



Australian Capital Territory

Proceeds of Crime Act 1991 No 103

Republication No 4

Republication date: 13 September 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 13 September 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Proceeds of Crime Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 13 September 2002. It also includes any amendment, repeal or expiry affecting the republished law to 13 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
13 September 2002



Australian Capital Territory

Proceeds of Crime Act 1991

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Australian Capital Territory

Proceeds of Crime Act 1991

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Proceeds of Crime Act 1991*.

3 Principal objects

The principal objects of this Act are—

- (a) to deprive persons of the proceeds of, and benefits derived from, the commission of offences against the laws of the Territory; and
- (b) to provide for the forfeiture of property used in or in connection with the commission of such offences; and
- (c) to enable law enforcement authorities effectively to trace such proceeds, benefits and property; and
- (d) to provide for the enforcement in the ACT of forfeiture orders, pecuniary penalty orders and restraining orders made in respect of offences against laws of the States and other Territories.

4 Interpretation for Act

- (1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

- (a) a fixed term deposit; or
- (b) a safety deposit box.

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

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

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

Bankruptcy Act means the *Bankruptcy Act 1966* (Cwlth).

benefit includes service or advantage.

chief police officer means the police officer who is responsible for the day-to-day administration and control of police services in the ACT.

confiscation order means a forfeiture order or pecuniary penalty order.

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

Crimes Act means the *Crimes Act 1900*.

Customs Act means the *Customs Act 1901* (Cwlth).

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

- (a) if the institution or corporation is a body corporate incorporated for a public purpose by a law of the Territory or a State or another Territory—a constituent member of the body corporate; and
- (b) any person occupying or acting in the position of director of the institution or corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (c) any person in accordance with whose directions or instructions the directors of the institution or corporation are accustomed to act.

distributable funds means money in the trust fund that is—

- (a) identified as distributable funds in accordance with the regulations (other than such money as is identified by the public trustee under section 37 (2) as suspended funds); or
- (b) identified by the public trustee under section 37 (3) as distributable funds.

DPP means the director of public prosecutions.

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

equitable sharing program means an arrangement under which either or both of the following happen:

- (a) the Territory shares with the Commonwealth, a State or another Territory a proportion of any proceeds of any unlawful activity recovered under a Territory law;
- (b) the Commonwealth, a State or another Territory shares with the Australian Capital Territory any proceeds resulting from a breach of the criminal law of the Commonwealth, that State or that Territory.

executive officer, in relation to a financial institution or a corporation, means any person, by whatever name called and whether or not he or she is a director of the institution or corporation, who is concerned, or takes part, in the management of the institution or corporation.

fax copy means a copy obtained by fax.

financial institution means—

- (a) an authorised deposit-taking institution; or
- (b) a body corporate that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of the Constitution of the Commonwealth, paragraph 51 (xx); or

- (c) a person who permits other persons to deposit money with him or her for use by those other persons in connection with gaming or betting.

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

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

government business enterprise means a prescribed government business enterprise.

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

interest, in relation to property, means—

- (a) a legal or equitable estate or interest in the property; or
(b) a right, power or privilege in connection with the property;

whether present or future and whether vested or contingent.

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

interstate indictable offence means an offence against a law of a State or another Territory, being an offence in relation to which an interstate forfeiture order or an interstate pecuniary penalty order may be made under a corresponding law of that State or Territory.

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

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

narcotic substance means—

- (a) a narcotic substance within the meaning of the Customs Act; or
- (b) a substance declared by the regulations to be a substance to which this definition applies.

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

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

pecuniary penalty order means an order under section 25 (1).

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

petition means a petition under the Bankruptcy Act.

premises includes—

- (a) a building or other structure; and
- (b) an aircraft, vehicle or vessel; and
- (c) a place, whether enclosed or built on or not.

prescribed officer means a senior executive service officer of the government service.

prescribed time, in relation to a warrant issued under division 4.1 in relation to property, means—

- (a) where an information is laid in respect of the relevant offence either before the warrant is issued or within 48 hours after the warrant is issued—the day that is 28 days after the date of the issue of the warrant; or
- (b) in any other case—the time that is 48 hours after the time of the issue of the warrant.

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

proceeds of confiscated assets means—

- (a) the remainder of the proceeds referred to in the Crimes Act, section 250 (c); or
- (b) the remainder of the money referred to in section 20 (3) (b) (i); or
- (c) the remainder of the proceeds referred to in section 20 (3) (b) (ii); or
- (d) the amount referred to in section 25 (8); or
- (e) the remainder of the money referred to in section 28 (4) (b) (i); or
- (f) the remainder of the proceeds referred to in section 28 (4) (b) (ii); or
- (g) an amount referred to in section 31 (1) or (2); or
- (h) an amount referred to in section 32 (f); or
- (i) the remainder of the money referred to in section 53 (6) (a); or
- (j) the remainder of the proceeds referred to in section 53 (6) (b).

proceeds of crime means—

- (a) proceeds of an indictable offence; or
- (b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that—
 - (i) occurred outside the ACT; and
 - (ii) would, if they had occurred in the ACT, have constituted an indictable offence.

production order means an order under section 64.

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

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

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

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

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

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

court took the offence into account in passing sentence for the other offence referred to in that paragraph; or

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

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

restraining order means an order under section 45 (2).

suspended funds means money in the trust fund that is—

- (a) identified as suspended funds in accordance with the regulations (other than such money as is identified by the public trustee under section 37 (3) as distributable funds); or
- (b) identified by the public trustee under section 37 (2) as suspended funds.

tainted property, in relation to an offence, means—

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

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

trust fund means the confiscated assets trust fund established by section 33.

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

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

- (a) a summons to require the attendance of the person to answer the information has been issued; or
 - (b) a warrant for the apprehension of the person has been issued.
- (3) A reference in this Act to a ***benefit derived*** by a person includes a reference to—
- (a) a benefit derived, directly or indirectly, by the person; and
 - (b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.
- (4) A reference in this Act to the ***property*** of a person includes a reference to property in respect of which the person has the beneficial interest.
- (5) A reference in this Act to a ***criminal offence*** is a reference to an offence against a Territory law.
- (6) Without prejudice to its effect under subsection (5), this Act has effect as if a reference in this Act to a ***criminal offence*** included a reference to an offence against a law of the Commonwealth, a State or another Territory.
- (7) A reference in this Act to acquiring property, or an interest in property, for ***sufficient consideration*** is a reference to acquiring the property or the interest for a consideration that is sufficient and that, having regard solely to commercial considerations, reflects the value of the property or the interest.
- (8) For this Act, a person shall not be regarded as a director within the meaning of subsection (1), definition of ***director***, paragraph (c) by reason only that the directors act on advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or corporation, as the case may be.

5 Meaning of *conviction* etc of offence

- (1) For this Act, a person shall be taken to be convicted of an offence if—
- (a) the person is convicted, whether summarily or on indictment, of the offence; or
 - (b) the person is charged with, and found guilty of, the offence but is discharged without conviction; or
 - (c) a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence; or
 - (d) the person absconds in connection with the offence.
- (2) For this Act, a person's conviction of an offence shall be taken to be quashed—
- (a) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (a)—if the conviction is quashed or set aside; or
 - (b) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (b)—if the finding of guilt is quashed or set aside; or
 - (c) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (c)—if either of the following events occur:
 - (i) the person's conviction of the other offence referred to in that paragraph is quashed or set aside;
 - (ii) the decision of the court to take the offence into account in passing sentence for that other offence is quashed or set aside; or
 - (d) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (d)—if, after the person is brought before a court in respect of the offence, the person is

discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.

- (3) For this Act, a person shall be taken to have been convicted of an offence in a particular State or another Territory if—
- (a) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (a)—the person was convicted of the offence in a court in that State or other Territory; or
 - (b) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (b)—the person was discharged without conviction by a court in that State or other Territory; or
 - (c) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (c)—the offence was taken into account by a court in that State or other Territory in passing sentence on the person for the other offence referred to in that paragraph; or
 - (d) where the person is to be taken to have been convicted of the offence by reason of subsection (1) (d)—the information alleging the commission of the offence by the person was laid in that State or other Territory.
- (4) A reference in this Act, in relation to a person's conviction of an offence, to the *commission* of the offence is, where the person is to be taken to have been convicted of the offence by reason of subsection (1) (d), a reference to the alleged commission of the offence by the person.

6 Meaning of *absconding*

For this Act (other than section 17), a person shall be taken to abscond in connection with an offence only if—

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

- (b) a warrant for the arrest of the person is issued in relation to that information; and
- (c) 1 of the following occurs:
 - (i) the person dies without the warrant being executed;
 - (ii) at the end of the period of 6 months commencing on the day on which the warrant is issued—
 - (A) the person cannot be found; or
 - (B) the person is, for any other reason, not amenable to justice and, if the person is outside the ACT, extradition proceedings are not on foot;
 - (iii) at the end of the period of 6 months commencing on the day on which the warrant is issued—
 - (A) the person is, by reason of being outside the ACT, not amenable to justice; and
 - (B) extradition proceedings are on foot;and subsequently those proceedings terminate without an order for the person's extradition being made.

7 Meaning of *serious offence*

- (1) In this Act:

serious offence means—

- (a) a serious narcotics offence; or
- (b) an organised fraud offence; or
- (c) a money laundering offence in relation to the proceeds of a serious narcotics offence or an organised fraud offence;

and includes an ancillary offence in respect of an offence referred to in paragraph (a), (b) or (c).

(2) In this section:

ancillary offence, in relation to an offence (the ***main offence***), means—

- (a) an offence of conspiring to commit the main offence; or
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the main offence; or
- (c) an offence of receiving or assisting another person in order to enable the person to escape punishment for, or to dispose of the proceeds of, the main offence; or
- (d) an offence of attempting to commit the main offence.

money laundering offence means an offence against section 74.

organised fraud offence means an offence against section 76.

possession includes possession for supply.

production includes growing and manufacture.

serious narcotics offence means an offence—

- (a) constituted by the production, possession, supply, importation or export of a narcotic substance; and
- (b) involving a quantity of the narcotic substance that is equal to or greater than the trafficable quantity applicable to the narcotic substance.

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

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

8 Related offences

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

9 Meaning of *dealing with property*

For this Act, *dealing with property* of a person includes—

- (a) if a debt is owed to that person—making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from the ACT; and
- (c) receiving or making a gift of the property.

10 Effective control of property

- (1) Property, or an interest in property, may be subject to the effective control of a person within the meaning of this Act whether or not the person has—
 - (a) a legal or equitable estate or interest in the property; or
 - (b) a right, power or privilege in connection with the property.
- (2) Without limiting the generality of any other provision of this Act, in determining—
 - (a) whether or not property, or an interest in property, is subject to the effective control of a person; or
 - (b) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of a person;

regard may be had to—

- (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
- (d) a trust that has a relationship to the property; and

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

11 Appropriate court in relation to indictable offence

- (1) Where a person is convicted of an offence before the Supreme Court, that court is the appropriate court in relation to the conviction.
- (2) Where a person is convicted of an offence before the Magistrates Court, that court and the Supreme Court are both appropriate courts in relation to the conviction.

13 Application of Act

- (1) Subject to subsection (2), parts 2 and 4 do not apply to a person's conviction of an offence if the person was convicted of the offence before the commencement of this Act.
- (2) Subsection (1) does not apply in relation to interstate forfeiture orders, interstate pecuniary penalty orders or interstate restraining orders.
- (3) Subject to subsection (1) this Act applies to—
 - (a) an offence committed, or believed to have been committed, at any time (whether before or after the commencement of this Act); and
 - (b) a person's conviction at any time of an offence (whether before or after the commencement of this Act).

Part 2 Confiscation

Division 2.1 Application for confiscation order

14 Application for confiscation order

- (1) Where a person is convicted of an indictable offence, the DPP may, subject to subsections (2), (3) and (4), apply to an appropriate court for 1 or both of the following orders:
 - (a) a forfeiture order against property that is tainted property in respect of the offence;
 - (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.
- (2) The DPP is not empowered to make an application after the end of the relevant application period in relation to the conviction.
- (3) The DPP is not empowered to make an application to a court under subsection (1) for a forfeiture order against property in respect of a person's conviction of an offence if—
 - (a) an application has previously been made—
 - (i) under that subsection; or
 - (ii) under another Territory law;for forfeiture or condemnation of the property in respect of the offence; and
 - (b) the application has been finally determined on the merits; except with the leave of the court.
- (4) The DPP is not empowered to make an application to a court under subsection (1) for a pecuniary penalty order against a person in respect of benefits derived by the person from the commission of an offence if—

- (a) an application has previously been made—
 - (i) under that subsection; or
 - (ii) under another Territory law;for a pecuniary penalty in respect of those benefits derived by the person from the commission of the offence; and
- (b) the application has been finally determined on the merits;
except with the leave of the court.
- (5) The court shall not grant leave under subsection (3) or (4) unless satisfied that—
 - (a) the tainted property, or the benefit, to which the new application relates was identified only after the first application was determined; or
 - (b) necessary evidence became available only after the first application was determined; or
 - (c) the court is otherwise satisfied that it is in the interests of justice to grant the leave.
- (6) An application may be made under this section in relation to 1 or more indictable offence.
- (7) An application may be made under this section for a pecuniary penalty order in respect of an offence even if section 28 applies to the offence.

15 Notice of application

- (1) Where the DPP applies for a forfeiture order against property in respect of a person's conviction of an offence—
 - (a) the DPP shall give written notice of the application to the person and to any other person the DPP has reason to believe may have an interest in the property; and

- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
 - (c) the court may, at any time before the final determination of the application, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.
- (2) Where the DPP applies for a pecuniary penalty order against a person—
- (a) the DPP shall give the person written notice of the application; and
 - (b) the person may appear and adduce evidence at the hearing of the application.

