



AUSTRALIAN CAPITAL TERRITORY

Confiscation of Criminal Assets Act 2003

A2003-8

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Purposes of Act	2
4 Application of Act to property and dealings	3
5 Application of Act to offences	3
6 Dictionary	3
7 Notes	4
8 Offences against Act—application of Criminal Code etc	4

	Page
Part 2	General overview of confiscation scheme
9	General overview 5
Part 3	Key concepts
10	What is <i>tainted property</i> 6
11	What is <i>unclaimed tainted property</i> 8
12	Meaning of <i>derived</i> 8
13	Meaning of <i>offence</i> and of particular kinds of offences 9
14	Meaning of <i>effective control</i> of property 10
15	Meaning of <i>convicted</i> and <i>quashed</i> 11
16	When does someone <i>abscond</i> 13
17	When is someone <i>cleared</i> of an offence 14
18	When a proceeding is <i>finalised</i> 14
Part 4	Restraint of property
Division 4.1	General
19	Meaning of <i>restraining order</i> 16
20	Meaning of <i>artistic profits restraining order</i> 16
21	Meaning of <i>unclaimed tainted property restraining order</i> 16
22	Restraining orders—purposes 17
23	Contravening restraining orders 17
24	Setting aside dealings with restrained property 18
Division 4.2	Making restraining orders
25	Restraining orders over unclaimed tainted property—application 19
26	Restraining orders over other property—application 19
27	Restraining orders—time for making certain applications 21
28	Restraining orders over unclaimed tainted property—affidavit supporting application 22
29	Restraining orders over other property—affidavit supporting application 23
30	Restraining orders over unclaimed tainted property—making 25
31	Restraining orders over other property—making 25
32	Making of restraining orders—specific serious offence not required etc 27

	Page
33	28
34	30
35	30
36	31
37	34
38	36
39	37
40	39
Division 4.3 Duration of restraining orders	
41	39
42	39
43	39
44	40
45	41
46	42
47	42
48	46
49	48
Division 4.4 Restraining orders—other matters	
50	49
51	51
Part 5 Forfeiture of property	
Division 5.1 Conviction forfeiture orders	
52	52
53	52
54	52
55	53
56	53

	Page
Division 5.2 Automatic forfeiture—conviction for serious offences	
57 Unclaimed tainted property restraining orders— non-application of div 5.2	54
58 Automatic forfeiture of restrained property on conviction for serious offences	54
59 Automatic forfeiture—court order declaring property automatically forfeited	55
60 Automatic forfeiture—court orders	55
61 When automatic forfeiture under div 5.2 ends	57
Division 5.3 Automatic forfeiture—unclaimed tainted property	
62 Forfeiture of unclaimed tainted property	57
63 When automatic forfeiture under div 5.3 ends	58
Division 5.4 Civil forfeiture orders	
64 Artistic profits and unclaimed tainted property— non-application of div 5.4	58
65 Meaning of <i>civil forfeiture order</i>	58
66 Civil forfeiture orders—application	59
67 Civil forfeiture orders—making	59
68 Civil forfeiture orders—forfeiture	61
69 Civil forfeiture order proceedings—restrictions on disclosure	61
70 Civil forfeiture orders—disclosure offences	62
71 When civil forfeiture order ends	65
Part 6 Exclusion of property	
Division 6.1 General	
72 Meaning of <i>exclusion order</i>	66
73 When property is <i>subject to forfeiture</i>	66
74 Effect of exclusion order	67
Division 6.2 Making exclusion orders	
75 Exclusion orders—application	67
76 Making of exclusion orders—ordinary indictable offences	68
77 Making of exclusion orders—serious offences	70
78 Making of exclusion orders—unclaimed tainted property	71

	Page
Part 7	Penalty orders
Division 7.1	Benefits
79	Meaning of <i>commission</i> of serious offence for pt 7 73
80	Meaning of <i>benefits</i> derived by an offender 73
81	Meaning of <i>artistic profits</i> 74
Division 7.2	Making penalty orders
82	Meaning of <i>penalty order</i> 75
83	Penalty orders—application 76
84	Penalty orders—offenders convicted of ordinary indictable offences 76
85	Penalty orders—commission of serious offences 77
86	Penalty orders—amount of penalty 79
87	Penalty orders—contents 80
88	Penalty orders—enforceable as judgment debt 80
89	Penalty orders—variation for reassessed value of benefits 80
Division 7.3	Value of benefits
90	Meaning of <i>narcotic substance</i> and <i>property</i> for div 7.3 81
91	Presumed value of benefits—ordinary indictable offence 81
92	Presumed value of benefits—serious offence 83
93	Value of benefits—relevant matters 84
Division 7.4	Satisfaction of penalty order
94	Creation of penalty charge over restrained property 86
95	When penalty charge over property ends 87
96	Power to satisfy penalty order 88
97	Public trustee to repay any amount surplus to satisfying penalty order 89
Division 7.5	End of penalty orders
98	When penalty order ends 89
Part 8	Restrained property
Division 8.1	Management of restrained property by public trustee
99	Application of div 8.1 90

Contents

	Page
100 Powers of public trustee to preserve restrained property etc	90
101 Sale, modification or destruction of property by public trustee	91
102 Notice of sale, modification or destruction of restrained property by public trustee	92
103 Emergency modification or destruction of restrained property	93
104 Notice details to be included in public trustee's report	93
105 Order to stop sale, modification or destruction of restrained property	94
Division 8.2 Joint ownership of restrained property	
106 Effect of death on joint ownership	95
Part 9 Forfeited property	
Division 9.1 Preliminary	
107 Meaning of <i>interested person</i> in pt 9	97
108 Forfeited property—powers of public trustee	97
Division 9.2 Vesting and disposal of forfeited property	
109 Vesting of forfeited property—general rule	98
110 Vesting of registrable property on forfeiture	98
111 Disposal of forfeited property	99
Division 9.3 Improperly obtained registered property interests	
112 Application of div 9.3 to registered property interests	100
113 Discharge of prior registered property interests given for improper purposes	101
Division 9.4 Sale of jointly owned forfeited property	
114 Application of div 9.4 to jointly owned property	101
115 Inconsistency with Trustee Act or Conveyancing Act	102
116 Order for sale of jointly owned property	102
117 Trust for sale of property	103
118 Effect of trust for sale on joint ownership	104
119 Distribution of proceeds of sale of property	104
120 Variation of court order for sale	104
Division 9.5 Forfeited property—return or compensation	
121 Meaning of <i>return or compensation order</i>	105

	Page
122	105
123	106
Division 9.6	
Forfeited property—buyback of interest	
124	107
125	107
126	107
127	108
Part 10	
Confiscated assets trust fund	
128	109
129	109
130	110
131	110
132	111
133	112
134	112
135	113
Part 11	
Interstate orders	
136	114
137	114
138	115
139	116
140	116
141	117
142	117
143	118
Part 12	
Information gathering	
Division 12.1	
Inquiry notices	
144	119

Contents

	Page
145	119
146	120
147	120
Division 12.2	Monitoring orders
148	121
149	121
150	122
151	122
Division 12.3	Transaction suspension orders
152	123
153	124
154	124
155	125
Division 12.4	Production orders for property-tracking documents
156	126
157	127
158	127
159	128
160	128
161	129
162	130
163	130
Division 12.5	Examination orders and notices
Subdivision 12.5.1	Preliminary
164	131
165	132
Subdivision 12.5.2	Examination orders
166	132
167	133
168	133
169	133
170	134

	Page
Subdivision 12.5.3 Examination notices	
171	Meaning of <i>examination notice</i> 135
172	Examination notices—giving 135
173	Examination notices—form 136
Subdivision 12.5.4 Conducting examinations	
174	Time and place of examination 136
175	Requirements made of person examined 137
176	Conduct of examination 137
177	Role of the examinee’s lawyer 138
178	Examinations—consequential powers about documents 138
179	Examinations—additional restrictions on disclosure 138
180	Protection of authorised investigator etc 139
Subdivision 12.5.5 Offences—examination notices	
181	Obstruction etc of authorised investigator 140
182	Failing to attend examination 140
183	Offences relating to appearance at examination 141
184	Unauthorised presence at an examination 141
185	Examinations—additional disclosure offences 142
Division 12.6 Information order offences	
186	Meaning of <i>information order</i> 144
187	Information orders—failure to comply 145
188	Information orders—false or misleading information 145
189	Information orders—false or misleading documents 146
190	Destruction etc of documents 146
191	Meaning of <i>non-disclosable information order</i> 147
192	Information orders—disclosure offences 148
193	Information orders—disclosure by police officers 150
194	Information orders—protection of complying financial institutions 150
Part 13 Search warrants	
Division 13.1 Preliminary	
195	Definitions for pt 13 151

	Page
Division 13.2 Search warrants—general	
196 Applications for search warrants—general	153
197 Offence for making false etc statements in search warrant applications	153
198 Additional contents of search warrant applications	154
199 Issuing search warrants	154
200 When search warrant for property-tracking document may be issued	154
201 Contents of search warrants	155
202 Authorisation given by search warrants	156
Division 13.3 Telephone and electronic warrants	
203 Applying for search warrants by telephone or other electronic means	157
204 Issuing search warrants by telephone or other electronic means	157
205 Unsigned warrants by telephone or other electronic means in court proceedings	158
206 Offence for stating incorrect names in warrants by telephone or other electronic means	159
207 Offence for execution etc of search warrant departing in material form	159
208 Offence for execution etc of unauthorised form of search warrant	160
209 Offence for giving unauthorised form of search warrant	160
Division 13.4 Executing search warrants	
210 Search warrants—whether must be executed only during particular hours	161
211 Search warrants—restrictions on personal searches	161
212 Use of force and availability of assistance in executing search warrant	162
213 Search warrants—announcement before entry	162
214 Details of search warrant to be given to occupier etc	163
215 Occupier entitled to be present during search etc	163
216 Particular powers available to officers executing search warrant	164
217 Use of equipment to examine or process things	164
218 Moving things to another place for examination or processing	165

	Page
219	166
220	167
221	168
222	169
223	170
Division 13.5	Stopping and searching vehicles
224	170
225	171
Division 13.6	Search warrants—things seized
226	172
227	172
228	173
229	174
230	174
Division 13.7	Search warrants—miscellaneous
231	174
232	175
233	176
234	176
235	177
Part 14	Court procedure
236	178
237	179
238	180
239	180
240	182
241	182
242	183
243	183
244	185

Contents

	Page	
245	Applications for another confiscation proceeding in relation to same offence	186
246	Confiscation proceedings—time extensions for applications	186
247	Confiscation proceedings—amendment of applications	187
248	Confiscation proceedings—relevant material	187
249	Confiscation proceedings—witness not required to answer questions prejudicing investigation	188
250	Confiscation proceedings—additional orders	188
251	Contravention of additional orders under s 250	189
252	Confiscation proceedings—consent orders	189
253	Confiscation proceedings—notice of making orders	190
254	Concurrent proceedings	191
Part 15	Miscellaneous	
255	Selfincrimination and other privileges overridden	192
256	Powers under Act not limited by criminal proceedings	193
257	Powers under Act do not limit each other or powers under other laws	193
258	Examination orders—reporting requirements	194
259	Approved forms	195
260	Regulation-making power	196
Part 16	Consequential and transitional matters	
261	Repeal of Proceeds of Crime legislation	197
262	Orders under repealed Act	197
263	Proceedings for offences committed before the commencement of this Act	198
264	Use of information etc obtained under repealed Act	198
265	Confiscated assets trust fund	198
266	Transitional regulations	199
267	Modification of pt 16's operation	199
268	Amendments of other legislation—sch 1	199
269	Expiry of pt 16	200

		Page
Schedule 1	Amendments of other legislation	201
Part 1.1	Administrative Decisions (Judicial Review) Act 1989	201
Part 1.2	Crimes Act 1900	201
Part 1.3	Prostitution Act 1992	209
Dictionary		210



AUSTRALIAN CAPITAL TERRITORY

Confiscation of Criminal Assets Act 2003

A2003-8

An Act to deprive people of the proceeds of crime and of property used for criminal activity, and for other purposes

*Notified under the Legislation Act 2001 on 27 March 2003
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Confiscation of Criminal Assets Act 2003*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Purposes of Act

The *purposes of this Act* include the following:

- (a) to encourage law-abiding behaviour by the community;
- (b) to give effect to the principle of public policy that a person should not be enriched because of the commission of an offence, whether or not anyone has been convicted of the offence;
- (c) to deprive a person of all material advantage derived from the commission of an offence, whatever the form into which property or benefits derived from the offence may have been changed;
- (d) to deprive a person of property used, or intended by an offender to be used, in relation to the commission of an offence, whatever the form into which it may have been

changed, and to prevent the person from using the property to commit other offences;

- (e) to enable the effective tracing and seizure by law enforcement authorities of property used, or intended by an offender to be used, in relation to the commission of an offence and all material advantage derived from the offence;
- (f) to provide for the enforcement in the ACT of orders, notices or decisions (however described) made under corresponding laws.

4 Application of Act to property and dealings

- (1) This Act applies to property located anywhere, whether in the ACT, in Australia outside the ACT, or outside Australia.
- (2) This Act applies to dealings with property anywhere, whether it happens in the ACT, in Australia outside the ACT, or outside Australia.

5 Application of Act to offences

This Act applies in relation to offences, whether committed, or alleged to have been committed, before or after the commencement of this Act.

6 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*effective control*, of property—see section 14.’ means that the term ‘effective control’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

7 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

8 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2

General overview of confiscation scheme

9 General overview

The notes to this section provide a general overview of the scheme of this Act.

Note 1 Restraining orders

A court may make an order (a *restraining order*) preventing the disposal or other dealing with property. A restraining order may also be made to secure a property for the payment of a penalty order (see note 4).

Property may be restrained even though it is not the offender's property.

Note 2 Confiscation of property on conviction

A court that convicts a person of an indictable offence may make an order (a *conviction forfeiture order*) for the forfeiture to the Territory of tainted property in relation to the offence (whether or not the tainted property is restrained).

If a person is convicted of a serious offence (generally an offence punishable by imprisonment for 5 years or more), all restrained property is, by the operation of this Act, forfeited to the Territory (an *automatic forfeiture*).

Property may be forfeited even though it is not the offender's property.

Note 3 Confiscation of property without conviction

If a court is satisfied on the balance of probabilities that a person has committed a serious offence, it may make an order (a *civil forfeiture order*) for the forfeiture to the Territory of all restrained property even though the person has not been convicted, or the person has been cleared, of the relevant offence.

Note 4 Penalty orders

A court may order the payment to the Territory (a *penalty order*) of the value of the tainted property and the advantages and other benefits derived in any way from the commission of an indictable offence and for restrained property be sold to satisfy the penalty order.

Note 5 Exclusion of property from forfeiture and return or compensation for forfeited property

Provision is made for a order that property be excluded from forfeiture (an *exclusion order*) and forfeited property can be returned or compensation paid for it in certain circumstances. Provision is also made for the buyback of interests in forfeited property.

Part 3 Key concepts

Note 1 The following concepts are defined in this part:

- *abscond*—see s 16
- *cleared*, of an offence—see s 17
- *convicted*—see s 15 (1)
- *derived*—see s 12
- *effective control*, of property—see s 14
- *finalised* confiscation or criminal proceeding—see s 18
- *indictable offence*—see s 13 (2)
- *offence*—see s 13 (1)
- *ordinary indictable offence*—s 13 (2)
- *quashed*—see s 15 (3) and (4)
- *related* offence—see s 13 (3)
- *serious offence*—see s 13 (2)
- *tainted property*—see s 10
- *unclaimed tainted property*—see s 11.

Note 2 Other important concepts include *benefits* (see s 80), *penalty order* (see s 82) and *relevant court* (see s 238).

10 What is *tainted property*

(1) In this Act:

tainted property, in relation to an offence, means—

- (a) property that was used, or was intended by an offender to be used, in relation to the commission of the offence; or
- (b) property that was derived by anyone from the commission of the offence; or
- (c) property that was derived by anyone from property mentioned in paragraph (a) or (b);

and includes an amount of money held in an account with a financial institution that represents the value of property mentioned

in paragraph (a), (b) or (c) that has been directly or indirectly credited to the account.

Note 1 For the meaning of *in relation to*, see dict.

Note 2 For the meaning of *derived*, see s 12.

Note 3 *Property* includes an interest in property, see Legislation Act, dict, pt 1.

- (2) For subsection (1) (a), any property found in the possession of an offender at the time of, or immediately after, the commission of the offence is taken to be property that was used, or was intended by the offender to be used, in relation to the commission of the offence, unless the contrary is established by the offender.

Examples of *tainted property* for s 10

- 1 A car used as a getaway car for an armed robbery (see s (1) (a)).
- 2 Money and jewellery stolen during the commission of the armed robbery offence (see s (1) (b)).
- 3 Shares bought using money stolen during the commission of the armed robbery offence, or a mixture of that money and money unconnected with the offence (see s (1) (c) and s 12 (1) (Meaning of *derived*)).
- 4 A house in relation to which a mortgage is partly or completely discharged using money stolen during the commission of the armed robbery offence, or a mixture of that money and money unconnected with the offence (see s (1) (c) and s 12 (1)).
- 5 Money or other property received from the sale of the car, jewellery, shares or house mentioned in examples 1 to 4 (see s (1) (c) and s 12 (1)).
- 6 Other property purchased using the money mentioned in example 5 (see s (1) (c) and s 12 (1)).
- 7 Money stolen during the commission of the armed robbery offence is deposited in 1 or more accounts with a credit union and later transferred to a bank account that also contains money unconnected with the offence. The money in the bank account to the value of the money stolen during the commission of the offence is *tainted property* (see s (1)).
- 8 Money received from the sale of the car, jewellery, shares or house mentioned in examples 1 to 4 is deposited in a credit union account that also contains money unconnected with the armed robbery offence. The money in the account to the value of the money received from the sale of the car, jewellery, shares or house mentioned in examples 1 to 4 is *tainted property* (see s (1) and s 12 (1)).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

11 What is *unclaimed tainted property*

In this Act:

unclaimed tainted property means property that—

- (a) is tainted property in relation to an offence; and

Note For the meaning of *in relation to*, see dict.

- (b) is not claimed by anyone;

even if it is not possible to identify the offence or an offender.

Examples of property that may be *unclaimed tainted property*

- 1 a large quantity of hydroponic equipment and lights for growing plants indoors that is found at premises suspected of being used for the production of drugs and that is not claimed by anyone
- 2 a large amount of money with traces of cocaine that is found in a house suspected of being used for drug dealing and that is not claimed by anyone
- 3 a large quantity of jewellery found in a car that has been recently used by several people and that is not claimed by anyone
- 4 a large amount of money found beneath a bridge in a bag that also contains traces of explosives

Note 1 A claim for property restrained under an unclaimed tainted property restraining order does not, of itself, change or end the restraining order, see s 46 (2).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Meaning of *derived*

- (1) In this Act:

derived—property or a benefit is ***derived*** if it is derived or realised, whether completely or partly and whether directly or indirectly.

Examples

See section 10, examples 3 to 6 and 8.

Note 1 For the meaning of ***benefits***, see s 80.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Property or a benefit is ***derived*** by a person if it is derived by someone else at the request or direction of the person.

Example

Jane Citizen commits an indictable offence and then writes a book about the commission of the offence. Ms Citizen directs the book's publisher to pay the royalties for the book to her husband rather than to herself. The royalties would still be ***derived*** by Ms Citizen because they are derived by her husband at her direction. (This may be relevant, for example, for deciding whether they are artistic profits and thus benefits under div 7.1.)

- (3) For subsection (2), a request or direction of a person (the ***first person***)—
- (a) includes an understanding between the first person and someone else or the first person making it known (directly or indirectly) to someone else that a particular outcome (or an outcome of a particular kind) is wanted or required by the first person; and
 - (b) may be taken to have been made even though, after all the evidence has been considered, the existence of the request or direction can be found only by inference from the actions of people or from other relevant circumstances.

13 Meaning of ***offence*** and of particular kinds of offences

- (1) In this Act:

offence means an offence against the law of the Territory, the Commonwealth, a State or another Territory.

(2) In this Act:

indictable offence includes an offence (however described) against the law of the Commonwealth, a State or another Territory that may be dealt with under a law of the Commonwealth, the State or the other Territory as an indictable offence (or in a way corresponding to the way in which an indictable offence against the law of the Territory may be dealt with), even if it may also be dealt with as a summary offence (however described) in some circumstances.

Note An offence against a Territory law is an ***indictable offence*** if it is punishable by imprisonment for longer than 1 year, or is declared by law to be an indictable offence (see Legislation Act, s 190 (1)).

ordinary indictable offence means an indictable offence other than a serious offence.

serious offence means—

- (a) an indictable offence that is punishable by imprisonment for 5 years or longer; or
 - (b) any other indictable offence declared under the regulations to be a serious offence.
- (3) For this Act, an offence is ***related*** to another offence if the physical elements of the 2 offences are the same, or substantially the same, acts or omissions.

14 Meaning of ***effective control*** of property

- (1) For this Act, property may be subject to the ***effective control*** of a person whether or not the person has an interest in it.

Note ***Interest***, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

See Legislation Act, dict, pt 1.

- (2) In deciding whether or not property is subject to the effective control of a person, or whether or not there are reasonable grounds

to suspect or believe that it is, regard may be had to any relevant matter, including, for example, any of the following:

- (a) shareholdings in, debentures over, or directorships of, a company that has an interest (whether direct or indirect) in the property (a *relevant company*);
- (b) a trust that has a relationship to the property (a *relevant trust*);
- (c) family, personal, business and other relationships between people having an interest in the property, or in a relevant company or relevant trust, and other people.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, property is taken to be subject to the *effective control* of a person if—
 - (a) it is held by someone else on trust or otherwise for the ultimate benefit of the person; or
 - (b) within 6 years before or after the commission of the offence in relation to which an application is made in a confiscation proceeding, the person disposed of the property without sufficient consideration to someone else.

Note 1 For the meaning of *in relation to*, see dict.

Note 2 For the meaning of *sufficient consideration*, see dict.

15 Meaning of *convicted* and *quashed*

- (1) For this Act, a person is taken to be *convicted* of an offence if—
 - (a) the person is convicted of the offence, whether summarily or on indictment; or
 - (b) the person is found guilty, but not convicted, of the offence; or
 - (c) the person absconds in relation to the offence.

Note 1 **Found guilty**, of an offence, is defined in the Legislation Act, dict, pt 1 as including—

- (a) having the offence taken into account under the *Crimes Act 1900*, s 357 (which is about taking outstanding charges into account when passing sentence); and
- (b) having an order made in relation to the offence under the *Crimes Act 1900*, s 402 (Conditional release of offenders without proceeding to conviction) or the *Children and Young People Act 1999*, s 96 (Disposition of young offenders).

Note 2 For the meaning of **abscond**, see s 16.

- (2) The person is taken to be convicted of the offence—
 - (a) if subsection (1) (a) applies—on the day the person is convicted; or
 - (b) if subsection (1) (b) applies—on the day the person is found guilty; or
 - (c) if subsection (1) (c) applies—
 - (i) on the day the person is committed for trial for the offence; or
 - (ii) on the day a court, in a confiscation proceeding, makes an order that the evidence is of sufficient weight to support a conviction for the offence.
- (3) For this Act, the person's conviction for the offence is taken to be **quashed** when—
 - (a) if subsection (1) (a) applies—the conviction is quashed or set aside; or
 - (b) if subsection (1) (b) applies because the offence was taken into account in passing sentence for another offence—
 - (i) the person's conviction or finding of guilty for the other offence is quashed or set aside; or
 - (ii) the decision to take the offence into account is quashed or set aside; or

- (c) if subsection (1) (b) applies for another reason—the finding of guilty for the offence (however described) is quashed or set aside; or
- (d) if subsection (1) (c) applies—the person is brought before a court for the offence, and the person is cleared of the offence.

Note For the meaning of *cleared*, see s 17.

- (4) However, a person's conviction for an offence is not taken to be *quashed* if a court quashes or sets aside the conviction or finding of guilty (however described) but orders the person to be retried for the offence.

16 When does someone *abscond*

- (1) This section applies to an offender in relation to an indictable offence if—
 - (a) an indictment is presented against the offender for the offence; and
 - (b) a warrant is issued for the arrest of the offender for the offence; and
 - (c) either—
 - (i) the offender is committed for trial for the offence; or
 - (ii) a court, in a confiscation proceeding, makes a finding that the evidence is of sufficient weight to support the offender's conviction for the offence.
- (2) For this Act, the offender is taken to have *absconded* in relation to the offence if—
 - (a) the offender dies before the warrant is executed; or
 - (b) at the end of 6 months after the day the warrant is issued, the offender cannot be found; or
 - (c) at the end of 6 months after the day the warrant is issued—

- (i) the offender is not amenable to justice for any other reason; and
 - (ii) if the offender is outside the ACT—an extradition proceeding against the offender is not on foot; or
- (d) at the end of 6 months after the day the warrant is issued—
- (i) the offender is not amenable to justice because the offender is outside the ACT; and
 - (ii) an extradition proceeding against the offender is on foot; and the extradition proceeding later ends without an order for the offender's extradition being made.

17 When is someone *cleared* of an offence

For this Act, a person is *cleared* of an offence if—

- (a) an indictment for the offence lapses, or is withdrawn or struck out; or
- (b) a charge for the offence is withdrawn or discharged; or
- (c) the person is acquitted of the offence; or
- (d) the person's conviction for the offence is quashed.

18 When a proceeding is *finalised*

- (1) For this Act, a confiscation proceeding is *finalised* if—
- (a) the proceeding lapses, or is withdrawn or struck out; or
 - (b) the appeal period for an appeal against the final judgment of the court hearing the proceeding ends without an appeal having been made against the judgment; or
 - (c) if an appeal against the final judgment is made within the appeal period—the appeal is dismissed, withdrawn or struck out, or the appeal is otherwise finalised (within the meaning of this subsection).

- (2) For this Act, a criminal proceeding is *finalised* if—
- (a) the offender is cleared of the offence to which the proceeding relates; or
 - (b) the offender is convicted of an offence to which the proceeding relates, and the appeal period for an appeal against the conviction or finding of guilty (however described) ends without an appeal having been made against it; or
 - (c) if an appeal is made against the conviction or finding of guilty (however described) within the appeal period—the appeal is dismissed, withdrawn or struck out, or the appeal is otherwise finalised (within the meaning of this subsection) without a retrial having been ordered; or
 - (d) if a retrial has been ordered—the proceeding on the retrial is finalised (within the meaning of this subsection).

- (3) In this section:

appeal period means the period within which an appeal may be made without an extension of time or leave to make the appeal out of time.

Part 4 Restraint of property

Division 4.1 General

19 **Meaning of *restraining order***

In this Act:

restraining order means an order under section 30 (Restraining orders over unclaimed tainted property—making) or section 31 (Restraining orders over other property—making) that a person must not deal with the property stated in the order except in accordance with—

- (a) the order; or
- (b) another order of a relevant court; or
- (c) this Act.

20 **Meaning of *artistic profits restraining order***

In this Act:

artistic profits restraining order, in relation to an offence, means a restraining order made solely to satisfy a penalty order for artistic profits in relation to the offence.

21 **Meaning of *unclaimed tainted property restraining order***

In this Act:

unclaimed tainted property restraining order means a restraining order made solely over unclaimed tainted property.

Note A claim for property restrained under an unclaimed tainted property restraining order does not, of itself, change or end the restraining order, see s 46 (2).

22 Restraining orders—purposes

A restraining order may be made to preserve property so that the property will be available for 1 or more of the following purposes:

- (a) for forfeiture under a conviction forfeiture order;
- (b) for automatic forfeiture;
- (c) for forfeiture under a civil forfeiture order;
- (d) to satisfy a penalty order.

Note Pt 5 deals with forfeiture and pt 7 deals with penalty orders.

23 Contravening restraining orders

- (1) A person commits an offence if—
- (a) the person deals with property; and
 - (b) the property is subject to a restraining order; and
 - (c) the person knows that, or is reckless about the fact that, the property is subject to a restraining order; and
 - (d) the dealing with the property contravenes the order.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person deals with property; and
 - (b) the property is subject to a restraining order; and
 - (c) the dealing with the property contravenes the order; and
 - (d) either of the following applies:
 - (i) the restraining order, or details of the order, were recorded in a statutory property register under section 50 (2) (Restraining orders—registration in

statutory property registers) when the person dealt with the property;

- (ii) the person was given notice of the order under section 34 (Restraining orders—notice of making) before the person dealt with the property.

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

- (3) Strict liability applies to subsection (2) (b), (c) and (d).

