.

Clause 311 makes a consequential amendment to section 73 of the *Police Powers and Responsibilities Act 2000* relating to the requirements for information within a search warrant.

Clause 312 makes a consequential amendment to section 74 of the *Police Powers and Responsibilities Act 2000* relating to the powers under a search warrant.

Clause 313 makes a consequential amendment to section 76 of the *Police Powers and Responsibilities Act 2000* by deleting a reference to the *Crimes (Confiscation) Act 1989* and by inserting instead a reference to this Bill.

Clause 314 makes an amendment to section 97(1) of the *Police Powers and Responsibilities Act 2000* so that the section also applies when a police officer reasonably suspects that a cash dealer holds documents that may be confiscation related evidence in relation to a confiscation related activity involving someone else.

Clause 315 makes an amendment to section 97(3)(b) of the *Police Powers and Responsibilities Act 2000* so that information about any production notices issued within the previous year in relation to the person suspected of being involved in confiscation related activity is also required to be included in the application.

Clause 316 makes an amendment to section 101 of the *Police Powers and Responsibilities Act 2000* so that the powers that a police officer has under a production notice includes power to seize a document if the officer reasonably suspects it is confiscation related evidence.

Clause 317 amends section 105 of the *Police Powers and Responsibilities Act 2000* to extend the operation of Part 5 to serious crime related activity. The clause also makes consequential amendments arising from the change of terminology in the Bill.

Clause 318 amends section 106 of the *Police Powers and Responsibilities Act 2000* to allow an application to be made for a production order for a property tracking document relating to a serious crime related activity a police officer reasonably suspects a person has engaged in. The clause also makes consequential amendments arising from the change of terminology in the Bill.

Clause 319 amends section 107 of the *Police Powers and Responsibilities Act 2000* to provide for a Supreme Court judge to issue a production order for a property tracking document relating to a serious crime related activity a police officer reasonably suspects a person has engaged in. The clause also makes consequential amendments arising from the change of terminology in the Bill.

Clause 320 amends section 109 of the *Police Powers and Responsibilities Act 2000* to extend the powers under a production order to include confiscation related evidence.

Clause 321 replaces the heading of chapter 4, part 1 as a consequence of the provisions in relation to suspension orders. The clause also inserts a heading for division 1.

Clause 322 inserts a heading for chapter 4, part 1, division 2.

Clause 323 amends section 117 of the *Police Powers and Responsibilities Act 20001* to extend the powers of a police officer to obtain a monitoring order. The power is extended so that a Supreme Court judge may also make a monitoring order if satisfied that there are reasonable grounds for suspecting that the person named in the application has been, or is about to be, involved in a serious crime related activity, or has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

Clause 324 amends section 121 of the *Police Powers and Responsibilities Act 2000* by omitting subsection (6) and inserting a new subsection (7*)* which defines "officer" for the purposes of the section.

Clause 325 inserts a new chapter 4, part 1, division 3 which provides for the obtaining of suspension orders. Division 3 contains new sections 121A to 121F.

Section 121A provides that a police officer can apply to a Supreme Court judge for a suspension order to direct a financial institution to give information to a police officer. Subsections (2) and (3) allow the application to be made without notice to any person and require that applications for orders are sworn, state the grounds for the order and include certain other information.

Section 121B provides that a Supreme Court judge may make a suspension order only if satisfied that there are reasonable grounds for suspecting that the person named in the application has committed or is about to commit a confiscation offence, or was or is about to be involved in the commission of a confiscation offence, or has, or is about to benefit directly or indirectly from the commission of the confiscation offence or has been, or is about to be, involved in a serious crime related activity, or has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

Section 121C provides that a suspension order must direct a financial institution to notify a police officer immediately of any transaction

which concerns an account held with the institution by the named person and must also notify the police officer immediately if there are reasonable grounds to suspect that such a transaction is about to occur. In either case the financial institution must not complete or effect the transaction for a period of 48 hours unless a police officer named in the order has given written consent to the immediate completion of the transaction. Subsection (2) contains certain other additional requirements for the suspension order.