16 Amendment of application

- (1) Subject to subsection (2), where the DPP applies for a confiscation order, the court hearing the application may amend the application—
- (a) on application by the DPP; or
 - (b) with the consent of the DPP.
- (2) The court shall not amend the application so as to—
- (a) include additional property in an application for a forfeiture order; or
 - (b) include an additional benefit in an application for a pecuniary penalty order;
- unless the court is satisfied that—
- (c) the property or benefit was not reasonably capable of identification when the application was originally made; or
 - (d) necessary evidence became available only after the application was originally made.

- (3) Where—
- (a) the DPP applies to amend an application for a forfeiture order; and
 - (b) the amendment would have the effect of including additional property in the application for the forfeiture order;
- then—
- (c) the DPP shall give written notice of the application to amend to any person who the DPP has reason to believe may have an interest in property to be included in the application for the forfeiture order; and
 - (d) any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

- (4) Where—
- (a) the DPP applies to amend an application for a pecuniary penalty order against a person; and
 - (b) the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order;

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

17 Making of confiscation order where person has absconded

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

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

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

18 Procedure on application

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

- (2) Where—

- (a) an application is made for a confiscation order in respect of a person's conviction of an offence; and
- (b) the application is made to the court before which the person was convicted; and
- (c) the court has not, when the application is made, passed sentence on the person for the offence;

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

- (3) Where—

- (a) a person is to be taken to have been convicted of an offence by reason of section 5 (1) (c); and
- (b) an application is made to a court for a confiscation order in respect of the conviction;

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

Division 2.2 Forfeiture orders

19 Forfeiture orders

- (1) Where—
- (a) the DPP applies to a court for an order under this section against property in respect of a person's conviction of an offence; and
 - (b) the court is satisfied that the property is tainted property in respect of the offence;

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

- (2) Where the court orders that property (other than money) is forfeited to the Territory, the court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.
- (3) In considering whether it is appropriate to make a forfeiture order in respect of particular property, the court may have regard to—
- (a) any hardship that may reasonably be expected to be caused to any person by the operation of such an order; and
 - (b) the use that is ordinarily made, or was intended to be made, of the property.
- (4) In considering whether it is appropriate to make a forfeiture order under subsection (1) in respect of particular property, the court may also have regard to the gravity of the offence concerned.
- (5) A court that makes a forfeiture order against property may, if it is satisfied that—
- (a) it would not be contrary to the public interest for a person's interest in the property to be transferred to the person; and

- (b) there is no other reason why the person's interest in the property should not be transferred to that person;
- by order—
- (c) declare the nature, extent and value (as at the time when the order is made) of the interest; and
- (d) declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged as provided by section 31.
- (6) Where—
- (a) the DPP applies for a forfeiture order against particular property in reliance on a person's conviction of an offence; and
- (b) evidence is given, at the hearing of the application, that the property was in the person's possession at the time of, or immediately after, the commission of the offence;
- then—
- (c) if no evidence is given that tends to show that the property was not used in, or in connection with, the commission of the offence—the court shall presume that the property was used in, or in connection with, the commission of the offence; or
- (d) in any other case—the court shall not make a forfeiture order against the property unless it is satisfied that the property was used in, or in connection with, the commission of the offence.
- (7) Where a court makes a forfeiture order, the court has power to give all directions that are necessary or convenient for giving effect to the order.
- (8) Without limiting subsection (7), where a court makes a forfeiture order against registrable property, the court may direct an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.

20 Effects of forfeiture order

- (1) Subject to subsection (2), where a court makes a forfeiture order against property, the property vests absolutely in the Territory.
- (2) Where a forfeiture order is made against registrable property—
 - (a) the property vests in equity in the Territory but does not vest in the Territory at law until the applicable registration requirements have been complied with; and
 - (b) the Territory is entitled to be registered as owner of the property; and
 - (c) the Minister has power, on behalf of the Territory, to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Territory as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.
- (3) Where a court makes a forfeiture order against property—
 - (a) the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Territory, before the relevant time; and
 - (b) if, at the relevant time, the order has not been discharged, then, subject to any direction under subsection (4), the public trustee shall, as soon as practicable after the relevant time—
 - (i) if the property is money—after paying the public trustee’s remuneration and other costs, charges and expenses of the kind referred to in section 59 payable to or incurred by it in connection with the restraining order, pay the remainder of the money to the trust fund as required by section 34; and
 - (ii) if the property is not money—sell or otherwise dispose of the property and, after paying the public trustee’s

remuneration and other costs, charges and expenses of the kind referred to in section 59 payable to or incurred by it in connection with the restraining order or the sale or disposition, pay the remainder of those proceeds to the trust fund as required by section 34.

- (4) Where a court makes a forfeiture order against property, the Minister, or a prescribed officer authorised by the Minister for this subsection, may, at or after the relevant time but before the property is dealt with under subsection (3) (b), direct that the property be disposed of, or otherwise dealt with, as specified in the direction.
- (5) Without limiting subsection (4), the directions that may be given under that subsection include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.
- (6) A reference in this section to the appeal period in relation to a person's conviction of an offence is—
 - (a) in a case where the person is to be taken to have been convicted of the offence by reason of section 5 (1) (b)—a reference to the appeal period in relation to the finding of the person guilty of the offence; and
 - (b) in a case where the person is to be taken to have been convicted of the offence by reason of section 5 (1) (c)—a reference to the appeal period in relation to the person's conviction of the other offence referred to in that paragraph.
- (7) In this section:

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

 - (a) if the period provided for the lodging of an appeal against the decision or finding has ended without such an appeal having been lodged—at the end of that period; or
 - (b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined.

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

- (a) the end of the appeal period in relation to the making of the forfeiture order; or
- (b) the end of the appeal period in relation to the person's conviction;

whichever is the later.

21 Effect of forfeiture order on third parties

- (1) Where an application is made for a forfeiture order against particular property, a person who claims an interest in the property may apply, before the forfeiture order is made, to the court for an order under subsection (6).
- (2) Subject to subsections (3) and (7), where a court makes a forfeiture order against property, a person who claims an interest in the property may apply to the court for an order under subsection (6).
- (3) A person who—
 - (a) was given notice of the application for the forfeiture order; or
 - (b) appeared at the hearing of the application;shall not make an application to a court under subsection (2) except with the leave of the court.
- (4) The court may grant the person leave to apply if the court is satisfied that there are special grounds for granting the leave.
- (5) Without limiting subsection (4), the court may grant a person leave to apply if the court is satisfied that—
 - (a) the person, for a good reason, did not attend the hearing of the application for the forfeiture order although the person had notice of the application; or
 - (b) particular evidence proposed to be adduced by the person in connection with the application under subsection (2) was not

available to the person at the time of the hearing of the application for the forfeiture order.

- (6) If a person applies to a court for an order under this subsection in respect of the applicant's interest in property and the court is satisfied that—
- (a) the applicant was not, in any way, involved in the commission of an offence in respect of which forfeiture of the property is sought, or the forfeiture order against the property was made, as the case requires; and
 - (b) if the applicant acquired the interest at the time of or after the commission of such an offence—the applicant acquired the interest—
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property;
- the court shall make an order—
- (c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest; and
 - (d) either—
 - (i) if the interest is still vested in the Territory—directing the Territory to transfer the interest to the applicant; or
 - (ii) declaring that the Territory is liable to pay to the applicant an amount equal to the value declared under paragraph (c).
- (7) Subject to subsection (8), an application under subsection (2) shall be made before the end of the period of 6 months commencing on the day on which the forfeiture order is made.
- (8) Where a forfeiture order is made against property, the court that made the forfeiture order may grant a person claiming an interest in

the property leave to apply under subsection (2) outside the period referred to in subsection (7) if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the part of the person.

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

Note If a form is approved under s 95 (Approved forms) for an application, the form must be used.

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

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

- (1) Where—
- (a) a court makes a forfeiture order against property in reliance on a person's conviction of an offence; and
 - (b) the conviction is subsequently quashed;
- the quashing of the conviction discharges the order.
- (2) Where a forfeiture order against property is discharged as provided by subsection (1) or by a court hearing an appeal against the making of the order, the DPP shall—
- (a) as soon as practicable after the discharge of the order, give written notice of the discharge of the forfeiture order to any person the DPP has reason to believe may have had an interest in the property immediately before the making of the forfeiture order; and
 - (b) if required to do so by a court—give or publish notice of the discharge of the forfeiture order to a specified person or class of persons in the manner and within the time that the court considers appropriate.

- (3) A notice under subsection (2) shall include a statement to the effect that a person claiming an interest in the property may apply under subsection (4) for the transfer of the interest to the person.
- (4) Where a forfeiture order against property is discharged as provided by subsection (1) or by a court hearing an appeal against the making of the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order may apply to the Minister, in writing, for the transfer of the interest to the person and, on receipt of an application from a person who had an interest in the property immediately before the making of the forfeiture order—
- (a) if the interest is still vested in the Territory—the Minister shall arrange for the interest to be transferred to the person; or
 - (b) in any other case—there is payable to the person an amount equal to the value of the interest.
- (5) Where the Minister is required by this section to arrange for property to be transferred to a person, he or she has power, on behalf of the Territory, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

Division 2.3 Pecuniary penalty orders

23 Application of div 2.3

This division applies to—

- (a) property that comes into the possession, or under the control, of a person either within or outside the ACT and either before or after the commencement of this Act; and
- (b) benefits that are provided to a person either within or outside the ACT and either before or after the commencement of this Act.

24 Special provisions in relation to serious offences

- (1) Where an application is made to a court for a pecuniary penalty order against a person in reliance on the person's conviction of a serious offence, the court shall not make a pecuniary penalty order in reliance on the conviction until after the end of the period of 6 months commencing on the day of the conviction.
- (2) Subsection (1) does not apply to an application for a pecuniary penalty order against a person who is to be taken to have been convicted of the serious offence by reason of section 5 (1) (d).

25 Pecuniary penalty orders

- (1) Where—
 - (a) an application is made to a court for an order under this section in respect of benefits derived by a person from the commission of an offence; and
 - (b) the court is satisfied that the person derived benefits from the commission of the offence;the court may, if it considers it appropriate—
 - (c) assess, in accordance with section 26, the value of the benefits so derived; and
 - (d) order the person to pay to the Territory a pecuniary penalty equal to the penalty amount.
- (2) Subject to subsections (3) and (4), the penalty amount is the value of the benefits as assessed under subsection (1) (c).
- (3) Where—
 - (a) property that is proceeds of the offence has been forfeited, under this Act or another Territory law in relation to the offence; or
 - (b) a forfeiture order is proposed to be made against property that is proceeds of the offence;

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

- (4) Where the court making a pecuniary penalty order is satisfied that an amount of tax (whether payable under a law of the Territory, the Commonwealth, a State, another Territory or a foreign country) that has been paid by the person is attributable in whole or in part to the benefits in respect of which the order is being made, the court may determine that the penalty amount be reduced by the amount that, in the opinion of the court, represents the extent to which the amount of tax so paid is attributable to those benefits and where the court makes such a determination the penalty amount shall be taken to be reduced accordingly.
- (5) If the court considers it appropriate to do so, the court may reduce the amount payable by a person under a pecuniary penalty order made in relation to an offence by an amount equal to the amount payable by the person by way of fine, restitution, compensation or damages in relation to the offence.
- (6) Where—
 - (a) a court makes a pecuniary penalty order in relation to an offence; and
 - (b) in calculating the penalty amount, the court took into account a forfeiture of, or proposed forfeiture order in respect of, property; and
 - (c) an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made;

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

- (7) Where—
- (a) a court makes a pecuniary penalty order against a person in relation to an offence; and
 - (b) in calculating the penalty amount, the court took into account, in accordance with subsection (4), an amount of tax paid by the person; and
 - (c) an amount is repaid or refunded to the person in respect of that tax;

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

- (8) An amount payable by a person to the Territory in accordance with a pecuniary penalty order is a civil debt due by the person to the Territory.
- (9) A pecuniary penalty order against a person may be enforced as if it were an order made in civil proceedings instituted by the Territory against the person to recover a debt due by the person to the Territory and the debt arising from the order shall be taken to be a judgment debt.

26 Assessment of pecuniary penalty

- (1) In this section:

insolvency trustee means—

- (a) in relation to bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under the Bankruptcy Act, part 4, division 6—the trustee of the composition or scheme of arrangement; or

- (c) in relation to a deed of assignment, a deed of arrangement or a composition under the Bankruptcy Act, part 10—the trustee of the deed or the composition; or
- (d) in relation to the estate of a deceased person in respect of which an order has been made under the Bankruptcy Act, part 11—the trustee of the estate.

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

- (2) For the purposes of an application for a pecuniary penalty order against a person (the *defendant*), the value of the benefits derived by the defendant from the commission of an offence or offences shall be assessed by the court having regard to the evidence before it concerning all or any of the following:
 - (a) the money, or the value of the property other than money, that came into the possession or under the control of—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;by reason of the commission of the offence or any of the offences;
 - (b) the value of any other benefit provided to—
 - (i) the defendant; or
 - (ii) another person at the request or direction of the defendant;by reason of the commission of the offence or any of the offences;

- (c) if the offence or any of the offences consisted of the doing of an act or thing in relation to a narcotic substance—
 - (i) the market value, at the time of the offence, of similar or substantially similar narcotic substances; and
 - (ii) the amount that was, or the range of amounts that were, ordinarily paid for the doing of a similar or substantially similar act or thing;
 - (d) the value of the defendant's property—
 - (i) where the application relates to a single offence—before, during and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period;
 - (e) the defendant's income and expenditure—
 - (i) where the application relates to a single offence—before, during and after the commission of the offence; or
 - (ii) where the application relates to 2 or more offences—before, during and after the offence period.
- (3) The court, in quantifying the value of a benefit for this section, may treat as the value of the benefit the value that the benefit would have had if derived at the time when the valuation is being made and, without limiting the generality of this, may have regard to any decline in the purchasing power of money between the time when the benefit was derived and the time when the valuation is being made.
- (4) Where an application is made for a pecuniary penalty order against a person in respect of a single ordinary indictable offence, the following provisions have effect:
- (a) if, at the hearing of the application, evidence is given that the value of the person's property during or after the commission of the offence exceeded the value of the person's property before the commission of the offence, then, for section 25 (1),

the court shall, subject to paragraphs (b) and (c) and subsection (7), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the greatest excess;

- (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) does not apply to the excess;
 - (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) applies to the excess as if it were reduced by the amount of that part.
- (5) Where an application is made for a pecuniary penalty order against a person in respect of 2 or more ordinary indictable offences, the following provisions have effect:
- (a) if, at the hearing of the application, evidence is given that the value of the person's property at any time during or after the offence period exceeded the value of the person's property before the offence period, then, for section 25 (1), the court shall, subject to paragraphs (b) and (c) and to subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
 - (b) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that the whole of the excess was due to causes unrelated to the commission of the offences, paragraph (a) does not apply to the excess;
 - (c) if, after evidence of the kind referred to in paragraph (a) is given, the person satisfies the court that a part of the excess was due to causes unrelated to the commission of the offences, paragraph (a) applies to the excess as if it were reduced by the amount of that part.