24 Setting aside dealings with restrained property

- (1) The DPP may apply to a relevant court for an order that a dealing with restrained property be set aside if—
 - (a) the dealing was in contravention of the restraining order; and
 - (b) the dealing—
 - (i) was not for sufficient consideration; or
 - (ii) transferred property to a person who was not acting honestly; or
 - (iii) transferred property to a person who did not take reasonable care to establish that the property may be lawfully acquired by the person
- (2) On application under subsection (1), the court may make an order setting aside a dealing with property in contravention of a restraining order.
- (3) The order may be expressed to take effect on—
 - (a) the day when the dealing took place; or
 - (b) the day when the order setting aside the dealing is made.
- (4) If the court makes an order mentioned in subsection (3) (b), the court must declare the rights of anyone who acquired an interest in

the property on or after the day of the dealing and before the day the order is made.

Division 4.2 Making restraining orders

Note 1 For general provisions about a proceeding for a restraining order (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the offender or the public being present, see s 243.

25 Restraining orders over unclaimed tainted property—application

- (1) The DPP may apply to a relevant court for a restraining order over unclaimed tainted property.
- (2) The application must state the following:
 - (a) that the application is for an unclaimed tainted property restraining order;
 - (b) the property sought to be restrained.
- (3) The application must be supported by an affidavit under section 28 (Restraining orders over unclaimed tainted property—affidavit supporting application).
- (4) An application for an unclaimed tainted property restraining order must be made only in relation to unclaimed tainted property (but may be made at the same time as an application for a restraining order over other property).

26 Restraining orders over other property—application

- (1) The DPP may apply to a relevant court for a restraining order over any of the following:
 - (a) stated property of a person;
 - (b) stated property of a person and all other property of the person (including property acquired after the making of the order);

- (c) all property of a person (including property acquired after the making of the order);
- (d) all property of a person (including property acquired after the making of the order) other than stated property.

Note 1 A reference to a *person* generally includes a reference to a corporation as well as an individual, see Legislation Act, s 160. (See also the Legislation Act, dict, pt 1, def *person*.)

Note 2 *Property* includes an interest in property, see Legislation Act, dict, pt 1.

- (2) The application must state the following:
 - (a) the offence to which the application relates;
 - (b) when it is alleged the offence was committed;
 - (c) the person who is alleged to have committed the offence;
 - (d) the person whose property the application relates to;
 - (e) the property sought to be restrained (including whether it is property of the offender or someone else);
 - Note* *Offender* includes a corporation, see dict.
 - (f) whether the application is for an artistic profits restraining order.
- (3) The application must be supported by an affidavit under section 29 (Restraining orders over other property—affidavit supporting application).
- (4) For subsection (2) (a), the application need not specify a particular offence and it is sufficient if the application states that some offence or other was committed.
- (5) For subsection (2) (b), the application need not specify a particular time or day and it is sufficient if the application states a period within which the offence was committed.
- (6) To remove any doubt—

- (a) an application for a restraining order under this section may be made in relation to an interest (or interests) in property; and

Note **Property** includes an interest in property, see Legislation Act, dict, pt 1.

- (b) an application for a restraining order under this section may be made in relation to 2 or more offences; and
- (c) an application for a restraining order under this section may be made in relation to the property of 2 or more people; and
- (d) this section does not apply to an application for a restraining order over unclaimed tainted property.

27 Restraining orders—time for making certain applications

- (1) This section does not apply to an application for—
- (a) an artistic profits restraining order; or
- (b) an unclaimed tainted property restraining order.
- (2) An application for a restraining order in relation to an ordinary indictable offence must be made before the end of the longer of the following periods:
- (a) if an indictment has been presented against the offender for the offence, and the offender has not been convicted or cleared of the offence—2 years after the day the indictment was presented;
- (b) if the offender has been convicted of the offence (and not cleared)—2 years after the day of the conviction;
- (c) in any case—6 years after the day the offence was committed (or is alleged to have been committed).

Note 1 For the meaning of *in relation to*, see dict.

Note 2 The court may allow leave for an application to be made after a time fixed by this section in certain circumstances (see s 49 and s 246).

- (3) An application for a restraining order in relation to a serious offence must be made before the end of the longer of the following periods:
- (a) if an indictment has been presented against the offender for the offence, and the offender has not been convicted or cleared of the offence—2 years after the day the indictment was presented;
 - (b) if the offender has been convicted of the offence—2 years after the day of the conviction;
 - (c) in any case—6 years after the day the offence was committed (or is alleged to have been committed).

Note The court may allow leave for an application to be made after a time fixed by this section in certain circumstances (see s 49 and s 246).

28 Restraining orders over unclaimed tainted property— affidavit supporting application

- (1) An affidavit by a police officer supporting an application under section 25 (Restraining orders over unclaimed tainted property—application) for an unclaimed tainted property restraining order must state—
- (a) that the police officer suspects that the property is unclaimed tainted property; and
 - (b) that the property has not been claimed by anyone.

Note No time limit applies to an application for an unclaimed tainted property restraining order, see s 27 (1) (b).

- (2) The affidavit must state that the police officer believes that the property sought to be restrained may be required to satisfy a purpose mentioned in section 22 (Restraining orders—purposes).
- (3) For subsection (2), no particular purpose need be stated in the affidavit.
- (4) The affidavit must state the grounds for each suspicion or belief of the police officer stated in the affidavit.

29 Restraining orders over other property—affidavit supporting application

- (1) An affidavit by a police officer supporting an application under section 26 (Restraining orders over other property—application) for a restraining order must state—
 - (a) that the officer believes that an indictment has been presented against the offender for a stated indictable offence, or that the offender has been convicted of a stated indictable offence; or
 - (b) that the officer suspects that the offender has committed a stated indictable offence, and that it is intended, within a stated period—
 - (i) for an ordinary indictable offence—to present an indictment against the offender for the offence (or a related indictable offence); or
 - (ii) for a serious offence—
 - (A) to present an indictment against the offender for the offence (or a related serious offence); or
 - (B) to apply for a civil forfeiture order or a penalty order in relation to the offence (or a related serious offence).
- (2) Subsection (1) (b) does not require the police officer to specify a particular offence in the affidavit and it is sufficient if the police officer suspects that the offender has committed a particular kind of offence and the affidavit describes the nature of the offence in general terms.
- (3) If the application is not for an artistic profits restraining order, the affidavit must state that the police officer believes that the application is being made within the relevant period mentioned in section 27 (Restraining orders—time for making certain applications) for the offence to which the application relates.

Note No time limit applies to an application for an artistic profits restraining order, see s 27 (1) (a).

- (4) For subsection (3), if the application relates to a serious offence, it is sufficient if the police officer believes that the offence was committed within the relevant period mentioned in section 27, and it is not necessary for the officer to believe that the offence was committed on any particular day or time within the relevant period.
- (5) The affidavit must state, for the property mentioned in the application, or for each stated part of the property—
 - (a) that the officer suspects that the property is either the offender's property or the property of someone else; and
 - (b) for property that the officer suspects is the property of someone else—
 - (i) that the property is tainted property; or
 - (ii) that the property is subject to the offender's effective control.
- (6) The affidavit must state that the police officer believes that—
 - (a) the property sought to be restrained may be required to satisfy a purpose mentioned in section 22 (Restraining orders—purposes); and
 - (b) if the application is for an artistic profits restraining order—the property sought to be restrained may be required to satisfy a penalty order for artistic profits in relation to the offence.
- (7) For subsection (6) (a), no particular purpose need be stated in the affidavit.
- (8) The affidavit must state the grounds for each belief or suspicion of the police officer stated in the affidavit.

30 Restraining orders over unclaimed tainted property—making

- (1) This section applies if an application is made under section 25 (Restraining orders over unclaimed tainted property—application) to a relevant court for an unclaimed tainted property restraining order in relation to an offence.
- (2) The relevant court must make a restraining order over the property to which the application relates if, having regard to the police officer's affidavit supporting the application and any other evidence before the court, the court is satisfied that there are reasonable grounds for the officer's suspicions and beliefs stated in the affidavit.

Note A claim for property restrained under an unclaimed tainted property restraining order does not, of itself, change or end the restraining order, see s 46 (2).

- (3) The restraining order may direct the public trustee to take control of the restrained property.

Note For the commencement of a restraining order, see Legislation Act, s 73 (4).

- (4) To remove any doubt, for making a restraining order under this section, it is irrelevant whether there is any risk of the property being dealt with in a way that would defeat or hinder the purposes of this Act.

31 Restraining orders over other property—making

- (1) This section applies if an application is made under section 26 (Restraining orders over other property—application) to a relevant court for a restraining order in relation to an offence.
- (2) The relevant court must make a restraining order over the property to which the application relates if, having regard to the police officer's affidavit supporting the application and any other evidence before the court—

- (a) the court is satisfied that there are reasonable grounds for the officer's beliefs and suspicions stated in the affidavit; and
 - (b) if an indictment has not been presented for the offence, or the offence is a serious offence of which the offender has been cleared—the court is satisfied that, within 6 weeks after the date of the order or (if allowed by the court) a longer period of not longer than 3 months after that date—
 - (i) for an ordinary indictable offence—it is intended to present an indictment against the offender for the offence (or a related indictable offence); or
 - (ii) for a serious offence—
 - (A) it is intended to present an indictment against the offender for the offence (or a related serious offence); or
 - (B) it is intended to apply for a civil forfeiture order or a penalty order in relation to the offence (or a related serious offence).
- (3) The restraining order may do either or both of the following:
- (a) direct the public trustee to take control of the restrained property or stated restrained property;
 - (b) provide, under section 37 or 38, for living and business expenses, or legal expenses, to be met out of the restrained property.
- Note* For the commencement of a restraining order, see Legislation Act, s 73 (4).
- (4) The relevant court may refuse to make the restraining order if the DPP does not give the relevant court any undertaking that the court considers appropriate about the payment of damages or costs in relation to the making or operation of the order.
- (5) To remove any doubt—

- (a) a restraining order may be made under this section in relation to an interest (or interests) in property; and

Note **Property** includes an interest in property, see Legislation Act, dict, pt 1.

- (b) a restraining order may relate to 2 or more offences committed (or alleged to have been committed) by an offender; and

Note **Offender** includes a corporation, see dict.

- (c) a restraining order may relate to the property of 2 or more people; and

- (d) for making a restraining order under this section, it is irrelevant whether there is any risk of the property being dealt with in a way that would defeat or hinder the purposes of this Act.

32 Making of restraining orders—specific serious offence not required etc

- (1) For section 31 and to remove any doubt, if the relevant court is satisfied that there are reasonable grounds for the police officer's belief that a serious offence was committed by the offender within the relevant period mentioned in section 27 (Restraining orders—time for making certain applications), the court must not refuse to make a restraining order in relation to the offence only because the court is not satisfied—

- (a) that the officer had any belief that a particular serious offence was committed within the relevant period; or
- (b) that the officer had any belief about the particular day or time when the offender committed the offence within the relevant period; or
- (c) that there are reasonable grounds for any belief by the officer about anything mentioned in paragraph (a) or (b).

Note For the meaning of *in relation to*, see dict.

- (2) Also, for section 31 and to remove any doubt, the relevant court must not refuse to make a restraining order in relation to the offender only because—
- (a) an indictment has not been presented against the offender for the offence; or
 - (b) the offender has not been convicted of the offence; or
 - (c) the offender has been cleared of the offence, including being cleared after having been convicted of the offence; or
 - (d) a doubt is raised about whether the person committed the offence.

33 Restraining orders—contents

- (1) A restraining order must state that a person must not deal with the property stated in the order except in accordance with—
- (a) the order; or
 - (b) another order of a relevant court; or
 - (c) this Act.
- (2) A restraining order (other than an unclaimed tainted property restraining order) must also state—
- (a) that it is a restraining order under this Act; and
 - (b) the person (or people) whose property it applies to; and
 - (c) for each person to whose property it applies to—the property to which it applies, including whether it applies to property acquired after the making of the order; and
 - (d) if section 31 (2) (b) (Restraining orders over other property—making) applies to the restraining order—the applicable period under the paragraph; and

Note The restraining order ends unless an indictment is presented or, for a serious offence, a forfeiture or penalty application is made, before the end of the stated period (see div 4.3, tables 1 and 2).

- (e) if the order directs the public trustee to take control of the restrained property or stated restrained property—the direction and the property to which it applies; and
 - (f) if the relevant court making the order has given a direction under section 35 (Restraining order proceedings—restrictions on disclosure)—
 - (i) the direction given by the court; and
 - (ii) the effect of section 36 (Restraining orders—disclosure offences) in relation to the direction; and
 - (g) if the order provides, under section 37 or 38, for living and business expenses, or legal expenses, to be met out of the restrained property—
 - (i) the kind of expenses that may be met out of the restrained property; and
 - (ii) the period during which the expenses may be met out of the restrained property; and
 - (iii) the maximum amount of the expenses that may be met out of the restrained property.
- (3) An unclaimed tainted property restraining order must also state—
- (a) that it is an unclaimed tainted property restraining order under this Act; and
 - (b) the property to which it applies; and
 - (c) if the relevant court making the order has given a direction under section 35—
 - (i) the direction given by the court; and
 - (ii) the effect of section 36 in relation to the direction; and
 - (d) that, unless a relevant court makes an order that stops the operation of the restraining order over the property, the

property will be automatically forfeited under this Act to the Territory at the end of 14 days after the day the order is made.

- (4) A failure by a relevant court to comply with this section in relation to the restraining order does not invalidate the restraining order or any forfeiture order or automatic forfeiture made in relation to the property restrained under the restraining order.

34 Restraining orders—notice of making

- (1) If a court makes a restraining order over property, the DPP must give a copy of the order to—
- (a) for an unclaimed tainted property restraining order—anyone the DPP suspects may have an interest in the property; and
 - (b) for any other restraining order—the owner of the restrained property and anyone else the DPP suspects may have an interest in the property.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) A relevant court may order the DPP to—
- (a) give a copy of a restraining order, the application for the order or the supporting affidavit to anyone and may give directions about how any document is to be given to the person; or
 - (b) give notice of the order to anyone and may give directions about how the notice is to be given.
- (3) Subsections (1) and (2) have effect subject to any direction of the court under section 35.

35 Restraining order proceedings—restrictions on disclosure

- (1) On application by the DPP, a relevant court hearing an application for a restraining order may give directions prohibiting or restricting the publication or disclosure of all or any of the following:

- (a) the fact that an application for the order, or that a restraining order, has been made;
- (b) the application for the order;
- (c) the supporting affidavit for the order and any other affidavit filed in relation to the application;
- (d) any information about the proceeding (whether or not a hearing has been held);
- (e) any evidence given, statement made or thing done during the proceeding;
- (f) any information, document or thing derived from anything mentioned in this subsection.

Examples of directions

- 1 that the application for the restraining order and a stated part of the supporting affidavit not be disclosed to the person against whom the restraining order is made until the court has decided an application for another restraining order against someone else's property
- 2 that the supporting affidavit must be made available only to the offender's lawyer

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In deciding whether to give a direction under subsection (1), the court must have regard to whether the direction—
 - (a) would promote the purposes of this Act; or
 - (b) is desirable to protect the integrity of an investigation (however described) for any purpose or a prosecution of an offence.
- (3) The court may also have regard to any other relevant matter in deciding whether to give a direction under subsection (1).

36 Restraining orders—disclosure offences

Note An offence against this section is a strict liability offence, see s (7).

- (1) A person commits an offence if—
- (a) a relevant court has given a direction under section 35 (1) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person has notice of the direction (whether by being given a copy of the restraining order to which the direction relates or otherwise); and
 - (c) the person publishes or discloses the matter to someone else.

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

- (2) A person commits an offence if—
- (a) a relevant court has given a direction under section 35 (1) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person has notice of the direction (whether by being given a copy of the restraining order to which the direction relates or otherwise); and
 - (c) the person publishes or discloses information to someone else; and
 - (d) the other person could infer from the information the matter to which the direction relates.

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

- (3) Subsections (1) and (2) do not apply if the publication or disclosure is made to any of the following entities in the circumstances mentioned for the entity:
- (a) a police officer—in any circumstances;
 - (b) an officer, employee or agent of the person—to ensure that the order is complied with and the person to whom the publication or disclosure is made is given notice of the direction (whether

by being given a copy of the restraining order to which the direction relates or otherwise) by the person making the publication or disclosure;

- (c) a lawyer—to obtain legal advice or representation in relation to the order;
- (d) a relevant court—with the court's leave.

Note The application for leave, and any proceeding with the court's leave, must be heard in closed court, see s (8).

- (4) Also, subsections (1) and (2) do not apply if the publication or disclosure is made—

- (a) by a police officer in the exercise of the officer's functions; or
- (b) for the purpose of giving or obtaining legal advice, or making legal representations, in relation to the order.

- (5) A person commits an offence if—

- (a) a relevant court has given a direction under section 35 (1) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
- (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
- (c) the person ceases to be a person mentioned in subsection (3) or (4); and
- (d) the person publishes or discloses the matter to someone else.

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

- (6) A person commits an offence if—

- (a) a relevant court has given a direction under section 35 (1) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and

- (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
- (c) the person ceases to be a person mentioned in subsection (3) or (4); and
- (d) the person publishes or discloses information to someone else; and
- (e) the other person could infer from the information the matter to which the direction relates.

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

- (7) An offence against this section is a strict liability offence.
- (8) For subsection (3) (d), an application for leave, and any proceeding with the court's leave, must be heard in closed court.

37 Payment of living and business expenses from restrained property

- (1) A relevant court may, in a restraining order or an order under section 39 (Additional orders about restraining orders and restrained property) varying a restraining order, allow any of the following expenses to be met out of the restrained property of a person, or a stated part of the property:
 - (a) the living and business expenses of the person (other than the person's legal expenses in defending a criminal charge);
 - (b) the living expenses of a dependant of the person.

Note For legal expenses in defending a criminal charge, see s 38.

- (2) However, the court must not allow expenses to be met out of restrained property unless the person satisfies the court that—
 - (a) the expenses are reasonable; and
 - (b) the expenses are necessary to avoid severe hardship to the person or the person's dependants; and

- (c) the expenses cannot be met out of property of the person not subject to a restraining order; and
 - (d) any property to be released from restraint for the expenses was lawfully acquired by the person, is not tainted property and does not have evidentiary value in any criminal proceeding.
- (3) The regulations may—
- (a) prescribe matters to which the court may, must or must not have regard for subsection (2) (a) or (b); and
 - (b) prescribe, or make provision in relation to, the maximum amount of living or business expenses of a person that may be allowed (for a period or otherwise).
- (4) Regulations made for this section may apply, adopt or incorporate (with or without change) a provision of a law of the Commonwealth or a State, or an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (5) In this section:

dependant, of a person, means the person's domestic partner or a child of the person.

domestic partner, of a person, means a person who lives with the person in a domestic partnership, and includes a spouse.

domestic partnership means the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.

38 Payment of certain legal expenses from restrained property

- (1) A relevant court may, in a restraining order or an order under section 39 (Additional orders about restraining orders and restrained property) varying a restraining order, allow a person's legal expenses in defending a criminal charge to be met out of the restrained property of the person, or a stated part of the property.
- (2) However, the court must not allow the legal expenses to be met out of restrained property unless—
 - (a) the person applies for an order for the legal expenses to be met out of restrained property; and
 - (b) the application is supported by an affidavit of the person setting out all of the person's interests in property, including any property of the person outside Australia, and the person's liabilities; and
 - (c) the court is satisfied that—
 - (i) the affidavit is a true statement of the person's interests in property and the person's liabilities; and
 - (ii) the person has taken all reasonable steps to bring any property outside Australia within the jurisdiction of the court; and
 - (iii) the legal expenses cannot be met out of property of the person not subject to a restraining order; and
 - (iv) any property to be released from restraint for the expenses was lawfully acquired by the person, is not tainted property and does not have evidentiary value in any criminal proceeding.
- (3) If the court makes or varies a restraining order that allows the legal expenses to be met out of restrained property, the court must include in the order conditions ensuring that—

- (a) restrained property is used only to meet legal fees, disbursements and out-of-pocket expenses incurred by the person in defending the criminal charge; and
- (b) all legal fees, disbursements and out-of-pocket expenses are properly and reasonably incurred by the person; and
- (c) all legal fees are calculated in accordance with the scale of costs for criminal matters determined by the legal aid commission in accordance with the *Legal Aid Act 1977*, section 32 (8), (9) and (10).

39 Additional orders about restraining orders and restrained property

- (1) A relevant court may, when it makes a restraining order or at any later time before the order ends, make any additional order that the court considers appropriate in relation to the restraining order or restrained property (other than an order mentioned in subsection (2)).

Examples of additional orders

- 1 an order varying the property subject to the restraining order (other than an order excluding property from the restraining order)
- 2 an order authorising the disposal of the property subject to the restraining order to satisfy a penalty order or execution levied against the property
- 3 an order varying any condition to which the restraining order is subject.
- 4 an order that living or business expenses of a person, or legal expenses of a person to defend a criminal charge, be met out of restrained property
- 5 an order for the carrying out of any undertaking about the payment of damages or costs given by the Territory in relation to the making or operation of the restraining order
- 6 an order for the examination of anyone before the court, or an officer of the court, about the affairs (including the nature and location of any property) of the owner of restrained property or of the offender
- 7 an order for the examination of anyone before the court, or an officer of the court, about any property that may be tainted property
- 8 an order directing the owner of the restrained property or anyone else to give to a stated person, within a stated period, a sworn statement about stated particulars of the restrained property

- 9 an order directing the registrar-general not to register any instrument affecting restrained property except in accordance with the order
- 10 an order directing the owner of restrained property or anyone else to do anything necessary or convenient to be done to allow the public trustee to take control of the property in accordance with the restraining order, including anything necessary or convenient to be done to bring the property within the jurisdiction
- 11 if the restraining order directs the public trustee to take control of property, an order regulating how the public trustee may exercise functions under the restraining order or an order deciding any question about the property

Note 1 For general provisions about additional orders under this section (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) However, the court must not make any of the following orders under subsection (1):

- (a) an order revoking or otherwise ending a restraining order;
- (b) an order for the extension of the period a restraining order is to remain in force;
- (c) an order for the exclusion of property from a restraining order.

Note 1 For the revocation of a restraining order, see s 43 and s 44.

Note 2 For the extension of the operation of a restraining order, see s 49.

Note 3 For the exclusion of property from a restraining order, see pt 6.

(3) Also, the court must not make an order that living or business expenses of a person, or legal expenses of a person to defend a criminal charge, be met out of restrained property unless the order is made in accordance with section 37 or 38 (as appropriate).

(4) If the DPP proposes to oppose an application by a person under this section for an additional order, the DPP must give the applicant, and anyone else to whom notice of the application was given, written notice of the grounds on which the application will be opposed.

- (5) To remove any doubt, an additional order under this section does not end only because the restraining order ends or the property to which the additional order relates ceases to be restrained property.

40 Contravention of additional orders under s 39

A person commits an offence if—

- (a) a relevant court makes an additional order under section 39; and
- (b) the person has notice of the order (whether by being given a copy of the order or otherwise); and
- (c) the person contravenes the order.

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

Division 4.3 Duration of restraining orders

41 Meaning of *forfeiture or penalty application* for div 4.3

In this division:

forfeiture or penalty application means an application for a forfeiture order or a penalty order.

42 Restraining orders generally not time limited

A restraining order operates (or continues to operate) until it ends under this division (including in accordance with an order under section 49 (Extension of time for restraining orders)).

43 Revocation or variation of restraining orders made without notice of application

- (1) A person with an interest in restrained property may apply to the court that made the restraining order for the revocation, by order, of the restraining order if the DPP did not give the person notice of the application for the order.

- (2) The court must not make an order revoking the restraining order unless it is satisfied that there were not and are no longer, or there are no longer, sufficient grounds for making the order.
- (3) However, if the DPP has told the court that the restraining order applies to property that has evidentiary value in a criminal proceeding, the court must not revoke the restraining order without the DPP's agreement but may, by order, vary the restraining order to exclude any part of the property that the DPP has told the court does not have evidentiary value.
- (4) If the DPP proposes to oppose an application by a person under this section for the revocation of a restraining order, the DPP must give the applicant, and anyone else to whom notice of the application was given, written notice of the grounds on which the application will be opposed.

44 Revocation or variation of restraining orders if security or undertakings given

- (1) The owner of restrained property may apply to the court that made the restraining order for the restraining order to be revoked or varied, by order, under this section.
- (2) The court must not make an order revoking the restraining order unless the DPP has told the court that the owner has given—
 - (a) security satisfactory to the DPP to the value estimated by the DPP of any order that may be sought under this Act in relation to the offence in relation to which the order was made (and any related offence); or
 - (b) an undertaking satisfactory to the DPP about the restrained property.
- (3) However, if the owner can only give security or an undertaking that partly satisfies the DPP, the court may, by order, vary the restraining order to exclude particular property in relation to which the DPP has told the court that satisfactory security or a satisfactory undertaking has been given.

- (4) Also, if the DPP has told the court that the restraining order applies to property that has evidentiary value in a criminal proceeding, the court must not revoke the restraining order without the DPP's agreement but may, by order, vary the restraining order to exclude any part of the property that the DPP has told the court does not have evidentiary value.
- (5) If the DPP proposes to oppose an application by a person under this section for the revocation of a restraining order, the DPP must give the applicant, and anyone else to whom notice of the application was given, written notice of the grounds on which the application will be opposed.
- (6) The court may order that the revocation or variation of a restraining order under this section takes effect at a stated time or on the happening of a stated event.

45 When restraining order over particular property ends

- (1) A restraining order over particular property ends—
 - (a) if the restraining order stops applying to the property in accordance with an order under this Act (for example, an exclusion order); or
 - (b) if the property is forfeited under this Act—when the property vests in law in the Territory and the public trustee takes control of the property; or
 - (c) if the property is disposed of by the public trustee to satisfy a penalty order; or
 - (d) when the restraining order ends under this division.

Note 1 On forfeiture, restrained property vests in the Territory. However, registrable property does not vest in law in the Territory until the Territory's interest is registered in the appropriate register. Until then, it is vested in equity in the Territory. (See s 109 and s 110.)

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) To remove any doubt, the ending of a restraining order over particular property does not affect the operation of the restraining order in relation to other property restrained under the order.

Note For the meaning of *in relation to*, see dict.

46 When unclaimed tainted property restraining order ends

- (1) An unclaimed tainted property restraining order over property ends if—
- (a) the restraining order stops applying to the property in accordance with an order under this Act (for example, an exclusion order); or
 - (b) the automatic forfeiture of the property is fully satisfied.

Note 1 For the meaning of *fully satisfied*, see dict.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If a person claims an interest in the property to which the unclaimed tainted property restraining order applies, the order does not cease to be an unclaimed tainted property restraining order, or cease to apply to the property, only because of the making of the claim.
- (3) The relevant court may, on the application of the DPP while the order is in force, order that the restraining order is to end earlier than otherwise provided for by this section.

47 When restraining order ends—ordinary indictable offences

- (1) This section applies to an offender over whose property a restraining order has been made in relation to an ordinary indictable offence.
- (2) However, this section does not apply if the restraining order was also given in relation to a related serious offence, or is varied to apply to a related serious offence.

- (3) The restraining order ends for the circumstances stated in table 1, column 2 at the time indicated for those circumstances in column 3.

Note 1 The restraining order may continue to operate in relation to related ordinary indictable offences, see s (6).

Note 2 For the ending of forfeiture and penalty orders for ordinary indictable offences, see—

- s 56 (When conviction forfeiture order ends)
- s 98 (When penalty order ends).

- (4) A reference in table 1 to a person being convicted of the offence mentioned in subsection (1) includes a reference to the person being convicted of a related offence instead of the offence mentioned in subsection (1).

- (5) For table 1, items 4 and 6, if more than 1 forfeiture or penalty application is made within the period stated in the item, column 2, the restraining order ends at the latest time that it would end if any of those applications were the only forfeiture or penalty application made.

- (6) If, within the period stated in the restraining order under section 33 (2) (d) (Restraining order—contents), an indictment is presented against the offender for another ordinary indictable offence or offences related to the offence mentioned in subsection (1) (the **primary offence**), the restraining order ends at the later of the following times:

- (a) the time that it would end if there were no related offences;
- (b) the latest time that it would end if—
 - (i) the related offence or any of the related offences, taken by itself, were the primary offence; and
 - (ii) there were no other offences in relation to which the restraining order had been made.

- (7) The relevant court may, on the application of the DPP while the order is in force, order that the restraining order is to end earlier than otherwise provided for by this section.