Section 121D provides that the suspension order has effect from the time notice of the order is given to the financial institution.

Section 121E provides that a financial institution given notice of a suspension order must not knowingly contravene the order or provide false or misleading information in purported compliance with the order. The maximum penalty provided is 1000 penalty units.

Section 121F provides that a financial institution subject to a suspension order must not disclose the existence or operation of the order to any person other than a police officer, an officer or agent of the institution ensuring compliance, or a lawyer obtaining legal advice or providing representation.

Subsection (2) provides that a person to whom the existence of the order has been disclosed is similarly bound, with a police officer only able to make a disclosure for the purpose of performing duties as a police officer. Once the person ceases to be fall into the category of a person to whom a disclosure could be made, the person must not disclose the information in any circumstances.

Subsection (3) provides that subsection (2) does not prevent a police officer disclosing the existence or operation of a suspension order in relation to a legal proceeding or in a proceeding before a court.

Subsection (4) provides that a police officer can not be required under any circumstances to disclose the existence or operation of a suspension order to a court.

Subsection (5) provides that a person who contravenes subsections (1) and (2) commits a crime punishable by a maximum penalty of 350 penalty units or 7 years imprisonment.

Subsection (6) provides that a reference in this clause to disclosing the existence or operation of a suspension order includes a reference to disclosing information to persons who could reasonably be suspected to be able to infer the existence or operation of the suspension order.

Subsection (7) defines "officer" for the purposes of the section.

Clause 326 amends section 420 of the *Police Powers and Responsibilities Act 2000 to* make it clear that Part 3 dealing with things in the possession of the police service does not apply to a thing seized by a police officer under a property seizure order made under the Bill. However under new subsection (3) to the extent Part 3 imposes an obligation on a police officer to keep seized things in a safe place the Part does apply to movable property that is seized under a property seizure order.

Clause 327 omits certain definitions from the dictionary in the *Police Powers and Responsibilities Act 2000.* The clause also inserts additional definitions in the dictionary.

PART 7—OTHER ACTS AMENDED

Clause 328 and Schedule 4 make a number of consequential amendments to other Acts necessary on the commencement of this Bill.

Schedule 1 contains examples of the operation of the Bill.

Schedule 2 Part 1 contains the list of offences for the purposes of Clause 29 of the Bill. Part 2 contains the list of confiscation offences for the purposes of Clause 99 of the Bill.

SCHEDULE 3—MINOR AMENDMENTS OF CRIME AND MISCONDUCT ACT 2001

Clause 1 corrects a grammatical error in section 15(b) by replacing "were" with "was".

Clause 2 amends section 31(1) by replacing "criminal activity" with "major crime". This is to make the section consistent with the other sections in Chapter 2, Part 2.

Clause 3 corrects a grammatical error in the heading to section 44 by inserting "than" after "other".

Clause 4 corrects a numerical error in section 46 by renumbering section 46(5) to (7) as section 46(3) to (5).

Clause 5 amends section 49(3)(a) by replacing "and" with "or".

Clause 6 amends the note to section 73(5) by replacing "be required to attend at a commission hearing to establish the claim" with "apply to, or be required to attend before, the Supreme Court to establish the claim under section 196". This clarifies that the Supreme Court is the appropriate entity to determine claims of privilege under this section.

Clause 7 amends section 74(8) by inserting "or thing" after "A document". This is to make section 74(8) consistent with the remainder of section 74.

Clause 8 amends the note to section 75(5) by replacing "be required to attend at a commission hearing to establish the claim" with "apply to, or be required to attend before, the Supreme Court to establish the claim under section 196". This clarifies that the Supreme Court is the appropriate entity to determine claims of privilege under this section.

Clause 9 corrects an incorrect reference in section 78(5) by replacing "subsection (1)" with "subsection (2)".