- (6) Where an application is made for a pecuniary penalty order against a person in relation to a serious offence or serious offences—
- (a) all property of the person at the time the application is made; and
 - (b) all property of the person at any time—
 - (i) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of 5 years immediately before the day on which the application is made;
- whichever is the shorter;
- shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the person by reason of the commission of the offence or offences.
- (7) A benefit shall not be taken into account for this section if a pecuniary penalty has been imposed in respect of the benefit under—
- (a) this Act; or
 - (b) the *Proceeds of Crime Act 1987* (Cwlth); or
 - (c) the Customs Act, part 13, division 3; or
 - (d) a law of a State or another Territory.
- (8) In calculating, for the purposes of an application for a pecuniary penalty order, the value of benefits derived by a person from the commission of an offence or offences, any expenses or outgoings of the person in connection with the commission of the offence or offences shall be disregarded.
- (9) For this section, where property of a person vests in an insolvency trustee, the property shall be taken to continue to be the property of the person.

- (10) At the hearing of an application for a pecuniary penalty order, a police officer who is experienced in the investigation of narcotic substance offences may testify, to the best of the officer's information, knowledge and belief—
- (a) with respect to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or
 - (b) with respect to the amount, or the range of amounts, that was the amount, or range of amounts, ordinarily paid at a particular time, or during a particular period, for the doing of an act or thing in relation to a narcotic substance;

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

27 Court may lift corporate veil etc

- (1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person.
- (2) On application by an appropriate officer, a court may, if in its opinion particular property is subject to the effective control of a person against whom the court has made a pecuniary penalty order, make an order declaring that the whole, or a specified part, of that property is available to satisfy the pecuniary penalty order.
- (3) Where a court declares that property is available to satisfy a pecuniary penalty order—
 - (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
 - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

- (4) Where an appropriate officer makes an application for an order under subsection (2) that property is available to satisfy a pecuniary penalty order against a person—
- (a) the appropriate officer shall give written notice of the application to the person and to any person who the appropriate officer has reason to believe may have an interest in the property; and
 - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

Division 2.4 Forfeiture in case of serious offence

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

- (1) If—
- (a) a person (the *defendant*) is convicted of a serious offence (otherwise than by reason of section 5 (1) (d)); and
 - (b) a restraining order is or was granted in respect of property (whether property of the defendant or of some other person) in reliance on—
 - (i) the defendant's conviction of that offence; or
 - (ii) the charging or proposed charging of the defendant with that offence or a related offence; and
 - (c) the restraining order, to the extent to which it relates to the property, is not the subject of a declaration under section 51 (5); and
 - (d) the restraining order is in force at the end of the period of 6 months commencing on the day of the conviction;

the property is, under this subsection, forfeited to the Territory at the end of that period.

- (2) Subject to subsection (3), where property is forfeited to the Territory under subsection (1), the property vests absolutely in the Territory.
- (3) Where registrable property is forfeited to the Territory under subsection (1)—
 - (a) the property vests in equity in the Territory but does not vest in the Territory at law until the applicable registration requirements have been complied with; and
 - (b) the Territory is entitled to be registered as owner of the property; and
 - (c) the Minister has power, on behalf of the Territory, to do, or to authorise the doing of, anything necessary or convenient to obtain the registration of the Territory as owner, including, without limiting the generality of this, the execution of any instrument required to be executed by a person transferring an interest in property of that kind.
- (4) Where property is forfeited to the Territory under this section in respect of a person's conviction of a serious offence—
 - (a) the property shall not, except with the leave of the court that made the relevant restraining order and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or on behalf of the Territory, before the end of the appeal period in respect of the conviction; and
 - (b) if, at the end of the appeal period in respect of the conviction, the conviction has not been quashed, then, subject to any direction under subsection (5), the public trustee shall, as soon as practicable after the end of the appeal period—
 - (i) if the property is money—after paying the public trustee's remuneration and other costs, charges and expenses of the kind referred to in section 59 payable to or incurred by it in connection with the restraining order, pay the

remainder of the money to the trust fund as required by section 34; and

- (ii) if the property is not money—sell or otherwise dispose of the property and, after paying the public trustee’s remuneration and other costs, charges and expenses of the kind referred to in section 59 payable to or incurred by it in connection with the restraining order or the sale or disposition, pay the remainder of those proceeds to the trust fund as required by section 34.
- (5) Where property is forfeited under this section because of a person’s conviction of a serious offence, the Minister, or a prescribed officer authorised by the Minister for this subsection, may, at or after the end of the appeal period in respect of the conviction but before the property is dealt with under subsection (4) (b), direct that the property be disposed of, or otherwise dealt with, as specified in the direction.
- (6) Without limiting subsection (5), the directions that may be given under that subsection include a direction that property is to be disposed of in accordance with the provisions of a law specified in the direction.
- (7) Where property is forfeited to the Territory under subsection (1), the Minister may give all directions that are necessary or convenient to realise the Territory’s interest in the property.
- (8) Without limiting the generality of subsection (7), where registrable property is forfeited to the Territory under subsection (1), the Minister may direct a public servant or a police officer to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of the property.
- (9) A reference in this section to the *appeal period* in relation to the conviction of a person of an offence is—
- (a) in a case where the person is to be taken to have been convicted of the offence by reason of section 5 (1) (b)—a

reference to the appeal period in relation to the finding of the person guilty of the offence; and

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

(10) Where a court makes a restraining order in reliance on—

- (a) a person's conviction of a serious offence; or
- (b) the charging or proposed charging of a person with such an offence;

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

(11) In this section:

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

- (a) if the period provided for the lodging of an appeal against the conviction has ended without such an appeal having been lodged—at the end of that period; or
- (b) if an appeal against the conviction has been lodged—when the appeal lapses or is finally determined.

29 Recovery of property to which s 28 applies

- (1) Where property is forfeited to the Territory under section 28, a person who claims an interest in the property may, subject to subsections (2) and (4), apply to the court that made the relevant restraining order for an order under subsection (6) or (7).

- (2) The application shall, subject to subsection (3), be made before the end of the period of 6 months commencing on the day on which the property is forfeited to the Territory.
- (3) The court may grant a person leave to apply after the end of the period referred to in subsection (2) if the court is satisfied that the delay in making the application is not due to neglect on the part of the applicant.
- (4) An application for an order under subsection (6) or (7) in relation to an interest in property shall not be made by a person who was given notice of—
 - (a) proceedings on the application for the relevant restraining order; or
 - (b) the making of the relevant restraining order;except with the leave of the court.
- (5) The court may grant a person leave to make an application if the court is satisfied that the person's failure to seek to have the property excluded from the relevant restraining order was not due to any neglect on the part of the applicant.
- (6) Where a person applies for an order under this subsection in respect of an interest in property, the court may—
 - (a) if satisfied that—
 - (i) the applicant was not, in any way, involved in the commission of the relevant serious offence; and
 - (ii) the applicant's interest in the property is not subject to the effective control of the defendant; and
 - (iii) if the applicant acquired the interest at the time of or after the commission of the offence—the applicant acquired the interest—
 - (A) for sufficient consideration; and

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

(b) if satisfied that—

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

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

make an order—

(c) declaring the nature, extent and value of the applicant's interest in the property; and

(d) either—

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

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

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

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

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

by order—

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

(d) declare that section 28 shall cease to operate in relation to the interest if payment is made in accordance with section 31.

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

Note If a form is approved under s 95 (Approved forms) for an application, the form must be used.

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

- (10) In this section:

defendant, in relation to property forfeited to the Territory under section 28, means the person by virtue of whose conviction the property is forfeited.

relevant restraining order, in relation to property forfeited to the Territory under section 28, means the restraining order by virtue of which the property is forfeited.

30 Effect of quashing of conviction

- (1) Where—

- (a) property is forfeited to the Territory under section 28 in respect of a person's conviction of a serious offence; and
(b) the conviction is subsequently quashed;

the DPP shall—

- (c) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person the DPP has reason to believe may have had an interest in the property immediately before the property was forfeited; and
(d) if required to do so by a court, give or publish notice of the quashing of the conviction to a specified person or class of

persons in the manner and within the time that the court considers appropriate.

- (2) A notice under subsection (1) shall include a statement to the effect that a person claiming an interest in the property may apply under subsection (3) for the transfer of the interest to the person.
- (3) Where subsection (1) applies to property, any person who claims to have had an interest in the property immediately before it was forfeited may apply to the Minister, in writing, for the transfer of the interest to the person and, on receipt of an application from a person who had an interest in the property immediately before it was forfeited—
 - (a) if the interest is still vested in the Territory—the Minister shall arrange for the interest to be transferred to the person; or
 - (b) in any other case—there is payable to the person an amount equal to the value of the interest.
- (4) Where the Minister is required by this section to arrange for property to be transferred to a person, the Minister has power, on behalf of the Territory, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

Division 2.5 Miscellaneous

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

- (1) Where a court—
 - (a) makes a forfeiture order against property; and
 - (b) makes an order under section 19 (5) in respect of an interest in the property;

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

- (2) Where—
- (a) property is forfeited to the Territory under section 28; and
 - (b) a court makes an order under section 29 (7) in respect of an interest in the property; and
 - (c) there is paid to the Territory, while the interest is still vested in the Territory, the amount specified in the order under section 29 (7) as the value of the interest;

section 28 ceases to apply in relation to the interest.

- (3) Where subsection (1) or (2) applies to an interest in property, the Minister shall arrange for the interest to be transferred to the person in whom it was vested immediately before the property was forfeited to the Territory.
- (4) Where the Minister is required by this section to arrange for an interest in property to be transferred to a person, the Minister has power, on behalf of the Territory, to do, or authorise the doing of, anything necessary or convenient to effect the transfer, including, without limiting the generality of this, the execution of any instrument and the making of an application for registration of an interest in the property on any appropriate register.

32 Buying out other interests in forfeited property

Where—

- (a) property is forfeited to the Territory under this part; and
- (b) an interest in the property is required to be transferred to a person (the *purchaser*) under section 22 (4) or 31 (3), or under a direction under section 21 (6) (d) (i), or 29 (6) (d) (i); and

- (c) the purchaser's interest in the property, immediately before the forfeiture took place, was not the only interest in the property; and
- (d) the purchaser gives written notice to each other person who had an interest in the property immediately before the forfeiture took place that—
 - (i) the purchaser intends to purchase that other interest from the Territory; and
 - (ii) the person served with the notice may, within 21 days after receiving the notice, lodge a written objection to the purchase of that interest with the Minister; and
- (e) the person served with notice under paragraph (d) in relation to that interest does not lodge a written objection to the purchase of that interest with the Minister within the period referred to in that paragraph; and
- (f) the person pays to the Territory, while that interest is still vested in the Territory, an amount equal to the value of that interest;

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

Part 3 Confiscated assets trust fund

33 Establishment of trust fund

A fund called the confiscated assets trust fund is established by this subsection.

33A Bank account

All money received by the confiscated assets trust fund shall be paid into a trust bank account maintained under the *Financial Management Act 1996*, section 51.

34 Payments into trust fund

- (1) There are to be paid to the trust fund—
 - (a) proceeds of confiscated assets; and
 - (b) money derived from the enforcement of an interstate forfeiture order registered in the ACT, other than money covered by a direction under section 20 (4) or 28 (5); and
 - (c) the Territory's share, under the equitable sharing program, of proceeds resulting from a breach of the criminal law of the Commonwealth, a State or another Territory.
- (2) Subject to section 37, all amounts paid to the trust fund are to be identified in accordance with the regulations as distributable funds or suspended funds and are to retain that identity while they remain within the trust fund.
- (3) Where an amount payable to the Territory must, under this section, be paid to the trust fund, payment of that amount to the trust fund is, for all purposes, taken to be payment to the Territory.

35 Payments out of trust fund

- (1) The purposes of the trust fund are—
- (a) to the extent to which it comprises suspended funds—
 - (i) making such payments (if any) to the Commonwealth or a State as the Attorney-General considers are appropriate under the equitable sharing program; and
 - (ii) paying the prescribed annual management fee in accordance with the regulations; and
 - (iii) making such payments by way of restitution as are required under section 21 (6) (d) (ii), 22 (4) (b) or 29 (6) (d) (ii); and
 - (b) to the extent to which it comprises distributable funds—
 - (i) making payments to a government business enterprise of any proceeds of confiscated assets that relate to a relevant offence that caused financial loss to the government business enterprise; and
 - (ii) making payments in accordance with section 36 for purposes related to law enforcement and drug rehabilitation and education.
- (2) In this section:
- relevant offence* means an offence under—
- (a) the *Crimes (Offences against the Government) Act 1989*, section 5, 6, 7, 8 or 11; or
 - (b) the Crimes Act, section 184; or
 - (c) a prescribed offence.

36 Application of distributable funds

- (1) For section 35 (1) (b) (ii), the Attorney-General may, from time to time, but shall, at least once in each financial year, determine in accordance with the regulations the amount of the balance of the distributable funds that is available for distribution at that time.
- (2) The Attorney-General may apply the balance towards—
 - (a) the administration of this Act; and
 - (b) enforcement of the laws of the Territory; and
 - (c) criminal justice activities; and
 - (d) crime prevention; and
 - (e) assistance to the victims of crime; and
 - (f) the prevention of drug abuse; and
 - (g) rehabilitation of drug users; and
 - (h) any other prescribed purpose.