Table 1 Ending of restraining orders—ordinary indictable offences

column 1 item	column 2 circumstances	column 3 when restraining order ends
1	an indictment is not presented against the offender for the offence before the end of the period stated in the restraining order under section 33 (2) (d)	end of the period stated in the restraining order under that paragraph
2	an indictment is presented against the offender for the offence before the end of the period stated in the restraining order under section 33 (2) (d), but the offender is cleared of the offence	when the offender is cleared of the offence
3	the offender is convicted of the offence, the restraining order is made before the conviction, and no forfeiture or penalty application is made within 6 months after the day of the conviction	end of the 6 month period

column 1 item	column 2 circumstances	column 3 when restraining order ends
4	the offender is convicted of the offence, the restraining order is made before the conviction, and a forfeiture or penalty application is made within 6 months after the day of the conviction	at or after the finalisation of the proceeding in relation to the application, as follows: (a) if no forfeiture order or penalty order is in force at the finalisation of the proceeding—at that time; (b) if a forfeiture order or penalty order is in force at that time—when the forfeiture order or penalty order ends
5	the offender is convicted of the offence, the restraining order is made on the same day as, or after, the conviction, and no forfeiture or penalty application is made within 6 months after the day the restraining order was made	end of the 6 month period
6	the offender is convicted of the offence, the restraining order is made on the same day as, or after, the conviction, and a forfeiture or penalty application is made within 6 months after the day the restraining order was made	at or after the finalisation of the proceeding in relation to the application, as follows: (a) if no forfeiture order or penalty order is in force at the time of the finalisation of the proceeding—at that time; (b) if a forfeiture order or penalty order is in force at that time—when the forfeiture order or penalty order ends

48 When restraining order ends—serious offences

- (1) This section applies to an offender over whose property a restraining order has been made in relation to a serious offence.
- (2) The restraining order ends for the circumstances stated in table 2, column 2 at the time indicated for those circumstances in column 3.

Note 1 The restraining order may continue to operate in relation to related serious offences, see s (5).

Note 2 For the ending of forfeiture and penalty orders for serious offences, see—

- s 56 (When conviction forfeiture order ends)
- s 71 (When civil forfeiture order ends)
- s 98 (When penalty order ends).

Note 3 For the ending of automatic forfeiture for serious offences, see s 61.

- (3) A reference in table 2 to a person being convicted of the offence mentioned in subsection (1) includes a reference to the person being convicted of a related offence instead of the offence mentioned in subsection (1).
- (4) For table 2, item 4, if more than 1 forfeiture or penalty application is made before the restraining order ends under item 1, 2 or 3, the restraining order ends at the latest time that it would end if any of those applications were the only forfeiture or penalty application made.
- (5) If, within the period stated in the restraining order under section 33 (2) (d) (Restraining order—contents), an indictment is presented against the offender for another offence or offences related to the offence mentioned in subsection (1) (the **primary offence**), the restraining order ends at the later of the following times:
 - (a) the time that it would end under this section if there were no related offences;

- (b) the latest time that it would end under this section or section 47 (When restraining order ends—ordinary indictable offences) if—
- (i) the related offence or any of the related offences, taken by itself, were the primary offence; and
 - (ii) there were no other offences in relation to which the restraining order had been made.
- (6) The relevant court may, on the application of the DPP while the order is in force, order that a restraining order ends earlier than otherwise provided for by this section.

Table 2 Ending of restraining orders—serious offences

column 1 item	column 2 circumstances	column 3 when restraining order ends
1	an indictment is not presented against the offender for the offence, or a forfeiture or penalty application is not made, before the end of the period stated in the restraining order under section 33 (2) (d)	end of the period stated in the restraining order under that paragraph
2	the offender is cleared or convicted of the offence, the restraining order is made before the offender is cleared or convicted of the offence, and no forfeiture or penalty application is made within 6 months after the day the offender is cleared or convicted	the later of whichever of the following events applies: (a) end of the 6 month period; (b) when the automatic forfeiture ends
3	the offender is cleared or convicted of the offence, the restraining order is made on the same day as, or after, the offender is cleared or convicted of the offence, and no	the later of whichever of the following events applies: (a) end of the 6 month period;

column 1 item	column 2 circumstances	column 3 when restraining order ends
	forfeiture or penalty application is made within 6 months after the day the offender is cleared or convicted	(b) when the automatic forfeiture ends
4	a forfeiture or penalty application is made before the restraining order ends under item 1, 2 or 3	<p>the later of whichever of the following events applies on or after the finalisation of the proceeding in relation to the application:</p> <p>(a) if no forfeiture order or penalty order is in force at the time of the finalisation of the proceeding—when the proceeding is finalised;</p> <p>(b) if a forfeiture order or penalty order is in force at that time—when the order ends;</p> <p>(c) if the offender has been convicted of the offence—when the automatic forfeiture ends</p>

49 Extension of time for restraining orders

- (1) This section applies to an offender over whose property a restraining order is or has been in force in relation to the commission (or the alleged commission) of an indictable offence, despite anything else in this Act.
- (2) On the application of the DPP, the court that made the restraining order may make either or both of the following orders:

- (a) an order that the restraining order is to remain in force for a stated period (or as stated in the order);
 - (b) an order that a restraining order that has ended is to be revived for a stated period (or as stated in the order).
- (3) The order may be stated to have effect—
- (a) immediately; or
 - (b) at a stated time; or
 - (c) if a stated event happens.
- (4) The court may make an order under this section only if satisfied that—
- (a) any additional property to which the application relates was (or will be) derived from the offence, or identified, only after the restraining order ended (or would otherwise end); or
 - (b) necessary evidence for the making of a forfeiture or penalty application has (or will) become available only after the restraining order ended (or would otherwise end); or
 - (c) if an automatic forfeiture in relation to a serious offence ends because the offender is cleared of the offence—it is desirable in relation to an application for a civil forfeiture order or a penalty order under section 85 (Penalty orders—commission of serious offences); or
 - (d) it is otherwise desirable having regard to the purposes of this Act.

Division 4.4 Restraining orders—other matters

50 Restraining orders—registration in statutory property registers

- (1) This section applies if a restraining order is over property that may be recorded in a statutory property register

Note A registered interstate restraining order is taken to be a restraining order under this Act (see s 139).

- (2) The restraining order, or details of the restraining order, may be recorded in the register on application by a responsible authority.
- (3) Anyone who acquires an interest in the property after the recording of the restraining order in the register is taken to have notice of the restraining order at the time of acquisition.
- (4) Without limiting subsection (2), if the restraining order is over land registered under the *Land Titles Act 1925*—
 - (a) the responsible authority may lodge a copy of the restraining order with the registrar-general for registration under the *Land Titles Act 1925*, section 104 (Lodging of caveat); and
 - (b) the responsible authority is, on behalf of the Territory, taken to be a person claiming an interest in the land to which the restraining order relates; and
 - (c) to remove any doubt, that Act, section 104 (5) does not apply to the registered restraining order.

Note The *Land Titles Act 1925*, s 104 (5) allows certain dealings to be registered unless the caveat prohibits them. However, this Act, s 23 prohibits such a dealing.

- (5) If the property ceases to be restrained property, the responsible authority must apply for the cancellation of the restraining order's registration in the statutory property register.
- (6) Without limiting subsection (5), if the restraining order is over land registered under the *Land Titles Act 1925*, the responsible authority must lodge a notice of the ending of the restraining order with the registrar-general for registration under that Act.
- (7) In this section:

responsible authority means—

- (a) the DPP; or

- (b) if the public trustee has taken control of the property under this Act—the public trustee; or
- (c) for a registered interstate restraining order—anyone who is authorised under the corresponding law under which the order was made to register a restraining order, or details of a restraining order, in a statutory property register.

51 Execution against restrained property

- (1) A restraining order over the property of a person does not prevent the levying of execution against the property, entirely or in part, in satisfaction of a penalty order in force against the person.
- (2) However, the property must not be disposed of, or otherwise dealt with, except in accordance with an order of a relevant court under section 39 (1) (Additional orders about restraining orders and restrained property).

Part 5 Forfeiture of property

Division 5.1 Conviction forfeiture orders

Note For general provisions about a proceeding for a conviction forfeiture order (which is a confiscation proceeding—see s 236), see pt 14.

52 Meaning of *conviction forfeiture order*

In this Act:

conviction forfeiture order means an order under section 54 (Conviction forfeiture orders—making) for the forfeiture to the Territory of tainted property in relation to an indictable offence.

53 Conviction forfeiture orders—application

- (1) The DPP may apply to a relevant court for a conviction forfeiture order against a person.

Note A reference to a *person* generally includes a reference to a corporation as well as an individual, see Legislation Act, s 160. (See also the Legislation Act, dict, pt 1, def *person*.)

- (2) The application may be made before or after, or at the same time as, the person's conviction for an indictable offence.
- (3) However, if the person has been convicted of the offence, the DPP must make the application within 2 years after the day of the conviction.

Note The court may allow leave for an application to be made after the time fixed by this section in certain circumstances (see s 246).

54 Conviction forfeiture orders—making

- (1) On application under section 53, the court must make an order for the forfeiture to the Territory of tainted property in relation to the indictable offence if satisfied that—
 - (a) the offender has been convicted of the offence; and

- (b) the offender has not been cleared of the offence; and
 - (c) the property, or any of the property, to which the application relates is tainted property in relation to the offence.
- (2) If a court makes the order, it must state in the order—
- (a) the property to which it applies; and
 - (b) what it considers to be the value of the property (other than money) to be forfeited to the Territory under the order at the time the order is made.

55 Conviction forfeiture orders—forfeiture

- (1) The property to which the conviction forfeiture order applies is forfeited to the Territory at the end of 14 days after the day the order is made, except so far as the property is excluded from forfeiture under an exclusion order.

Note 1 For the commencement of a restraining order, see Legislation Act, s 73 (4).

Note 2 The effect of an exclusion order for property subject to forfeiture is that the property is excluded from forfeiture, see s 74 (c).

- (2) However, if an application for an exclusion order in relation to the property, or a part of the property, has been made (but not decided) before the end of the 14-day period, the property (or that part) is not forfeited until the proceeding in relation to the exclusion order is finalised.

56 When conviction forfeiture order ends

- (1) A conviction forfeiture order ends if—
- (a) the offender is cleared of the offence to which the order relates, and all related offences (if any); or
 - (b) the order is reversed or set aside on appeal; or
 - (c) the order is fully satisfied.

Note For the meaning of *fully satisfied*, see dict.

- (2) The order is satisfied for a particular interest in forfeited property if the interest is bought back under section 127 (Buyback orders—buying interest in property).

Note After the forfeiture of property, the offender may recover the property or its value in certain circumstances (see div 9.5).

Division 5.2 Automatic forfeiture—conviction for serious offences

57 Unclaimed tainted property restraining orders—non-application of div 5.2

This division does not apply to property restrained under an unclaimed tainted property restraining order.

Note For the forfeiture of unclaimed tainted property, see div 5.3.

58 Automatic forfeiture of restrained property on conviction for serious offences

- (1) This section applies if—
- (a) a person is convicted of a serious offence; and
 - (b) a restraining order (other than an artistic profits restraining order) is made, whether before or after the conviction, over property in relation to the offence or a related serious offence committed by the person.

Note A reference to a *person* generally includes a reference to a corporation as well as an individual, see Legislation Act, s 160. (See also the Legislation Act, dict, pt 1, def *person*.)

- (2) The restrained property is forfeited to the Territory at the end of whichever of the following periods applies (the *relevant 14-day period*), except so far as the property is excluded from forfeiture under an exclusion order:
- (a) if the restraining order was made before the conviction—14 days after the day of conviction;

- (b) if the restraining order was made at the same time as or after the conviction—14 days after the day the restraining order comes into force.

Note 1 For the commencement of a restraining order, see Legislation Act, s 73 (4).

Note 2 The effect of an exclusion order for property subject to forfeiture is that the property is excluded from forfeiture, see s 74 (c).

- (3) However, if an application for an exclusion order in relation to the property, or a part of the property, has been made (but not decided) before the end of the relevant 14-day period, the property (or that part) is not forfeited until the proceeding in relation to the exclusion order is finalised.

59 Automatic forfeiture—court order declaring property automatically forfeited

- (1) The DPP may apply to a relevant court for an order declaring that property has been automatically forfeited under this division.
- (2) If the relevant court is satisfied that the property has been automatically forfeited under this division, the court must make the order and state in the order the property to which it applies.
- (3) The registrar of the relevant court may exercise the functions of the court for this section.

Note For general provisions about a proceeding for an order under this section (which is a confiscation proceeding—see s 236), see pt 14.

60 Automatic forfeiture—court orders

- (1) A relevant court may, when it convicts a person of a serious offence or at any later time, make any order that it considers appropriate for giving effect to an automatic forfeiture of property.

Examples of orders

- 1 an order for the examination of anyone before the court, or an officer of the court, about any property that might be forfeited because of the conviction

Part 5 Forfeiture of property
Division 5.2 Automatic forfeiture—conviction for serious offences

Section 61

- 1 an order directing the owner of property that might be forfeited because of the conviction, or anyone else, to give to a stated person, within a stated period, a sworn statement about stated particulars of the property
- 2 an order directing the owner of property that might be forfeited because of the conviction, or anyone else, to do anything necessary or convenient to be done to allow the public trustee to take control of the property, including anything necessary or convenient to be done to bring the property within the jurisdiction
- 3 an order in relation to the registration of title to, or charges over, property under a Territory law

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The order may be made on the court's initiative, or on the application of any of the following people:
- (a) the DPP;
 - (b) the offender;
 - (c) the public trustee;
 - (d) anyone with an interest in property to which the order relates;
 - (e) anyone else with the court's leave.

Note For general provisions about a proceeding for an order under this section (which is a confiscation proceeding—see s 236), see pt 14.

- (3) A person commits an offence if—
- (a) a relevant court makes an order under subsection (1) to give effect to an automatic forfeiture of property; and
 - (b) the order requires the person to do, or not do, something stated in the order; and
 - (c) the person has notice of the order (whether by being given a copy of the order or otherwise); and
 - (d) the person contravenes the order.

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

61 When automatic forfeiture under div 5.2 ends

- (1) Automatic forfeiture under this division ends if—
 - (a) the offender is cleared of the offence to which the forfeiture relates, and all related serious offences (if any); or
 - (b) the automatic forfeiture is fully satisfied.

Note For the meaning of *fully satisfied*, see dict.

- (2) Automatic forfeiture is satisfied for a particular interest in forfeited property if the interest is bought back under section 127 (Buyback orders—buying interest in property).

Note After the forfeiture of property, the offender may recover the property or its value in certain circumstances (see div 9.5).

Division 5.3 Automatic forfeiture—unclaimed tainted property

Note For general provisions about a proceeding for a conviction forfeiture order (which is a confiscation proceeding—see s 236), see pt 14.

62 Forfeiture of unclaimed tainted property

- (1) This section applies if an unclaimed tainted property restraining order is made over property.
- (2) The restrained property is forfeited to the Territory at the end of 14 days after the day the restraining order comes into force, except so far as the property is excluded from forfeiture under an exclusion order.

Note 1 For the commencement of a restraining order, see Legislation Act, s 73 (4).

Note 2 The effect of an exclusion order for property subject to forfeiture is that the property is excluded from forfeiture, see s 74 (c).

- (3) However, if an application for an exclusion order in relation to the property, or a part of the property, has been made (but not decided) before the end of the 14-day period, the property (or that part) is not forfeited until the proceeding in relation to the exclusion order is finalised.

63 When automatic forfeiture under div 5.3 ends

Automatic forfeiture under this division ends if the automatic forfeiture is fully satisfied.

Note For the meaning of *fully satisfied*, see dict.

Division 5.4 Civil forfeiture orders

Note For general provisions about a proceeding for a conviction forfeiture order (which is a confiscation proceeding—see s 236), see pt 14.

64 Artistic profits and unclaimed tainted property— non-application of div 5.4

This division does not apply to property restrained under—

- (a) an artistic profits restraining order; or
- (b) an unclaimed tainted property restraining order.

Note 1 An artistic profits restraining order is made solely to preserve property to satisfy a penalty order for artistic profits in relation to an offence (see s 20).

Note 2 Unclaimed tainted property is forfeitable under div 5.3.

65 Meaning of *civil forfeiture order*

In this Act:

civil forfeiture order means an order under section 67 (Civil forfeiture orders—making) for the forfeiture to the Territory of restrained property in relation to the commission (or the alleged commission) of a serious offence.

66 Civil forfeiture orders—application

- (1) The DPP may apply to a relevant court for a civil forfeiture order for the forfeiture to the Territory of property restrained in relation to the commission (or the alleged commission) of a serious offence.
- (2) The application may be made—
 - (a) at the same time as, or after, an application for a restraining order in relation to the offence; or
 - (b) if a restraining order is in force in relation to the offence.

67 Civil forfeiture orders—making

- (1) This section applies if, on an application under section 66 for an order for the forfeiture to the Territory of restrained property, the court is satisfied on the balance of probabilities that a person (the *offender*) has committed a serious offence within whichever of the following periods applies (the *relevant period*):
 - (a) 6 years before the day the application to restrain the property was made;
 - (b) if an extended period for making the restraining order application was allowed under section 246 (Confiscation proceedings—time extensions for applications)—the total of the 6-year period and the extended period.

Note 1 The court must be satisfied on the balance of probabilities about the commission of the offence because confiscation proceedings are civil, not criminal (see s 237).

Note 2 A reference to a *person* generally includes a reference to a corporation as well as an individual, see Legislation Act, s 160. (See also the Legislation Act, dict, pt 1, def *person*.)

- (2) If this section applies, the relevant court must order that the restrained property be forfeited to the Territory.
- (3) The order must state—
 - (a) the property to which it applies; and

- (b) what the relevant court considers to be the value of the property (other than money) to be forfeited to the Territory under the order at the time the order is made; and
- (c) if the relevant court making the order has given a direction under section 69 (Civil forfeiture order proceedings—restrictions on disclosure)—
 - (i) the direction given by the court; and
 - (ii) the effect of section 70 (Civil forfeiture orders—disclosure offences) in relation to the direction.
- (4) To remove any doubt, if the relevant court is satisfied that the offender committed a serious offence within the relevant period, the court must not refuse to make a civil forfeiture order only because it is not satisfied—
 - (a) that a particular serious offence was committed by the offender within the relevant period; or
 - (b) that the offence was committed on any particular day or time within the relevant period.
- (5) Also, to remove any doubt, the relevant court must not refuse to make a civil forfeiture order in relation to a serious offence only because—
 - (a) an indictment has not been presented against the offender for the offence; or
 - (b) the offender has not been convicted of the offence; or
 - (c) the offender has been cleared of the offence, including being cleared after having been convicted of the offence; or
 - (d) a doubt is raised about whether the offender committed the offence.

68 Civil forfeiture orders—forfeiture

- (1) The property to which the civil forfeiture order applies is forfeited to the Territory at the end of 14 days after the day the order is made, except so far as the property is excluded from forfeiture under an exclusion order.

Note 1 For the commencement of a restraining order, see Legislation Act, s 73 (4).

Note 2 The effect of an exclusion order for property subject to forfeiture is that the property is excluded from forfeiture, see s 74 (c).

- (2) However, if an application for an exclusion order in relation to the property, or a part of the property, has been made (but not decided) before the end of the 14-day period, the property (or that part) is not forfeited until the proceeding in relation to the exclusion order is finalised.

69 Civil forfeiture order proceedings—restrictions on disclosure

- (1) On application by the DPP, a relevant court hearing an application for a civil forfeiture order may—
- (a) direct that the hearing of the application, or part of it, take place in closed court and give directions about who may be present; and
 - (b) give directions prohibiting or restricting the publication or disclosure of all or any of the following:
 - (i) the fact that an application for the order, or that a civil forfeiture order, has been made;
 - (ii) the application for the order;
 - (iii) any information about the proceeding (whether or not a hearing has been held);
 - (iv) any evidence given, statement made or thing done during the proceeding;

- (v) any information, document or thing derived from anything mentioned in this subsection.

Examples of directions

- 1 that the application for the civil forfeiture order not be disclosed to the person against whom the civil forfeiture order is made until the court has decided an application for a restraining order against someone else's property
- 2 that the supporting affidavit must be made available only to the offender's lawyer

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In deciding whether to give a direction under subsection (1), the court must have regard to whether the direction—
 - (a) would promote the purposes of this Act; or
 - (b) is desirable to protect the integrity of an investigation (however described) for any purpose or a prosecution of an offence.
- (3) The court may also have regard to any other relevant matter in deciding whether to give a direction under subsection (1).

70 Civil forfeiture orders—disclosure offences

Note An offence against this section is a strict liability offence, see s (7).

- (1) A person commits an offence if—
 - (a) a relevant court has given a direction under section 69 (1) (b) prohibiting or restricting the publication or disclosure of a matter mentioned in the paragraph; and
 - (b) the person has notice of the direction (whether by being given a copy of the civil forfeiture order to which the direction relates or otherwise); and
 - (c) the person publishes or discloses the matter to someone else.

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

- (2) A person commits an offence if—
- (a) a relevant court has given a direction under section 69 (1) (b) prohibiting or restricting the publication or disclosure of a matter mentioned in the paragraph; and
 - (b) the person has notice of the direction (whether by being given a copy of the civil forfeiture order to which the direction relates or otherwise); and
 - (c) the person publishes or discloses information to someone else; and
 - (d) the other person could infer from the information the matter to which the direction relates.

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

- (3) Subsections (1) and (2) do not apply if the publication or disclosure is to any of the following entities in the circumstances mentioned for the entity:
- (a) a police officer—in any circumstances;
 - (b) an officer, employee or agent of the person—to ensure that the order is complied with and the person to whom the publication or disclosure is made is given notice of the direction (whether by being given a copy of the restraining order to which the direction relates or otherwise) by the person making the publication or disclosure;
 - (c) a lawyer—to obtain legal advice or representation in relation to the order;
 - (d) a relevant court—with the court's leave.

Note The application for leave, and any proceeding with the court's leave, must be heard in closed court, see s (8).

- (4) Also, subsections (1) and (2) do not apply if the publication or disclosure is made—

- (a) by a police officer in the exercise of the officer's functions; or
 - (b) for the purpose of giving or obtaining legal advice, or making legal representations, in relation to the order.
- (5) A person commits an offence if—
- (a) a relevant court has given a direction under section 69 (1) (b) prohibiting or restricting the publication or disclosure of a matter mentioned in the paragraph; and
 - (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
 - (c) the person ceases to be a person mentioned in subsection (3) or (4); and
 - (d) the person publishes or discloses the matter to someone else.

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

- (6) A person commits an offence if—
- (a) a relevant court has given a direction under section 69 (1) (b) prohibiting or restricting the publication or disclosure of a matter mentioned in the paragraph; and
 - (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
 - (c) the person ceases to be a person mentioned in subsection (3) or (4); and
 - (d) the person publishes or discloses information to someone else; and
 - (e) the other person could infer from the information the matter to which the direction relates.

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

- (7) An offence against this section is a strict liability offence.

- (8) For subsection (3) (d), an application for leave, and any proceeding with the court's leave, must be heard in closed court.

71 When civil forfeiture order ends

- (1) A civil forfeiture order ends if—
- (a) the order is set aside or discharged on appeal; or
 - (b) the order is fully satisfied.

Note For the meaning of *fully satisfied*, see dict.

- (2) The order is satisfied for a particular interest in forfeited property if the interest is bought back under section 127 (Buyback orders—buying interest in property).

Note After the forfeiture of property, the offender may recover the property or its value in certain circumstances (see div 9.5).

Part 6 Exclusion of property

Note For general provisions about a proceeding for an exclusion order (which is a confiscation proceeding—see s 236), see pt 14.

Division 6.1 General

72 Meaning of *exclusion order*

In this Act:

exclusion order means an order under this part in relation to—

- (a) restrained property (other than restrained property that has been forfeited) or property in relation to which an application for a restraining order has been made; or
- (b) property in relation to which an application for a conviction forfeiture order has been made; or
- (c) property subject to forfeiture under this Act.

Note 1 **Property** includes an interest in property, see Legislation Act, dict, pt 1.

Note 2 This part does not apply to forfeited property (see s 75 (4)). A person with an interest in forfeited property immediately before its forfeiture may apply for the return of the property or compensation for its value under a return or compensation order under div 9.5.

Note 3 Property is forfeited 14 days after a forfeiture order or an automatic forfeiture applies to the property unless an application for an exclusion order is made, see pt 5 (Forfeiture of property).

73 When property is *subject to forfeiture*

For this Act, property is *subject to forfeiture* if—

- (a) a forfeiture order made under this Act applies to the property and the property has not been forfeited; or
- (b) an automatic forfeiture under this Act applies to the property and the property has not been forfeited.

74 Effect of exclusion order

An exclusion order for property has effect as follows:

- (a) for property in relation to which an application for a restraining order or conviction forfeiture order has been made—the property is excluded from restraint or forfeiture (as appropriate);
- (b) for restrained property (other than restrained property that has been forfeited)—the restraining order stops applying to the property;
- (c) for property subject to forfeiture—the property is excluded from forfeiture.

Note This part does not apply to forfeited property (see s 75 (4)). A person with an interest in forfeited property immediately before its forfeiture may apply for the return of the property or compensation for its value under a return or compensation order under div 9.5.

Division 6.2 Making exclusion orders

75 Exclusion orders—application

- (1) This section applies to—
 - (a) restrained property (other than restrained property that has been forfeited) or property in relation to which an application for a restraining order has been made; or
 - (b) property in relation to which an application for a conviction forfeiture order has been made; or
 - (c) property subject to forfeiture under this Act.

Note See the notes to s 72.

- (2) A person claiming an interest in the property may apply to a relevant court for an exclusion order.
- (3) The application must be made—

- (a) if a restraining order or conviction forfeiture order has been applied for (but not made) in relation to the property—at the same time as, or after, the application is made for the order but before the order is made; or
 - (b) if the property is restrained or subject to forfeiture—at any time before the property is forfeited.
- (4) To remove any doubt, an application for a exclusion order cannot be made in relation to property that has been forfeited.

76 Making of exclusion orders—ordinary indictable offences

- (1) This section applies to an application for an exclusion order for property if—
- (a) a restraining order in relation to the property has been applied for in relation to an ordinary indictable offence; or
 - (b) the property has been restrained (but not forfeited) in relation to an ordinary indictable offence; or
 - (c) a conviction forfeiture order for an ordinary indictable offence has been applied for in relation to the property; or
 - (d) the property is subject to forfeiture in relation to an ordinary indictable offence.
- (2) If the application is made by an offender, the relevant court must not make an exclusion order for the property unless the court is satisfied that the property—
- (a) is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country; and
- Note* For the meaning of *in relation to*, see dict.
- (b) is not required to be restrained to satisfy a penalty order; and
 - (c) does not have evidentiary value in any criminal proceeding.

- (3) However, if the court is satisfied that the property is not tainted property as mentioned in subsection (2) (a), but considers that the property (or any part of the property) may be required to be restrained to satisfy a penalty order, the court must make an exclusion order declaring that the property (or part)—
- (a) is not subject to forfeiture under a conviction forfeiture order; but
 - (b) is to remain restrained for the purpose of satisfying a penalty order.
- (4) If the application is made by a person other than an offender, the court must not make an exclusion order for the property unless it is satisfied that—
- (a) the applicant has an interest in the property; and
 - Note* For the meaning of *interest*, see Legislation Act, dict, pt 1.
 - (b) the applicant was not a party to the relevant indictable offence or any related offence; and
 - (c) the interest is not subject to the effective control of an offender; and
 - Note* For the meaning of *effective control*, see s 14.
 - (d) the interest is not tainted property in relation to the relevant indictable offence or any related offence; and
 - (e) if the interest was acquired completely or partly, or directly or indirectly, from the offender—the interest was acquired honestly and for sufficient consideration and the applicant took reasonable care to establish that the interest may be lawfully acquired by the applicant; and
 - (f) the property does not have evidentiary value in any criminal proceeding.
- (5) An exclusion order must state the property to which it applies.

77 Making of exclusion orders—serious offences

- (1) This section applies to an application for an exclusion order for property if—
 - (a) a restraining order in relation to the property has been applied for in relation to serious offence; or
 - (b) the property has been restrained (but not forfeited) in relation to a serious offence; or
 - (c) a conviction forfeiture order for a serious offence has been applied for in relation to the property; or
 - (d) the property is subject to automatic forfeiture under division 5.2 (Automatic forfeiture—conviction for serious offences).
- (2) If the application is made by an offender, the relevant court must not make an exclusion order for the property unless the court is satisfied that the property—
 - (a) was lawfully acquired by the offender; and
 - (b) is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country; and

Note For the meaning of *in relation to*, see dict.