Clause 10 corrects an incorrect reference in section 78(5) by replacing "82(1)(d) with "82(1)(c)".

Clause 11 amends section 80 by replacing "privilege" with "claim". This is to make the reference more accurate and consistent with the remainder of the section.

Clause 12 corrects a grammatical error in section 81(5)(b) by replacing "by end" with "by the end".

Clause 13 amends section 82(1)(c) by replacing it with "to establish a reasonable excuse or claim of privilege under section 72 or 74." and omitting the footnote.

Clause 14 amends section 82(1) by omitting the note.

Clause 15 amends section 94(2) by replacing "the privilege" with "the claim". This is to make the reference more accurate and consistent with the remainder of the section.

Clause 16 amends section 111(3)(b) by replacing "the privilege" with "the claim". This is to make the reference more accurate and consistent with the remainder of the section.

Clause 17 amends section 113(1) by adding "(d) an order that has been made about the thing under section 156(4)". This presents another ground under which a commission officer is not required to seek an order under section 114 about a seized thing. This is because an order obtained under section 156(4) is already about a seized thing and in such circumstances, there is no need to obtain a further order under section 114.

Clause 18 updates section 120 by replacing the outdated reference to the "*Libraries and Archives Act 1988"* (now repealed) with "*Public Records Act 2002*" (the current legislation).

Clause 19 corrects an incorrect reference in section 125(f) by replacing "section 140(4)" with "section 124(3)".

Clause 20 corrects an incorrect reference in section 141(d) by replacing "section 124(2)" with "section 140(2)".

Clause 21 amends section 145(2) by adding "a misconduct tribunal hearing a matter, in its original or appellate jurisdiction, in which the relevant information is evidence" as a further entity to which information obtained by a surveillance warrant may be disclosed.

Clause 22 amends section 152 by adding "any conditions imposed under section 151(2)" as a further matter which must be stated in a covert search warrant. This had been inadvertently omitted.

Clause 23 amends section 162 by adding "any conditions imposed under section 161(2)" as a further matter which must be stated in an additional powers warrant. This had been inadvertently omitted.

Clause 24 amends section 186(1)(a) by replacing the reference to "section 78 or 81" with "section 78" and omitting the footnote.

Clause 25 amends section 188(1) by replacing the reference to "at a commission hearing because" with "to an identified commission officer or at a commission hearing and". This extends the application of section 188 to a document or thing required to be produced to an identified commission officer.

Clause 26 amends section 188(1) by adding "or thing" after the second reference to "document". This had been inadvertently omitted.

Clause 27 amends section 188(2) by adding "to an identified commission officer under a notice to produce under section 75 or" after the first reference to "thing". This extends the requirement for a person to produce a document or thing in their possession which they claim may incriminate them to an identified commission officer.

Clause 28 amends section 188(2)(a) by adding "to the commission officer or" after the first reference to "thing". This is to make section 188(2)(a) consistent with the other amendments to section 188.

Clause 29 amends section 188(2)(b) by adding "to the commission officer or" after the first reference to "thing". This is to make section 188(2)(b) consistent with the other amendments to section 188.

Clause 30 amends section 188 by adding a new subsection (4) which clarifies that section 197 does not apply to a document or thing produced under section 188.

Clause 31 amends section 194 by adding subsections (1A) and (1B) which clarify that a presiding officer must decide whether a refusal to answer questions or produce documents is justified.

Clause 32 amends section 194(2) by adding "based on a claim of privilege against self-incrimination" after "reasonable excuse". The intent is that the reference in section 194(2)(b) to section 197 should apply only to claims of privilege against self-incrimination.

Clause 33 amends section 196 by omitting "or reasonable excuse" from the heading. This is because the scheme provided for by section 196 only applies to claims of privilege.

Clause 34 amends section 196(1) by adding "or under section 192 in relation to a refusal to answer a question" after "thing". This extends the scheme provided for by section 196 to claims of privilege in refusing to answer questions of the presiding officer.

