

1991

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PROCEEDS OF CRIME BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by the authority of
the Attorney General)

PROCEEDS OF CRIME

Outline

The Proceeds of Crime Bill 1991 has four main purposes. The principal purpose is to permit a court to grant orders for the freezing and confiscation of property used in, or derived directly or indirectly from, the commission of an indictable offence against a law of the ACT. In addition the Bill:-

- . provides for the registration in ACT courts of orders for freezing and confiscation of property made under corresponding Commonwealth, State and Territory laws and which relate to property located in the ACT;
- . confers on police new powers to facilitate the following of the money trail and to require financial institutions to preserve their records to maintain the money trail;
- . creates new offences of money laundering and organised fraud.

Financial Impact

While it has not been possible to estimate the cost in bringing confiscation proceedings, and in preserving and realising property the subject of orders under the Bill, it is anticipated that the revenue generated from the minimisation of tax evasion and the confiscation of property under the Bill will more than offset the investigative and legal costs in bringing proceedings and in administering property. A specific trust fund is established for monies generated by this legislation, and there is provision for the allocation of moneys from the fund to law enforcement and other criminal justice activities, crime prevention, drug prevention and education, and victims of crime assistance and compensation.

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Abbreviation

The following abbreviations are used in this Explanatory Memorandum:

AFP: Australian Federal Police
Bankruptcy Act: Bankruptcy Act 1966
Chief Police Officer: The police officer who is responsible for the day to day administration and control of police services in the A.C.T.
DPP: Director of Public Prosecutions

Notes of Clauses

Clause 1:

Contains the short title.

Clause 2:

This clause provides that Section 1 of the Bill comes into operation on the day on which the Act is notified in the Gazette and the remaining provisions commence on the day fixed by the Minister by notice in the Gazette. If not already commenced the remaining provisions of the Bill commence 6 months after the Act is notified in the Gazette (Sub-clause 3)

Clause 3:

This Clause sets out the principal objects of the Bill which are to deprive persons of proceeds and benefits derived from the commission of offences against the laws of the ACT. The Bill provides for the forfeiture of property used in connection with the commission of such offences and enables law enforcement authorities to track down the proceeds of crime. Further objects are to enable the registration in Territory Courts of orders for freezing and confiscation of property made under corresponding State, Territory and Commonwealth laws relating to

property in the ACT.

Clause 4:

This is definitional. Sub-clause (2) provides that, for the purposes of the Act, a person is charged as soon as an information is laid against the person whether or not a summons or a warrant of apprehension has been issued. Sub-clause (3) extends the meaning of 'benefit derived by a person' to encompass a benefit derived directly or indirectly, or by another person at the first person's request. Sub-clause (4) extends the meaning of 'property of a person' to include property in which the person has the beneficial interest. Sub-clauses (5) and (6) set out the width of reading of criminal offence for the purposes of the Act. Sub-clause (7) provides that as reference to sufficient consideration in acquiring an interest means that the sufficient consideration reflects the value of the interest having regard to commercial considerations. Sub-clause (8) removes from the ambit of the definition of 'director' a person whose involvement is solely one of acting in his or her professional or business capacity and providing advice to the directors, and the directors act on this advice.

Clause 5:

This clause extends the meaning of 'conviction' for the purposes of the Act. Sub-clause (1) provides that a person shall be taken to be convicted of an offence for the purposes of the Act if the person is convicted, either summarily or on indictment, of the offence; the person is found guilty, or the charge is proved but the offender is discharged without conviction; the person is sentenced for another offence (of which the person has not been found guilty) and in passing the sentence the court, with the consent of the person, takes into account the offence in question; or the person absconds in connection with the offence.

Sub-clause (2) sets out the circumstances in which a "conviction", as defined, shall be taken to have been quashed, and sub-clause (3) establishes the nexus between the offence and the State whose courts have jurisdiction in relation to confiscation proceedings under the Act.

Sub-clause (4) provides that in relation to an absconder a reference to the commission of the offence shall be a reference to the 'alleged' commission of the offence.