37 Determinations by public trustee about suspended and distributable funds

- (1) The public trustee may, at such times as he or she considers appropriate, but shall, at least once in every 6 months, determine whether the amount of suspended funds in the trust fund—
 - (a) is likely to be insufficient to meet the payments to be made out of the suspended funds for section 35 (1) (a); or
 - (b) is likely to exceed the amount required to meet those payments.
- (2) Where the public trustee determines that the amount of suspended funds is likely to be insufficient to meet the payments to be made out of the suspended funds for section 35 (1) (a), the public trustee shall declare that such an amount of the distributable funds as the public trustee identifies, being not more than the amount required to meet those payments, is to be identified as suspended funds.

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

Part 4 Control of property liable to confiscation

Division 4.1 Search powers

38 Powers to search for, and seize, tainted property

- (1) A police officer may—
- (a) search a person for tainted property; and
 - (b) seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property;

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

- (c) with the consent of the person; or
 - (d) under a warrant issued under section 39; or
 - (e) under section 41.
- (2) A police officer may—
- (a) enter on land, or on or into premises; and
 - (b) search the land or premises for tainted property; and
 - (c) seize any document or property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property;

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

- (d) with the consent of the occupier of the land or premises; or
- (e) under a warrant issued under section 39; or
- (f) under section 41.

- (3) Where a police officer obtains the consent of the occupier to enter on land, or on or into premises, under subsection (2), the police officer shall ask the occupier to sign a written acknowledgment—
- (a) that the occupier has been informed that he or she may refuse to consent; and
 - (b) that the occupier has consented; and
 - (c) of the day on which, and the time at which, the occupier consented.
- (4) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of land or premises by a police officer under subsection (2) and an acknowledgment in accordance with subsection (3) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.
- (5) Where a police officer may search a person under this division, the police officer may also search—
- (a) the clothing that is being worn by the person; and
 - (b) any property in, or apparently in, the person's immediate control.
- (6) Nothing in this division shall be taken to authorise a police officer to carry out a search by way of an examination of a body cavity of a person.

39 Search warrants in relation to tainted property

- (1) Where a police officer suspects, on reasonable grounds, that there is, or may be within the next following 72 hours, tainted property of a particular kind—
- (a) on a person; or
 - (b) in the clothing that is being worn by a person; or
 - (c) otherwise in a person's immediate control;

the police officer may—

- (d) lay before a magistrate an information on oath setting out those grounds; and
 - (e) apply for the issue of a warrant to search the person for tainted property of that kind.
- (2) Where an application is made under subsection (1) for a warrant to search a person, the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—
- (a) to search the person for tainted property of that kind; and
 - (b) to seize property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property of that kind.
- (3) Where a police officer suspects, on reasonable grounds, that there is, or may be within the next following 72 hours, on any land, or on or in any premises, tainted property of a particular kind, the police officer may—
- (a) lay before a magistrate an information on oath setting out those grounds; and
 - (b) apply for the issue of a warrant to search the land or premises for tainted property of that kind.
- (4) Where an application is made under subsection (3) for a warrant to search land or premises, the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—
- (a) to enter on the land, or on or into the premises; and
 - (b) to search the land or premises for tainted property of that kind; and

- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind.
- (5) A warrant may be issued under subsection (2) or (4) in relation to any property-tracking document or tainted property whether or not an information has been laid in respect of the relevant offence.
- (6) A magistrate shall not issue a warrant under subsection (2) or (4) unless—
 - (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
 - (b) where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made—the magistrate is satisfied—
 - (i) that the property is tainted property; and
 - (ii) that an information will be laid in respect of the relevant offence within 48 hours; and
 - (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (7) A search warrant shall—
 - (a) state the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and
 - (b) include a description of the kind of property authorised to be seized; and
 - (c) specify a time, not being later than the prescribed time, on which the warrant ceases to have effect.
- (8) There shall also be stated in a warrant issued under subsection (4) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night.

- (9) If, in the course of searching, under a warrant issued under this section, for tainted property in relation to a particular offence, a police officer finds—
- (a) property that the police officer believes, on reasonable grounds, to be—
 - (i) tainted property in relation to the offence, although not of a kind specified in the warrant; or
 - (ii) tainted property in relation to another indictable offence; or
 - (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;

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

- (10) A police officer acting in accordance with a warrant issued under subsection (2) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant.
- (11) A person shall not be searched under this section except by a police officer of the same sex.

40 Search warrants may be granted by telephone

- (1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so, the police officer may make application for a search warrant under section 39 to a magistrate, by telephone, in accordance with this section.

- (2) Before making the application, the police officer shall prepare an information of a kind referred to in section 39 (1) or (3), but may, if it is necessary to do so, make the application before the information has been sworn.
- (3) Where a magistrate is, on application made under subsection (1), satisfied—
- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the magistrate shall complete and sign such a search warrant as the magistrate would have issued under section 39 if the application had been made to the magistrate in accordance with that section.
- (4) Where a magistrate signs a warrant under subsection (3)—
- (a) the magistrate shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for granting the warrant; and
 - (b) the police officer shall complete a form of warrant in the terms furnished to the police officer by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.
- (5) Where a police officer completes a form of warrant in accordance with subsection (4), the police officer shall, not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is earlier, give the magistrate who signed the warrant the form of warrant completed by the police officer and the information duly sworn in connection with the warrant.
- (6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by the magistrate

and deal with the documents in the manner in which the magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 39.

- (7) A form of warrant duly completed by a police officer in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any search, entry or seizure that the warrant so signed authorises.
- (8) Where it is material, in any proceedings, for a court to be satisfied that a search, entry or seizure was authorised in accordance with this section, and the warrant signed by a magistrate in accordance with this section authorising the search, entry or seizure is not produced in evidence, the court shall assume, unless the contrary is proved, that the search, entry or seizure was not authorised by such a warrant.
- (9) In this section:
- magistrate* does not include a person by virtue only of the person being a justice of the peace.

41 Searches in emergencies

- (1) Where a police officer suspects, on reasonable grounds, that particular property is tainted property, the police officer may—
- (a) search a person for the property and, if the property is found in the course of the search, seize the property; or
- (b) enter on land, or on or into premises, and search for the property and, if the property is found in the course of the search, seize the property.
- (2) A police officer shall not exercise a power under subsection (1) unless—
- (a) the police officer believes, on reasonable grounds, that it is necessary to exercise the power in order to prevent the concealment, loss or destruction of the property; and

- (b) the circumstances are so serious and urgent that they require the immediate exercise of the power without the authority of an order of a court or of a warrant issued under this Act.
- (3) Subsection (1) does not apply in respect of particular property unless an information has been laid in respect of the offence that the police officer believes, on reasonable grounds, to be the offence by reason of the commission of which the property is tainted property.
- (4) If, in the course of searching, in accordance with subsection (1), for tainted property in relation to a particular indictable offence, a police officer finds—
 - (a) property that the police officer believes, on reasonable grounds, to be tainted property in relation to another indictable offence;
or
 - (b) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence;and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the police officer may seize that property or thing.
- (5) Where a person is searched under this section, the search shall, if it is practicable in the circumstances to do so, be carried out by a police officer of the same sex.

42 Responsibility for seized property

Where property is seized under this division, the chief police officer shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act, and shall ensure that all reasonable steps are taken to preserve the property while it is so kept.

43 Return of seized property

- (1) Where property has been seized under this division (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the relevant Supreme Court for an order that the property be returned to the person.
- (2) Where a person makes an application under subsection (1) and the court is satisfied that—
 - (a) the person is entitled to possession of the property; and
 - (b) the property is not tainted property in relation to the relevant offence; and
 - (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property;

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

- (3) Where—
 - (a) property has been seized under this division (otherwise than because it may afford evidence as to the commission of an offence); and
 - (b) at the time when the property was seized, an information had not been laid in respect of a relevant offence; and
 - (c) at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a relevant offence;

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

(4) Where—

- (a) property has been seized under this division (otherwise than because it may afford evidence as to the commission of an offence); and
- (b) either of the following conditions is satisfied:
 - (i) before the property was seized a person had been convicted of a relevant offence or an information had been laid in respect of a relevant offence;
 - (ii) before the property was seized, an information had not been laid in respect of a relevant offence, but an information was laid in respect of a relevant offence within 48 hours after the time when the property was seized; and
- (c) no forfeiture order has been made against the property within the period of 14 days after the property was seized;

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

(5) Where—

- (a) property has been seized under this division (otherwise than because it may afford evidence as to the commission of an offence); and
- (b) but for this subsection, the chief police officer would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and
- (c) before the end of that period, a restraining order is made in relation to the property;

the following provisions have effect:

- (d) if the restraining order directs the public trustee to take custody and control of the property—the chief police officer shall arrange for the property to be given to the public trustee in accordance with the restraining order;
 - (e) if the court that made the restraining order has made an order under subsection (6) in relation to the property—the chief police officer shall arrange for the property to be kept until it is dealt with in accordance with another provision of this Act.
- (6) Where—
- (a) property has been seized under this division (otherwise than because it may afford evidence as to the commission of an offence); and
 - (b) a restraining order is made in relation to the property; and
 - (c) at the time when the restraining order is made, the property is in the possession of the chief police officer;
- the chief police officer may apply to the court that made the restraining order for an order that the chief police officer retain possession of the property and the court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence or any other offence, make an order that the chief police officer may retain the property for so long as the property is so required as evidence as to the commission of that offence.
- (7) Where the chief police officer applies to a court for an order under subsection (6), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.
- (8) Where—
- (a) property has been seized under this division (otherwise than because it may afford evidence as to the commission of an offence); and

- (b) an application is made for a restraining order or a forfeiture order in respect of the property; and
- (c) the application is refused; and
- (d) at the time when the application is refused, the property is in the possession of the chief police officer;

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

(9) Where—

- (a) property has been seized under this division; and
- (b) while the property is in the possession of the chief police officer a forfeiture order is made in respect of the property;

the chief police officer shall deal with the property as required by the order.

44 Issue of search warrants by ACT courts in relation to interstate indictable offences

- (1) This division (other than section 43) applies to the issue of search warrants in the ACT as if—
 - (a) a reference in this division to an offence included a reference to an interstate indictable offence; and
 - (b) a reference in this division to tainted property included a reference to property—
 - (i) used in, or in connection with, the commission of an interstate indictable offence; or
 - (ii) derived or realised, directly or indirectly, by any person from the commission of an interstate indictable offence.
- (2) If property is seized under a warrant issued under subsection (1) the following provisions have effect:

- (a) if—
- (i) by the end of the period of 7 days commencing on the day the property was seized, no person has been convicted of or charged with the interstate indictable offence in reliance on the commission of which the warrant was issued and an application for an interstate forfeiture order has not been made in respect of the property; or
 - (ii) a person has been charged with and convicted of the interstate indictable offence but by the end of the period of 6 months commencing on the day on which the person is convicted an application for an interstate forfeiture order has not been made in respect of the property; or
 - (iii) a person has been charged with the interstate indictable offence and has been discharged or acquitted;
- the chief police officer shall arrange for the property to be returned to the person from whose possession it was seized;
- (b) if a court of the State concerned makes an order—
- (i) directing that the property be returned to the person from whose possession it was seized; or
 - (ii) directing that that person be allowed access to the property;
- the chief police officer shall take such steps as are necessary to give effect to the order.

Division 4.2 Restraining orders

45 Restraining orders

- (1) Where a person (in this section and section 46 called the *defendant*)—
- (a) has been convicted of an indictable offence; or
 - (b) has been, or is about to be, charged with an indictable offence;

the DPP may apply to the Supreme Court for an order under subsection (2) against 1 or more of the following:

- (c) specified property of the defendant;
 - (d) all the property of the defendant (including property acquired after the making of the order);
 - (e) all the property of the defendant (including property acquired after the making of the order) other than specified property;
 - (f) specified property of a person other than the defendant.
- (2) Where the DPP applies to the Supreme Court for an order under this subsection against property, the court may, subject to section 46, by order—
- (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the order; and
 - (b) if the court is satisfied that the circumstances so require—direct the public trustee to take custody and control of the property, or of such part of the property as is specified in the order.
- (3) A restraining order against a person's property may be made subject to such conditions as the Supreme Court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, all or any of the following:
- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any) and reasonable business expenses;
 - (b) the person's reasonable expenses in defending a criminal charge;
 - (c) a specified debt incurred by the person in good faith (being a debt to which neither paragraph (a) nor (b) applies).