Clause 35 amends section 197 by replacing in the heading "documents and things" with "documents, things or statements". This is because it is intended to extend the protection provided for by section 197 to witness statements.

Clause 36 amends section 197 by omitting section 197(1)(a) and replacing it with a new section 197(1)(a) which extends the application of section 197.

Clause 37 amends section 197(1)(b) and (c) by omitting the references to "document or thing" and replacing them with "document, thing or statement" which extends the application of section 197 consistent with the amendment in Clause 36.

Clause 38 amends section 197(2) and (3) by omitting the references to "document or thing" and replacing them with "document, thing or

statement". This extends the protection provided for by section 197 to witness statements.

Clause 39 amends section 212(a) and (b) by inserting "or" after "person". This had been inadvertently omitted.

Clause 40 amends section 216(3) by omitting "information" and replacing it with "complaint". This is to make section 216(3) more accurate and consistent with the remainder of section 216.

Clause 41 corrects a grammatical error in section 221(2) by inserting "the" after "imprint of".

C*lause 42* adds a new section 221A which clarifies that the Crime and Misconduct Commission is a statutory body under the *Financial Administration and Audit Act 1997*. This means that the commission is therefore subject to the requirements of that Act.

Clause 43 amends section 251(1) by omitting that the chairperson is the commission's accountable officer for the *Financial Administration and Audit Act 1997*. This subsection never commenced.

Clause 44 corrects a drafting error in section 293(2)(a) by replacing "or" with "and".

Clause 45 amends section 305 by adding a new section 305(3) which provides that an "ineligible person" includes a commission officer or former commission officer. This clarifies that a commission officer or former commission officer is ineligible to be appointed as the parliamentary commissioner.

Clause 46 amends section 312(1)(a) by replacing "becomes" with "is or becomes". This makes the section more accurate in its application.

Clause 47 amends section 312 by adding a new section 312(4) which provides that an "ineligible person" includes a commission officer or former commission officer. This clarifies that the office of parliamentary commissioner is vacated if the parliamentary commissioner is or becomes a commission officer or former commission officer.

Clause 48 amends section 317(5) by adding "or unit of public administration" after "commission". This had been inadvertently omitted.

Clause 49 amends section 335 by adding "and others" to the heading. This more accurately reflects the content of section 335.

Clause 50 amends section 335(3) by adding "to or" after "publication". This restores the defence of absolute privilege to publication to the

commission for the purpose of performing the commission's functions, which had been inadvertently omitted.

Clause 51 corrects a grammatical error in section 340(6) by replacing "commissioner officer" with "commission officer".

Clause 52 amends section 371 by inserting a new section 371(2), section 371(3) and section 371(4). Section 371(2) requires the commission to ensure that any recording or photograph obtained or transcript or copy made under a warrant in force at the commencement of the *Crime and Misconduct Act 2001* is destroyed as soon as practicable after it is no longer required. Section 371(3) qualifies section 371(2) by providing that section 371(2) does not prevent material being preserved if, in the chairperson's opinion, it relates to a conviction and there is a possibility that an issue about the conviction may arise or it relates to an ongoing investigation. Section 371(4) provides that the *Public Records Act 2002* and the *Freedom of Information Act 1992* do not apply to the records referred to in section 316. This preserves the confidentiality of those records.

Clause 53 inserts a new section 375A and section 375B. Section 375A preserves the effect of orders in force at the commencement of the *Crime and Misconduct Act 2001.* Section 375B clarifies the commission's power to give written consent to publish material classified as confidential as at the commencement of the *Crime and Misconduct Act 2001.*

Clause 54 amends Schedule 2 by omitting the definition of "ombudsman". This is because the definition refers to the Parliamentary Commissioner under the *Parliamentary Commissioner Act 1974.* That Act has now been repealed.

Schedule 4 contains the other Acts amended by Clause 328 of the Bill.

Schedule 5 contains a dictionary of significant terms used in this Bill.