Clause 6:

This clause defines an absconder for the purposes of the Act except clause 17. A person is to be treated as having absconded in relation to an offence where an information has been laid alleging that the person committed the offence and a warrant has been issued for the person's arrest and, either the person dies without the warrant having been executed or, at the end of a period of 6 months after the issue of the warrant, the person cannot be found or is for some other reason not amenable to justice and extradition proceedings are not on foot. A person is also an absconder if, at the end of the 6 month period, the person is by reason of being outside the Territory, not amenable to justice and extradition proceedings are on foot and subsequently those proceedings are terminated without an extradition order being made. Before making a confiscation order the court is required (by clause 17) to be satisfied that the person has absconded and committed the offence.

Clause 7:

Clause 7 defines 'serious offence' for the purposes of the Act. A serious offence is one which gives rise to statutory forfeiture under clause 28 and in respect of which a monitoring order may be sought under clause 68. Sub-clause (1) provides that a serious offence means a serious narcotics offence, an organised fraud offence or a money laundering offence in relation to the proceeds of either a serious narcotics offence

or an organised fraud offence and includes an ancillary offence in relation to any of those offences.

Sub-clause (2) contains a number of definitions including a definition of a serious narcotics offence which is defined to include a range of offences against Commonwealth or Territory law relating to the production, possession, supply, importation or export of a traffickable quantity of a narcotic substance. For ease of reference and to ensure uniformity the terms 'narcotic substance' (defined in sub-clause 4(1)) and 'traffickable quantity' have been defined by reference to their meaning in the Customs Act 1901 subject to variation, by regulation in the case of 'narcotic substance', to take into account Territory laws.

Clause 8:

This clause defines 'related offences'. The purpose of this concept is to ensure that restraining orders continue to run where relatively minor changes are made to the charges which have been laid against a person, or where a person is convicted other than of the offence charged, for example, pursuant to an alternative verdict provision. This clause states that two offences are related to one another if the elements of the two offences are substantially the same acts or omissions.

Clause 9:

This clause defines the term 'dealing with property' to include the making of a payment to a person in reduction of a debt, the making of a gift to a person and removing property from the Territory. This definition is relevant to determining the range of conduct precluded by a restraining order under clause 44 and also to determining what constitutes a breach of a restraining order under clause 55.

Clause 10:

This clause gives the court the right to have regard to, when considering whether a person has effective control of property or an interest in property or whether or not there are reasonable grounds to hold this belief: - shareholdings in, debentures over or directorships of companies that have interest in the property; trusts that have relationships to the property; and any relationships between persons having an interest in the property or in companies or trusts outlined above and other persons.

Clause 11

Clause 11 prescribes the court which has jurisdiction to determine an application for a confiscation order in relation to a particular offence. Sub-clause (1) provides that the Supreme Court has sole jurisdiction to determine applications for a confiscation order where that court convicted the person of the offence. Sub-clause (2) provides that where a person is convicted before the Magistrates Court, that court and the Supreme Court are both able to receive and determine applications for a confiscation order for that offence.

Clause 12:

This clause provides that the Act binds the Crown but does not render the Crown liable to be prosecuted for an offence.

Clause 13.

This clause provides that the Act applies to offences whether committed before or after the commencement of the Act. However, Parts II and IV of the Act apply only to offences in respect of which a person is convicted after the commencement of the Act, unless they apply in relation to interstate offences, in which case the relevant conviction can predate the commencement of this Act.

Clause 14:

Clause 14 deals with the circumstances in which an application for a confiscation order may be made. Sub-clause (1) provides that the DPP may, where a person is convicted of an indictable offence, apply to the appropriate court for an order for the forfeiture of tainted property, or for a pecuniary penalty order in respect of benefits derived by the offender from the commission of the offence, or both. Sub-clause (2) requires the DPP to make an application for a confiscation order within six months of the date on which the person is taken to have been convicted of the relevant offence.

Sub-clause (3) precludes the DPP from making an application for the forfeiture of property in respect of a person's conviction of an offence if an application to confiscate that property has previously been made under this or another law and has been finally determined by a court. Only where the application has been dismissed, or withdrawn, for purely technical reasons without a determination of the merits of the application may the DPP re-apply in respect of the same property. Sub-clause (4) makes similar provision in respect of an application for a pecuniary penalty order.