 - (c) is not required to be restrained to satisfy a penalty order; and
 - (d) does not have evidentiary value in any criminal proceeding.
- (3) However, if the court is satisfied that the property was lawfully acquired, and is not tainted property as mentioned in subsection (2) (b), but considers that the property (or any part of the property) may be required to be restrained to satisfy a penalty order, the court must make an exclusion order declaring that the property (or part)—
 - (a) is not subject to automatic forfeiture or to forfeiture under a forfeiture order; but

- (b) is to remain restrained for the purpose of satisfying a penalty order.
- (4) If the application is made by a person other than an offender, the court must not make an exclusion order for the property unless it is satisfied that—
- (a) the applicant has an interest in the property; and
- Note* For the meaning of *interest*, see Legislation Act, dict, pt 1.
- (b) the applicant was not a party to the relevant serious offence or any related offence; and
- (c) the interest is not subject to the effective control of an offender; and
- Note* For the meaning of *effective control*, see s 14.
- (d) the interest is not tainted property in relation to the relevant serious offence or any related offence; and
- (e) if the interest was acquired completely or partly, or directly or indirectly, from the offender—the interest was acquired honestly and for sufficient consideration and the applicant took reasonable care to establish that the interest may be lawfully acquired by the applicant;
- (f) the property does not have evidentiary value in any criminal proceeding.
- (5) An exclusion order must state the property to which it applies.

78 Making of exclusion orders—unclaimed tainted property

- (1) This section applies to an application for an exclusion order for unclaimed tainted property if—
- (a) an unclaimed tainted property restraining order has been applied for in relation to the property; or
- (b) the property has been restrained under an unclaimed tainted property restraining order (but not forfeited); or

- (c) the property is subject to automatic forfeiture under division 5.3 (Automatic forfeiture—unclaimed tainted property).
- (2) The court must not make an exclusion order unless the court is satisfied that—
- (a) the applicant for the exclusion order has an interest in the property; and
- Note* For the meaning of *interest*, see Legislation Act, dict, pt 1.
- (b) the interest was lawfully acquired by the applicant; and
- (c) the interest is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country; and
- Note* For the meaning of *in relation to*, see dict.
- (d) the interest is not required to be restrained to satisfy a penalty order; and
- (e) the property does not have evidentiary value in any criminal proceeding.
- (3) An exclusion order must state the property to which it applies.

Part 7 **Penalty orders**

Division 7.1 **Benefits**

79 **Meaning of *commission* of serious offence for pt 7**

In this part:

commission, of a serious offence, includes the alleged commission of the offence.

80 **Meaning of *benefits* derived by an offender**

In this Act:

benefits, derived by an offender from the commission of an offence, means—

- (a) tainted property, except tainted property that was used, or was intended by the offender to be used, in relation to the commission of an offence, and property derived by anyone from that property; and
- (b) artistic profits allowed under section 81 (3) in relation to the offence; and
- (c) any service or other advantage derived by the offender from the commission of the offence.

Example for par (c)

Mr Tres Adventuresome ran a small wholesale food business before becoming involved in illegal activity. He started to trade in gourmet foods as a cover for the commission of several offences involving the importation of cannabis into Australia. His move into the gourmet food trade could not have been achieved, and the offences could not have been committed, without key contacts (in the legitimate food trade) made by him. Because of the contacts, his legitimate business expanded considerably.

In the 12 months ending immediately before the commission of the earliest offence, Mr Adventuresome's income from the business was \$50 000. In the 12 months after then, his income from legitimate business activity (unrelated to

the offences) was \$200 000. This increase in activity is entirely because of continuing (legitimate) working relationships with those key contacts.

The difference of \$150 000 is the value of a benefit derived from the commission of the offences by Mr Adventuresome because his relationship with the key contacts is an advantage derived by him from their commission.

Note 1 **Derived** includes obtained because of an understanding or a particular outcome being made known, see s 12.

Note 2 For the assessment of the value of benefits, see div 7.3.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

81 **Meaning of *artistic profits***

(1) In this Act:

artistic profits, derived by an offender from the commission of an offence, means property, or any service or other advantage, derived from the commercial exploitation of—

- (a) the notoriety of the offender, or someone else involved in the commission of the offence (***another involved person***), that results from the offence; or
- (b) the depiction of the offence or the circumstances surrounding the offence; or
- (c) an expression of the thoughts, opinions or emotions of the offender, or another involved person, about the offence.

(2) The commercial exploitation may be by any means, including, for example, in—

- (a) a visual recording (for example, a film, slide, videotape, videodisc or anything else from which a visual image can be produced); or
- (b) a sound recording (for example, a compact disc, tape, record or anything else from which words or sounds can be produced); or

- (c) printed material (for example, a book, newspaper, magazine or any other written or pictorial matter); or
 - (d) a radio or television production; or
 - (e) live entertainment of any kind (for example, a public presentation or speech).
- (3) A relevant court must allow artistic profits as benefits for section 80 (b) (Meaning of *benefits* derived by an offender), unless it is satisfied that it would not be in the public interest to do so.
- (4) In deciding whether it would not be in the public interest to allow artistic profits as benefits, the court must have regard to the following matters:
- (a) the purposes of this Act;
 - (b) whether the commercial exploitation has any general social or educational value;
 - (c) the nature and purposes of the commercial exploitation, including its use for research, educational or rehabilitation purposes;
 - (d) the seriousness of the offence;
 - (e) how long ago the offence was committed.
- (5) Subsection (4) does not limit the matters to which the court may have regard.

Division 7.2 Making penalty orders

Note For general provisions about a proceeding for a penalty order (which is a confiscation proceeding—see s 236), see pt 14.

82 Meaning of *penalty order*

In this Act:

penalty order means an order under this division for the payment by an offender of the value of benefits derived by an offender from the commission of an offence.

83 **Penalty orders—application**

- (1) The DPP may apply to a relevant court for a penalty order in relation to the commission of an indictable offence by an offender.

Note 1 **Commission**, of a serious offence, includes the alleged commission of the offence, see s 79.

Note 2 **Indictable offence** includes an offence against the law of the Commonwealth, a State or another Territory that may be dealt with under a law of the Commonwealth, the State or the other Territory as an indictable offence (see s 13 (2)).

Note 3 **Offender** includes a corporation, see dict.

- (2) The application may be made before or after, or at the same time as, any conviction of the offender for the offence.
- (3) However, if the person has been convicted of the offence, the DPP must make the application within 2 years after the day of the conviction.

Note The court may allow leave for an application to be made after the time fixed by this section in certain circumstances (see s 246).

- (4) Subsection (3) does not apply to an application for an artistic profits restraining order.

84 **Penalty orders—offenders convicted of ordinary indictable offences**

- (1) On application under section 83, the relevant court must make an order under this section for the payment by the offender of the value of benefits derived by the offender from the commission of an ordinary indictable offence if satisfied that—

- (a) the offender has been convicted of the offence or a related ordinary indictable offence; and

- (b) the offender has not been cleared of the offence of which the offender was convicted.
- (2) To remove any doubt, a relevant court may make an order under this section that relates only to artistic profits.

85 Penalty orders—commission of serious offences

- (1) On application under section 83, the court must make an order under this section for the payment by the offender of the value of benefits derived by the offender from the commission of a serious offence if the court is satisfied on the balance of probabilities—
 - (a) for an application for a penalty order that relates only to artistic profits—that the offender committed a serious offence at any time; and
 - (b) for any other application—that the offender committed a serious offence within the relevant period.

Note 1 For the meaning of *relevant period*, see s (5).

Note 2 The court must be satisfied on the balance of probabilities about the commission of the offence because confiscation proceedings are civil, not criminal (see s 237).

- (2) To remove any doubt, if the relevant court is satisfied that the offender committed a serious offence within the relevant period, the court must not refuse to make a penalty order only because it is not satisfied—
 - (a) that a particular serious offence was committed by the offender within the relevant period; or
 - (b) that the offence was committed on any particular day or time within the relevant period.
- (3) Also, to remove any doubt, the relevant court must not refuse to make a penalty order in relation to the serious offence only because—

- (a) an indictment has not been presented against the offender for the offence; or
 - (b) the offender has not been convicted of the offence; or
 - (c) the offender has been cleared of the offence, including being cleared after having been convicted of the offence; or
 - (d) a doubt is raised about whether the offender committed the offence.
- (4) Further, to remove any doubt, the relevant court must not refuse to make a penalty order only because—
- (a) a relevant court had previously made a penalty order under this section in relation to the offender for the same serious offence (or a related offence); and
 - (b) the order had later ended because the offender was cleared of the offence.

Note The earlier penalty order would have ended when the offender was cleared (see s 98 (a)).

- (5) In this section:

relevant period means—

- (a) if a restraining order is in force over any property in relation to the serious offence—
 - (i) 6 years before the day the application to restrain the property was made; or
 - (ii) if an extended period for making the restraining order application was allowed under section 246 (Confiscation proceedings—time extensions for applications)—the total of the 6-year period and the extended period; or
- (b) if a restraining order is not in force over any property in relation to the serious offence—

- (i) 6 years before the day the application for the penalty order was made; or
- (ii) if an extended period for making the penalty order application was allowed under section 246—the total of the 6-year period and the extended period.

86 Penalty orders—amount of penalty

- (1) In making a penalty order in relation to an offence, the court must—
 - (a) assess under division 7.3 (Value of benefits) the value of any benefits (the *assessed value*) derived by the offender from the commission of the offence and any related offence; and
 - (b) order the offender to pay the Territory the amount worked out under subsection (2).
- (2) The amount payable under the penalty order is the assessed value less any amount by which the assessed value is reduced under subsection (3).
- (3) The assessed value in relation to the offence or any related offence may be reduced if the court is satisfied that it is just and equitable that the assessed value should be reduced by any of the following amounts:
 - (a) the value of property subject to forfeiture under this Act or a corresponding law;
Note For the meaning of *subject to forfeiture*, see s 73.
 - (b) the value of property forfeited under this Act or a corresponding law;
 - (c) the amount of any other penalty order, or any other financial penalty (however described) under a corresponding law;
 - (d) any amount payable by the offender under a reparation order under the *Crimes Act 1900*, section 350, or any corresponding order made under the law of the Commonwealth, a State or another Territory;

- (e) any amount payable by the offender for restitution, compensation or damages, other than any fine imposed by a court;
- (f) any amount of tax payable under a law of the Territory, the Commonwealth, a State, another Territory or a foreign country in relation to the benefits.

87 Penalty orders—contents

- (1) A penalty order must state—
 - (a) the amount of the penalty payable under the order; and
 - (b) the person by whom the penalty is payable.
- (2) A failure by a relevant court to comply with this section does not invalidate the penalty order or any action by anyone to satisfy the penalty order.

88 Penalty orders—enforceable as judgment debt

The amount ordered to be paid by a relevant court under a penalty order is a judgment debt owing to the Territory.

Note Any restrained property is automatically charged with the amount of the penalty order, and may be sold to satisfy the order (see div 7.4).

89 Penalty orders—variation for reassessed value of benefits

On application by the person by whom the penalty under a penalty order is payable or the DPP, a relevant court may make an order varying the order to reflect the value of the relevant benefits as reassessed at the time the varying order is made.

Examples

- 1 The amount of the penalty order is reduced by the value of forfeited property (see s 86 (3) (b)). The order for the forfeiture is overturned by a court in a later proceeding. The relevant court may vary the penalty order to increase the amount of the penalty order by the value of the forfeited property.

- 2 The amount of the penalty order is reduced by an amount of tax payable by the offender in relation to a benefit (see s 86 (3) (f)). The amount of tax is reduced on a review by the commissioner of taxation. The relevant court may vary the penalty order to increase the amount of the penalty order by the reduced amount of tax.
- 3 If, in example 2, the amount of the tax payable had been increased on review, the court may vary the penalty order to reduce the amount of the penalty order by the amount of the increased tax.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 7.3 Value of benefits

90 Meaning of *narcotic substance* and *property* for div 7.3

In this division:

narcotic substance—see the *Customs Act 1901* (Cwlth), section 4, and includes anything prescribed under the regulations for this definition.

property, of an offender, includes—

- (a) property subject to the effective control of the offender; and
- (b) property that, immediately before it vested in the trustee for the property under the *Bankruptcy Act 1966* (Cwlth), was the offender's property.

Note For the meaning of *effective control*, see s 14.

91 Presumed value of benefits—ordinary indictable offence

- (1) This section applies to the assessment of the value of benefits derived by an offender from the commission of an ordinary indictable offence (or ordinary indictable offences).
- (2) The value of the benefits derived by the offender from the commission of the offence (or offences) is—

- (a) if evidence is given about any increase in value of the offender's property since immediately before the offence (or the earliest offence) was committed—taken to be not less than the amount of the greatest increase in value of which evidence is given; and
- (b) in any case—taken to include the value of any narcotic substance to which the offence (or offences) relates.

Example for par (a)

An offender has committed an ordinary indictable offence. Just before beginning to commit the offence, the value of the offender's property was \$50 000. Two months after the offence began to be committed, the value of the offender's property was \$150 000. At the time of the application for the penalty order, however, the offender's property was only worth \$75 000.

The 'greatest increase' in the total value of the offender's property since immediately before the offence was committed is \$100 000 (\$150 000 minus \$50 000).

Note 1 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 For the valuation of narcotic substances, see s 93 (3) and (4).

- (3) However, the value of the benefits is taken not to include any part (or all) of the increase in value if the offender satisfies the court that the part (or all) of the increase was from either—
 - (a) property that—
 - (i) was lawfully acquired by the offender; and
 - (ii) is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country; or
 - (b) benefits that were lawfully acquired by the offender.

Note For the meaning of *in relation to*, see dict.

- (4) This section does not apply in relation to a penalty order relating only to artistic profits.

92 Presumed value of benefits—serious offence

- (1) This section applies to the assessment of the value of benefits derived by an offender from the commission of a serious offence (or serious offences).

Note **Commission**, of a serious offence, includes the alleged commission of the offence, see s 79.

- (2) The value of the benefits derived from the offence (or offences) is taken to include the following:
- (a) the value of all of the offender's property on the day the application was made;
 - (b) the value of any other property held by the offender within the shorter of the following periods:
 - (i) between the day the offence (or the earliest offence) was committed and the day the application was made;
 - (ii) 6 years immediately before the day the application was made;
 - (c) the value of any narcotic substance to which the offence (or offences) relate;

Note For the valuation of narcotic substances, see s 93 (3) and (4).

- (d) all of the person's expenditure during the relevant period under paragraph (b) (other than expenditure to the extent that it resulted in the acquisition of property mentioned in paragraph (a) or (b)).
- (3) However, subsection (2) does not apply to particular property if the offender satisfies the court that the property—
- (a) was lawfully acquired by the offender; and
 - (b) is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country.

Note For the meaning of *in relation to*, see dict.

- (4) Also, subsection (2) does not apply to particular expenditure if the offender satisfies the court that the expenditure—
- (a) was derived from property or benefits lawfully acquired by the offender; and
 - (b) the property from which the expenditure was derived is not tainted property in relation to any offence against a Territory law, or a law of the Commonwealth, a State, another Territory or a foreign country.
- (5) For subsection (2) (b) (i), if a serious offence was committed over more than 1 day, the reference in the subparagraph to the day the offence was committed is a reference to the day the offence was begun to be committed.
- (6) This section does not apply in relation to a penalty order relating only to artistic profits.

93 Value of benefits—relevant matters

- (1) In assessing the value of a benefit derived from the commission of an offence and any related offences, the relevant court may have regard to any relevant matters.

Examples of relevant matters

- 1 an increase in the income or profits of the offender in comparable periods before and after the offence was committed (see s 80, example for par (c))
- 2 an increase in the value of property held by the offender because of the benefit, taking into account any relevant variation in the purchasing power of money
- 3 the value of the offender's property before, during and after the commission of the offence
- 4 the income and expenditure of the offender before, during and after the commission of the offence
- 5 the part of the benefit derived from the commission of the offence and the part derived from other sources

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The court must assess the value of a benefit by reference to the highest value the benefit has had since the commission of the offence or a related offence, unless the court is satisfied that the benefit should be valued differently having regard to the purposes of this Act.

Examples

- 9 An offender derives a benefit worth \$10 000 from the commission of an offence. If the benefit had been derived at the time of valuation for a penalty order proceeding 2 years later, the benefit would have been worth \$11 000 (because of inflation). The court may assess the value of the benefit as \$11 000 rather than \$10 000.
- 10 The offence to which benefits relate is an ordinary indictable offence. However, the offender later committed a related offence that was a serious offence. The court may have regard to the highest value of the benefits since the commission of the ordinary indictable offence.
- (3) At the hearing of an application for a penalty order, a law enforcement officer who is experienced in the investigation of narcotic offences may testify, to the best of the officer's information, knowledge and belief—
- (a) in relation to the amount that was the market value of a narcotic substance at a particular time or during a particular period; or
 - (b) in relation to the amount, or the range of amounts, ordinarily paid at a particular time or during a particular period, for the doing of anything in relation to a narcotic substance.
- (4) The law enforcement officer's testimony under subsection (3)—
- (a) is admissible at the hearing despite any rule of law or practice about hearsay evidence; and
 - (b) is prima facie evidence of the matters testified.
- (5) In this section:
- law enforcement officer*** means—
- (a) a police officer; or

- (b) an officer of Customs under the *Customs Act 1901* (Cwlth).

Division 7.4 Satisfaction of penalty order

94 Creation of penalty charge over restrained property

- (1) This section applies if, in relation to an offence—
- (a) a restraining order is made; and
 - (b) a penalty order is made.
- (2) On the making of the later of the orders, all of the restrained property is automatically charged to secure the payment to the Territory of the amount of the penalty order.

Note 1 An interstate penalty charge is taken to be a penalty charge under this Act (see s 139).

Note If the penalty charge is over restrained property that may be recorded in a statutory property register, details of the restraining order may be recorded in the register under s 50.

- (3) If the restraining order is varied after the penalty order is made to add more property, the additional property is also automatically charged to secure payment to the Territory of the amount of the penalty order.
- (4) A charge on property created by this section (a *penalty charge*)—
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would have priority over the charge if this subsection had not been enacted; and
 - (b) has priority over all other encumbrances; and
 - (c) is not affected by any change in the ownership of the property unless the change in ownership ends the penalty charge under section 95 (c) or (d).

95 When penalty charge over property ends

A penalty charge over property ends when the earliest of the following events happens:

- (a) the penalty order for which the charge was created ends;

Note For when a penalty order ends, see s 98. See also the example to this section.

- (b) the restraining order over the property ends;

Note For when restraining orders end, see div 4.3. See also the example to this section.

- (c) the property is sold, or otherwise disposed of, with the consent of—

- (i) the relevant court that made the penalty order; or
(ii) if a trustee (including the public trustee) controls the property—the trustee;

- (d) the property is sold to a purchaser who—

- (i) buys the property honestly and for sufficient consideration; and
(ii) at the time of the purchase, has no notice of the charge.

Example of end of restraining order and penalty order

If a penalty order is made in relation to an ordinary indictable offence of which the offender was convicted, both the restraining order and the penalty order end if the conviction is later quashed (see s 47 and s 98).

Note 1 If the restraining order over the charged property is registered in a statutory property register, anyone who buys the property is taken to have notice of the charge (see s 50 (3)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

96 Power to satisfy penalty order

- (1) A penalty order in relation to an offence authorises the public trustee to satisfy the order out of any property restrained for the offence (including any property that becomes restrained after the order is made).

Note 1 The penalty order may also be enforced as a judgment debt (see s 88).

Note 2 An amount received by the public trustee to satisfy the penalty order must be paid into the confiscated assets trust fund, see s 131.

Note 3 An interstate penalty charge is taken to be a penalty charge under this Act (see s 139).

- (2) To satisfy the penalty order, the public trustee may sell or otherwise dispose of restrained property that is not money in any way the public trustee considers appropriate.

Note The money realised by the public trustee from the disposal of property must be paid into the be paid into the confiscated assets trust fund, see s 131 and dict, def *fully satisfied*, par (b).

- (3) However, the public trustee must not sell or otherwise dispose of restrained property to satisfy the order until—

- (a) all confiscation proceedings (including forfeiture proceedings) in relation to the property have been finalised; and
- (b) all proceedings in relation to the offender's conviction for the offence are finalised.

Note 1 For the meaning of *confiscation proceedings*, see s 236.

Note 2 For when confiscation and criminal proceedings are finalised, see s 18.

Note 3 If the offender is acquitted on appeal, the restraining order will end, and the penalty charge ends under s 95.

- (4) The penalty order also authorises the public trustee or anyone else named in the order (an *authorised agent*) to sign any instrument necessary or convenient for the disposal of restrained property.

- (5) An instrument signed by an authorised agent has the same effect as if it were signed by the person who owned the property before it was disposed of.

97 Public trustee to repay any amount surplus to satisfying penalty order

If the amounts paid into the trust fund to satisfy a penalty order are more than is required to fully satisfy the order, the public trustee must pay the surplus amount to the person against whom the order was made.

Division 7.5 End of penalty orders

98 When penalty order ends

A penalty order ends if—

- (a) for a penalty order made under section 84 (Penalty orders—offenders convicted of ordinary indictable offences)—the offender is cleared of the offence (or offences) to which the penalty order relates, and all related offences (if any); or
- (b) the order is reversed or set aside on appeal; or
- (c) the order is fully satisfied.

Note 1 For the meaning of *fully satisfied*, see dict.

Note 2 If the order ends because it was made because of the conviction of the offender for a serious offence, and the offender is cleared, a further penalty order may be made against the offender (see s 85 (4)).

Part 8 **Restrained property**

Division 8.1 **Management of restrained property by public trustee**

99 **Application of div 8.1**

This division applies if the public trustee takes control of restrained property under an order under this Act.

Note 1 A registered interstate restraining order is taken to be a restraining order under this Act (see s 139).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

100 **Powers of public trustee to preserve restrained property etc**

- (1) The public trustee may do anything necessary or desirable to preserve the value of the restrained property.

Examples

- 1 bring or defend any civil proceeding affecting the property
- 2 insure the property
- 3 if the property consists (completely or partly) of securities or investments, realise or otherwise deal with the securities or investments
- 4 if the property is related to a business—
 - (a) employ, or end the employment of, people in the business; and
 - (b) do anything else that is necessary or convenient for carrying on the business on a sound commercial basis
- 5 if the property consists, completely or partly, of shares in a corporation, exercise (to the exclusion of the registered proprietor) the rights attaching to the shares as if the public trustee were the registered holder

Note 1 Related powers of the public trustee include making an application to a relevant court for an order about the restrained property (see s 39) and the registration of title to, or charges over, registrable property (see s 50).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The owner of restrained property commits an offence if—
- (a) the public trustee asks the owner for the person's tax file number within a stated reasonable time; and
 - (b) the owner fails to give the public trustee the person's tax file number within that time.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against this section is a strict liability offence.

101 Sale, modification or destruction of property by public trustee

- (1) The public trustee may sell restrained property if—
- (a) the property is deteriorating or substantially losing value or the public trustee considers that the property is likely to deteriorate or substantially lose value; or
 - (b) the public trustee considers that the cost of maintaining the property would be more than the value of the property if the property were forfeited.
- (2) The restraining order that applied to restrained property sold under this section applies to the proceeds of the sale of the property.
- (3) The public trustee may modify or destroy restrained property if the public trustee considers it is necessary to do so in the public interest.

Examples of destruction of property in the public interest

- 1 the restrained property cannot be used legally or the only practical use of the property is for an illegal purpose

2 the restrained property is a threat to public health or safety

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

102 Notice of sale, modification or destruction of restrained property by public trustee

- (1) The public trustee must give written notice of a proposed sale, modification or destruction of restrained property under section 101 (the *proposed action*) to—
- (a) the owner of the property (if known); and
 - (b) anyone else the public trustee believes may have an interest in the property.

Note 1 For how documents may be given, see Legislation Act, pt 19.5.

Note 2 For the emergency modification or destruction of restrained property, see s 103.

- (2) The notice must state—
- (a) the proposed action and the property to which it applies; and
 - (b) the date when the proposed action is to be taken (the *date of effect*); and
 - (c) that the proposed action may be taken on or after the date of effect unless a relevant court orders the public trustee not to take the proposed action.
- (3) The notice may, but need not, provide an opportunity for the person to make representations why the proposed action should not be taken.
- (4) The date of effect must not be earlier than 21 days after the day the notice is given to the person.

Note For the power to give a reduced period of notice, see s 103.

- (5) The public trustee must not take the proposed action before the date of effect.

Note For the power not to give notice of the modification or destruction of property, see s 103.

103 Emergency modification or destruction of restrained property

- (1) This section applies if the public trustee considers that restrained property is a serious threat to public health or safety.
- (2) Despite section 102, the public trustee may—
 - (a) give notice to a person under that section with a date of effect less than 21 days after the day the notice is given to the person; or
 - (b) modify or destroy the property without giving notice under that section.
- (3) If the public trustee modifies or destroys the property under subsection (2) (b), the public trustee must, as soon as practicable, give notice of the action taken, and the grounds for the action, to—
 - (a) the owner of the property (if known); and
 - (b) anyone else the public trustee believes may have an interest in the property.

104 Notice details to be included in public trustee's report

- (1) The public trustee must include details of a notice given under section 102 or 103 in the public trustee's report under the *Annual Reports (Government Agencies) Act 1995* for—
 - (a) the period during which the notice was given; or
 - (b) if the chief police officer has, under this section, declared the publication of details of the notice to be prejudicial—the next period after the chief police officer revokes the declaration.
- (2) Before including details of the notice in a report under subsection (1) (a), the public trustee must consult the chief police

officer about whether publication of the details of the notice in the report would be likely to prejudice any police investigation.

- (3) If, in the chief police officer's opinion, the publication of the details of the notice in the report would be likely to prejudice a police investigation, the chief police officer must—
 - (a) declare the publication of the details to be prejudicial; and
 - (b) tell the public trustee, in writing, that the declaration is made.
- (4) If, in the chief police officer's opinion after making a declaration, the publication of details of the notice would no longer be likely to prejudice any police investigation, the chief police officer must—
 - (a) revoke the declaration; and
 - (b) tell the public trustee, in writing, that the declaration is revoked.
- (5) In this section:

police investigation includes a contemplated police investigation.

105 Order to stop sale, modification or destruction of restrained property

- (1) A person may apply to a relevant court for an order stopping the public trustee from selling, modifying or disposing of restrained property under this division.
- (2) If the person was not given notice of the proposed action by the public trustee, the person may make the application only with the leave of the relevant court and if the person satisfies the court that the person has an interest in the property.

Note For general provisions about a proceeding for an order under this section (which is a confiscation proceeding—see s 236), see pt 14.

- (3) On an application under this section, the court may make any order about the sale, modification or destruction of the property it considers appropriate.

Division 8.2 Joint ownership of restrained property

106 Effect of death on joint ownership

- (1) This section applies to property that is jointly owned if any of the owners die while the property (including any interest in the property) is subject to a restraining order.

Note A registered interstate restraining order is taken to be a restraining order under this Act (see s 139).

- (2) If the property was held by the dead person as a joint tenant, the person's death does not vest the person's interest in the property in the surviving joint owner.
- (3) If the property was held by the dead person as a tenant in common, the dead person's interest must not be transferred to anyone else because of the person's death.

Examples of prohibited transfers

The dead person's interest must not be transferred to an executor or administrator, or to a beneficiary under the dead person's will or under intestacy.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The restraining order continues to apply to the property as if the person had not died.
- (5) An automatic forfeiture of any interest of the dead person in the property, or a forfeiture order made in relation to the interest, applies as if the interest were forfeited immediately before the person died.

Note 1 A registered interstate automatic forfeiture decision is taken to be an automatic forfeiture under this Act (see s 139).

Note 2 A registered interstate forfeiture order is taken to be a forfeiture order under this Act (see s 139).

Part 8 Restrained property
Division 8.2 Joint ownership of restrained property

Section 106

- (6) If the restraining order stops applying to the property without it being forfeited under this Act, this section is taken not to have applied to the property.

Part 9 **Forfeited property**

Division 9.1 **Preliminary**

107 **Meaning of *interested person* in pt 9**

In this part:

interested person, in relation to property, means—

- (a) a person who has an interest in the property; or
- (b) the DPP; or
- (c) if a trustee (including the public trustee) controls the property—the trustee; or
- (d) if the property has been forfeited—a person who had an interest in the property immediately before it was forfeited.

108 **Forfeited property—powers of public trustee**

- (1) The public trustee may take any steps that are necessary or desirable to vest forfeited property in the Territory and to bring it under the public trustee's control.

Examples

- 1 the giving notice of, or otherwise taking action to protect, the Territory's equitable interest in forfeited property
- 2 registering a caveat over forfeited property
- 3 obtaining registration of an interest in forfeited property on behalf of the Territory (including signing an instrument of transfer)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) This section does not limit the powers of the public trustee under this Act in relation to the forfeited property.

Example

the public trustee may transfer an interest in property on behalf of the Territory

Note A registered interstate forfeiture order is taken to be a forfeiture order under this Act (see s 139).