- (4) The Supreme Court shall not make provision of a kind referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to a restraining order.
- (5) Where the public trustee is given a direction under subsection (2) (b) in relation to property, the public trustee may do anything that is reasonably necessary for the purpose of preserving the property including, without limiting the generality of this—
- (a) becoming a party to any civil proceedings affecting the property; and
 - (b) ensuring that the property is insured; and
 - (c) if the property consists, wholly or partly, of securities or investments—realising or otherwise dealing with the securities or investments; and
 - (d) if the property consists, wholly or partly, of a business—
 - (i) employing, or terminating the employment of, persons in the business; and
 - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis.
- (6) Where the public trustee is given a direction under subsection (2) (b) in relation to shares in a company, he or she is entitled—
- (a) to exercise the rights attaching to the shares as if he or she were the registered holder of the shares; and
 - (b) to do so to the exclusion of the registered holder.
- (7) Neither subsection (5) (c) nor subsection (6) limits the generality of the other.
- (8) Where the DPP applies to the Supreme Court for an order under subsection (2), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering

of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

46 Grounds for making restraining order

- (1) Where the offence concerned is a serious offence, the Supreme Court shall, subject to subsections (3), (4), (8) and (10), make a restraining order against the property.
- (2) Where the offence concerned is an ordinary indictable offence the Supreme Court shall, subject to subsections (3), (4), (5), (6), (7) and (10), make a restraining order against the property unless the court is satisfied that it is not in the public interest to make such an order.
- (3) If the defendant has not been convicted of the offence concerned, the Supreme Court shall not make a restraining order unless—
 - (a) the application for the order is supported by an affidavit of a police officer stating that the officer believes that the defendant committed the offence; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (4) Where the application is made in reliance on the proposed charging of the defendant with the offence concerned, the Supreme Court shall not make a restraining order unless it is satisfied that the defendant will be charged with the offence or a related offence within 48 hours.
- (5) Where—
 - (a) the offence concerned is an ordinary indictable offence; and
 - (b) the application seeks a restraining order against specified property of the defendant;

the Supreme Court shall not make a restraining order against the property unless—

- (c) the application is supported by an affidavit of a police officer stating that the officer believes that—
 - (i) the property is tainted property in relation to the offence; or
 - (ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
 - (d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (6) Where—
- (a) the offence is an ordinary indictable offence; and
 - (b) the application seeks a restraining order against—
 - (i) all the property of the defendant; or
 - (ii) all the property of the defendant other than specified property; or
 - (iii) specified property of the defendant and all other property of the defendant;

the Supreme Court shall not make a restraining order against the property unless—

- (c) the application is supported by an affidavit of a police officer stating that the officer believes that the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
 - (d) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (7) Where the application seeks a restraining order against specified property of a person other than the defendant and the offence concerned is an ordinary indictable offence, the Supreme Court shall not make a restraining order against the property unless—

- (a) the application is supported by an affidavit of a police officer stating that—
 - (i) the officer believes that the property is tainted property in relation to the offence; or
 - (ii) the officer believes that—
 - (A) the property is subject to the effective control of the defendant; and
 - (B) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (8) Where the application seeks a restraining order against specified property of a person other than the defendant and the offence concerned is a serious offence, the Supreme Court shall not make a restraining order against the property unless—
- (a) the application is supported by an affidavit of a police officer stating that—
 - (i) the officer believes that the property is tainted property in relation to the offence; or
 - (ii) the officer believes that the property is subject to the effective control of the defendant; and
 - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.
- (9) The Supreme Court may make a restraining order in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

- (10) The Supreme Court may refuse to make a restraining order if the Territory refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.
- (11) For an application under section 45, the DPP may, on behalf of the Territory, give to the Supreme Court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.
- (12) An affidavit made by a police officer for this section that states that the officer believes a particular matter shall set out the grounds on which the officer holds that belief.

47 Notice of application for restraining order

- (1) Subject to subsection (2), the DPP shall give written notice of an application for a restraining order against property to—
 - (a) the owner of the property; and
 - (b) any other person the DPP has reason to believe may have an interest in the property.
- (2) If the DPP requests the Supreme Court to do so, the court shall consider the application without notice having been given in accordance with subsection (1) but, subject to section 48, a restraining order made under this subsection shall cease to have effect at the end of such period (not exceeding 14 days) as is specified by the court in the restraining order.
- (3) The Supreme Court may, at any time before the final determination of an application for a restraining order direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

48 Extension of certain restraining orders

- (1) Subject to subsection (2), the Supreme Court may, on application made by the DPP before the end of the period mentioned in section 47 (2), extend the period of operation of a restraining order made in reliance on that subsection.
- (2) Section 46 (other than section 46 (4)) applies, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on section 47 (2) in the same way as it applies to the making of a restraining order.
- (3) The DPP shall give written notice of an application under subsection (1) for the extension of the period of operation of a restraining order to—
 - (a) the owner of the property against which the restraining order was made; and
 - (b) any other person the DPP has reason to believe may have an interest in the property.
- (4) The Supreme Court may, at any time before the final determination of an application for an extension of the period of operation of a restraining order, direct the DPP to give or publish notice of the application to a specified person or class of persons, in the manner and within the time that the court considers appropriate.

49 Persons who may appear and adduce evidence

- (1) Where—
 - (a) the DPP applies for a restraining order against property; and
 - (b) notice of the application is given in accordance with section 47 (1);any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.
- (2) Where the DPP applies for the extension of the period of operation of a restraining order that has been made in respect of property, any

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

50 Notice of restraining orders

- (1) Subject to subsection (2), where a restraining order is made against a person's property, the DPP shall give the person written notice of the order.
- (2) Where—
 - (a) the Supreme Court makes a restraining order; and
 - (b) the court is satisfied that it would be in the public interest to delay giving notice of the order to a person;

the court may order that giving the person notice of the restraining order be delayed for such period as is specified in the order under the subsection and the DPP shall give the person notice of the restraining order as soon as practicable after the end of the period specified.

51 Court may make further orders

- (1) Where the Supreme Court makes a restraining order, the court may, at the time when it makes the restraining order or at any later time, make any ancillary orders that the court considers appropriate and, without limiting the generality of this, the court may make any 1 or more of the following orders:
 - (a) an order varying the property to which the restraining order relates;
 - (b) an order varying any condition to which the restraining order is subject;
 - (c) an order for the examination on oath before the court or the registrar of the court of any person, including—
 - (i) a person whose property is subject to the restraining order (the *owner*); or

(ii) a person who is the defendant within the meaning of section 45 in relation to the offence to which the restraining order relates (in this subsection called the *defendant*);

about the affairs (including the nature and location of any property) of—

(iii) anyone else who is either the owner or the defendant, or both; and

(iv) if the person to be examined is either the owner or the defendant or both—that person;

(d) an order with respect to the carrying out of any undertaking with respect to the payment of damages or costs given by the Territory in connection with the making of the restraining order;

(e) an order directing—

(i) the owner; or

(ii) if the owner is not the defendant—the defendant; or

(iii) if the owner or the defendant is a body corporate—a director of the body corporate specified by the court;

to give to—

(iv) where the restraining order is, or includes, an order made under section 45 (2) (b)—the public trustee; and

(v) in any other case—the applicant for the ancillary order or such other person as the court directs;

within a period specified in the ancillary order, a statement sworn on oath setting out such particulars of the property, or dealings with the property, of the owner or the defendant, as the case may be, as the court thinks proper;

(f) where the restraining order directed the public trustee to take custody and control of property—

- (i) an order regulating the manner in which the public trustee may exercise his or her powers or perform his or her duties under the restraining order; or
 - (ii) an order determining any question relating to the property to which the restraining order relates, including any question relating to—
 - (A) the liabilities of the owner; or
 - (B) the exercise of the powers, or the performance of the duties, of the public trustee;with respect to the property to which the restraining order relates; or
 - (iii) an order directing the owner or another person to do any act or thing necessary or convenient to be done to enable the public trustee to take custody and control of the property in accordance with the restraining order.
- (2) An order under subsection (1) may be made on application by—
- (a) the DPP; or
 - (b) the owner; or
 - (c) where the restraining order directed the public trustee to take custody and control of property—the public trustee; or
 - (d) with the leave of the Supreme Court—any other person.
- (3) An ancillary order made before or after the commencement of this subsection in relation to a restraining order that is in force on or after that commencement does not cease to have effect merely because the restraining order, or part of it, ceases to be in force under section 61 (2) (e) or (g).
- (4) Where—
- (a) a person (in this subsection called the *defendant*) has been convicted of, or has been charged or is about to be charged with, an offence; and

- (b) the Supreme Court, in reliance on the conviction, charging or proposed charging makes a restraining order against property; and
- (c) a person having an interest in the property applies to the court for a variation of the order to exclude the person's interest from the order;

the court shall grant the application if—

- (d) where the applicant is not the defendant and the offence is an ordinary indictable offence—
 - (i) if the restraining order was made against the property under section 46 (7) (a) (ii)—the court is satisfied that the interest is not tainted property and that—
 - (A) a pecuniary penalty order cannot be made against the defendant; or
 - (B) the applicant's interest in the property is not subject to the effective control of the defendant; or
 - (ii) in any other case—the court is satisfied that the interest is not tainted property; or
- (e) where the applicant is the defendant and the offence is an ordinary indictable offence—the court is satisfied that—
 - (i) the interest is not tainted property; and
 - (ii) a pecuniary penalty order cannot be made against the defendant; or
- (f) where the applicant is not the defendant, the restraining order was not made under section 46 (8) and the offence is a serious offence—the court is satisfied that—
 - (i) the applicant was not, in any way, involved in the commission of the offence; and

- (ii) where the applicant acquired the interest at the time of or after the commission, or alleged commission, of the offence—the applicant acquired the interest—
 - (A) for sufficient consideration; and
 - (B) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was tainted property; or
- (g) where the applicant is not the defendant and the restraining order was made under section 46 (8)—the court is satisfied that—
 - (i) the applicant was not, in any way, involved in the commission of the offence; and
 - (ii) the property is not tainted property in relation to the offence; and
 - (iii) the applicant’s interest in the property is not subject to the effective control of the defendant; or
- (h) in any case—the court is satisfied that it is in the public interest to do so having regard to all the circumstances, including—
 - (i) any financial hardship or other consequence of the interest remaining subject to the order; and
 - (ii) the seriousness of the offence; and
 - (iii) the likelihood that the interest will be—
 - (A) subject to a forfeiture order; or
 - (B) subject to section 28; or
 - (C) required to satisfy a pecuniary penalty order.
- (5) Where—
 - (a) a person (in this subsection called the *defendant*) has been convicted of, or has been charged or is about to be charged with, a serious offence; and

- (b) the Supreme Court, in reliance on the conviction, charging or proposed charging, makes a restraining order against property; and
- (c) the defendant has an interest in the property; and
- (d) the defendant applies to the court for a declaration under this subsection in relation to the interest; and
- (e) the court is satisfied that—
 - (i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity; and
 - (ii) the defendant's interest in the property was lawfully acquired;

the court may, by order, declare that the restraining order, to the extent to which it relates to the property, shall be disregarded for section 28.

- (6) Where a person is examined before the Supreme Court or the registrar of a court under an order under subsection (1), the person is not excused from answering a question when required to do so by the court or the registrar, as the case may be, on the ground that the answer to the question might tend to incriminate the person or make the person liable to forfeiture or a penalty.
- (7) Where a person is examined before the Supreme Court or the registrar of a court under an order under subsection (1), a statement or disclosure made by the person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.
- (8) Where an order under subsection (1) (e) directs a person to give a statement, the person is not excused from giving the statement, or from setting out particulars in the statement, on the ground that the

statement or particulars, as the case may be, might tend to incriminate the person or make the person liable to a forfeiture or penalty.

- (9) Where a person gives a statement under an order made under subsection (1) (e), neither the statement, nor any information, document or thing obtained as a direct or indirect consequence of the statement, is admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.
- (10) For subsection (7) or (9), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.
- (11) Where the DPP applies to the Supreme Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

52 Order for taxation of legal expenses to be met out of restrained property

- (1) Where—
- (a) the Supreme Court makes a restraining order directing the public trustee to take custody and control of property; and
 - (b) the order makes provision for meeting, out of the property or part of it, a person's reasonable expenses in defending a criminal charge;

the public trustee may apply to the court for an order under subsection (3).

- (2) The public trustee shall give written notice of an application under subsection (1) to the person.

- (3) On an application under subsection (1), the Supreme Court may order that the expenses be taxed as provided in the order or may dismiss the application.
- (4) Where the public trustee makes an application under subsection (1), he or she need not, except as ordered by the Supreme Court after the application is made, take any steps for the purpose of meeting the expenses as provided by the restraining order unless and until—
- (a) an order under subsection (3) in relation to the expenses is complied with; or
 - (b) the application, and any appeal arising out of it, are finally determined, or otherwise disposed of, otherwise than by the making of such an order.

53 Public trustee to discharge pecuniary penalty

- (1) Where—
- (a) a pecuniary penalty order is made against a person (in this subsection called the *defendant*) in reliance on the defendant's conviction of an offence; and
 - (b) at the time when the pecuniary penalty order is made, the public trustee has custody and control of property under a restraining order made, in reliance on the defendant's conviction of the offence or a related offence or in reliance on the charging or proposed charging of the defendant with the offence or a related offence, against—
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under section 27 (2) is made;

the Supreme Court may include in the pecuniary penalty order a direction to the public trustee to pay the Territory, in accordance with this section, an amount equal to the penalty amount out of that property.

- (2) Where—
- (a) a pecuniary penalty order is made against a person (in this subsection called the *defendant*) in reliance on the defendant's conviction of an offence; and
 - (b) a restraining order is subsequently made against—
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under section 27 (2) is in force;in reliance on the defendant's conviction of the offence; and
 - (c) the restraining order includes a direction that the public trustee take custody and control of the property;
- the Supreme Court making the restraining order may include in the restraining order a direction to the public trustee to pay the Territory, in accordance with this section, an amount equal to the penalty amount out of that property.
- (3) For the purposes of enabling the public trustee to comply with a direction given by the Supreme Court under subsection (1) or (2), the court may, in the order in which the direction is given or by a subsequent order—
- (a) direct the public trustee to sell or otherwise dispose of such of the property that is under the control of the public trustee as the court specifies; and
 - (b) appoint an officer of the court or any other person to execute any deed or instrument in the name of a person who owns or has an estate, interest or right in the property and to do any act or thing necessary to give validity and operation to the deed or instrument.
- (4) The execution of the deed or instrument by the person appointed by an order under subsection (3) has the same force and validity as if the deed or instrument had been executed by the person who owned or had the estate, interest or right in the property.