Pursuant to sub-clause (5) the court cannot grant leave unless it is satisfied that the tainted property or benefits to which the application relates was identified only after the first application was determined, that the necessary evidence only became available after that time or the court is otherwise satisfied that it is in the interests of justice to grant leave. The purpose of this restriction is to prevent the 6 month limitation period for applications being disregarded in relation to property which ought to have been included in, or subsequently added to, the original application, so that people are not repeatedly exposed to confiscation proceedings and confiscation matters are finally determined as soon as possible after conviction.

Sub-clause (6) permits an application to be lodged in respect of more than one offence. Sub-clause (7) permits an application for a pecuniary penalty order to be made even if the case is one to which statutory forfeiture applies.

Clause 15:

Clause 15 requires the DPP to give notice of the making of a confiscation application to the person whose conviction gives rise to the application and to every person who the DPP believes has an interest in property that is affected by the application. A court has the power to direct the DPP to give notice to a specified class of person in the manner and within the time specified by the court at any time prior to the final determination of the application. Every person who claims an interest in the property may appear and adduce evidence at the hearing of the application. Sub-clause (2) provides that where an application is made for a pecuniary penalty order, the DPP must give notice to the person convicted of the relevant offence and that person may appear and adduce evidence at the hearing.

Clause 16:

This clause enables an application for a confiscation order to be amended whether to increase the property or the benefit which is covered by the application or not. Sub-clause (1) provides that the application for a confiscation order may be amended by the court on the application of, or with the consent of the DPP.

Sub-clause (2) precludes the court from amending the application to include additional property or additional benefits unless the court is satisfied that the property or benefit was not reasonably capable of identification at the time the application was made, or that the evidence necessary to support the application has only subsequently become available. The purpose of this restriction is to prevent the 6 month limitation period for applications being disregarded in relation to property which ought to have been included in the original application.

Sub-clause (3) requires the DPP to give notice of the application to amend a forfeiture order, where the amendment would have the effect of including additional property, to anybody who the DPP has reasonable grounds to believe has an interest in that additional property. Any person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application.

Sub-clause (4) requires the DPP to give the offender notice of an application to include additional benefit in the application for the pecuniary penalty order.

Clause 17:

This clause imposes special requirements on a court when dealing with an application for confiscation in respect of a person who is an absconder and who is deemed to have been convicted of an offence. This clause precludes the court from making a confiscation order against an absconder unless the court is satisfied, on the balance of probabilities, that the person has absconded and either the person has been committed to stand trial for that offence or is satisfied, having regard to all the evidence before it, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.

Clause 18

This clause is intended to expedite confiscation proceedings and to avoid the need to re-hear evidence which was adduced in the criminal proceedings. Under sub-clause (1) the court is entitled to have regard, in determining the application for the confiscation order, to the evidence given and the transcript of any proceedings against the person for the offence. Sub-clause (3) permits a court to have regard to the transcript of proceedings for the offence referred to in paragraph 5(1)(c). Under sub-clause (2) where the court has not yet passed sentence on the person for the offence the court may, if it considers reasonable to do so, defer passing sentence until it has determined the application for the confiscation order.

Clause 19:

Sub-clause (1) gives the court a discretion to order property forfeited to the Territory where an application for forfeiture has been made in respect of the property and the court is satisfied that it is tainted property. Sub-clause (2) requires the court to determine the value of any forfeited property, other than money, at the time it makes a confiscation order. Sub-clause (3) permits the court to have regard to, any genuine hardship (as opposed to a reduction in the standard of living) which would be likely to be caused by a confiscation order, and the use that is ordinarily made of property, in determining whether to exercise its discretion to make a forfeiture order.

Sub-clause (4) permits the court to take the gravity of the offence into account when determining whether to order the forfeiture of property which is tainted by virtue of having been used or involved in the commission of the offence. For example it may be established that a farm was used for storing drugs but, having regard to the type and quantity of drugs involved and to the fact that the farm was not solely or primarily used for drug storage but was also a viable farming enterprise, the court may exercise its discretion and refuse to order forfeiture of the farm.