Division 9.2 Vesting and disposal of forfeited property

109 Vesting of forfeited property—general rule

On forfeiture, the forfeited property vests absolutely in the Territory.

Note 1 **Property** includes an interest in property, see Legislation Act, dict, pt 1.

Note 2 If a joint owner of restrained property dies, and the property is later forfeited, the forfeiture takes effect as if the property had been forfeited immediately before death (see s 106).

110 Vesting of registrable property on forfeiture

- (1) This section applies despite section 109, if the forfeited property is, or is an interest in, registrable property.
- (2) On forfeiture, the property or the interest vests in equity in the Territory, but does not vest at law in the Territory until the applicable registration requirements for the property or the interest have been complied with.

Example

All of a person's property, except a mortgage over the person's house, is restrained before the person's conviction for a serious offence. All the restrained property is forfeited 14 days after the person's conviction. The mortgagee's interest is not forfeited because it was not restrained. However, all other registrable interests in the house are forfeited and vest in the Territory in equity. On registration of the interests under the *Land Titles Act 1925*, the interests vest in law in the Territory.

Note 1 For the power of a relevant court to order the sale of property owned by more than 1 person, see div 9.4.

Note 2 Non-registrable property vests 'at law' in the Territory on forfeiture, because it vests 'absolutely' under s 109. Registrable property vests 'at

law' in the Territory when it is registered in the name of the Territory under this section.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The Territory is entitled to be registered as the owner of the property or the interest.
- (4) The registration of the Territory as the owner of the property is taken not to be a contravention of a direction under section 111 (3) in relation to the property.

Note If a joint owner of restrained property dies, and the property is later forfeited, the forfeiture takes effect as if the property had been forfeited immediately before death (see s 106).

- (5) To remove any doubt, if property is divisible into 2 or more interests and not all the interests in the property are forfeited, the other interest or interests are not ended only because of the forfeiture of another interest in the property.

111 Disposal of forfeited property

- (1) If forfeited property is money, the public trustee must pay the money into the trust fund.
- (2) The public trustee must sell or otherwise dispose of forfeited property (other than money) as soon as practicable after—
 - (a) the end of 14 days after the day the property was forfeited; and
 - (b) the property has vested at law in the Territory; and
 - (c) the public trustee has control of the property; and
 - (d) if applicable—the end of 14 days after all confiscation proceedings in relation to the property have been finalised.

Note 1 A restraining order stops applying to property when the property vests in law in the Territory and the public trustee takes control of the property (see s 45 (1) (b)).

Note 2 The 14-day periods reflect the application periods for return or compensation orders under div 9.5 and buy-back orders under div 9.6.

Note 3 For the sale of jointly owned property, see s 116.

- (3) However, the Minister may, after all confiscation proceedings in relation to forfeited property are finalised and before the public trustee deals with the property under subsection (1) or (2), direct that the property be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (4) The public trustee must comply with the Minister's direction.
- (5) Also, if the DPP tells the public trustee that forfeited property has evidentiary value in a criminal proceeding, the property must not be sold or otherwise disposed of before the criminal proceeding is finalised, other than—
 - (a) for the purpose of vesting the property at law in the Territory or allowing the public trustee to take control of the property; or
 - (b) in accordance with a written direction of the DPP.

Division 9.3 **Improperly obtained registered property interests**

Note For general provisions about a proceeding for an order under this section (which is a confiscation proceeding—see s 236), see pt 14.

112 Application of div 9.3 to registered property interests

This division applies to forfeited property if—

- (a) the property has vested in law in the Territory after a registered property interest in the property was created; or
- (b) if the property was jointly owned immediately before forfeiture—the property has vested in trustees for sale under section 117 after the interest was created.

Note If a joint owner of restrained property dies, and the property is later forfeited, the forfeiture takes effect as if the property had been forfeited immediately before death (see s 106).

113 Discharge of prior registered property interests given for improper purposes

- (1) An interested person may apply to a relevant court for an order discharging a registered property interest to which forfeited property is subject.
- (2) The court must order the discharge of the registered property interest unless satisfied that—
 - (a) the interest was acquired honestly and for sufficient consideration and the person took reasonable care to establish that the interest could be lawfully acquired by the person; and
 - (b) for a registered property interest that was acquired otherwise than in the ordinary course of business—
 - (i) the owner of the registered property interest was not a party to the offence (or a related offence) in relation to which the forfeiture was made; and
 - (ii) the property is not subject to the effective control of the person who committed the offence (or a related offence) in relation to which the forfeiture was made.

Note For the meaning of *effective control*, see s 14.

- (3) On application by an interested person, a person responsible for a statutory property register must make the entries in the register that are necessary or desirable to give effect to the court order.

Division 9.4 Sale of jointly owned forfeited property

Note For general provisions about proceedings for orders under this division (which are confiscation proceedings—see s 236), see pt 14.

114 Application of div 9.4 to jointly owned property

- (1) This division applies to jointly owned property if the property, or an interest in the property, is forfeited under this Act.

Note 1 A registered interstate automatic forfeiture decision is taken to be an automatic forfeiture under this Act (see s 139).

Note 2 A registered interstate forfeiture order is taken to be a forfeiture order under this Act (see s 139).

- (2) However, this division does not affect any right of a person to sell an interest in the property that has not been forfeited if the property is not subject to an order under this division.

115 Inconsistency with Trustee Act or Conveyancing Act

- (1) This section applies if there is an inconsistency between—
- (a) this division or a court order under this division; and
 - (b) the *Trustee Act 1925* or the *Conveyancing Act 1919*, division 4.5 (Dispositions on trust for sale or with power of sale).
- (2) If this section applies, this division or the court order overrides the legislation mentioned in subsection (1) (b), to the extent of the inconsistency.

116 Order for sale of jointly owned property

- (1) An interested person may apply to a relevant court for an order for the sale under a trust for sale of jointly owned property to which this division applies.

Note A trust for sale allows property to be sold over the objections of a person.

- (2) The court may order the sale of the property under a trust for sale if satisfied that the sale of the property—
- (a) is the most practical way of ensuring a reasonable price for the property or a joint owner's interest in the property; or
 - (b) is just and equitable in all the circumstances.
- (3) The court may give the trustees any directions about the property, its sale and the proceeds of the sale that the court considers appropriate.

Examples of directions

- 1 a direction that the trustees obtain a valuation of the property from a qualified valuer before the sale
- 2 a direction that the property must only be sold by auction
- 3 a direction fixing the reserve price for the sale of the property at auction
- 4 if a joint owner is allowed to buy the property, a direction that the joint owner may set off against the purchase price any share of that person in the proceeds of the sale

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) A joint owner of the property may buy the property only if a direction of the court allows the person to buy the property.
- (5) On application by the purchaser of the property, a person responsible for a statutory property register must make the entries in the register that are necessary or desirable to give effect to the sale of the property in accordance with the court order (and any directions of the court).

117 Trust for sale of property

- (1) If a relevant court makes an order for the sale of property under a trust for sale, the court must appoint trustees for the sale.
- (2) The trustees hold the property under a trust for sale to sell the property and, after payment of the costs and expenses of the sale and of any outgoings in relation to the property, to pay the proceeds of the sale and any income from the property to the court.
- (3) The property vests in the trustees on their appointment.
- (4) The property vests in the trustees subject to any registered property interests that apply to all of the property, other than an undivided share of the property.

118 Effect of trust for sale on joint ownership

The joint ownership of the property ends on the vesting of the property in the trustees.

119 Distribution of proceeds of sale of property

- (1) The amount paid to a relevant court under section 117 (2) is payable to the Territory.
- (2) However, the court may order the payment of part or all of the amount to a person (an *innocent joint owner*) who was a joint owner of the property immediately before it was sold under this division if—
 - (a) the innocent joint owner was not a party to the offence (or a related offence) in relation to which the forfeiture was made; and
 - (b) the innocent joint owner's interest is not subject to the effective control of a person who committed the offence (or a related offence) (an *offender*) in relation to which the forfeiture was made; and

Note For the meaning of *effective control*, see s 14.

- (c) for property acquired completely or partly, or directly or indirectly, from an offender—the property was acquired honestly and for sufficient consideration and the innocent joint owner took reasonable care to establish that the property could be lawfully acquired by the innocent joint owner.
- (3) For subsection (2), the court may have regard to any matter it considers appropriate, including the relationship between the offender and the innocent joint owner.

120 Variation of court order for sale

On application by the trustees for sale or an interested person, a relevant court may vary an order it has made for the sale of property

under a trust for sale (or make or vary any directions about the property, its sale or the proceeds of sale).

Division 9.5 Forfeited property—return or compensation

Note For general provisions about a proceeding for a return or compensation order (which is a confiscation proceeding—see s 236), see pt 14.

121 Meaning of *return or compensation order*

In this Act:

return or compensation order means an order under section 123 (Return or compensation orders—making) that an interest in forfeited property be returned to the person who held the interest immediately before its forfeiture, or that the Territory pay to the person the value of the interest.

122 Return or compensation orders—application

- (1) A person who held an interest in forfeited property immediately before its forfeiture may apply to a relevant court for a return or compensation order in relation to the interest.
- (2) The application may be made only if 1 of the following events happens (a *qualifying event*):
 - (a) if the interest was forfeited under a forfeiture order or automatic forfeiture—the person is cleared of the offence (and any related offences) to which the forfeiture related;

Note For the meaning of *cleared*, see s 17.

- (b) if the interest was forfeited under a forfeiture order—the proceeding in relation to the order is finalised and the order is overturned on appeal.

Note For the meaning of *finalised*, see s 18.

- (3) The application must be made within 14 days after—

- (a) the day the qualifying event happens; or
- (b) if the person only became aware of the qualifying event at a later time, and the delay in becoming aware of the event was not because of the person's neglect—the day the person became aware of the qualifying event.

Note The court may allow leave for an application to be made after a time fixed by this section in certain circumstances (see s 246).

123 Return or compensation orders—making

- (1) On application under section 122, if satisfied that a qualifying event mentioned in section 122 (2) has happened in relation to a forfeited interest, the court may order—
 - (a) that the forfeited interest be returned to the person who held the interest immediately before its forfeiture; or
 - (b) that the Territory pay the person the value of the interest.
- (2) In making the order, the court must—
 - (a) declare the extent, nature and value of the person's interest in the forfeited property; and
 - (b) order that—
 - (i) if the interest is still vested in the Territory—the Territory transfer the interest to the person; or
 - (ii) in any other case—the public trustee pay the person the value declared under paragraph (a).

Division 9.6 Forfeited property—buyback of interest

Note For general provisions about a proceeding for a buyback order (which is a confiscation proceeding—see s 236), see pt 14.

124 Meaning of *buyback order*

In this Act:

buyback order means an order under section 126 (Buyback orders—making) declaring that a person may buy an interest in forfeited property from the Territory.

125 Buyback orders—application

- (1) A person who held an interest in forfeited property immediately before its forfeiture may apply to a relevant court for a buyback order in relation to—
 - (a) that interest; or
 - (b) any other interest in the forfeited property; or
 - (c) all interests in the forfeited property.
- (2) The application must be made within 14 days after—
 - (a) the day the interest formerly held by the person was forfeited; or
 - (b) if the person only became aware of the forfeiture at a later time, and the delay in becoming aware of the forfeiture was not because of the person's neglect—the day the person became aware of the forfeiture.

Note The court may allow leave for an application to be made after a time fixed by this section in certain circumstances (see s 246).

126 Buyback orders—making

- (1) On application under section 125, the court may, by order, declare that a person may buy an interest in forfeited property from the Territory if it is satisfied that—
 - (a) the interest is still vested in the Territory; and
 - (b) it would not be contrary to the public interest (including for the purposes of this Act) to do so; and

- (c) if the order applied for is in relation to an interest other than the interest formerly held by the person—no-one else who held an interest in the forfeited property immediately before forfeiture objects to the making of the order.

Note The applicant must give notice of the application to anyone else the applicant knows to have had an interest in the property immediately before forfeiture (see s 244).

- (2) In making the order, the court must declare—
- (a) the extent, nature and value of the interest in the forfeited property that is to be bought from the Territory; and
- (b) that the interest may be bought from the Territory for the value declared under paragraph (a) within 1 month after the day the order is made.

127 Buyback orders—buying interest in property

If a buyback order is made, and the applicant for the order pays to the public trustee the value declared under section 126 (2) (a) within 1 month after the day the order is made, the Territory must transfer the interest to the applicant.

Part 10 Confiscated assets trust fund

128 Definitions for pt 10

In this part:

distributable funds means money in the trust fund that is—

- (a) designated as distributable funds under the regulations; or
- (b) declared under section 135 (4) (Review of reserved and distributable funds by public trustee) to be distributable funds.

equitable sharing program—see section 129.

reserved funds means money in the trust fund that is—

- (a) designated as reserved funds under the regulations; or
- (b) declared under section 135 (2) to be reserved funds.

129 Meaning of *equitable sharing program*

(1) In this part:

equitable sharing program means an arrangement under which all or any of the following happen:

- (a) the Territory shares with the Commonwealth or a State a proportion of any proceeds of an unlawful activity recovered under a Territory law (including this Act), if, in the Minister's opinion, the Commonwealth or that State has made a significant contribution to the recovery of the proceeds or to the investigation or prosecution of the unlawful activity;
- (b) the Commonwealth or a State shares with the Territory a proportion of any proceeds of an unlawful activity recovered under a law of the Commonwealth or that State, if, in the opinion of the appropriate Minister of the Commonwealth or

that State, the Territory has made a significant contribution to the recovery of the proceeds;

- (c) the Territory shares with a foreign country a proportion of the proceeds of any unlawful activity recovered under a Territory law, if, in the Minister's opinion, the foreign country has made a significant contribution to the recovery of the proceeds or to the investigation or prosecution of the unlawful activity.
- (2) In subsection (1):

unlawful activity means an act or omission that is—

- (a) an indictable offence; or
- (b) an offence against a law of a foreign country.

Note ***Indictable offence*** includes an offence against the law of the Commonwealth, a State or another Territory that may be dealt with under a law of the Commonwealth, the State or the other Territory as an indictable offence (see s 13 (2)).

130 Establishment of trust fund

There is to be a trust fund called the confiscated assets trust fund.

131 Payments into trust fund

- (1) The following amounts must be paid into the trust fund:
- (a) the income from the administration of restrained property;
 - (b) the forfeited money mentioned in section 111 (1) (Disposal of forfeited property) and the *Crimes Act 1900*, section 386B (1) (Disposal of forfeited money or goods by the public trustee);
 - (c) income earned from forfeited property (including income from the administration of the property);
 - (d) amounts raised from the sale of property to satisfy penalty orders, including any income earned from those amounts;

- (e) payments for forfeited property that is bought back under a buyback order;
 - (f) the remainder of the proceeds mentioned in the *Crimes Act 1900*, section 250 (2) (b) (Disposal of forfeited articles by public trustee) and section 386B (3) (b);
 - (g) the proceeds of the enforcement of registered interstate automatic forfeiture decisions and registered interstate forfeiture orders;
 - (h) payments and the proceeds of property sold to satisfy an interstate penalty orders;
 - (i) payments received under the equitable sharing program.
- (2) However, this section does not apply in relation to forfeited property to which a direction under section 111 (3) (Disposal of forfeited property) applies.
- (3) Amounts paid into the trust fund must be designated as reserved funds or distributable funds in accordance with the regulations (if any).
- (4) All amounts payable into the trust fund must be paid into a trust banking account maintained under the *Financial Management Act 1996*, section 51 (Departmental trust banking accounts).

132 Purposes of trust fund

- (1) The trust fund may be used to make payments from reserved funds for the following purposes:
- (a) payments under return or compensation orders;
 - (b) payments of compensation under the *Crimes Act 1900*, section 386C (Return or compensation for forfeited money or goods);
 - (c) if property in the possession or control of the public trustee is returned, or compensation paid for property that has been under the control of the public trustee, under a return or

compensation order—any costs, charges or expenses deducted by the public trustee in relation to the property;

- (d) the annual management fee prescribed under the regulations for the public trustee;
 - (e) other costs, charges or expenses of the public trustee in relation to the exercise of functions under this Act;
 - (f) payments under the equitable sharing program.
- (2) The trust fund may be used to make payments from distributable funds in accordance with section 134 (2) (Distribution of surplus funds).

133 Payments from trust fund

- (1) Payments must be made in accordance with the principle that payments for a purpose for which reserved funds may be used have priority over payments for purposes for which distributable funds may be used.
- (2) The public trustee may make payments for the purposes of the trust fund.
- (3) However, a payment under the equitable sharing program or from distributable funds may be made only in accordance with a written direction of the Minister.

134 Distribution of surplus funds

- (1) For section 132 (2) (Purposes of trust fund), the Minister must, at least once in each financial year, decide the amount of distributable funds available for payment from the trust fund.
- (2) The Minister may approve the use of part or all of the decided amount for any of the following purposes:
 - (a) the enforcement of Territory laws;
 - (b) criminal justice activities;

- (c) crime prevention;
 - (d) assistance to victims of crime;
 - (e) the prevention of drug abuse;
 - (f) the rehabilitation of drug users;
 - (g) a purpose prescribed under the regulations relating to law enforcement or drug rehabilitation and education.
- (3) An approval is a notifiable instrument.

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

135 Review of reserved and distributable funds by public trustee

- (1) The public trustee must review the trust fund at least twice each year to decide whether the amount of reserved funds is likely to be sufficient to meet the payments from reserved funds that may be made within the 6 month period after the review.
- (2) If the public trustee considers that the amount of reserved funds is likely to be insufficient, the public trustee must declare, in writing, an amount of distributable funds to be reserved funds.
- (3) The amount declared must not be more than is necessary to increase the amount of reserved funds to what is required to meet payments from reserved funds within the 6 months after the declaration is made.
- (4) If the public trustee considers that the amount of reserved funds is likely to be more than is necessary, the public trustee must declare, in writing, the amount of the surplus funds to be distributable funds.

Part 11 Interstate orders

Note Proceedings under this part are civil, not criminal (see s 237 (1) (b)).

136 Meaning of *authenticated* for pt 11

In this part:

authenticated, in relation to a corresponding law order, means authenticated by the entity that made the order in accordance with the corresponding law under which the order was made or the practice of the entity.

Example

if the entity is a court, the order may be authenticated by the court's seal or stamp

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

137 Interstate restraining and forfeiture orders etc— registration

- (1) This section applies if—
 - (a) an interstate restraining order expressly applies to—
 - (i) stated property in the ACT; or
 - (ii) all the property in the ACT of a person; or
 - (iii) all the property (other than stated property) in the ACT of a person; or
 - (b) an interstate automatic forfeiture decision expressly applies to property in the ACT; or
 - (c) an interstate forfeiture order expressly applies to property in the ACT.

- (2) An authenticated copy of the order or decision may be registered in a relevant court by the applicant for the order or decision, the DPP or a person prescribed under the regulations.
- (3) An authenticated copy of any amendment of the order or decision (made before or after the registration of the order or decision) may be registered in a relevant court by a person mentioned in subsection (2).
- (4) Registration of the order or decision, and any amendment of the order or decision, may be refused to the extent that the order or decision, or the order or decision as amended, could not, on registration, be enforced in the ACT.
- (5) The order or decision, and any amendment of the order or decision, must be registered in accordance with the procedure of the relevant court.

138 Interstate restraining and forfeiture orders etc—interim registration

- (1) This section applies to an electronic copy of an authenticated interstate restraining order, interstate automatic forfeiture decision or interstate forfeiture order or of an authenticated copy of any amendment of such an order or decision.
- (2) If the electronic copy is certified in accordance with the procedure of a relevant court, it is taken, for this Act, to be an authenticated copy of the order, decision or amendment.
- (3) However, if the order, decision or amendment is registered in the relevant court using the electronic copy, the registration ceases to have effect at the end of 5 days after the day of registration, or when an authenticated copy of the order, decision or amendment is registered, whichever happens first.
- (4) In this section:
electronic copy, of a document, includes the following copies of the document:

- (a) a fax copy;
- (b) an emailed copy;
- (c) a scanned copy.

139 Interstate restraining and forfeiture orders etc—effect of registration

- (1) For this Act, a registered interstate restraining order is taken to be a restraining order under this Act.
- (2) For this Act, a registered interstate automatic forfeiture decision is taken to be an automatic forfeiture under division 5.2 (Automatic forfeiture—conviction for serious offences).
- (3) For this Act, a registered interstate civil forfeiture order is taken to be a civil forfeiture order under this Act.
- (4) For this Act, a registered interstate conviction forfeiture order is taken to be a conviction forfeiture order under this Act.
- (5) An amendment of a registered interstate order or decision mentioned in this section has effect for this Act only if it is registered under this part.

140 Interstate restraining and forfeiture orders etc—ending of registration

A registered interstate restraining order, automatic forfeiture decision or forfeiture order ceases to be registered under this Act if—

- (a) it ceases to be in force under the corresponding law under which it was made; or
- (b) its registration is cancelled under section 141.

141 Interstate restraining and forfeiture orders etc— cancellation of registration

- (1) The registration of an interstate restraining order, interstate automatic forfeiture decision or interstate forfeiture order may be cancelled by a relevant court, or an officer of a relevant court prescribed under the regulations, if—
 - (a) the registration was improperly obtained; or
 - (b) details of any amendment of the order or decision, or any direction of the entity that made the order or decision, was not given to the relevant court in accordance with the procedure of the court.
- (2) The registration of an interstate restraining order, interstate automatic forfeiture decision or interstate forfeiture order, or an amendment of such an order or decision, may be cancelled by a relevant court, to the extent that the order or decision, or the order or decision as amended, cannot be enforced in the ACT.

142 Creation of interstate penalty charges

- (1) This section applies if—
 - (a) an interstate restraining order is made because of the commission, or the alleged commission, of an indictable offence by a person; and
 - (b) an interstate penalty order is made against the person in relation to the offence; and
 - (c) the interstate restraining order is registered under this Act; and
 - (d) the interstate penalty order is registered in the ACT under the *Service and Execution of Process Act 1992* (Cwlth).
- (2) On the registration of both of the orders mentioned in subsection (1) (c) and (d), a charge (an *interstate penalty charge*) to secure the amount payable under the interstate penalty order is

created over the property in the ACT restrained under the interstate restraining order.

- (3) If the interstate restraining order is amended, after the interstate penalty order is made, to add more property, and the interstate restraining order is registered under this part, the additional property is also subject to the penalty charge on registration of the amendment.

143 Interstate penalty charges—effect of creation

For this Act, an interstate penalty charge is taken to be a penalty charge under this Act.

Part 12 **Information gathering**

Division 12.1 **Inquiry notices**

144 **Meaning of *inquiry notice***

In this Act:

inquiry notice means a notice by a police officer requiring a financial institution to give the officer stated information in relation to—

- (a) an account with the institution (including whether an account has existed or does exist); or
- (b) a transaction (other than in relation to an account) conducted, or proposed to be conducted, by or with the institution (including whether a transaction has been conducted).

Note 1 *Account* includes a safe-deposit box (see dict, def *account*).

Note 2 It is an offence to contravene an inquiry notice, to give false or misleading information in purported compliance with an inquiry notice, or to disclose the existence or operation of the notice (see div 12.6).

145 **Inquiry notices—giving**

- (1) A police officer of the rank of commander (or higher) may give an inquiry notice to a financial institution.
- (2) The inquiry notice may be given only if the police officer is satisfied that the information to which the notice relates is relevant to deciding whether—
 - (a) an application could be made for an order under this Act (including for another order under this part), a corresponding law order, or a search warrant under part 13 (Search warrants), in relation to anyone; or

- (b) a proceeding could be begun against anyone for an offence against this Act or a corresponding law or for a money laundering offence.

Note A *money laundering offence* includes a prescribed offence against a law of the Commonwealth, a State or another Territory, see dict.

- (3) The police officer must give a copy of the notice to the financial institution to which the notice applies.

Note For how documents may be served, see Legislation Act, pt 19.5.

146 Inquiry notices—form

- (1) An inquiry notice must be signed by the police officer giving it.
- (2) The notice must state—
- (a) that it is an inquiry notice under this Act; and
 - (b) the financial institution to which the notice applies; and
 - (c) the information that the financial institution is required to give; and
 - (d) how the information is to be given; and
 - (e) that the inquiry notice is a non-disclosable information order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (3) The notice must also include a statement setting out the effect of division 12.6 (Information order offences) in relation to inquiry notices.

147 Inquiry notices—immunity for complying financial institutions and staff

A civil proceeding does not lie against a financial institution, or an officer, employee or agent of a financial institution, in relation to loss, damage or injury of any kind to someone else because of the giving of information honestly to a police officer in compliance with (or purported compliance with) an inquiry notice

Division 12.2 Monitoring orders

Note 1 For general provisions about a proceeding for a monitoring order (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the offender or the public being present, see s 243.

148 Meaning of *monitoring order*

In this Act:

monitoring order means an order under section 151 (Monitoring orders—making) requiring a financial institution give a police officer information obtained or held by the institution about transactions conducted, or proposed to be conducted, by a person with the institution.

149 Monitoring orders—application

- (1) A police officer may apply to a relevant court for a monitoring order.
- (2) The application may be made only if the police officer has reasonable grounds for suspecting that the person in relation to whom the order is sought—
 - (a) has committed, or is about to commit, a serious offence; or
 - (b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
 - (c) has derived, or is about to derive, property or a benefit from the commission of a serious offence.

Note **Serious offence** means an offence against a Territory law or the law of the Commonwealth, a State or another Territory that is punishable by imprisonment for 5 years or longer (see s 13 (2)).

150 Monitoring orders—affidavit supporting application

- (1) An application for a monitoring order must be supported by an affidavit of the applicant police officer stating the grounds for the officer's suspicions.
- (2) The court may require the police officer to give additional information about the grounds on which the order is sought.

151 Monitoring orders—making

- (1) This section applies if an application is made under section 149 (Monitoring orders—application) to a relevant court for a monitoring order requiring a financial institution to give a police officer information obtained or held by the institution about transactions conducted, or proposed to be conducted with the institution, by the person in relation to whom the order is sought.
- (2) The relevant court must make the monitoring order sought if, having regard to the police officer's affidavit supporting the application and any other evidence before the court, the court is satisfied that there are reasonable grounds for the officer's suspicions stated in the affidavit.
- (3) The order must state—
 - (a) that it is a monitoring order under this Act; and
 - (b) the financial institution to which the order applies; and
 - (c) the person in relation to whom the order is made; and
 - (d) the nature of the transactions to be monitored; and
 - (e) the information that the financial institution is required to give; and
 - (f) how the information is to be given; and
 - (g) the period for which the order has effect; and
 - (h) that the monitoring order is a non-disclosable information order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (4) The order must also include a statement setting out the effect of division 12.6 (Information order offences) in relation to monitoring orders.
- (5) The period mentioned in subsection (3) (g) must not begin earlier than the day when notice of the order is given to the financial institution and must end not later than 3 months after the day when the order is made.
- (6) To remove any doubt, a relevant court may make 2 or more monitoring orders (including for successive periods) in relation to the same person.
- (7) The chief police officer must give a copy of a monitoring order to the financial institution to which the order applies.

Note For how documents may be served, see Legislation Act, pt 19.5.

Division 12.3 Transaction suspension orders

Note 1 For general provisions about a proceeding for a transaction suspension order (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the offender or the public being present, see s 243.

152 Meaning of *transaction suspension order*

- (1) In this Act:

transaction suspension order means an order under section 155 (Transaction suspension orders—making) requiring a financial institution, on becoming aware of a transaction (including a proposed transaction) to be conducted through a stated account, to—

- (a) immediately tell a police officer about the transaction; and
- (b) delay the processing of the transaction for 48 hours after the institution becomes aware of the transaction.

- (2) In this section:

account does not include a safe-deposit box.

153 Transaction suspension orders—application

- (1) A police officer may apply to a relevant court for a transaction suspension order.
- (2) The application may be made only if the police officer has reasonable grounds for suspecting that—
- (a) the person in relation to whom the order is sought—
 - (i) has committed, or is about to commit, a money laundering offence; or
 - (ii) was involved in the commission, or is about to be involved in the commission, of a money laundering offence; or
 - (iii) has derived, or is about to derive, property or a benefit from the commission of a money laundering offence; and
 - (b) the account in relation to which the order is sought is operated by, or under the effective control of, the person.

Note 1 For the meaning of *effective control*, see s 14.

Note 2 A *money laundering offence* includes a prescribed offence against a law of the Commonwealth, a State or another Territory, see dict.

Note 3 For the meaning of *in relation to*, see dict.

- (3) To remove any doubt, the application may be made in relation to 2 or more accounts.