- (5) Where the public trustee is given a direction under subsection (1) or (2) in relation to property, the public trustee shall not—
- (a) if the property is money—apply the money in accordance with subsection (6) until the end of the relevant appeal period; and
 - (b) if the property is not money—sell or otherwise dispose of the property until the end of the relevant appeal period.
- (6) Where the public trustee is given a direction under subsection (1) or (2) in relation to property, the public trustee shall, as soon as practicable after the end of the relevant appeal period—
- (a) if the property is money—
 - (i) apply the money in payment of the costs, charges, expenses and remuneration, of the kind referred to in section 59, incurred or payable in connection with the restraining order and payable to the public trustee under the regulations; and
 - (ii) subject to subsection (7), pay the remainder of the money to the trust fund as required by section 34; and
 - (b) if the property is not money—
 - (i) sell or otherwise dispose of the property; and
 - (ii) apply the proceeds of the sale or disposition in payment of the costs, charges, expenses and remuneration, of the kind referred to in section 59, incurred or payable in connection with the restraining order or the sale or disposition and payable to the public trustee under the regulations; and
 - (iii) subject to subsection (7), pay the remainder of those proceeds to the trust fund as required by section 34.
- (7) Where the money or proceeds to which subsection (6) (a) (ii) or (b) (iii) applies exceeds the penalty amount, the public trustee shall—

- (a) pay to the trust fund as required by section 34 an amount equal to the penalty amount; and
 - (b) pay the balance to the person whose property was subject to the restraining order.
- (8) Where the public trustee pays, in accordance with a direction under this section, money to the trust fund as required by section 34 in satisfaction of a person's liability under a pecuniary penalty order, the person's liability under the pecuniary penalty order shall, to the extent of the payment, be deemed to be discharged.
- (9) Where—
- (a) a restraining order is made against property in reliance on a person's conviction of an offence or in reliance on the charging, or proposed charging of a person with an offence; and
 - (b) before or after the restraining order is made, a pecuniary penalty order has been or is made against the person in reliance on the person's conviction of the offence or a related indictable offence;
- the relevant appeal period in respect of the property is—
- (c) the appeal period in relation to the person's conviction of the offence; or
 - (d) the appeal period in relation to the making of the pecuniary penalty order;
- whichever ends last.
- (10) A reference in this section to the *appeal period* in relation to a person's conviction of an offence is—
- (a) in a case where the person is to be taken to have been convicted of the offence by reason of section 5 (1) (b)—a reference to the appeal period in relation to the finding of the person guilty of the offence; and

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

(11) In this section:

appeal period, in relation to a decision of the Supreme Court or a finding, means the period ending—

- (a) if the period provided for the lodging of an appeal against the decision or finding has ended without such an appeal having been lodged—at the end of that period; or
- (b) if an appeal against the decision or finding has been lodged—when the appeal lapses or is finally determined.

54 Charge on property subject to restraining order

(1) Where—

- (a) a pecuniary penalty order is made against a person (the *defendant*) in reliance on the defendant's conviction of an offence; and
- (b) a restraining order is, or has been, made against—
 - (i) property of the defendant; or
 - (ii) property of another person in relation to which an order under section 27 (2) is, or has been, made;

in reliance on the defendant's conviction of the offence or a related offence or in reliance on the charging, or proposed charging, of the defendant with the offence or a related offence;

then, on the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment to the Territory of the penalty amount.

(2) Where a charge is created by subsection (1) on property of a person, the charge ceases to have effect in respect of the property—

- (a) on the quashing of the conviction in reliance on which the pecuniary penalty order was made; or
 - (b) on the discharge of the pecuniary penalty order or the restraining order by the Supreme Court hearing an appeal against the making of the order; or
 - (c) on payment to the Territory of the penalty amount in satisfaction of the pecuniary penalty order; or
 - (d) on the person becoming a bankrupt; or
 - (e) on the sale or other disposition of the property—
 - (i) under an order under section 53; or
 - (ii) by the owner of the property with the consent of the court that made the pecuniary penalty order; or
 - (iii) where the restraining order directed the public trustee to take control of the property—by the owner of the property with the consent of the public trustee; or
 - (f) on the sale of the property to a purchaser in good faith for value who, at the time of the purchase, has no notice of the charge;
- whichever occurs first.
- (3) A charge created on property by subsection (1)—
 - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.
 - (4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Territory, the Commonwealth, a State or another Territory provide for the registration of title to, or charges over, property of that kind, the

public trustee or the DPP may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for subsection (2) (f), be deemed to have notice of the charge at the time of the purchase or acquisition.

55 Registration of restraining orders

Where a restraining order applies to property of a particular kind and the provisions of any Territory law provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions may, on application by the DPP, record on the register kept under those provisions the particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for section 56, be deemed to have notice of the restraining order at the time of the dealing.

56 Contravention of restraining orders

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence:

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Where—
- (a) a restraining order is made against property; and
 - (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and
 - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;

the DPP may apply to the Supreme Court that made the restraining order for an order that the disposition or dealing be set aside.

- (3) Where the DPP makes an application under subsection (2) in relation to a disposition or dealing, the Supreme Court may make an order—
- (a) setting the disposition or dealing aside as from the day on which the disposition or dealing took place; or
 - (b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

57 Duties of public trustee

- (1) Where, after the public trustee has been directed by an order under section 53 (1) or (2) to pay an amount to the Territory out of property of a person, the public trustee is given written notice of the presentation of a creditor's petition against the person, the public trustee—
- (a) shall refrain from taking action to sell the property under any direction to do so contained in an order under section 53; and
 - (b) shall not pay any money under the direction to do so contained in the firstmentioned order;
- until the petition has been dealt with by a bankruptcy court, has been withdrawn or has lapsed.
- (2) Where, after the public trustee has been directed by an order under section 53 (1) or (2) to pay an amount to the Territory out of property of a person, the public trustee is given notice in writing of the reference to a bankruptcy court of a debtor's petition against the person, the public trustee—
- (a) shall refrain from taking action to sell the property under any direction to do so contained in an order under section 53; and
 - (b) shall not pay any money under the direction to do so contained in the firstmentioned order;

until the petition has been dealt with by a bankruptcy court.

(3) In this section:

bankruptcy court means a court having jurisdiction in bankruptcy under the Bankruptcy Act.

58 Protection of public trustee from personal liability in certain cases

(1) Where—

- (a) the Supreme Court has made a restraining order directing the public trustee to take custody and control of all the property of a person or of all the property of a person other than specified property; and
- (b) the public trustee has taken custody and control of any property, without notice of any claim by another person in respect of that property; and
- (c) the firstmentioned person did not, at the date of the restraining order, have any beneficial interest in the property referred to in paragraph (b);

the public trustee is not personally liable for—

- (d) any loss or damage arising from him or her having taken custody and control of the property sustained by a person claiming the property or an interest in the property; or
- (e) the cost of proceedings taken to establish a claim to the property or to an interest in the property;

unless the court in which the claim is made is of the opinion that the public trustee has been guilty of negligence in respect of the taking of custody and control of the property.

(2) Where the public trustee has, in accordance with a restraining order made in reliance on a person's conviction of an offence or in reliance on the charging, or proposed charging, of a person with an

offence, taken custody and control of property specified in the restraining order, the public trustee is not personally liable for—

- (a) any loss or damage arising from its having taken custody and control of the property (being loss or damage sustained by some other person claiming the property or an interest in the property); or
- (b) the cost of proceedings taken to establish a claim to the property, or to an interest in the property;

unless the Supreme Court in which the claim is made is of the opinion that the public trustee has been guilty of negligence in respect of the taking of custody and control of the property.

- (3) The public trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Territory, the Commonwealth, a State or another Territory in respect of property of which the public trustee has been directed by a restraining order to take custody and control, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the order, except to the extent (if any) of the rents and profits received by the public trustee in respect of that property on or after the date of the order.
- (4) Where the public trustee, having been directed by a restraining order to take custody and control of a business carried on by a person, carries on that business, the public trustee is not personally liable for any payment in respect of long service leave or extended leave for which the person was liable or for any payment in respect of long service leave or extended leave to which a person employed by the public trustee in his or her capacity of custodian and controller of the business, or the legal personal representative of such a person, becomes entitled after the date of the order.

59 Costs etc payable to public trustee

The regulations may make provision for or in relation to—

- (a) the costs, charges and expenses incurred in connection with;
and
- (b) the public trustee's remuneration in respect of;

the exercise by the public trustee of functions, duties or powers under this Act.

60 Court may revoke restraining orders

Where the Supreme Court has made a restraining order against a person's property, the court may, on application made to it by the person, revoke the order if—

- (a) where the order was made in reliance on the person's conviction of an offence or the charging, or proposed charging, of the person with an offence—the person gives security satisfactory to the court for the payment of any pecuniary penalty that may be imposed on the person under this Act in respect of the person's conviction of the offence or a related offence; or
- (b) the person gives undertakings satisfactory to the court concerning the person's property.

61 When restraining order ceases to be in force

- (1) If, at the end of the period of 48 hours after the making of a restraining order in reliance on the proposed charging of a person with an offence, the person has not been charged with the offence or a related indictable offence, the order ceases to be in force at the end of that period.
- (2) Subject to subsection (5), where—
 - (a) a restraining order is made in reliance on a person's conviction of an offence or the charging of a person with an offence; or

- (b) a restraining order is made in reliance on the proposed charging of a person with an offence and the person is, within the succeeding period of 48 hours, charged with the offence or a related indictable offence;

the following provisions have effect:

- (c) if, within the relevant period in relation to the restraining order, the charge is withdrawn and the person is not charged with a related indictable offence by the time the charge is withdrawn, the restraining order ceases to be in force when the charge is withdrawn;
- (d) if, within the relevant period in relation to the restraining order, the person is acquitted of the charge and the person is not charged with a related indictable offence by the time of the acquittal, the restraining order ceases to be in force when the acquittal occurs;
- (e) if—
- (i) the Supreme Court makes a confiscation order that is a pecuniary penalty order in reliance on the person's conviction of the offence or a related indictable offence; and
 - (ii) the pecuniary penalty order is satisfied or otherwise ceases to be in force; and
 - (iii) when the order is satisfied or otherwise ceases to be in force—
 - (A) no application for another confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is yet to be determined; and
 - (B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

the restraining order ceases to be in force, on the pecuniary penalty order being satisfied or otherwise ceasing to be in force, to the extent that the property to which the restraining order relates is the same as the property that is sold or otherwise disposed of to satisfy the pecuniary penalty order and pay the costs, charges, expenses and remuneration referred to in section 53 (6);

- (f) if—
 - (i) the Supreme Court refuses an application for a confiscation order in reliance on the person's conviction of the offence or a related indictable offence; and
 - (ii) when the court refuses the application—
 - (A) no application for another confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is yet to be determined; and
 - (B) no other confiscation order made in reliance on the person's conviction of the offence or a related indictable offence is in force;

the restraining order ceases to be in force when the court refuses the application;

- (g) if some or all of the property subject to the restraining order is forfeited under section 19 or 28, the restraining order, to the extent to which it relates to that property, ceases to be in force when that property is forfeited;
- (h) if, within the relevant period in relation to the restraining order, an application is made to the court under subsection (3) for an extension of the period of operation of the restraining order and the court refuses the application after the end of the relevant period, the restraining order ceases to be in force when the court refuses the application;

- (i) subject to paragraph (h) if, within the relevant period in relation to the restraining order, an application is made to the court under subsection (3) for an extension of the period of operation of the restraining order and that application is granted, the restraining order ceases to be in force at such time, or on the occurrence of such event, as is specified in an order of the court made under that subsection;
 - (j) in any other case, the restraining order ceases to be in force at the end of the relevant period in relation to the restraining order.
- (3) The DPP may, before the end of the relevant period in relation to a restraining order against property made in reliance on a person's conviction of an offence or the charging, or proposed charging, of a person with an offence, apply to the Supreme Court that made the restraining order for an extension of the period of operation of the restraining order and, if the court is satisfied—
- (a) that a forfeiture order may still be made in respect of the property or part of the property; or
 - (b) that the property or part of the property may still become forfeited under section 28 (1); or
 - (c) where the property is—
 - (i) property of the person; or
 - (ii) property of another person—
 - (A) against which the restraining order was made under section 46 (7) (a) (ii) or (8) (a) (ii); or
 - (B) in relation to which an order under section 27 (2) has been, or is likely to be, made;
- that a pecuniary penalty order may still be made against the person;
- the court may—

- (d) by order, extend the period of operation of the restraining order; and
 - (e) make such other order or orders as it considers appropriate in relation to the operation of the restraining order.
- (4) The DPP shall give a person written notice of an application under subsection (3) in relation to a restraining order in respect of property of the person.
- (5) Where—
- (a) a restraining order has been made in reliance on a person's conviction of an offence or the charging, or proposed charging, of a person with an offence; and
 - (b) in reliance on the person's conviction of the offence or a related indictable offence, the Supreme Court has made a forfeiture order in respect of part or all of the property and has also made a pecuniary penalty order against the person;
- the court may make such further orders, and give such directions, as it considers appropriate in relation to the operation of the restraining order, the forfeiture order and the pecuniary penalty order, and this Act has effect, in relation to those orders and to the property subject to those orders, subject to any further orders, or any directions, so given.
- (6) A reference in this section to the *relevant period* in relation to a restraining order is a reference to the period beginning on the day when the order was made and ending—
- (a) if an order has, or orders have, been made under subsection (3) extending the restraining order's period of operation—at such time, or on the occurrence of such event, as is specified in the order, or the last of the orders, so made; or
 - (b) if paragraph (a) does not apply but an order has, or orders have, been made under section 51 (1) (a), (b) or (f) in relation to the restraining order—at the end of 6 months after the day when the order, or the last of the orders, was so made; or

- (c) in any other case—at the end of 6 months after the day when the restraining order was made.
- (7) In this section:
extend includes further extend.

62 Notice of applications under div 4.2

- (1) A person who makes an application under section 51 in relation to a restraining order shall give written notice of that application to each other person who is entitled, under section 51 (2), to make an application under section 51 in relation to the restraining order.
- (2) A person who makes an application under section 60 in relation to a restraining order shall give written notice of that application, to—
 - (a) the DPP; and
 - (b) where the order directed the public trustee to take control of property—the public trustee.

Part 5 **Information gathering powers**

Division 5.1 **Production orders**

63 **Meaning of *indictable offence* in pt 5**

In this part:

indictable offence includes an interstate indictable offence.