Under sub-clause (5) a court that makes a forfeiture order may, where it is satisfied that it would not be contrary to the public interest, and that there is no other reason why the property should not be transferred to its previous owner, declare the nature, extent and value of the person's interest and declare that the forfeiture order may, to the extent of that interest, be discharged upon payment as provided by clause 31. Unless there is something inherent in the nature of the property that is forfeited or some other factor that makes it undesirable for it to be returned to the community as a whole, or to the previous owner, the court may permit the previous owner to buy his interest back from the Territory.

Sub-clause (6) provides an evidentiary aid to establishing that property used, or involved, in the commission of an offence. Under that sub-clause, where the DPP applies for a forfeiture order in reliance on a person's conviction and evidence is given at the hearing of an application for a forfeiture order that the property was in the person's possession at the time of, or immediately after, the commission of the offence, and no evidence to the contrary is adduced the court shall presume the property to have been so used. However, if evidence to the contrary is led, the court cannot make a forfeiture order unless it is satisfied, on the balance of probabilities, that the property was used in, or in connection with, the commission of the offence.

Under sub-clauses (7) & (8) a court that makes a forfeiture order has power to give all directions necessary or convenient to give effect to the order including the power to direct an officer to obtain documents necessary to transfer property.

Clause 20

This clause sets out the means by which the Territory acquires title to property that is the subject of the forfeiture order and limits the Minister's power to dispose of forfeited property while the order is the subject of a possible appeal.

Sub-clause (1) provides that non-registrable property vests absolutely in the Territory upon the making of a forfeiture order. Sub-clause (2) provides that, in relation to registrable property which is the subject of a forfeiture order, the property vests in equity in the Territory but not at law until the registration requirements have been complied with. The Minister has power, on behalf of the Territory, to do anything necessary to obtain the registration of the Territory as owner, including executing any instrument required to be executed by the person transferring an interest of that kind to the Territory.

Sub-clause (3) precludes dealing with the property by the Territory until the expiration of both the appeal period in relation to the conviction and the appeal period in relation to the forfeiture order. At the end of the expiration of the appeal periods, if the order has not been discharged the forfeited property will in most cases be transferred to the Public Trustee to be dealt with under sub-clause (3) (b). The Public Trustee will be authorised to deduct its fees and costs for the administration of the restraining order and the sale or disposition and to pay the remainder to the Trust Fund. Sub-clause (4) provides the Attorney-General with the power to direct that forfeited property be disposed of in some particular way, for example by directing that the property be made available for use by a law enforcement agency but ultimately sold and the proceeds paid into the Trust Fund. The reserve power of direction will be capable of delegation only to a 'prescribed officer' as defined being a member of the Senior Executive Service of Attorney-General's Department. Sub-clause (5) provides that the Minister may give directions for disposing of property in accordance with the provisions of a law.

Sub-clause (6) defines 'appeal period' in relation to a person who is taken to have been convicted of an offence by virtue of paragraph 5(1)(b) and 5(1)(c) of the Act. Sub-clause (7) defines 'appeal period' in relation to a decision of the courts as either the period allowed for the lodging within that time, when the appeal lapses or is finally determined. Sub-clause (7) also defines 'relevant time' for the purposes of this section.

Clause 21:

This clause deals with the procedure by which third parties whose property interests are affected by forfeiture orders can seek relief. Sub-clause (1) enables a third party whose interests may be affected by a forfeiture order to seek an order under sub-clause (6) exempting his property from the operation of the order. It is desirable for the effective operation of the legislation, that property interests be determined at the earliest possible time and accordingly sub-clause (1) enables a

third party to establish his or her innocent interest before a forfeiture order is made.

Sub-clause (2) enables parties with an interest in forfeited property to lodge an application to establish their innocence in certain circumstances. Sub-clause (3) precludes a person who had notice of the application for the forfeiture order or who appeared at the hearing of the application, from making an application under this section without special leave of the court.

Sub-clause (4) enables the court to grant a person leave to apply where it is satisfied that there are special grounds for granting that leave. Sub-clause (5) provides that special grounds exist where the court is satisfied that the person did not appear at the hearing for good reason although the person had notice of the hearing, or that particular evidence proposed to be produced by the person was not available at the time of the hearing of the application for the forfeiture order. These provisions are in furtherance of the object of clarifying property interests and confiscation of such interests at the earliest possible time.