154 Transaction suspension orders—affidavit supporting application

- (1) An application for a transaction suspension order must be supported by an affidavit of the applicant police officer stating—

- (a) the grounds for the officer's suspicions; and
 - (b) the account in relation to which the order is sought.
- (2) The court may require the police officer to give additional information about the grounds on which the order is sought.

155 Transaction suspension orders—making

- (1) This section applies if an application is made under section 153 (Transaction suspension orders—application) to a relevant court for a transaction suspension order requiring a financial institution, on becoming aware of a transaction (including a proposed transaction) to be conducted through the account to which the application relates, to—
- (a) immediately tell a police officer about the transaction; and
 - (b) delay the processing of the transaction for 48 hours after the institution becomes aware of the transaction.
- (2) The relevant court must make the transaction suspension order sought if, having regard to the police officer's affidavit supporting the application and any other evidence before the court, the court is satisfied that there are reasonable grounds for the officer's suspicions stated in the affidavit.
- (3) The order must state—
- (a) that it is a transaction suspension order under this Act; and
 - (b) the terms of the order; and
 - (c) the financial institution to which the order applies; and
 - (d) the account in relation to which the order is made; and
 - (e) how notice of transactions (including proposed transactions) is to be given; and
 - (f) the period for which the order has effect; and

(g) that the transaction suspension order is a non-disclosable information order.

Note 1 The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

Note 2 An order cannot be made in relation to a safe-deposit box (see s 152 (2)).

- (4) The order must also include a statement setting out the effect of division 12.6 (Information order offences) in relation to transaction suspension orders.
- (5) The period mentioned in subsection (3) (f) must not begin earlier than the day when notice of the order is given to the financial institution and must end not later than 3 months after the day when the order is made.
- (6) To remove any doubt, a relevant court may make 2 or more transaction suspension orders (including for successive periods) in relation to the same account.
- (7) The chief police officer must give a copy of a transaction suspension order to the financial institution to which the order applies.

Note For how documents may be served, see Legislation Act, pt 19.5.

Division 12.4 Production orders for property-tracking documents

Note 1 For general provisions about a proceeding for a production order (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the offender or the public being present, see s 243.

156 Meaning of *production order*

In this Act:

production order means an order under section 160 (Production orders—making) requiring a person to give a police officer any

property-tracking documents in the person's possession or control that relate to the person or property (or both) stated in the order.

157 Meaning of *property-tracking document*

In this Act:

property-tracking document means—

- (a) a document relevant to identifying, locating or quantifying—
 - (i) property (including tainted property and property under the effective control of a person) in relation to which action has been or could be taken under this Act or a corresponding law; or
 - (ii) benefits derived by a person from the commission (or the alleged commission) of an indictable offence; or
 - (iii) evidence in relation to property or benefits mentioned in subparagraph (i) or (ii); or
- (b) a document relevant to identifying or locating a document necessary for the transfer of property mentioned in paragraph (a) (i); or
- (c) a document relevant to understanding a document mentioned in paragraph (a) or (b).

Note 1 For the meaning of *effective control*, see s 14.

Note 2 For the meaning of *in relation to*, see dict.

Note 3 **Indictable offence** includes an offence against the law of the Commonwealth, a State or another Territory that may be dealt with under a law of the Commonwealth, the State or the other Territory as an indictable offence (see s 13 (2)).

158 Production orders—application

- (1) A police officer may apply to a relevant court for a production order.

- (2) The application may be made only if the police officer has reasonable grounds for suspecting that—
- (a) someone has committed an indictable offence; and
 - (b) the person against whom the order is sought has possession or control of a property-tracking document in relation to the offence.

Note **Indictable offence** includes an offence against the law of the Commonwealth, a State or another Territory that may be dealt with under a law of the Commonwealth, the State or the other Territory as an indictable offence (see s 13 (2)).

159 Production orders—affidavit supporting application

- (1) An application for a production order must be supported by an affidavit of the applicant police officer stating the grounds for the officer's suspicions.
- (2) The court may require the police officer to give additional information about the grounds on which the order is sought.

160 Production orders—making

- (1) This section applies if an application is made under section 158 (Production orders—application) to a relevant court for a production order requiring a person to give a police officer any property-tracking documents in the person's possession or control that relate to the person or property (or both) to which the application relates.
- (2) The relevant court must make the production order sought if, having regard to the police officer's affidavit supporting the application and any other evidence before the court, the court is satisfied that there are reasonable grounds for the officer's suspicions stated in the affidavit.
- (3) A production order must state—
 - (a) that it is a production order under this Act; and
 - (b) the person to whom the order applies; and

- (c) that the person must give to a police officer any property-tracking documents in the person's possession or control that relate to the person or property (or both) stated in the order; and
- (d) the place where and the time when, or the period within which, the documents must to be given to a police officer; and
- (e) whether the relevant court making the order has declared that the order is a non-disclosable production order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (4) The order must also include a statement setting out the effect of division 12.6 (Information order offences) in relation to the order.
- (5) The chief police officer must give a copy of a production order to the person to whom the order applies.

Note For how documents may be served, see Legislation Act, pt 19.5.

161 Production order proceedings—restrictions on disclosure

- (1) On application by the applicant police officer, a relevant court hearing an application for a production order may declare that the order is a non-disclosable production order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (2) In deciding whether to make a declaration under subsection (1), the court must have regard to whether the declaration—
 - (a) would promote the purposes of this Act; or
 - (b) is desirable to protect the integrity of an investigation (however described) for any purpose or a prosecution of an offence.
- (3) The court may also have regard to any other relevant matter in deciding whether to make a declaration under subsection (1).

162 Production orders—variation

- (1) This section applies if a court makes a production order requiring a person to give a document to a police officer.
- (2) The person may apply to the court for an order varying the production order.
- (3) If the court is satisfied that a document to which the production order relates is essential to the person's lawful business activities, the court may, by order, vary the production order to require the person to make the document available to a police officer for inspection.

163 Production orders—consequential powers about documents

- (1) If a document is given to a police officer under a production order, the officer may—
 - (a) take possession of, and make copies of, or take extracts from, the document; and
 - (b) keep the document for the period necessary for this Act.
- (2) If a police officer keeps a document given to the officer under a production order, the officer must, if asked by a person who would be entitled to inspect the document if it was not in the officer's possession—
 - (a) give the person a copy of the document certified by the officer in writing to be a true copy of the document; or
 - (b) at any reasonable time, allow the person to inspect the document, make copies of it or take extracts from it.
- (3) If a document is made available to a police officer for inspection under a production order as varied under section 162, the officer may make copies of, or take extracts from, the document.

Division 12.5 Examination orders and notices

Note 1 For general provisions about a proceeding for an examination order (which is a confiscation proceeding—see s 236), see pt 14.

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the person to whom the notice applies or the public being present, see s 243.

Subdivision 12.5.1 Preliminary

164 Definitions for div 12.5

In this division:

associate, of a person, includes an individual or corporation that has a family, personal, business or other relationship with the person.

authorised investigator—see section 165 (1).

investigation, in relation to a person, means—

- (a) an investigation of any of the following:
 - (i) any property of or under the effective control of, and any dealings with property by, the person or an associate of the person in relation to which action has been or could be taken under this Act or a corresponding law;
 - (ii) benefits derived by the person, or an associate of the person, from the commission (or the alleged commission) of an indictable offence;
 - (iii) the financial affairs of the person or an associate of the person; or
- (b) an investigation to decide whether an application could be made for an order under this Act (including another order under this part), a corresponding law order or a search warrant under part 13 (Search warrants), in relation to anyone; or

- (c) an investigation to decide whether a proceeding could be begun against anyone for an offence against this Act or a corresponding law or for a money laundering offence.

Note 1 For the meaning of *effective control*, see s 14.

Note 2 For the meaning of *in relation to*, see dict.

Note 3 A *money laundering offence* includes a prescribed offence against a law of the Commonwealth, a State or another Territory, see dict.

165 Authorised investigators

- (1) The chief police officer may, in writing, authorise a police officer (an *authorised investigator*) of the rank of superintendent (or higher) to exercise powers under this division in relation to the investigation stated in the authorisation.
- (2) The chief police officer may give an authorisation under subsection (1) only if the chief police officer is satisfied that the police officer has the necessary qualifications, expertise and experience to examine people in relation to the investigation.
- (3) An authorised investigator must exercise the investigator's functions under the supervision of, and in accordance with any directions of, the DPP.
- (4) For subsection (3), the authorised investigator must consult with the DPP about the conduct of an examination.

Subdivision 12.5.2 Examination orders

166 Meaning of *examination order*

In this Act:

examination order means an order under section 169 (Examination orders—making) authorising an authorised investigator to give the person (or people) to whom the order applies an examination notice in relation to the investigation stated in the order.

167 Examination orders—application

- (1) An authorised investigator may apply to a relevant court for an examination order for the investigation for which the investigator is an authorised investigator.
- (2) The application must state the investigation to which the application relates and the person (or people) the investigator proposes to examine in relation to the investigation.
- (3) The application may be made only if the authorised investigator has reasonable grounds for suspecting that the person (or people) can give the investigator information or documents, including property-tracking documents, (or both) in relation to the investigation for which the investigator is an authorised investigator.

Note For the meaning of *in relation to*, see dict.

168 Examination orders—affidavit supporting application

- (1) An application for an examination order must be supported by an affidavit of the applicant authorised investigator stating the grounds for the investigator's suspicions.
- (2) The court may require the authorised investigator to give additional information about the grounds on which the order is sought.

169 Examination orders—making

- (1) This section applies if an application is made under section 167 (Examination orders—application) to a relevant court for an examination order authorising an authorised investigator to give the person (or people) to whom the application relates an examination notice in relation to the investigation stated in the application.
- (2) The relevant court must make the examination order if, having regard to the authorised investigator's affidavit supporting the application and any other evidence before the court, the court is satisfied that—

- (a) the investigator is authorised under section 165 (Authorised investigators) in relation to the investigation stated in the application; and
 - (b) there are reasonable grounds for the investigator's suspicions stated in the affidavit.
- (3) An examination order must state—
- (a) that it is an examination order under this Act; and
 - (b) the person (or people) to whom the order applies; and
 - (c) the investigation to which the order relates; and
 - (d) whether the order applies to documents; and
 - (e) if the order applies to documents—the kinds of documents that a person to whom the order applies may be required to produce under an examination notice; and
 - (f) whether the relevant court making the order has declared that the order is a non-disclosable examination order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

170 Examination order proceedings—restrictions on disclosure

- (1) On application by the applicant authorised investigator, a relevant court hearing an application for an examination order may declare that the order is a non-disclosable examination order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (2) In deciding whether to make a declaration under subsection (1), the court must have regard to whether the declaration—
- (a) would promote the purposes of this Act; or
 - (b) is desirable to protect the integrity of an investigation (however described) for any purpose or a prosecution of an offence.

- (3) The court may also have regard to any other relevant matter in deciding whether to make a declaration under subsection (1).

Subdivision 12.5.3 Examination notices

171 Meaning of *examination notice*

In this Act:

examination notice means a notice by an authorised investigator requiring a person to give the investigator any information or documents (or both) the person has in relation to the investigation stated in the notice.

Note 1 For the meaning of *in relation to*, see dict.

Note 2 It is an offence to contravene an examination notice, to give false or misleading information in purported compliance with an examination notice, or to disclose the existence or operation of the notice (see sdiv 12.5.5 and div 12.6).

172 Examination notices—giving

- (1) An authorised investigator may give an examination notice to a person who is subject to an examination order for the investigation authorised by the order.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) The examination notice is a non-disclosable examination notice if the relevant court that made the examination order to which the notice relates declared that the examination order is a non-disclosable examination order.

Note The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (3) To remove any doubt, an authorised investigator may give 2 or more examination notices in relation to the same investigation to the same person.

173 Examination notices—form

- (1) An examination notice must be signed by the authorised investigator giving it.
- (2) The notice must state—
 - (a) that it is an examination notice under this Act; and
 - (b) the person to whom the notice applies; and
 - (c) the investigation about which the person is to be examined; and
 - (d) the time when and the place where the person is required to attend for examination; and
 - (e) whether the examination notice is a non-disclosable examination notice.

Note 1 For when an examination notice is non-disclosable, see s 172 (2).

Note 2 The disclosure of the existence or operation of a non-disclosable information order is prohibited, see s 192.

- (3) If the examination order to which the notice relates applies to documents, the notice may require the person to give the authorised investigator, at the examination, any documents (including property-tracking documents) of the kind stated in the order that the person has in relation to the investigation stated in the notice.
- (4) The notice must also include a statement setting out the effect of subdivision 12.5.5 (Offences—examination notices) and division 12.6 (Information order offences) in relation to examination notices.

Subdivision 12.5.4 Conducting examinations

174 Time and place of examination

- (1) The examination of a person must be conducted at the time and place stated in the examination notice given to the person.

- (2) However, the time and place of the examination may be changed by agreement between the authorised investigator and the person to whom the examination notice was given or the person's lawyer.

175 Requirements made of person examined

- (1) A person to whom an examination notice applies may be examined on oath or affirmation by the authorised investigator.

Note For the taking of an oath or the making of an affirmation, see the *Oaths and Affirmations Act 1984*.

- (2) For subsection (1), the authorised investigator may—
- (a) require the person either to take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the person.
- (3) The authorised investigator may require the person to answer a question that is put to the person at the examination

176 Conduct of examination

- (1) The examination of the person must take place in private.
- (2) The authorised investigator may give directions about who may be present during the examination, or during a part of it.
- (3) The following people are entitled to be present at the examination:
- (a) the authorised investigator;
 - (b) the person being examined, and the person's lawyer;
 - (c) anyone else who is entitled to be present because of a direction under subsection (2).
- (4) The authorised investigator may arrange for a record of the examination to be made.
- (5) The *Evidence (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links) applies to an examination under this division as if a reference to evidence were a reference to an

examination under this division and any other necessary changes were made.

Note An authorised investigator is a Territory court for the *Evidence (Miscellaneous Provisions) Act 1991*, pt 3 (see s 14, defs *State*, *Territory court* and *tribunal*).

177 Role of the examinee's lawyer

The lawyer of the person being examined may, at the times during the examination that the authorised investigator decides, address the investigator and examine the person about matters about which the investigator has examined (or proposes to examine) the person.

178 Examinations—consequential powers about documents

- (1) If a document is given to an authorised investigator under an examination notice, the investigator may—
 - (a) take possession of, and make copies of, or take extracts from, the document; and
 - (b) keep the document for the period necessary for this Act.
- (2) If an authorised investigator keeps a document given to the investigator under an examination notice, the investigator must, if asked by a person who would be entitled to inspect the document if it was not in the investigator's possession—
 - (a) give the person a copy of the document certified by the investigator in writing to be a true copy of the document; or
 - (b) at any reasonable time, allow the person to inspect the document, make copies of it or take extracts from it.

179 Examinations—additional restrictions on disclosure

- (1) This section applies in relation to the examination of a person under an examination notice (other than a notice that is a non-disclosable examination notice under section 172 (2) (Examination notices—giving)).

Note 1 For non-disclosable examination notices, see s 172 (2). The disclosure of the existence or operation of a non-disclosable examination notice is prohibited, see s 192.

Note 2 The disclosure of matter relating to a direction under this section is prohibited, see s 185.

- (2) An authorised investigator may, on the investigator's own initiative or at the request of the person being examined or the DPP, give directions prohibiting or restricting the publication or disclosure of all or any of the following:
- (a) the fact that an examination notice has been given to a person;
 - (b) any information about the examination (whether or not an examination has been held);
 - (c) any information given, statement made, document produced or thing done during the examination;
 - (d) any information, document or thing derived from anything mentioned in this subsection.
- (3) In deciding whether to give a direction under subsection (2), the authorised investigator must have regard to whether the direction—
- (a) would promote the purposes of this Act; or
 - (b) is desirable to protect the integrity of an investigation (however described) for any purpose or a prosecution of an offence.
- (4) The authorised investigator may also have regard to any other relevant matter in deciding whether to give a direction under subsection (2).

180 Protection of authorised investigator etc

- (1) An authorised investigator has, in the exercise of his or her functions as an authorised investigator, the same protection and immunity as a judge.

- (2) A lawyer appearing at the examination on behalf of the person being examined has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.
- (3) A person being examined under this division—
 - (a) has the same protection as a witness in a proceeding in the Supreme Court; and
 - (b) in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in the Supreme Court.

Subdivision 12.5.5 Offences—examination notices

Note For other applicable offences, see div 12.6 (Information order offences).

181 Obstruction etc of authorised investigator

- (1) A person commits an offence if—
 - (a) the person knows that, or is reckless about the fact that, a person is an authorised investigator; and
 - (b) the person obstructs, hinders, intimidates or resists the investigator in the exercise of the investigator’s functions.

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

- (2) Strict liability applies to subsection (1) (b).

182 Failing to attend examination

- (1) A person commits an offence if the person is required by an examination notice to attend an examination and the person fails to attend the examination at—
 - (a) the time and place stated in the notice; or
 - (b) the time and place as changed under section 174 (2) (Time and place of examination).

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

- (2) An offence against this section is a strict liability offence.

183 Offences relating to appearance at examination

- (1) A person who is required by an examination notice to attend an examination commits an offence if, during the examination, the person—
- (a) fails to be sworn or to make an affirmation that the authorised investigator requires the person to swear or make; or
 - (b) fails to answer a question that the authorised investigator requires the person to answer; or
 - (c) fails to produce a document that the person is required under the examination notice to produce at the examination; or
 - (d) leaves the examination before being excused by the authorised investigator.

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

- (2) However, subsection (1) (c) does not apply if the person complied with the notice in relation to production of a document (if any) to the extent that it was practicable to do so.
- (3) An offence against this section is a strict liability offence.

184 Unauthorised presence at an examination

- (1) A person commits an offence if the person—
- (a) is present at an examination; and
 - (b) is not entitled under section 176 (3) (Conduct of examination) to be present.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

185 Examinations—additional disclosure offences

Note An offence against this section is a strict liability offence, see s (7).

- (1) A person commits an offence if—
- (a) an authorised investigator has given a direction under section 179 (2) (Examinations—additional restrictions on disclosure) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person has notice of the direction (whether by being given a copy of the direction or otherwise); and
 - (c) the person publishes or discloses the matter to someone else.

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

- (2) A person commits an offence if—
- (a) an authorised investigator has given a direction under section 179 (2) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person has notice of the direction (whether by being given a copy of the direction or otherwise); and
 - (c) the person publishes or discloses information to someone else; and
 - (d) the other person could infer from the information the matter to which the direction relates.

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

- (3) Subsections (1) and (2) do not apply if the publication or disclosure is made to any of the following entities in the circumstances mentioned for the entity:

- (a) a police officer—in any circumstances;
- (b) an officer, employee or agent of the person—to ensure that the order is complied with and the person to whom the publication or disclosure is made is given notice of the direction (whether by being given a copy of the restraining order to which the direction relates or otherwise) by the person making the publication or disclosure;
- (c) a lawyer—to obtain legal advice or representation in relation to the order;
- (d) a relevant court—with the court's leave.

Note The application for leave, and any proceeding with the court's leave, must be heard in closed court, see s (8).

- (4) Also, subsections (1) and (2) do not apply if the publication or disclosure is made—
 - (a) by a police officer in the exercise of the officer's functions; or
 - (b) for the purpose of giving or obtaining legal advice, or making legal representations, in relation to the order.
- (5) A person commits an offence if—
 - (a) an authorised investigator has given a direction under section 179 (2) (Examinations—additional restrictions on disclosure) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
 - (c) the person ceases to be a person mentioned in subsection (3) or (4); and
 - (d) the person publishes or discloses the matter to someone else.

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

- (6) A person commits an offence if—
- (a) an authorised investigator has given a direction under section 179 (2) prohibiting or restricting the publication or disclosure of a matter mentioned in the subsection; and
 - (b) the person receives information in relation to the matter in accordance with subsection (3) or (4); and
 - (c) the person ceases to be a person mentioned in subsection (3) or (4); and
 - (d) the person publishes or discloses information to someone else; and
 - (e) the other person could infer from the information the matter to which the direction relates.

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

- (7) An offence against this section is a strict liability offence.
- (8) For subsection (3) (d), an application for leave, and any proceeding with the court's leave, must be heard in closed court.

Division 12.6 Information order offences

186 Meaning of *information order*

In this Act:

information order means—

- (a) an inquiry notice; or
- (b) a monitoring order; or
- (c) a transaction suspension order; or
- (d) a production order; or
- (e) an examination order; or

- (f) an examination notice.

187 Information orders—failure to comply

A person commits an offence if—

- (a) the person is given an information order (other than an examination notice); and
- (b) the person fails to comply with the order.

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

Note For contravention of an examination notice, see s 182.

188 Information orders—false or misleading information

- (1) A person commits an offence if—

- (a) the person gives information to a police officer; and
- (b) the person does so knowing that the information—
 - (i) is false or misleading in a material particular; or
 - (ii) omits something that makes the information false or misleading in a material particular; and
- (c) the information is given in compliance (or purported compliance) with an information order.

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

- (2) Subsection (1) (c) does not apply if, before the information was given by the person to the police officer, a police officer did not take reasonable steps to tell the person of the existence of the offence against subsection (1).
- (3) For subsection (2), it is sufficient if the following form of words is used:

‘Giving false or misleading information is an offence with serious consequences’.

189 Information orders—false or misleading documents

- (1) A person commits an offence if—
- (a) the person produces a document to a police officer (including an authorised investigator); and
 - (b) the person does so knowing that the document is false or misleading in a material particular; and
 - (c) the document is produced in compliance (or purported compliance) with an information order.

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

- (2) Subsection (1) does not apply to a person who produces a document to a police officer if the document is accompanied by a written statement signed by the person (or, for a corporation, by an officer of the corporation)—
- (a) stating that the document is, to the person’s knowledge, false or misleading in a material particular; and
 - (b) setting out, or referring to, the material particular in which the document is, to the person’s knowledge, false or misleading.

190 Destruction etc of documents

- (1) A person commits an offence if—
- (a) the person is given—
 - (i) a production order for a property-tracking document; or
 - (ii) an examination notice that requires the person to produce a document at an examination; and
 - (b) the person intentionally destroys, damages, changes or otherwise interferes with the document.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person is given—
 - (i) a production order for a property-tracking document; or
 - (ii) an examination notice that requires the person to produce a document at an examination; and
 - (b) the person destroys, damages, changes or otherwise interferes with the document.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against subsection (2) a strict liability offence.
- (4) An offence against subsection (2) is declared to be an indictable offence.

Note An offence against a Territory law is an *indictable offence* if it is punishable by imprisonment for longer than 1 year, or is declared by law to be an indictable offence (see Legislation Act, s 190 (1)).

191 Meaning of *non-disclosable information order*

In this Act:

non-disclosable information order means any of the following information orders:

- (a) an inquiry notice;
- (b) a monitoring order;
- (c) a transaction suspension order;
- (d) a production order that is declared under section 161 (1) (Production order proceedings—restrictions on disclosure) to be a non-disclosable production order;

- (e) an examination order that is declared under section 170 (1) (Examination order proceedings—restrictions on disclosure) to be a non-disclosable examination order;
- (f) an examination notice that is a non-disclosable examination notice under section 172 (2) (Examination notices—giving).

192 Information orders—disclosure offences

Note An offence against this section is a strict liability offence, see s (7).

- (1) A person commits an offence if the person publishes or discloses the existence or operation of a non-disclosable information order to someone else.

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

- (2) A person commits an offence if—
 - (a) the person publishes or discloses information to someone else; and
 - (b) the other person could infer from the information the existence or operation of a non-disclosable information order.

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

- (3) Subsections (1) and (2) do not apply if the publication or disclosure is made to any of the following entities in the circumstances mentioned for the entity:
 - (a) a police officer—in any circumstances;
 - (b) an officer, employee or agent of the person—to ensure that the order is complied with and the person to whom the publication or disclosure is made is given notice of the offences against this section by the person making the publication or disclosure;
 - (c) a lawyer—to obtain legal advice or representation in relation to the order;

(d) a relevant court—with the court's leave.

Note The application for leave, and any proceeding with the court's leave, must be heard in closed court, see s (8).

(4) Also, subsections (1) and (2) do not apply if the publication or disclosure is made—

- (a) by a police officer in the exercise of the officer's functions; or
- (b) for the purpose of giving or obtaining legal advice, or making legal representations, in relation to the order.

(5) A person commits an offence if—

- (a) the person receives information in relation to a non-disclosable information order in accordance with subsection (3) or (4); and
- (b) the person ceases to be a person mentioned in subsection (3) or (4); and
- (c) the person publishes or discloses the existence or operation of the order to someone else.

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

(6) A person commits an offence if—

- (a) the person receives information in relation to a non-disclosable information order in accordance with subsection (3) or (4); and
- (b) the person ceases to be a person mentioned in subsection (3) or (4); and
- (c) the person publishes or discloses information to someone else; and
- (d) the other person could infer from the information the existence or operation of the order.

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

- (7) An offence against this section is a strict liability offence.
- (8) For subsection (3) (d), an application for leave, and any proceeding with the court's leave, must be heard in closed court.

193 Information orders—disclosure by police officers

- (1) This section applies to a non-disclosable information order.
- (2) A police officer may disclose the existence or operation of the order for the purposes of, or in the course of, a legal proceeding.

Note A police officer may also disclose the existence or operation of the order in the exercise of the officer's functions, see s 192 (4) (b).

- (3) However, a police officer is not required to disclose to a court the existence or operation of the order.
- (4) In this section:

disclosure, of the existence or operation of the order, includes the disclosure of information to a person from which the person could reasonably infer the existence or operation of the order.

194 Information orders—protection of complying financial institutions

- (1) This section applies to a financial institution, and to an officer, employee or agent of the institution, if—
 - (a) the institution complies with an information order; and
 - (b) information given under the order relates to a money laundering offence.
- (2) The institution or person is taken not to have been at any time in possession of the information given under the order.

Part 13 **Search warrants**

Division 13.1 **Preliminary**

195 **Definitions for pt 13**

In this part:

at includes in or on.

data includes—

- (a) information in any form; and
- (b) any program (or part of a program).

data storage device means a thing containing, or designed to contain, data for use by a computer.

executing police officer, of a search warrant, means—

- (a) the police officer (the *first police officer*) named in the warrant as the police officer responsible for executing the warrant; or
- (b) if the first police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the first police officer; or
- (c) another police officer whose name has been written in the warrant by the police officer last named in the warrant.

frisk search means—

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

issuing officer, for a search warrant, means—

- (a) a judge, the registrar or a deputy registrar of the Supreme Court; or
- (b) a magistrate; or
- (c) the registrar or a deputy registrar of the Magistrates Court if authorised by the Chief Magistrate to issue search warrants under this part.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

ordinary search means a search of a person or of articles in a person's possession, which may include—

- (a) requiring the person to remove the person's overcoat, coat or jacket and any gloves, shoes or hat; and
- (b) an examination of those items.

person assisting, in relation to a search warrant, means a person who has been authorised by an executing police officer to assist in executing the warrant.

premises includes the following:

- (a) land (whether vacant or occupied);
- (b) any structure, building, vehicle or place (whether built or not);
- (c) any part of a structure, building, vehicle or place.

search warrant means a warrant issued under section 199 (Issuing search warrants) that is in force.

target material means—

- (a) property (including tainted property and property under the effective control of a person) in relation to which action has been or could be taken under this Act; or

Note 1 For the meaning of *effective control*, see s 14.

Note 2 For the meaning of *in relation to*, see dict.

- (b) benefits derived by a person from the commission of an indictable offence; or
- (c) evidence in relation to property or benefits mentioned in paragraph (a) or (b); or
- (d) evidence in relation to an indictable offence.

vehicle includes an aircraft or vessel.

Division 13.2 Search warrants—general

196 Applications for search warrants—general

- (1) A police officer may apply to an issuing officer for a search warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The issuing officer may refuse to consider the application until the applicant police officer gives the issuing officer all the information the issuing officer requires about the application in the way the issuing officer requires.

197 Offence for making false etc statements in search warrant applications

A police officer commits an offence if—

- (a) the police officer makes a statement (whether orally, in a document or in any other way); and
- (b) the police officer does so knowing that the statement—
 - (i) is false or misleading in a material particular; or
 - (ii) omits something that makes the statement false or misleading in a material particular; and

- (c) the statement is made to an issuing officer in relation to an application for a search warrant.

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

198 Additional contents of search warrant applications

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

199 Issuing search warrants

- (1) An issuing officer may issue a warrant to search premises if satisfied that there are reasonable grounds for suspecting that there is at the premises, or will be within the next 72 hours, target material.

Note *At* includes in or on (see s 195).

- (2) If an application for a search warrant is made under section 203 (Applying for search warrants by telephone or other electronic means), this section applies as if the reference in subsection (1) to 72 hours were a reference to 48 hours.