64 **Production orders**

(1) Where—

- (a) a person has been convicted of an indictable offence and a police officer suspects, on reasonable grounds, that a person has possession or control of a property-tracking document in relation to the offence; or
- (b) a police officer suspects, on reasonable grounds, that—
 - (i) a person has committed an indictable offence; and
 - (ii) a person has possession or control of a property-tracking document in relation to the offence;

the police officer may—

- (c) lay before a judge of the Supreme Court an information on oath setting out those grounds; and
 - (d) apply to the judge for an order under subsection (4) against the person suspected of having possession or control of the document.
- (2) Where a police officer applying for an order under this section in respect of an offence includes in the information under subsection (1) information on oath that the officer believes, on reasonable grounds, that—
- (a) if the offence is an ordinary indictable offence—

- (i) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
 - (ii) property specified in the information is subject to the effective control of the person; or
- (b) if the offence is a serious offence—property specified in the information is subject to the effective control of the person;
the judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for this section.
- (3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the judge may have regard to the matters referred to in section 10 (2).
- (4) Where an application is made under subsection (1) for an order against a person, the judge may, subject to subsections (5) and (6), make an order that the person—
 - (a) produce to a police officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
 - (b) make available to a police officer, for inspection, any documents of that kind that are in the person's possession or control.
- (5) An order under subsection (4) (a) shall not be made in respect of bankers' books.
- (6) A judge shall not make an order under this section unless—
 - (a) the informant or some other person has given the judge, either orally or by affidavit, such information (if any) as the judge requires concerning the grounds on which the order is sought; and

- (b) the judge is satisfied that there are reasonable grounds for making the order.
- (7) An order that a person produce a document or documents to a police officer shall specify the time when and the place where the document is or the documents are to be produced.
- (8) An order that a person make a document or documents available to a police officer for inspection shall specify the time or times when the document is or the documents are to be made available.
- (9) Where a document is produced to a police officer under an order under this section, the police officer may do any 1 or more of the following:
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document;
 - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for this Act.
- (10) Where a document is made available to a police officer for inspection under an order under this section, the police officer may do any 1 or more of the following:
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document.
- (11) Where a police officer retains a document under an order under this section, the police officer shall, on request by the person to whom the order was addressed—
- (a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; and

- (b) unless the person has received a copy of the document under paragraph (a)—permit the person to do any 1 or more of the following:
 - (i) inspect the document;
 - (ii) take extracts from the document;
 - (iii) make copies of the document.
- (12) A person is not excused from producing or making available a document when required to do so by an order under this section on the ground that—
 - (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or
 - (b) the production or making available of the document would be in breach of an obligation arising under a Territory law (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.
- (13) Where a person produces or makes available a document under an order under this section, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 66 (1).
- (14) For subsection (13), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.
- (15) In this section:
bankers' books means any accounting records used in the ordinary business of banking, and includes ledgers, daybooks, cashbooks and account books.

65 Variation of production order

Where a judge of the Supreme Court makes a production order requiring a person to produce a document to a police officer, the person may apply to the judge or another judge of the Court for a variation of the order and if the judge hearing the application is satisfied that the document is essential to the business activities of the person, he or she may vary the production order so that it requires the person to make the document available to a police officer for inspection.

66 Failure to comply with production order

Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, the person commits an offence against this subsection if the person—

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without—
 - (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Division 5.2 Search powers

67 Powers to search for, and seize, documents relevant to locating etc property

- (1) A police officer may—
 - (a) enter on land, or on or into premises; and
 - (b) search the land or premises for any property-tracking document in relation to an indictable offence; and
 - (c) seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document in relation to an indictable offence;but only if the entry, search or seizure, as the case may be, is made—
 - (d) with the consent of the occupier of the land or premises; or
 - (e) under a warrant issued under section 68.
- (2) Where a police officer obtains the consent of the occupier to enter on land, or on or into premises, under subsection (1), the police officer shall ask the occupier to sign a written acknowledgment—
 - (a) that the occupier has been informed that he or she may refuse to consent; and
 - (b) that the occupier has consented; and
 - (c) of the day on which, and the time at which, the occupier consented.
- (3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of land or premises by a police officer under subsection (1) and an acknowledgment in accordance with subsection (2) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

68 Search warrant for location etc of property

- (1) Where—
- (a) a person has been convicted of an indictable offence and a police officer suspects, on reasonable grounds, that there is, or may be within the next following 72 hours, on any land, or on or in any premises, a property-tracking document in relation to the offence; or
 - (b) a police officer suspects, on reasonable grounds, that—
 - (i) a person has committed an indictable offence; and
 - (ii) there is, or may be within the next following 72 hours, on any land, or on or in any premises, a property-tracking document in relation to the offence;the police officer may—
 - (c) lay before a judge of the Supreme Court an information on oath setting out those grounds; and
 - (d) apply to the judge for a search warrant under subsection (4) in respect of the land or premises.
- (2) Where a police officer applying for a warrant under this section in respect of an offence includes in the information under subsection (1) information on oath that the officer believes, on reasonable grounds, that—
- (a) if the offence is an ordinary indictable offence—
 - (i) the person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and
 - (ii) property specified in the information is subject to the effective control of the person; or
 - (b) if the offence is a serious offence—property specified in the information is subject to the effective control of the person;

the judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for this section.

- (3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the judge may have regard to the matters referred to in section 10 (2).
- (4) Where an application is made under subsection (1) for a search warrant in respect of land or premises, the judge may, subject to subsections (5) and (6), issue a search warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable—
 - (a) to enter on the land or on or into the premises; and
 - (b) to search the land or premises for documents of the kind referred to in subsection (1); and
 - (c) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a document of that kind.
- (5) A judge shall not issue a search warrant under subsection (4) unless the judge is satisfied that—
 - (a) the document involved cannot be identified or described with sufficient particularity for the purpose of obtaining a production order in respect of the document; or
 - (b) a production order has been given in respect of the document and has not been complied with; or
 - (c) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with; or
 - (d) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police

officer does not gain immediate access to the document without notice to any person.

- (6) A judge shall not issue a search warrant under this section unless—
- (a) the informant or some other person has given the judge, either orally or by affidavit, any further information that the judge requires concerning the grounds on which the search warrant is sought; and
 - (b) the judge is satisfied that there are reasonable grounds for issuing the search warrant.
- (7) There shall be stated in a search warrant issued under this section—
- (a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the indictable offence that has been or is believed to have been committed; and
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) a description of the kind of documents authorised to be seized; and
 - (d) a date, not being later than 1 month after the day of issue of the warrant, on which the warrant ceases to have effect.
- (8) If, in the course of searching, under a warrant issued under this section, for a property-tracking document in relation to a particular offence, a police officer finds—
- (a) any document that the police officer believes, on reasonable grounds, to be—
 - (i) a property-tracking document in relation to the offence, although not of a kind specified in the warrant; or
 - (ii) a property-tracking document in relation to another indictable offence; or

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

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

Division 5.3 Monitoring orders

69 Monitoring orders

- (1) A police officer may apply to a judge of the Supreme Court for an order (a *monitoring order*) directing a financial institution to give information to the police officer.
- (2) A monitoring order shall direct a financial institution to give information obtained by the institution about transactions conducted through an account held by a particular person with the institution.
- (3) A monitoring order shall apply in relation to transactions conducted during the period specified in the order (being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order).
- (4) A judge shall not make a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought—
 - (a) has committed, or is about to commit, an indictable offence that is a serious offence; or
 - (b) was involved in the commission, or is about to be involved in the commission, of an indictable offence that is a serious offence; or

- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an indictable offence that is a serious offence.
- (5) A monitoring order shall specify—
- (a) the name or names in which the account is believed to be held; and
 - (b) the class of information that the institution is required to give; and
 - (c) the manner in which the information is to be given.
- (6) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the application of section 74 and 75 in relation to the institution.
- (7) Where a financial institution that has been given notice of a monitoring order knowingly—
- (a) contravenes the order; or
 - (b) provides false or misleading information in purported compliance with the order;
- the institution commits an offence .
- Maximum Penalty: 1 000 penalty units.
- (8) A reference in this section to a transaction conducted through an account includes a reference to—
- (a) the making of a fixed term deposit; and
 - (b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

70 Existence and operation of monitoring order not to be disclosed

- (1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—
 - (a) a police officer; or
 - (b) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
 - (c) a legal practitioner, for the purposes of obtaining legal advice or representation in relation to the order.
- (2) A person of a kind referred to in subsection (1) (a), (b) or (c) to whom a disclosure of the existence or operation of a monitoring order has been made (whether in accordance with subsection (1) or a previous application of this subsection or otherwise) shall not—
 - (a) while he or she is such a person, disclose the existence or operation of the order except to another person of a kind referred to in subsection (1) (a), (b) or (c) for the purposes of—
 - (i) if the disclosure is made by a police officer—the performance of that person’s duties; or
 - (ii) if the disclosure is made by an officer or agent of the institution—ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or
 - (iii) if the disclosure is made by a legal practitioner—giving legal advice or making representations in relation to the order; or
 - (b) when he or she is no longer such a person, make a record of, or disclose, the existence or the operation of the order in any circumstances.
- (3) Nothing in subsection (2) prevents the disclosure by a police officer of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connection with, legal proceedings; or
 - (b) in the course of proceedings before a court.
- (4) A police officer shall not be required to disclose to any court the existence or operation of a monitoring order.
- (5) A person who contravenes subsection (1) or (2) commits an offence.
Maximum penalty: 200 penalty units, imprisonment for 2 years or both.
- (6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

Division 5.4 Obligations of financial institutions

71 Definitions for div 5.4

In this division:

customer generated financial transaction document, in relation to a financial institution, means a financial transaction document of the institution—

- (a) that relates to—
 - (i) the opening or closing by a person of an account with the institution; or
 - (ii) the operation by a person of an account with the institution; or
 - (iii) the opening or use by a person of a deposit box held by the institution; or
 - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person; or

- (v) the transmission of funds between Australia and a foreign country or between foreign countries on behalf of a person; or
- (vi) an application by a person for a loan from the institution (where a loan is made to the person under the application); and
- (b) that is given to the institution by or on behalf of the person (whether or not the document is signed by or on behalf of the person).

essential customer generated financial transaction document, in relation to a financial institution, means a customer generated financial transaction document other than a document that relates to the operation of an account held with the institution.

financial transaction document, in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document relating to—

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

but does not include a cheque or payment order.

minimum retention period, in relation to a financial transaction document of a financial institution, means—

- (a) if the document relates to the opening of an account with the institution—the period of 7 years after the day on which the account is closed; or
- (b) if the document relates to the opening by a person of a deposit box held by the institution—the period of 7 years after the day on which the deposit box ceases to be used by the person; or

- (c) in any other case—the period of 7 years after the day on which the transaction takes place.

72 Retention of records by financial institutions

- (1) A financial institution shall, subject to section 73, retain each essential customer generated financial transaction document in its original form for the minimum retention period applicable to the document.
- (2) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each customer generated financial transaction document that is not an essential customer generated financial transaction document for the minimum retention period applicable to the document.
- (3) Subject to subsection (4), a financial institution shall retain, or retain a copy of, each financial transaction document—
- (a) that is not a customer generated financial transaction document; and
 - (b) whose retention is necessary to preserve a record of the financial transaction concerned;
- for the minimum retention period applicable to the document.
- (4) Subsections (2) and (3) do not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$200 or such higher amount as is prescribed by the regulations for this subsection.
- (5) A financial institution required to retain documents under this section shall retain and store them in a way that makes retrieval of the documents reasonably practicable.
- (6) A financial institution that contravenes subsection (1), (2), (3) or (5) commits an offence.

Maximum penalty: 100 penalty units.

- (7) This section does not limit any other obligation of a financial institution to retain documents.

73 Register of original documents

- (1) Where a financial institution is required by law to release an original of an essential customer generated financial transaction document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original is returned, whichever occurs first.
- (2) The financial institution shall maintain a register of documents released under subsection (1).
- (3) A financial institution that contravenes subsection (1) or (2) commits an offence.

Maximum penalty: 100 penalty units.

Part 6 Offences

Division 6.1 Money laundering

74 Money laundering

- (1) In this section:

transaction includes the receiving or making of a gift.

- (2) A person who, after the commencement of this Act, engages in money laundering commits an offence.

Maximum penalty: 1 000 penalty units, imprisonment for 10 years or both.

- (3) A person shall be taken to engage in money laundering only if—
- (a) the person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or
 - (b) the person receives, possesses, conceals, disposes of or brings into the ACT any money, or other property, that is proceeds of crime;

and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

75 Possession etc of property suspected of being proceeds of crime

- (1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into the ACT any money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Where a person is charged with an offence against this section, it is a defence to the charge if the person satisfies the court that he or she had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

Division 6.2 Organised fraud

76 Organised fraud

- (1) A person who engages in organised fraud commits an offence.
Maximum penalty: 1 500 penalty units, imprisonment for 15 years or both.
- (2) A person shall be taken to engage in organised fraud only if he or she engages, after the commencement of this Act, in acts or omissions—
- (a) that constitute 3 or more public fraud offences; and
 - (b) from which the person derives substantial benefit.
- (3) Where a person is charged with an offence against subsection (1) in relation to a number of public fraud offences and the jury is not satisfied that the person is guilty of the offence against subsection (1) but is satisfied that the person is guilty of 1 or more of the public fraud offences, the jury shall acquit the person of the offence against subsection (1) and may find the person guilty of that public fraud offence or those public fraud offences and the person is punishable accordingly.
- (4) In this section:

public fraud offence means an offence against the *Crimes (Offences against the Government) Act 1989*, section 8 or the Crimes Act, section 184.

Division 6.3 Miscellaneous

77 **Conduct by directors, servants or agents**

- (1) Where it is necessary, for this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate—
 - (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed, for this Act, to have been engaged in by the body corporate.
- (3) Where it is necessary, for this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate—
 - (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of

the firstmentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for this Act, to have been engaged in by the firstmentioned person.

- (5) A reference in this section to the *state of mind* of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.
- (6) A reference in this section to a *director* of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, of a State or of another Territory.