200 When search warrant for property-tracking document may be issued

If the target material in relation to which a search warrant is being issued is a property-tracking document, the issuing officer may issue a search warrant in relation to the document only if the issuing officer is satisfied that—

- (a) the document cannot be identified or described with sufficient particularity for the purpose of obtaining a production order; or

- (b) a production order requiring the document has been given but not complied with; or
- (c) there are reasonable grounds to suspect that a production order would not be complied with; or
- (d) the investigation to which the warrant is being sought might be prejudiced by seeking a production order.

201 Contents of search warrants

- (1) A search warrant must state—
 - (a) the kind of target material that is to be searched for under the warrant; and
 - (b) a description of the premises to which the warrant relates; and
 - (c) the name of the executing police officer; and
 - (d) when the warrant expires (see subsection (2)); and
 - (e) whether the warrant may be executed at any time or only during particular hours (see 210); and
 - (f) whether the warrant authorises an ordinary search or frisk search of a person who is at or near the premises when the warrant is executed if the executing police officer or a person assisting suspects on reasonable grounds that the person has target material in the person's possession.
- (2) The time stated in the search warrant under subsection (1) (d) as the time when the warrant expires must be not later than—
 - (a) if the application for the warrant is made under section 204 (Issuing search warrants by telephone or other electronic means)—48 hours after the warrant is issued; or
 - (b) in any other case—the end of the 7th day after the day the warrant is issued.

Example

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

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

202 Authorisation given by search warrants

- (1) A search warrant authorises an executing police officer, or a person assisting—
- (a) to enter the premises and, if the premises are a vehicle, to enter the vehicle, wherever it is; and
 - (b) to search the premises for the kind of target material stated in the warrant, and to seize things of that kind found at the premises; and
 - (c) to seize any other thing found at the premises in the course of the search that the executing police officer or a person assisting believes on reasonable grounds to be target material in relation to which the warrant relates (including evidence of an indictable offence) or evidence of a summary offence if the police officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and
 - (d) if the warrant allows—to conduct an ordinary search or frisk search of a person at or near the premises if the executing police officer or a person assisting suspects on reasonable grounds that the person has target material in the person's possession.
- (2) A search warrant authorises an executing police officer to make things seized under the warrant available to another police officer, any public servant or anyone who holds a position under a Territory law, or a law of the Commonwealth, a State or another Territory, if it is necessary to do so for investigating or prosecuting an offence to which the things relate.

Division 13.3 Telephone and electronic warrants

203 Applying for search warrants by telephone or other electronic means

- (1) A police officer may apply to an issuing officer for a search warrant by telephone, fax or other electronic means—
 - (a) in an urgent case; or
 - (b) if the delay that would happen if an application were made in person would frustrate the effective execution of the warrant.
- (2) The application—
 - (a) must include all information that would be required in an application under division 13.2 (Search warrants—general) for a search warrant; and
 - (b) may, if necessary, be made before the information is sworn.
- (3) The issuing officer may require—
 - (a) communication by voice to the extent that it is practicable in the circumstances; and
 - (b) any further information.

204 Issuing search warrants by telephone or other electronic means

- (1) The issuing officer may complete and sign the same form of search warrant that would be issued under section 199 (Issuing search warrants) if satisfied that—
 - (a) a search warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would happen if an application were made in person would frustrate the effective execution of the warrant.

- (2) If the issuing officer issues the search warrant, the officer must tell the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the date and time when it was signed.
- (3) The applicant must then—
 - (a) complete a form of search warrant in terms substantially corresponding to those given by the issuing officer; and
 - (b) state on the form—
 - (i) the name of the issuing officer; and
 - (ii) the date and time the warrant was signed by the issuing officer.
- (4) The applicant must, by the end of the day after the 1st of the relevant events happens, give the issuing officer—
 - (a) the form of search warrant completed by the applicant; and
 - (b) if the information was unsworn under section 203 (2) (b) (Applying for search warrants by telephone or other electronic means)—the sworn information.
- (5) The issuing officer must attach the form of search warrant completed by the issuing officer to the documents given under subsection (4).
- (6) In subsection (4):

relevant event means the day when—

 - (a) the warrant is executed; or
 - (b) the warrant expires.

205 Unsigned warrants by telephone or other electronic means in court proceedings

- (1) This section applies if—

- (a) it is material, in any proceeding, for a court to be satisfied that the exercise of a power under a search warrant issued under this division was properly authorised; and
 - (b) the form of search warrant signed by the issuing officer is not produced in evidence.
- (2) The court must assume that the exercise of the power was not properly authorised unless the contrary is proved.

206 Offence for stating incorrect names in warrants by telephone or other electronic means

A person commits an offence if—

- (a) the person executes a document or presents a document to a person; and
- (b) the document purports to be a form of search warrant under section 204 (Issuing search warrants by telephone or other electronic means); and
- (c) the person states a name of an issuing officer in the document; and
- (d) the name is not the name of the issuing officer that authorised the warrant.

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

207 Offence for execution etc of search warrant departing in material form

A person commits an offence if—

- (a) the person executes a document or presents a document to a person; and
- (b) the document purports to be a form of search warrant under section 204 (Issuing search warrants by telephone or other electronic means); and

- (c) the document departs in a material particular from the form authorised by the issuing officer.

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

208 Offence for execution etc of unauthorised form of search warrant

A person commits an offence if—

- (a) the person executes a document or presents a document to a person; and
- (b) the document purports to be a form of search warrant under section 204 (Issuing search warrants by telephone or other electronic means); and
- (c) the document—
 - (i) has not been authorised by an issuing officer under that section; or
 - (ii) departs in a material particular from the terms authorised by the issuing officer under that section.

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

209 Offence for giving unauthorised form of search warrant

A person commits an offence if—

- (a) the person purports to give a form of search warrant to an issuing officer under section 204 (4) (b) (Issuing search warrants by telephone or other electronic means); and
- (b) the document is not the form of search warrant that the person executed.

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

Division 13.4 Executing search warrants

Note A court has a discretion to admit improperly obtained evidence (see *Evidence Act 1995* (Cwlth), s 138).

210 Search warrants—whether must be executed only during particular hours

A search warrant must not authorise a search during the period beginning at 9 pm on a day and ending at 6 am on the next day unless the issuing officer is satisfied that—

- (a) it would not be practicable to conduct the search at another time; or
- (b) it is necessary to prevent the concealment, loss or destruction of target material.

211 Search warrants—restrictions on personal searches

- (1) A search warrant cannot authorise a strip search or a search of a person's body cavities.
- (2) If a search warrant authorises an ordinary search or frisk search of a person—
 - (a) a different search from the search authorised must not be done under the warrant; and
 - (b) the search must be conducted by a person of the same sex as the person being searched.
- (3) A person assisting who is not a police officer must not take part in searching a person.
- (4) In this section:

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.

strip search means a search of a person or of articles in the possession of a person, which may include all or any of the following:

- (a) requiring the person to remove all of his or her clothing;
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

transgender person—see the *Crimes (Forensic Procedures) Act 2000*, section 17.

212 Use of force and availability of assistance in executing search warrant

- (1) Force may be used in executing a search warrant as follows:
 - (a) by an executing police officer—force against people and things may be used that is necessary and reasonable in the circumstances;
 - (b) by a person assisting who is a police officer—force against people and things may be used that is necessary and reasonable in the circumstances;
 - (c) by a person assisting who is not a police officer—force against things may be used that is necessary and reasonable in the circumstances.
- (2) An executing police officer may obtain the assistance in executing the warrant that is necessary and reasonable in the circumstances.

213 Search warrants—announcement before entry

- (1) An executing police officer must, before anyone enters premises under a search warrant—
 - (a) announce that the person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—
identify himself or herself to that person.
- (2) The executing police officer is not required to comply with subsection (1) if the police officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including any police officer or person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

214 Details of search warrant to be given to occupier etc

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the executing police officer or a person assisting must make available to the person—
 - (a) a copy of the warrant; and
 - (b) a document setting out the rights and obligations of the person.
- (2) Before a person is searched under a search warrant, the executing police officer or a person assisting must show the person a copy of the warrant.
- (3) The copy of the warrant need not include the issuing officer's signature or the seal or stamp of the court in which the issuing officer holds office or is employed.

215 Occupier entitled to be present during search etc

- (1) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the occupier or person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or

- (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

216 Particular powers available to officers executing search warrant

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

217 Use of equipment to examine or process things

- (1) The executing police officer, or a person assisting, for a search warrant may bring into or onto the premises any equipment reasonably necessary to examine or process a thing found at the premises to decide whether it may be seized under the warrant.

- (2) The executing police officer or a person assisting may operate equipment already at the premises to carry out an examination or processing if the officer believes on reasonable grounds that—
- (a) the equipment is suitable; and
 - (b) the examination or processing may be carried out without damaging the equipment or thing.

218 Moving things to another place for examination or processing

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

- (a) tell the occupier of the address of the place, and when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

219 Use of electronic equipment at premises

- (1) An executing police officer or a person assisting may operate electronic equipment at the premises to access data (including data not held at the premises) if the officer or person believes on reasonable grounds that—
- (a) the data might be target material; and
 - (b) the equipment can be operated without damaging it.

Note An executing police officer may obtain an order requiring a person with knowledge of a computer or computer system to provide assistance (see s 220).

- (2) If the executing police officer or person assisting believes that any data accessed by operating the electronic equipment might be target material, the officer or person may—
- (a) copy the data to a data storage device brought to the premises;
or
 - (b) if the occupier of the premises agrees in writing—copy the data to a data storage device at the premises.
- (3) The executing police officer or person assisting may take the device from the premises.
- (4) The executing police officer, or a person assisting who is a police officer, may do the following things if the officer or person finds that any target material is accessible using the equipment:
- (a) seize the equipment and any data storage device;

- (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.
- (5) A police officer may seize equipment under subsection (4) (a) only if—
- (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in subsection (4) (b); or
 - (b) possession of the equipment by the occupier could be an offence.

220 Person with knowledge of computer or computer system to assist access etc

- (1) An executing police officer may apply to an issuing officer for an order requiring a stated person to provide any information or assistance that is reasonably necessary to allow the executing police officer or a person assisting to do all or any of the following:
- (a) access data held in or accessible from a computer that is on the premises;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The issuing officer may make an order if satisfied that—
- (a) there are reasonable grounds for suspecting that target material is accessible from the computer; and
 - (b) the stated person is—
 - (i) reasonably suspected of possessing, or having under the person's control, target material of the kind stated in the search warrant; or
 - (ii) the owner or lessee of the computer; or
 - (iii) an employee of the owner or lessee of the computer; and

- (c) the stated person has knowledge of—
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person commits an offence if a person contravenes an order under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an order under this section.

221 Securing electronic equipment

- (1) If the executing police officer or a person assisting believes on reasonable grounds that—
 - (a) target material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if the officer or person does not take action, the material may be destroyed, altered or otherwise interfered with;

the officer or person may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

- (2) The executing police officer or a person assisting must give written notice to the occupier of the premises of—
 - (a) the officer's or person's intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.
- (3) The equipment may be secured until the earliest of the following events happens:

- (a) the end of 24 hours;
 - (b) the equipment is operated by the expert.
- (4) If the executing police officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, the officer or person may apply to the issuing officer to extend the period.
- (5) The executing police officer or a person assisting must tell the occupier of the premises of the officer's or person's intention to apply for an extension, and the occupier is entitled to be heard on the application.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

222 Copies of seized things to be provided

- (1) The occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is executed, may ask a police officer who seizes—
- (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a data storage device in which the information can be readily copied;
- to give the occupier or other person a copy of the thing or the information.
- (2) The police officer must do so as soon as practicable after the seizure.
- (3) However, the police officer is not required to do so if—
- (a) the thing was seized under section 219 (Use of electronic equipment at premises); or

- (b) possession by the occupier of the thing or information could be an offence.

223 Providing documents after execution of search warrant

Documents are taken to have been seized under a search warrant if—

- (a) the documents were at, or accessible from, the premises of a financial institution when a search warrant in relation to the premises was executed; and
- (b) the documents could not be found at that time; and
- (c) the financial institution provides them to the executing police officer as soon as practicable after the execution of the warrant.

Division 13.5 Stopping and searching vehicles

224 Searches of vehicles without search warrant in emergency situations

- (1) This section applies if a police officer believes, on reasonable grounds, that—
 - (a) a thing that is target material is in or on a vehicle; and
 - (b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) If this section applies, the police officer may—
 - (a) stop and detain the vehicle; and
 - (b) search the vehicle, and any container in or on the vehicle, for the thing; and
 - (c) seize the thing if the officer finds it.

- (3) If, in the course of searching for the thing, the police officer finds something else that is target material, the police officer may seize that thing if the officer suspects, on reasonable grounds, that—
- (a) it is necessary to seize it to prevent its concealment, loss or destruction; and
 - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) The police officer must exercise the police officer's powers subject to section 225.

225 How police officer exercises powers under s 224

When a police officer exercises a power under section 224 (Searches of vehicles without search warrant in emergency situations) in relation to a vehicle, the police officer—

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

Division 13.6 Search warrants—things seized

226 Receipts for things seized under search warrants

- (1) This section applies to—
 - (a) a thing seized under a search warrant; or
 - (b) a thing moved under section 218 (1) (Moving things to another place for examination or processing); or
 - (c) a thing seized under section 224 (Searches of vehicles without search warrant in emergency situations).
- (2) As soon as practicable after a thing is seized under this part by the executing police officer or a person assisting, the officer or person must give a receipt for it to the person from whom it was seized.
- (3) If, for any reason, it is not practicable to comply with subsection (2), the executing police officer or person assisting must leave the receipt, secured conspicuously, at the place of seizure.
- (4) A receipt under this section must include—
 - (a) a description of the thing seized; and
 - (b) if the thing is moved under section 218 (1)—where the thing is to be taken to.
- (5) A single receipt may be given for 2 or more things.

227 Keeping seized things under search warrants

- (1) This section applies to a police officer in relation to a thing seized under this part if—
 - (a) the reason for the thing's seizure no longer exists or it is decided that the thing is not to be used in evidence; or
 - (b) if the thing was seized under section 224 (Searches of vehicles without search warrant in emergency situations)—the period of 60 days after the day of the thing's seizure ends.

- (2) The police officer must take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it.
- (3) However, the police officer does not have to take those steps if—
 - (a) if subsection (1) (b) applies—
 - (i) a proceeding in relation to which the thing might provide evidence has been begun before the end of the 60-day period and has not been finalised (including an appeal to a court in relation to the proceeding); or
 - (ii) an order is in force under section 228 (Keeping things for further period); or
 - (b) if subsection (1) (a) or (b) applies—the police officer is otherwise authorised (by a law, or an order of a court, of the Territory, the Commonwealth, a State or another Territory) to keep, destroy or dispose of the thing; or
 - (c) the thing is forfeited or forfeitable to the Territory, the Commonwealth or a State or is the subject of a dispute about ownership.

228 Keeping things for further period

- (1) This section applies if a thing has been seized by a police officer under this part and a proceeding in relation to which the thing might provide evidence has not begun before the end of—
 - (a) 60 days after the day of the seizure; or
 - (b) a period previously stated in an order of an issuing officer under this section.
- (2) A police officer may apply to an issuing officer for an order that the officer may keep the thing for a further period.
- (3) Before making the application, the police officer must—

- (a) take reasonable steps to discover whose interests would be affected by the keeping of the thing; and
 - (b) if it is practicable to do so, tell each person the officer believes to be such a person of the proposed application.
- (4) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

229 Issuing officer may order keeping of thing

- (1) The issuing officer may order that the police officer who made an application under section 228 (Keeping things for further period) may keep the thing if the issuing officer is satisfied that it is necessary for the police officer to do so for the purpose of beginning or conducting a proceeding under this Act, another Territory law or the law of the Commonwealth, a State or another Territory.
- (2) The order must state the period for which the officer may keep the thing.
- (3) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

230 Transfer of things seized to public trustee

At the direction of the DPP, a police officer must transfer custody of a thing seized under this part to the public trustee.

Division 13.7 Search warrants—miscellaneous

231 Search warrants—false or misleading information

- (1) A person commits an offence if—
 - (a) the person gives information to a police officer or person assisting a police officer; and
 - (b) the person does so knowing that the information—

- (i) is false or misleading in a material particular; or
- (ii) omits something that makes the information false or misleading in a material particular; and
- (c) the information is given in compliance (or purported compliance) with a requirement under this part.

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

- (2) Subsection (1) (c) does not apply if, before the information was given by the person to the police officer or person assisting, a police officer or person assisting did not take reasonable steps to tell the person of the existence of the offence against subsection (1).
- (3) For subsection (2), it is sufficient if the following form of words is used:

‘Giving false or misleading information is an offence with serious consequences’.

232 Search warrants—false or misleading documents

- (1) A person commits an offence if—
 - (a) the person produces a document to a police officer or a person assisting a police officer; and
 - (b) the person does so knowing that the document is false or misleading in a material particular; and
 - (c) the document is produced in compliance (or purported compliance) with a requirement under this part.

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

- (2) Subsection (1) does not apply to a person who produces a document to a police officer or person assisting if the document is accompanied by a written statement signed by the person (or, for a corporation, by an officer of the corporation)—

- (a) stating that the document is, to the person's knowledge, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the person's knowledge, false or misleading.

233 Obstruction etc of police officers and people assisting

- (1) A person commits an offence if—
 - (a) the person knows that, or is reckless about the fact that, a person is a police officer; and
 - (b) the person obstructs, hinders, intimidates or resists the officer in the exercise of the officer's functions under this part.

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

- (2) For this section, it is immaterial whether the defendant was aware that the police officer was exercising the officer's functions.
- (3) Strict liability applies to subsection (1) (b).

234 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, a police officer must take all reasonable steps to ensure that the police officer, and any person assisting who is not a police officer, causes as little inconvenience, detriment and damage as practicable.
- (2) If a police officer, or a person assisting who is not a police officer, damages anything in the exercise or purported exercise of a function under this part, the police officer or person assisting must give written notice of the particulars of the damage to the person whom the police officer or person assisting believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

235 Compensation

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by a police officer or a person assisting who is not a police officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act or another Territory law brought against the person making the claim for compensation.
- (3) A court must not order the payment of reasonable compensation for the loss or expense unless it is satisfied it is just to make the order in the circumstances of the particular case.

Example for claim for damage or corruption of computer data

The court may have regard to whether the occupier of the premises and any employees, agents or officers of the occupier, if they were available at the time, gave any appropriate warning or guidance on the operation of the computer equipment.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 14 Court procedure

236 Meaning of *confiscation proceeding*

(1) In this Act:

confiscation proceeding means a proceeding in a relevant court in relation to any of the following orders under this Act:

- (a) a restraining order;
- (b) an additional order under section 39 in relation to a restraining order or restrained property;
- (c) a conviction forfeiture order;
- (d) an order under section 59 (Automatic forfeiture—court order declaring property automatically forfeited);
- (e) an order under section 60 (Automatic forfeiture—court orders);
- (f) a civil forfeiture order;
- (g) an exclusion order;
- (h) a penalty order;
- (i) an order under section 105 (Order to stop sale, modification or destruction of restrained property);
- (j) an order under section 113 for the discharge of a registered property interest in forfeited property;
- (k) an order under division 9.4 (Sale of jointly owned forfeited property);
- (l) a return or compensation order;
- (m) a monitoring order;
- (n) a transaction suspension order;
- (o) a production order;

- (p) an examination order
- (q) a buyback order;
- (r) an order under section 239 (2) (c) or 240 (2) to transfer a proceeding to another court;
- (s) an additional order under section 250 (Confiscation proceedings—additional orders);
- (t) an order under this Act in relation to an order mentioned in paragraphs (a) to (s), whether made before, at the same time, or after the making of that order.

Examples for par (t)—general

- 1 an order under section 24 to set aside a dealing with restrained property
- 2 an order under section 35 restricting the disclosure of the making of a restraining order
- 3 an order under section 49 extending the operation of a restraining order
- 4 an interlocutory order in relation to an order mentioned in paragraphs (a) to (s)

Examples for par (t)—additional orders under s 39 and s 250

- 1 See the examples to s 39 (1) for examples of additional orders in relation to restraining orders and restrained property.
- 2 See the examples to s 250 (1) for examples of additional orders in relation to other confiscation proceedings.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, a ***confiscation proceeding*** does not include—
 - (a) a registered corresponding law order that is taken to be a kind of order mentioned in subsection (1); or
 - (b) a proceeding under part 11 (Interstate orders).

237 Confiscation and corresponding law order proceedings are civil, not criminal

- (1) This section applies to—

- (a) a confiscation proceeding; and
 - (b) a proceeding under part 11 (Interstate orders) in relation to a corresponding law order.
- (2) The proceeding is a civil proceeding, not a criminal proceeding.
- (3) Without limiting subsection (2)—
- (a) any rules of interpretation applying only to the criminal law do not apply to the interpretation of the provisions of this Act or any other Territory law in relation to the proceeding; and
 - (b) the rules of evidence applying to a civil proceeding apply to the proceeding, and the rules of evidence applying to a criminal proceeding do not apply.

Example for par (b)

In hearing an application for a civil forfeiture order, whether the offender committed a serious offence is to be decided by the court on the balance of probabilities.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

238 Meaning of *relevant court*

In this Act:

relevant court, for a confiscation proceeding or a proceeding under part 11 (Interstate orders) in relation to a corresponding law order, means the court, or any court, that has jurisdiction under this part to hear and decide the proceeding.

239 Jurisdiction of Magistrates Court—confiscation proceedings

- (1) The Magistrates Court has jurisdiction to hear and decide a confiscation proceeding if—
- (a) the value of the property and benefits to which the proceeding relates (as decided by the Magistrates Court) is not more than

the amount the Magistrates Court may award for a personal action at law (the *Magistrates Court limit*); and

- (b) title to land is not genuinely in question in the proceeding.

Note For the amount the Magistrates Court may award for a personal action at law, see the *Magistrates Court (Civil Jurisdiction) Act 1982*, s 5.

- (2) However, if the value of the property and benefits to which the proceeding relates (as decided by the Magistrates Court) is more than the Magistrates Court limit, the Magistrates Court has jurisdiction to hear and decide the matter to—

- (a) dismiss the proceeding on its merits (but not for want of jurisdiction); or
- (b) make an order or orders in relation to property or benefits to the value of the limit; or
- (c) on the application of the DPP, or on the court's own initiative, by order, transfer the proceeding to the Supreme Court.

- (3) Despite the Magistrates Court limit, the Magistrates Court has jurisdiction to hear and decide the following confiscation proceedings:

- (a) any application for a monitoring order, transaction suspension order, production order or examination order;
- (b) any proceeding in relation to an indictable offence that has been disposed of summarily by the court;
- (c) a proceeding transferred to the court by the Supreme Court under section 241 (2).

Example for par (b)

Mr Somewhat Wayward is summarily convicted of an indictable offence by the Magistrates Court. The value of the benefits received by Mr Wayward from the commission of the offence was \$10 000 more than the Magistrates Court limit. The Magistrates Court may make a penalty order against Mr Wayward for the full amount of the benefits despite their value being more than the amount the Magistrates Court may award for a personal action at law.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) For this section—
- (a) the Magistrates Court has jurisdiction to decide—
 - (i) what is the property and benefits to which the proceeding relates; and
 - (ii) the value of any property and benefits to which the proceeding relates; and
 - (iii) whether title to land is genuinely in question; and
 - (b) title to land is genuinely in question in the proceeding if the Magistrates Court would not have jurisdiction to hear the proceeding under the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 11 (Proceedings affecting title to land).

240 Jurisdiction of Magistrates Court—interstate orders

- (1) The Magistrates Court has jurisdiction to hear and decide any proceeding under part 11 (Interstate orders) in relation to a corresponding law order.
- (2) To remove any doubt, the Magistrates Court is a relevant court even if—
 - (a) the value of the property and benefits to which the corresponding order relates is more than the amount the Magistrates Court may award for a personal action at law; or
 - (b) title to land was genuinely in question in the proceeding for the making of the corresponding law order.

241 Jurisdiction of Supreme Court

- (1) The Supreme Court has jurisdiction to hear and decide any confiscation proceeding or any proceeding under part 11 (Interstate orders) in relation to a corresponding law order.

- (2) The Supreme Court may, by order, transfer a confiscation proceeding to the Magistrates Court if the value of the property and benefits to which the proceeding relates (as decided by the Supreme Court)—
- (a) is less than or equal to the amount the Magistrates Court may award for a personal action at law; and
 - (b) does not include land the title to which is genuinely in question.
- (3) An order under subsection (2) may be made on the application of the DPP or of a person with an interest in the property or on the Supreme Court's own initiative.

242 Confiscation proceedings—transferred proceedings

If a proceeding is transferred from a court (the *first court*) to another court under section 239 (2) (c) or 241 (2)—

- (a) the proceeding is taken to have been begun in the other court; and
- (b) evidence given before, and documents filed with, the first court are taken to have been given before, or filed with, the other court.

Example for par (b)

If a proceeding is transferred from the Magistrates Court to the Supreme Court, the Supreme Court may make findings of fact based on the transcript of evidence given before the Magistrates Court without rehearing the evidence.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

243 Restricted access proceedings—notice of applications etc

- (1) This section applies to a confiscation proceeding for any of the following orders (a *restricted access proceeding*):

- (a) a restraining order;
 - (b) an application by the DPP or public trustee for an additional order under section 39 in relation to a restraining order or restrained property;
 - (c) an order under section 49 (Extension of time for restraining orders) that a restraining order—
 - (i) is to remain in force for a stated period (or as stated in the order); or
 - (ii) that has ended is to be revived for a stated period (or as stated in the order);
 - (d) a monitoring order;
 - (e) a transaction suspension order;
 - (f) a production order (other than an application to vary a production order under section 162);
 - (g) an examination order.
- (2) An application to begin a restricted access proceeding may be made to a relevant court without notice to the person against whom the relevant order is sought.
- (3) If an application is made to begin a restricted access proceeding without notice to the person against whom the relevant order is sought, the applicant is the only party to the application.
- (4) If notice is given to the person against whom the order is sought, the person is entitled to appear and to present evidence at the hearing of the application, but the person's absence does not prevent the court from making the order.
- (5) The relevant court must hold a restricted access proceeding in closed court if the applicant asks and may give directions about who may be present.

244 Other confiscation proceedings—notice of applications etc

- (1) This section applies to an application to a relevant court to begin a confiscation proceeding (other than a restricted access proceeding mentioned in section 243) or to amend such an application.

Note 1 No notice of the application is required for a restricted access proceeding (see s 243 (2)).

Note 2 In particular, no advance notice to anyone is required of the application for the order, and the application may be heard in closed court, without the offender or the public being present, see s 243.

Note 3 Related confiscation proceedings are begun by motion on notice or motion, see s 245.

- (2) The applicant must give written notice of the application to each of the following people, if applicable (a *notifiable person*):
- (a) if the application is made by the DPP—the person in relation to whom the order is sought;
 - (b) if the application is made by someone else—the DPP;
 - (c) if the public trustee has been directed to take control of the property—the public trustee;
 - (d) anyone else the applicant believes may have an interest in the property or benefits that are the subject of the proceeding (or, for forfeited property, may have had an interest in the property or benefits immediately before the property was forfeited).
- (3) Notice of the application must include a statement of the grounds for the application.
- (4) If a notifiable person proposes to oppose the application, the notifiable person must give the applicant written notice of the grounds on which the application will be opposed.
- (5) However, the court may waive the requirement to give written notice of the application to a notifiable person if the person is present in the court when the application is made.

- (6) The court may direct the applicant give notice of the application to anyone and may give directions about how the notice is to be given.
- (7) A notifiable person, and anyone else who claims an interest in the property or benefits, is entitled to appear and to present evidence at the hearing of the application, but the person's absence does not prevent the court from making an order.

245 Applications for another confiscation proceeding in relation to same offence

After the beginning of a confiscation proceeding in relation to a particular offence, any other confiscation proceeding in relation to the same or a related offence—

- (a) is taken to be an interlocutory application in relation to the first proceeding; and
- (b) may be begun by motion on notice or motion (supported, if appropriate, by affidavit) in accordance with the procedure of the relevant court.

246 Confiscation proceedings—time extensions for applications

- (1) A relevant court may give leave for—
 - (a) an application in relation to any confiscation proceeding to be made after the end of a period otherwise provided by this Act (the *standard period*); or
 - (b) if an application for a particular order in relation to an offence has already been made in relation to the offence (or a related offence)—another application for an order of that kind to be made in relation to the same offence (or a related offence), whether before or after the end of the standard period; or
 - (c) the amendment of an application for an order under this Act to vary the property or benefits to which the application relates.
- (2) The court may give leave only if satisfied that—

- (a) property or benefits to which the application relates were (or will be) derived from the offence, or identified, after the end of the standard period; or
 - (b) necessary evidence has (or will) become available only after the end of the standard period; or
 - (c) it is otherwise desirable having regard to the purposes of this Act.
- (3) To remove any doubt, this section does not authorise a relevant court to give leave for an application for an exclusion order in relation to property that has been forfeited.

247 Confiscation proceedings—amendment of applications

- (1) A relevant court may amend an application in any confiscation proceeding on the application, or with the consent, of the applicant.
- (2) The application may be amended at any time before the proceeding for the application is finalised.

248 Confiscation proceedings—relevant material

For a confiscation proceeding, the relevant court may take into account any material it considers appropriate.

Example of material that may be considered appropriate

evidence given in, and the transcript of, any proceedings for or about the offence to which the order sought relates

Note 1 Evidence may be given in the confiscation proceeding of a conviction, acquittal, sentencing, order or about proceedings in a court by a certificate signed by a judge, magistrate, registrar or proper officer of the court (see *Evidence Act 1995* (Cwlth), s 178).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

249 Confiscation proceedings—witness not required to answer questions prejudicing investigation

A witness in the hearing of a confiscation proceeding is not required to answer a question or produce a document if the relevant court is satisfied that answering the question or producing the document may prejudice an investigation or prosecution in relation to an indictable offence.

250 Confiscation proceedings—additional orders

- (1) A relevant court may, when it makes an order in a confiscation proceeding (a *primary order*) or at any later time, make any other order (an *additional order*) that it considers appropriate for varying or giving effect to the primary order.

Examples of additional orders

- 1 an order for the examination of anyone before the court, or an officer of the court, about any property that may be forfeited property
- 2 an order directing the owner of forfeited property or anyone else to give to a stated person, within a stated period, a sworn statement about stated particulars of the forfeited property
- 3 an order directing the owner of forfeited property or anyone else to do anything necessary or convenient to be done to allow the public trustee to take control of the property in accordance with a forfeiture order, including anything necessary or convenient to be done to bring the property within the jurisdiction
- 4 an order in relation to the registration of title to, or charges over, property under a Territory law
- 5 an order for the substituted service of a restraining order

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, this section does not authorise a relevant court to make an additional order in relation to a restraining order or restrained property (including an order for the exclusion of property from a restraining order).

Note 1 For additional orders about restraining orders and restrained property, see s 39 and the notes to that section.

Note 2 For the power to give orders to give effect to an automatic forfeiture for conviction for a serious offence (which operates over restrained property), see s 60.

- (3) An additional order may be made on the relevant court's own initiative, or on the application of any of the following people:
- (a) the applicant for the primary order;
 - (b) the DPP;
 - (c) the public trustee;
 - (d) anyone with an interest in the property or benefits to which the application relates;
 - (e) anyone else with the court's leave.
- (4) To remove any doubt, an additional order under this section does not end only because the order to which the additional order relates ends.

251 Contravention of additional orders under s 250

A person commits an offence if—

- (a) a relevant court makes an additional order under section 250; and
- (b) the person has notice of the order (whether by being given a copy of the order or otherwise); and
- (c) the person contravenes the order.

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

252 Confiscation proceedings—consent orders

- (1) A relevant court may make an order in a confiscation proceeding with the consent of the applicant in the proceeding and everyone

whom it has reason to believe has an interest in the property, benefits, transaction, document or information that is the subject of the proceeding.

- (2) An order may be made with consent under subsection (1) without consideration of the matters which the court would otherwise consider in the proceeding.

253 Confiscation proceedings—notice of making orders

- (1) If a relevant court makes an order in a confiscation proceeding, the applicant for the order must give a copy of the order to—
- (a) if the application is made by the DPP—the person in relation to whom the order is sought; and
 - (b) if the application is made by someone else—the DPP; and
 - (c) if the public trustee has been directed to take control of the property—the public trustee; and
 - (d) anyone else the applicant believes may have an interest in the property or benefits that are the subject of the proceeding (or, for forfeited property, may have had an interest in the property or benefits immediately before the property was forfeited).

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) The court may order the applicant to give notice of the order to anyone else and may give directions about how the notice is to be given.
- (3) The court must not make an order under subsection (2) if compliance with the order would be inconsistent with a direction under section 69 (1) (b) (Civil forfeiture order proceedings—restrictions on disclosure).
- (4) This section does not apply to the making of restraining orders or non-disclosable information orders.

Note See div 4.2 about notice of the making of restraining orders and pt 12 about making information orders.

254 Concurrent proceedings

This Act does not prevent a relevant court from conducting a confiscation proceeding at the same time as another confiscation proceeding or another civil or criminal proceeding, if the court considers it desirable for the purposes of this Act.

Part 15 Miscellaneous

255 Selfincrimination and other privileges overridden

- (1) This section applies despite the Legislation Act, part 15.4 (Preservation of certain common law privileges) if a person is required to disclose anything in a confiscation proceeding, by an order under this Act, or otherwise under this Act.
- (2) The person is not excused from the disclosure because—
 - (a) the disclosure might tend to incriminate the person or make the person liable to a penalty, or the person's property liable to forfeiture, under this Act or another Territory law; or
 - (b) the disclosure would be in breach of an obligation (whether imposed by law or otherwise) of the person not to make the disclosure.

Example—legal professional privilege

A person is not excused from disclosing a document because to do so would be in breach of an obligation by a lawyer to a client not to disclose the existence or contents of the document.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, the disclosure is inadmissible against the person making the disclosure in a civil or criminal proceeding except—
 - (a) in a criminal proceeding in relation to giving false or misleading documents, information or testimony; or
 - (b) in a proceeding on an application under this Act; or
 - (c) in a proceeding for an additional order under section 39 or 250 in relation to another confiscation proceeding under this Act; or

- (d) in a proceeding for enforcement of a confiscation forfeiture order, an automatic forfeiture or a penalty order; or
 - (e) for a document—in a civil proceeding in relation to a right or liability it gives or imposes.
- (4) An action does not lie against a person because of the disclosure if it is in breach of an obligation the person would otherwise have (whether imposed by law or applying otherwise).
- (5) In this section:
- disclosure*, by a person, includes—
- (a) the person answering a question or giving testimony or information to someone else; and
 - (b) the person giving or producing a statement, document or anything else to someone else.

Example of *disclosure*

giving information about the nature or location of property held by anyone

256 Powers under Act not limited by criminal proceedings

To remove any doubt, the fact that a criminal proceeding has begun, or is about to begin, (whether or not under this Act) against a person to whom an order under this Act or an examination notice applies does not prevent the person or anyone else from complying, or permit a person to refuse to comply, with the order or notice.

257 Powers under Act do not limit each other or powers under other laws

A power under this Act does not limit or exclude—

- (a) the operation of another power under this Act; or
- (b) the operation of another Territory law, or a law of the Commonwealth, a State or another Territory.

Example for par (a)

a search warrant under part 13 and an examination notice, production order and monitoring order may be used independently, or in conjunction with each other, in relation to identifying and locating tainted property and benefits derived from an offence.

Example for par (b)

a search warrant under the *Crimes Act 1900* may be applied for to locate target material rather than a search warrant under this Act, part 13.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

258 Examination orders—reporting requirements

- (1) As soon as practicable after the end of each financial year, the chief police officer must give the Minister a report about the operation of division 12.5 (Examination orders and notices) during the financial year.
- (2) The report must include the following information for the financial year:
 - (a) the number of applications for examination orders made during the year;
 - (b) the number of people given examination notices during the year;
 - (c) the number of investigations to which the notices related;
 - (d) the number of examinations conducted during the year.
- (3) The report must also include the following information for the financial year (whether or not the examination notice to which it relates was given during the year):
 - (a) the number and kind of confiscation proceedings begun during the year in relation to matters for which an examination notice has been given to a person;

- (b) the estimated value of property either restrained or confiscated during the year in relation to matters for which an examination notice had been given to a person;
 - (c) the number of charges laid relating to examination notice offences during the year;
 - (d) the number of arrests made during the year in relation to matters for which an examination notice has been given to a person;
 - (e) the number and kind of complaints made during the year to the Australian Federal Police or the Commonwealth Ombudsman in relation to examination notices;
 - (f) the number of complaints of the kind mentioned in paragraph (e) resolved during the year and their outcome;
 - (g) the number and kind of legal proceedings begun during the year in relation to examination notices (other than charges mentioned in paragraph (c) or proceedings begun by the DPP or a police officer);
 - (h) the number of legal proceedings of the kind mentioned in paragraph (g) finalised during the year and their outcome.
- (4) The Minister must present a copy of each report given to the Minister under subsection (1) to the Legislative Assembly within 6 sitting days after the day the Minister receives it.

259 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.

Note For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

260 Regulation-making power

- (1) The Executive may make regulations for this Act.

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

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Part 16 Consequential and transitional matters

261 Repeal of Proceeds of Crime legislation

- (1) The *Proceeds of Crime Act 1991* No 103 is repealed.
- (2) The *Proceeds of Crime Regulations 1993* No 50 are repealed.

262 Orders under repealed Act

- (1) The *Proceeds of Crime Act 1991* (repealed) continues to apply to property or benefits subject to—
 - (a) a restraining order made under that Act if the property or benefits are subject to a forfeiture order or pecuniary penalty order made under that Act; or
 - (b) a forfeiture order or pecuniary penalty order made under that Act; or
 - (c) an interstate forfeiture order, interstate pecuniary penalty order or interstate restraining order registered under that Act.
- (2) If, on the commencement of this Act, an application for an order, or for the registration of an order, mentioned in subsection (1) has been made, but not finalised, the *Proceeds of Crime Act 1991* (repealed) continues to apply to the application and the property or benefits the subject of the application.
- (3) If property or benefits are subject to a restraining order under the *Proceeds of Crime Act 1991* (repealed) but not to a forfeiture order or pecuniary penalty order under that Act, the restraining order is taken to be a restraining order under this Act.

263 Proceedings for offences committed before the commencement of this Act

- (1) To remove any doubt, a civil forfeiture order may be applied for and made in relation to a serious offence even though—
 - (a) an application for a forfeiture order under the *Proceeds of Crime Act 1991* in relation to the offence or a related offence failed; or
 - (b) a person was cleared of the offence before the commencement of this Act.

Note This Act applies in relation to offences, whether committed, or alleged to have been committed, before or after the commencement of this Act (see s 5).

- (2) To remove any doubt, a penalty order may be applied for and made under this Act in relation to an offence mentioned in subsection (1).

264 Use of information etc obtained under repealed Act

- (1) This section applies to property, documents or information that has been—
 - (a) seized or otherwise obtained under the *Proceeds of Crime Act 1991* (repealed); or
 - (b) obtained as a direct or indirect result of action taken under that Act.
- (2) To remove any doubt, the property, documents or information may be used for the purposes of this Act.

265 Confiscated assets trust fund

- (1) The amount of the confiscated assets trust fund (the *old trust fund*) under the *Proceeds of Crime Act 1991* (repealed) is transferred to the confiscated assets trust fund under this Act.

- (2) The amount of distributable funds in the old trust fund, immediately before the repeal of the *Proceeds of Crime Act 1991*, is taken to be distributable funds under this Act.
- (3) The amount of suspended funds in the old trust fund, immediately before the repeal of the *Proceeds of Crime Act 1991*, is taken to be reserved funds under this Act.
- (4) An amount payable under the *Proceeds of Crime Act 1991* (repealed) but not paid before the commencement of this Act is payable from the confiscated assets trust fund under this Act.

266 Transitional regulations

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act instead of the provisions of the *Proceeds of Crime Act 1991* or *Proceeds of Crime Regulations 1993*.
- (3) Regulations made for this section must not be taken to be inconsistent with this Act as far as they can operate concurrently with this Act.
- (4) This section is additional to, and does not limit, section 267.

267 Modification of pt 16's operation

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

268 Amendments of other legislation—sch 1

Schedule 1 amends the Acts mentioned in it.

269 Expiry of pt 16

This part expires 2 years after the day it commences.

Schedule 1 **Amendments of other legislation**

(see s 268)

Part 1.1 **Administrative Decisions (Judicial Review) Act 1989**

[1.1] Schedule 1, clause 2

insert

- *Confiscation of Criminal Assets Act 2003*

Part 1.2 **Crimes Act 1900**

[1.2] New section 7A

insert

7A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 114B (Money laundering)
- s 114C (1) (Possession etc of property suspected of being proceeds of crime)
- s 114D (1) (Organised fraud)
- s 386 (Unlawful possession of money or goods).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[1.3] New division 6.2A

insert

Division 6.2A Money laundering and organised fraud

114A Definitions for div 6.2A

deal, with money or other property, means—

- (a) receiving, possessing, concealing or disposing of money or other property; or
- (b) bringing into the ACT money or other property.

proceeds of crime means—

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

property includes property located in Australia outside the ACT or outside Australia.

unlawful activity means an act or omission that is an offence against Territory law or the law of the Commonwealth, a State, another Territory or a foreign country.

114B Money laundering

A person commits an offence if—

- (a) the person deals with money or other property; and
- (b) the money or other property is proceeds of crime; and
- (c) the person knows that, or is reckless about the fact that, the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

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

114C Possession etc of property suspected of being proceeds of crime

- (1) A person commits an offence if—
 - (a) the person deals with money or other property; and
 - (b) the money or other property is proceeds of crime.

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

- (2) An offence against this section is a strict liability offence..

114D 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 is taken to engage in organised fraud only if the person engages in acts or omissions—
 - (a) that constitute 3 or more public fraud offences; and
 - (b) from which the person derives substantial benefit.

- (3) If, on a trial for an offence against subsection (1) (the *offence charged*), the trier of fact is not satisfied that the person is guilty of the offence charged but is satisfied that the person is guilty of 1 or more public fraud offences (the *other offences*), the trier of fact—

- (a) must acquit the person of the offence charged; and
 - (b) may find the person guilty of the other offences.
- (4) In this section:

public fraud offence means an offence against the *Crimes (Offences against the Government) Act 1989*, section 8 (Fraud) or the Criminal Code, section 48 (Conspiracy).

[1.4] Section 185, new definitions

insert

tainted property—see the *Confiscation of Criminal Assets Act 2003*, section 10.

target material—see the *Confiscation of Criminal Assets Act 2003*, section 195.

[1.5] Section 194 (6) (a) (ii) and (7) (a) (ii)

substitute

- (ii) a thing relevant to another offence that is an indictable offence; or
- (iii) target material or tainted property;

Note Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

[1.6] Section 195 (1) (d) (ii)

substitute

- (ii) evidential material in relation to any indictable offence; or
- (iii) target material or tainted property;

Note Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

[1.7] Section 195 (2) (c) (ii)

substitute

- (ii) a thing relevant to any indictable offence; or
- (iii) target material or tainted property;

Note Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

[1.8] Sections 250 and 251

substitute

250 Disposal of forfeited articles by public trustee

- (1) The public trustee must sell or otherwise dispose of an article transferred to the public trustee under section 249 (4).
- (2) The public trustee must—
 - (a) apply the proceeds of the sale or disposition in payment of the public trustee’s remuneration, and other costs, charges and expenses, in relation to the sale or disposition; and
 - (b) pay the remainder of the proceeds to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (3) However, the Minister may, in a particular case, direct that the article be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (4) The public trustee must comply with the Minister’s direction.
- (5) The regulations may make provision in relation to public trustee’s remuneration, and other costs, charges and expenses, under subsection (2) (a).

[1.9] Section 344

omit

The court shall not, in determining

substitute

- (1) A court must not, in deciding

[1.10] New section 344 (2)

insert

- (2) A court must not, in deciding the sentence to be imposed on a person, reduce the severity of the sentence that would otherwise be imposed because of any automatic forfeiture of property, forfeiture order or penalty order under the *Confiscation of Criminal Assets Act 2003*.

[1.11] New section 350 (1A)

insert

- (1A) However, the court must not order the offender to make reparation to a person only because the person's property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003*.

[1.12] Section 350

renumber subsections when Act next republished under Legislation Act

[1.13] Section 386

substitute

386 Unlawful possession of money or goods

- (1) A person commits an offence if—
- (a) the person has money or goods in the person's custody or in the custody of someone else; and
 - (b) the money or goods are unlawfully obtained money or goods.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person has money or goods in or on any premises, whether the money or goods are in or on the premises for the person's own use or for the use of someone else; and
 - (b) the money or goods are unlawfully obtained money or goods.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
- (a) the person gives custody of money or goods to someone who is not lawfully entitled to possession of the money or goods; and
 - (b) the money or goods are unlawfully obtained money or goods.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (4) It is a defence to a prosecution for an offence against subsections (1) to (3) if the defendant satisfies the court that the defendant had no reasonable grounds for suspecting that the unlawfully obtained money or goods were stolen or otherwise unlawfully obtained.

- (5) In this section:

premises includes the following:

- (a) land (whether vacant or occupied);
- (b) any structure, building, vehicle or place (whether built or not);
- (c) any part of a structure, building, vehicle or place.

unlawfully obtained money or goods means money or goods that are reasonably suspected of having been stolen or otherwise unlawfully obtained.

386A Forfeiture of unlawfully obtained money or goods

- (1) If a person is convicted of an offence against section 386, the money or goods to which the offence relates are forfeited to the Territory—

- (a) if the person convicted is the owner of the money or goods—when the person is convicted; or
 - (b) in any other case—at the end of 90 days after the day the person is convicted of the offence unless the owner of the goods is known.
- (2) The forfeited money or goods must be transferred to the public trustee.

386B Disposal of forfeited money or goods by public trustee

- (1) The public trustee must pay any forfeited money transferred to the public trustee under section 386A (2) to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (2) The public trustee must sell or otherwise dispose of goods transferred to the public trustee under section 386A (2).
- (3) The public trustee must—
 - (a) apply the proceeds of the sale or disposition in payment of the public trustee’s remuneration, and other costs, charges and expenses, in relation to the sale or disposition; and
 - (b) pay the remainder of the proceeds to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (4) However, the Minister may, in a particular case, direct that forfeited goods be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (5) The public trustee must comply with the Minister’s direction.
- (6) The regulations may make provision in relation to public trustee’s remuneration, and other costs, charges and expenses, under subsection (3) (a).

386C Return or compensation for forfeited money or goods

- (1) If, after the end of the 90 day period mentioned in section 386A (1) (b), the owner of the money or goods claims the money or the

goods, the public trustee must, if satisfied that the person is the owner—

- (a) pay the money to the person; or
 - (b) return the goods to the person or pay the person reasonable compensation for the goods.
- (2) This section does not apply if the money or goods are subject to forfeiture, or have been forfeited, under the *Confiscation of Criminal Assets Act 2003*.

Note The *Confiscation of Criminal Assets Act 2003* provides for compensation or the return of forfeited property in certain circumstances.

[1.14] Dictionary, new definitions

insert

tainted property, for part 10 (Criminal investigation)—see the *Confiscation of Criminal Assets Act 2003*, section 10.

target material, for part 10 (Criminal investigation)—see the *Confiscation of Criminal Assets Act 2003*, section 195.

[1.15] Dictionary, definition of *trust fund*

omit

Part 1.3 Prostitution Act 1992

[1.16] Section 6 (1) (a) (iii)

substitute

- (iii) the *Crimes Act 1900*, section 114B (Money laundering);

Dictionary

(see s 6)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- authorised deposit-taking institution
- child
- DPP
- entity
- fail
- foreign country
- found guilty
- function
- indictment
- indictable offence
- interest (in relation to land or other property)
- lawyer
- may (see also s 146)
- must (see also s 146)
- police officer
- property
- public trustee
- registrar-general.

abscond—see section 16.

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

- (a) a facility or arrangement for a fixed term deposit or a safe-deposit box; and
- (b) a facility or arrangement prescribed under the regulations for this definition.

agent, for an agent that is a corporation, includes an officer, employee or agent of the corporation.

artistic profits—see section 81.

artistic profits restraining order—see section 20.

associate, for division 12.5 (Examination orders and notices)—see section 164.

at, for part 13 (Search warrants)—see section 195.

authenticated, in relation to a corresponding law order, for part 11 (Interstate orders)—see section 136.

authorised investigator, for division 12.5 (Examination orders and notices)—see section 165 (1).

automatic forfeiture, of property, means the forfeiture of the property—

- (a) under division 5.2 (Automatic forfeiture—conviction for serious offences); or
- (b) under division 5.3 (Automatic forfeiture—unclaimed tainted property).

Note A registered interstate automatic forfeiture decision is taken to be an automatic forfeiture under this Act (see s 139).

benefit includes service or advantage.

benefits, derived by an offender—see section 80.

buyback order—see section 124.

civil forfeiture order—see section 65.

cleared, of an offence—see section 17.

commission—

- (a) of a serious offence, for part 7 (Penalty orders)—see section 79; and

- (b) of an offence by a person who has absconded—includes the alleged commission of the offence by the person.

confiscation proceeding—see section 236.

convicted—see section 15 (1).

conviction forfeiture order—see section 52.

corresponding law means a law of the Commonwealth, a State or another Territory that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

corresponding law order means an order, notice or decision (however described) made under a corresponding law, whether or not the order, notice or decision—

- (a) is made by a court; or
- (b) corresponds, or substantially corresponds, to an order, notice or decision under this Act.

data, for part 13 (Search warrants)—see section 195.

data storage device, for part 13 (Search warrants)—see section 195.

dealing, with property of a person, includes, for example—

- (a) if a debt is owed to the person—making a payment to anyone in reduction of the debt; and
- (b) disposing of the property (including, for example, making a gift of the property or removing the property from the ACT or Australia); and
- (c) receiving the property, whether as a gift or otherwise; and
- (d) creating or assigning an interest in the property; and
- (e) using the property to obtain or extend credit; and
- (f) using credit secured against the property.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

derived—see section 12.

distributable funds, for part 10 (Confiscated assets trust fund)—see section 128.

effective control, of property—see section 14.

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

equitable sharing program, for part 10 (Confiscated assets trust fund)—see section 129.

examination notice—see section 171.

examination order—see section 166.

exclusion order—see section 72.

executing police officer, of a search warrant, for part 13 (Search warrants)—see section 195.

finalised, for a confiscation or criminal proceeding—see section 18.

financial institution means—

- (a) an authorised deposit-taking institution; or
- (b) the Reserve Bank of Australia; or
- (c) an entity registered or incorporated as a cooperative housing society or similar society under the law of the Territory, a State or another Territory; or
- (d) a person who carries on State banking within the meaning of the Commonwealth Constitution, section 51 (13); or
- (e) a corporation that is, or that, if it had been incorporated in Australia, would be, a financial corporation within the meaning of the Commonwealth Constitution, section 51 (20); or

- (f) a person who permits someone else to deposit money with the person for use by the other person in relation to gaming or betting; or
- (g) an entity prescribed under the regulations for this definition.

forfeited property, means property forfeited under part 5 (Forfeiture of property).

forfeiture order means a civil forfeiture order or a conviction forfeiture order.

Note A registered interstate forfeiture order is taken to be a forfeiture order under this Act (see s 139).

forfeiture or penalty application, for division 4.3 (Duration of restraining orders)—see section 41.

frisk search, for part 13 (Search warrants)—see section 195.

fully satisfied—a forfeiture order or penalty order, or an automatic forfeiture of property, is **fully satisfied** when—

- (a) for an automatic forfeiture of property or a forfeiture order—the property that is the subject of the automatic forfeiture or order has vested in law in the Territory and the public trustee has taken control of the property; and
- (b) for a penalty order—the amount of the order has been paid to, or recovered by, the Territory or realised by the public trustee from the disposal of property.

indictable offence—see section 13 (2).

information order—see section 186.

inquiry notice—see section 144.

in relation to—to remove any doubt, **in relation to** includes—

- (a) in; and
- (b) for or for the purposes of; and

- (c) in connection with; and
- (d) in respect of; and
- (e) with respect to.

Example

The phrase ‘property used, or intended to be used by an offender, in relation to the commission of an offence’ (in s 3 (d) and elsewhere) refers to all or any of the following:

- (a) property used *in* or *in relation to* the commission of the offence;
- (b) property used *for* or *for the purposes of* the commission of the offence;
- (c) property used *in connection with* the commission of the offence;
- (d) property used *in respect of* the commission of the offence;
- (e) property used *with respect to* the commission of the offence.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

interested person, for part 8 (Forfeited property)—see section 107.

interstate automatic forfeiture decision means a corresponding law order prescribed under the regulations for this definition.

interstate civil forfeiture order means a corresponding law order prescribed under the regulations for this definition.

interstate conviction forfeiture order means a corresponding law order prescribed under the regulations for this definition.

interstate forfeiture order means an interstate civil forfeiture order or interstate conviction forfeiture order.

interstate penalty charge—see section 142 (2) (Interstate penalty charges).

interstate penalty order means a corresponding law order prescribed under the regulations for this definition.

interstate restraining order means a corresponding law order prescribed under the regulations for this definition.

investigation, for division 12.5 (Examination orders and notices)—see section 164.

issuing officer, for a search warrant, for part 13 (Search warrants)—see section 195.

joint ownership—property is **jointly owned** if the owners own the property as joint tenants or tenants in common.

money laundering offence means—

- (a) an offence against the *Crimes Act 1900*, division 6.2A (Money laundering and organised fraud); or
- (b) an offence against a law of the Commonwealth, a State or another Territory that is declared under the regulations to be a corresponding offence, whether or not the offence corresponds, or substantially corresponds, to an offence mentioned in paragraph (a).

monitoring order—see section 148.

narcotic substance, for division 7.3 (Value of benefits)—see section 90.

non-disclosable information order—see section 191.

occupier, of premises, for part 13 (Search warrants)—see section 195.

offence—see section 13 (1).

offender, in relation to an offence, means a person (including a corporation) who committed, or is alleged to have committed, the offence.

Note A reference to a **person** generally includes a reference to a corporation as well as an individual, see Legislation Act, s 160. (See also the Legislation Act, dict, pt 1, def **person**.)

ordinary indictable offence—see section 13 (2).

ordinary search, for part 13 (Search warrants)—see section 195.

party, to an offence, means a person who—

- (a) commits or participates in the offence; or
- (b) is an accessory before or after the fact to the offence.

penalty charge—see section 94 (4) (Creation of penalty charge over restrained property).

Note An interstate penalty charge is taken to be a penalty charge under this Act (see s 142).

penalty order—see section 82.

person assisting, in relation to a search warrant, for part 13 (Search warrants)—see section 195.

premises, for part 13 (Search warrants)—see section 195.

present an indictment includes laying an information.

production order—see section 156.

property—

- (a) of an offender, for division 7.3 (Value of benefits)—see section 90; and
- (b) of a person, includes property in which the person has a beneficial interest.

property-tracking document—see section 157.

purposes of this Act—see section 3.

quashed—see section 15 (3) and (4).

registered, for a corresponding law order, means registered under part 11 (Interstate orders).

registrable property means property title to which is passed by registration in a statutory property register.

registered property interest means an interest in property recorded in a statutory property register.

related offence—see section 13 (3).

relevant court—see section 238.

reserved funds, for part 10 (Confiscated assets trust fund)—see section 128.

restrained, in relation to property, means property subject to a restraining order.

restraining order—see section 19.

Note A registered interstate restraining order is taken to be a restraining order under this Act (see s 139).

return or compensation order—see section 121.

search warrant, for part 13 (Search warrants)—see section 195.

serious offence—see section 13 (2).

statutory property register means a register kept under a Territory law, or a law of the Commonwealth, a State or another Territory, for recording ownership of property (including interests in property) if—

- (a) title to the property is passed by registration in the register of ownership of the property; or
- (b) the owner of an interest in the property may lose the interest if the interest is not registered in the register.

Examples

- 1 the register of land titles kept under the *Land Titles Act 1925*, section 43
- 2 the register of interests in goods mentioned in the *Sale of Motor Vehicles Act 1977*, part 4A (Registration of interests in motor vehicles)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

subject to forfeiture, in relation to property—see section 73.

sufficient consideration, in relation to acquiring or disposing or otherwise dealing with property, means acquiring, disposing of, or

otherwise dealing with, the property for a consideration that is sufficient and that appropriately reflects the value of the property having regard only to commercial considerations.

tainted property—see section 10.

target material, for part 13 (Search warrants)—see section 195.

transaction suspension order—see section 152.

trust fund means the confiscated assets trust fund under section 130.

unclaimed tainted property—see section 11.

unclaimed tainted property restraining order—see section 21.

vehicle, for part 13 (Search warrants)—see section 195.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

[Presentation speech made in Assembly on 21 November 2002]

I certify that the above is a true copy of the Confiscation of Criminal Assets Bill 2003 which originated in the Assembly as the Confiscation of Criminal Assets Bill 2002 and was passed by the Legislative Assembly on 4 March 2003.

Clerk of the Legislative Assembly

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