Part 7 **Interstate orders and warrants**

Division 7.1 **Interstate restraining orders**

78 **Registration of interstate restraining orders**

- (1) If an interstate restraining order expressly applies to—
 - (a) specified property in the ACT; or
 - (b) all property in the ACT of a specified person; or
 - (c) all property (other than specified property) in the ACT of a specified person;

a copy of the order, sealed by the court making the order, may be registered in the Supreme Court by the person on whose application the order was made or by an appropriate officer.

- (2) A copy of any amendments made to an interstate restraining order (before or after registration), sealed by the court making the amendments, may be registered in the same way, and the amendments do not, for this Act, have effect until they are registered.
- (3) Registration of an interstate restraining order may be refused to the extent that the order would not, on registration, be capable of enforcement in the ACT.
- (4) Registration shall be effected in accordance with the rules of the Supreme Court.

79 **Effect of registration**

- (1) An interstate restraining order registered in the Supreme Court may be enforced in the ACT as if it were a restraining order made under section 45 at the time of registration.

- (2) This Act (other than sections 28, 29, 50, 51, 53, 54, 60 and 61) applies to an interstate restraining order registered in the Supreme Court as it applies to a restraining order made under section 45.

80 Duration of registration

An interstate restraining order ceases to be registered under this Act if—

- (a) the Supreme Court in which it is registered receives notice that it has ceased to be in force in the State or Territory in which it was made; or
- (b) the registration is cancelled under section 81.

81 Cancellation of registration

- (1) The registration of an interstate restraining order in the Supreme Court may be cancelled by the court or a prescribed officer of the court if—
- (a) registration was improperly obtained; or
 - (b) particulars of any amendments made to the restraining order, or of any ancillary orders or directions made by a court, are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.
- (2) The registration of an interstate restraining order in the Supreme Court may be cancelled by the court to the extent that the order is not capable of enforcement in the ACT.

82 Charge on property subject to registered interstate restraining order

- (1) If—
- (a) an interstate restraining order is made against property in reliance on a person's conviction of an interstate indictable offence or in reliance on the charging, or proposed charging, of a person with an interstate indictable offence; or

- (b) an interstate pecuniary penalty order is made against the person in reliance on the person's conviction of that offence or a related interstate indictable offence; or
- (c) the interstate restraining order is registered under this division in the Supreme Court; or
- (d) the interstate pecuniary penalty order is registered in a Territory court under the *Service and Execution of Process Act 1901* (Cwlth);

then, on the registration referred to in paragraph (c) or the registration referred to in paragraph (d) (whichever occurs last), a charge is created on the property to secure payment of the amount due under the interstate pecuniary penalty order.

- (2) Where a charge is created by subsection (1) on property of a person to secure payment of the amount due under an interstate pecuniary penalty order, the charge ceases to have effect in respect of the property—
 - (a) on the quashing of the conviction in reliance on which the interstate pecuniary penalty order was made; or
 - (b) on the discharge of the interstate pecuniary penalty order by a court hearing an appeal against the making of the order; or
 - (c) on payment of the amount due under the interstate pecuniary penalty order; or
 - (d) on the person becoming bankrupt; or
 - (e) on the sale or other disposition of the property—
 - (i) under an order made by a court under the corresponding law of the State in which the interstate pecuniary penalty order was made; or
 - (ii) by the owner of the property with the consent of the court that made the interstate pecuniary penalty order; or

- (iii) where the interstate restraining order directed a person to take control of the property—by the owner of the property with the consent of that person; or
 - (f) on the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge;whichever occurs first.
- (3) A charge created on property by subsection (1)—
 - (a) is subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge; and
 - (b) has priority over all other encumbrances; and
 - (c) subject to subsection (2), is not affected by any change of ownership of the property.
- (4) Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law of the Territory, of the Commonwealth, of a State or of another Territory provide for the registration of title to, or charges over, property of that kind, the public trustee or the DPP may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for subsection (2) (f), be deemed to have notice of the charge at the time of the purchase or acquisition.

83 Powers of public trustee in relation to interstate restraining orders

Where—

- (a) an interstate restraining order is registered in the Supreme Court under this division; and
- (b) the restraining order directs an official of a State or another Territory to take control of property;

the public trustee may, in accordance with an agreement between the public trustee and that official, exercise the same powers in relation to the property that the official would have been able to exercise if the property were located in the State or other Territory.

Division 7.2 Interstate forfeiture orders

84 Registration of interstate forfeiture orders

- (1) If an interstate forfeiture order expressly applies to property in the ACT, a copy of the order, sealed by the court making the order, may be registered in the Supreme Court by the person on whose application the order was made or by an appropriate officer.
- (2) A copy of any amendments made to an interstate forfeiture order (before or after registration), sealed by the court making the amendments, may be registered in the same way, and the amendments do not, for this Act, have effect until they are registered.
- (3) Registration of an interstate forfeiture order may be refused to the extent that the order would not, on registration, be capable of enforcement in the ACT.
- (4) Registration shall be effected in accordance with the rules of the Supreme Court.

85 Effect of registration

- (1) An interstate forfeiture order registered in the Supreme Court may be enforced in the ACT as if it were a forfeiture order made under this Act at the time of registration.
- (2) This Act (other than sections 21, 22 and 91) applies to an interstate forfeiture order registered in the ACT as it applies to a forfeiture order made under section 19.

86 Duration of registration

An interstate forfeiture order ceases to be registered under this Act if—

- (a) the order ceases to be in force in the State or Territory in which it was made; or
- (b) the registration is cancelled under section 87.

87 Cancellation of registration

- (1) The registration of an interstate forfeiture order in the Supreme Court may be cancelled by the Supreme Court or a prescribed officer of the Supreme Court if—
 - (a) registration was improperly obtained; or
 - (b) particulars of any amendments made to the forfeiture order, or of any ancillary orders or directions made by a court, are not communicated to the Supreme Court in accordance with the requirements of the rules of the Supreme Court.
- (2) The registration of an interstate forfeiture order in the Supreme Court may be cancelled by the Supreme Court to the extent that the order is not capable of enforcement in the ACT.

Division 7.3 Miscellaneous

88 Interim registration of fax copies

- (1) A fax copy of a sealed copy of an interstate restraining order or an interstate forfeiture order, or of a sealed copy of any amendments made to such an order, shall be regarded for this Act as the same as the sealed copy, if the fax copy is itself certified in accordance with the rules of the Supreme Court.
- (2) Registration effected by means of a fax copy ceases to have effect at the end of the period of 5 days commencing on the day of registration unless a sealed copy that is not a fax copy has been registered by that time.

- (3) Registration of the sealed copy before the end of the period referred to in subsection (2) has effect as from the day of registration of the fax copy.

Part 8 Miscellaneous

89 Dealings with forfeited property

- (1) A person who knows that a forfeiture order has been made in respect of registrable property shall not, unless the forfeiture order has been discharged, dispose of, or otherwise deal with, the property before the Territory's interest has been registered on the appropriate register.
- (2) A person who contravenes subsection (1) commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

90 Standard of proof

Subject to section 17, any question of fact to be decided by a court on an application under this Act is to be decided on the balance of probabilities.

91 Appeals

- (1) A person who has an interest in property against which a forfeiture order is made may appeal against that order—
 - (a) in the case of a person convicted of the offence in reliance on which the order was made—in the same manner as if the order were, or were part of, a sentence imposed on the person in respect of the offence; or
 - (b) in any other case—in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.
- (2) A person against whom a pecuniary penalty order is made may appeal against that order in the same manner as if it were, or were

part of, a sentence imposed on the person in respect of the offence in reliance on which the order was made.

- (3) Where a court—
- (a) makes a pecuniary penalty order; and
 - (b) makes an order under section 27 (2) declaring that particular property is available to satisfy the order;

a person who has an interest in the property may appeal against the order under section 27 (2) in the same manner as if the person had been convicted of the offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of the offence.

- (4) On an appeal against a forfeiture order, a pecuniary penalty order or an order made under section 27 (2), the order may be confirmed, discharged or varied.
- (5) The DPP may appeal against a forfeiture order, a pecuniary penalty order or an order under section 27 (2) or against the refusal of a court to make such an order in the same manner as if the order were, or were part of, a sentence imposed in respect of the offence in reliance on which the order was made.
- (6) Nothing in this section shall be taken to affect any right of appeal that a person would have apart from this section.

92 Costs

- (1) Where—
- (a) a person brings, or appears at, proceedings under this Act before a court in order—
 - (i) to prevent a forfeiture order or restraining order from being made against property of the person; or
 - (ii) to have property of the person excluded from a forfeiture order or restraining order; and
 - (b) the person is successful in those proceedings; and

(c) the court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made;

the court may order the Territory to pay all costs incurred by the person in connection with the proceedings or such part of those costs as is determined by the court.

- (2) The costs referred to in subsection (1) are not limited to costs of a kind that are normally recoverable by the successful party to civil proceedings.

93 Indemnification of public trustee

- (1) The Territory is, by force of this subsection, liable to indemnify the public trustee against any personal liability (including any personal liability as to costs) incurred by the public trustee for any act done, or omitted to be done by him or her in the exercise, or purported exercise, of his or her powers and duties under this Act.
- (2) Nothing in subsection (1) affects—
- (a) any right that the public trustee has, apart from that subsection, to be indemnified in respect of any personal liability referred to in that subsection; or
 - (b) any other indemnity given to the public trustee in respect of any such personal liability.
- (3) Where the Territory makes a payment in accordance with the indemnity referred to in subsection (1), the Territory has the same right of reimbursement in respect of the payment (including reimbursement under another indemnity given to the public trustee) as the public trustee would have if he or she had made the payment.

94 Operation of other laws not affected

Nothing in this Act limits or restricts—

- (a) the operation of any other Territory law providing for the forfeiture of property or the imposition of pecuniary penalties; or
- (b) the remedies available to the Territory, apart from this Act, for the enforcement of its rights and the protection of its interests.

95 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

96 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

3 Legislation history

Proceeds of Crime Act 1991 No 103

notified 10 January 1991 (Gaz 1991 No S162)
s 1, s 2 commenced 10 January 1992 (s 2 (1))
remainder commenced 10 February 1992 (s 2 (2) and Gaz 1992
No S21)

as amended by

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)
commenced 27 August 1993 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 66

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 66 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Statute Law Revision (Penalties) Act 1994 No 81 sch

notified 29 November 1994 (Gaz 1994 No S253)
s 1, s 2 commenced 29 November 1994 (s 2 (1))
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 26

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 1 commenced 1 June 1998 (s 2 (2))

Financial Sector Reform (ACT) Act 1999 No 33 sch

notified 25 June 1999 (Gaz 1999 No S34)
s 1, s 2, dict commenced 25 June 1999 (s 2 (1))
sch commenced 1 July 1999 (s 2 (2) and Cwlth Gaz 1999 No S289)

Endnotes

4 Amendment history

Legislation (Consequential Amendments) Act 2001 No 44 pt 299

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 299 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.3286

Interpretation for Act

s 4 def *financial institution* am 1999 No 33 sch

def *prescribed officer* am 1994 No 38 sch 1 pt 66

Application to Crown

s 12 om 1993 No 44 sch 2

Application for confiscation order

div 2.1 hdg (prev pt 2 div 1 hdg) renum R3 LA

Forfeiture orders

div 2.2 hdg (prev pt 2 div 2 hdg) renum R3 LA

Effect of forfeiture order on third parties

s 21 am 2001 No 44 amdt 1.3287, amdt 1.3288

Pecuniary penalty orders

div 2.3 hdg (prev pt 2 div 3 hdg) renum R3 LA

Forfeiture in case of serious offence

div 2.4 hdg (prev pt 2 div 4 hdg) renum R3 LA

Recovery of property to which s 28 applies

s 29 am 2001 No 44 amdt 1.3289, amdt 1.3290

Miscellaneous

div 2.5 hdg (prev pt 2 div 5 hdg) renum R3 LA

Establishment of trust fund

s 33 am 1996 No 26 sch pt 26

Bank account

s 33A ins 1996 No 26 sch pt 26

Payments into trust fund

s 34 am 1996 No 26 sch pt 26

Search powers

div 4.1 hdg (prev pt 4 div 1 hdg) renum R3 LA

Restraining orders

div 4.2 hdg (prev pt 4 div 2 hdg) renum R3 LA

Contravention of restraining orders

s 56 am 1994 No 81 sch

Production orders

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA

Failure to comply with production order

s 66 am 1994 No 81 sch

Search powers

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA

Monitoring orders

div 5.3 hdg (prev pt 5 div 3 hdg) renum R3 LA

Monitoring orders

s 69 am 1994 No 81 sch

Existence and operation of monitoring order not to be disclosed

s 70 am 1994 No 81 sch; 1997 No 96 sch 1

Obligations of financial institutions

div 5.4 hdg (prev pt 5 div 4 hdg) renum R3 LA

Retention of records by financial institutions

s 72 am 1994 No 81 sch

Register of original documents

s 73 am 1994 No 81 sch

Money laundering

div 6.1 hdg (prev pt 6 div 1 hdg) renum R3 LA

Money laundering

s 74 am 1994 No 81 sch

Possession etc of property suspected of being proceeds of crime

s 75 am 1994 No 81 sch

Organised fraud

div 6.2 hdg (prev pt 6 div 2 hdg) renum R3 LA

Organised fraud

s 76 am 1994 No 81 sch

Miscellaneous

div 6.3 hdg (prev pt 6 div 3 hdg) renum R3 LA

Interstate restraining orders

div 7.1 hdg (prev pt 7 div 1 hdg) renum R3 LA

Interstate forfeiture orders

div 7.2 hdg (prev pt 7 div 2 hdg) renum R3 LA

Miscellaneous

div 7.3 hdg (prev pt 7 div 3 hdg) renum R3 LA

Endnotes

4 Earlier republications

Dealings with forfeited property

s 89 am 1994 No 81 sch

Approved forms

s 95 sub 2001 No 44 amdt 1.3291
(4)-(7) exp 12 September 2002 (s 95 (7))

Regulation-making power

s 96 ins 2001 No 44 amdt 1.3291

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 81	28 February 1995
2	Act 1999 No 33	30 September 1999
3	Act 2001 No 44	12 March 2002

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

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