Sub-clause (6) enables the court to exempt property from the operation of a forfeiture order, or to revoke the operation of a forfeiture order in respect of property, if it is satisfied that the applicant was not in any way involved in the commission of the offence and, where the interest was acquired at the time of, or after, the commission of the offence, that it was acquired for sufficient consideration and without knowledge, or in circumstances that would not arouse a reasonable suspicion, that the property was tainted property. In such a case, the court must declare the nature, extent and value of the applicant's interests and direct the Territory to either transfer the interest back to the applicant or pay the applicant an amount equal to the value of the applicant's interest.

Sub-clause (7) requires an application under this section to be made within six months of the making of the forfeiture order. Sub-clause (8) permits the court to grant leave to make an application outside the six months period if the court is satisfied that the delay was not due to neglect by the person. Sub-clause (9) requires notice to be given to the DPP and the Minister of the making of the application and sub-clause (10) provides that the DPP is a party to any proceedings under this section and the Minister may intervene in such proceedings.

Clause 22:

This section provides that a forfeiture order is discharged if the conviction upon which it is based is quashed or the forfeiture order is discharged on appeal. Sub-clause (2) provides that where a forfeiture order is discharged because, the conviction is quashed or an appeal against the making of the forfeiture order is upheld the DPP is required to notify in writing, as soon as possible after the discharge of the forfeiture order, any person believed to have had an interest in the property immediately before forfeiture or those persons or class of person that a court requests be notified. The notice must inform the person of his or her right to reclaim the property - sub-clause 3. Under sub-clause (4) any person who had an interest in property before the making of the forfeiture order may apply, in writing, to the Minister to have the interest transferred back. The Minister is required to arrange for the interest to be transferred back to the person or to pay the person an amount equal to the value of the interest. Sub-clause (5) enables the Minister to do anything necessary or convenient to effect the transfer of property back to the person in whom it was previously vested.

Clause 23:

This clause provides that pecuniary penalty orders may apply to any property that comes into the possession, or under the control, of a person, in the Territory or elsewhere, before or after the commencement of the Act. However, as clause 11

provides that the legislation applies in the case of Territory offences, only to offences committed after the commencement of the Act, the effect of this clause is to ensure that 'prepayments' made before the commencement of the Act may be taken into account when assessing benefits derived from offences committed after commencement.

Clause 24:

This clause precludes the court from making a pecuniary penalty order in respect of a person convicted of a serious offence until after the end of a period of six months commencing on the day of the conviction. The purpose of this is to preclude a court from making a pecuniary penalty order until the effect of the statutory forfeiture pursuant to clause 28 has been assessed. This provision does not apply to an application for a pecuniary penalty order against a person who is taken to have been convicted of a serious offence by reason of absconding.

Clause 25.

Sub-clause (1) enables the court, if satisfied that a person derived benefits from the commission of the offence, to assess the value of the benefits in accordance with clause 26 and to order the person to pay the Territory a pecuniary penalty equal to the penalty amount.

Sub-clause (2) defines 'penalty amount' to be the value of the benefits assessed under clause 26. Sub-clause (3) requires the value of any property which has been forfeited, or may become the subject of a forfeiture order, to be deducted from the penalty amount. Any taxes that have been paid under Commonwealth, State, Territory or Foreign law and which in the opinion of the court are attributable in whole or part to the benefits being assessed may also be deducted from the penalty amount: sub-clause (4). Sub-clause (5) gives the court a discretion to reduce the penalty amount by any amount payable by the person by way of fine, restitution or compensation in relation to the offence.

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Sub-clause (6) permits a court, on the application of the DPP, to vary a pecuniary penalty order by increasing the penalty amount if the original pecuniary penalty order was reduced by the value of property the subject of a forfeiture order, or a proposed forfeiture order, and either the proposed forfeiture order was not made, or the forfeiture or forfeiture order was discharged on appeal. Sub-clause (7) makes similar provision where tax taken into account is subsequently repaid or refunded.

Sub-clause (8) provides that a pecuniary penalty order gives rise to a civil debt due by the person to the Territory. Sub-clause (9) provides that a pecuniary penalty order may be enforced as an order of the court made in civil proceedings for the recovery of a debt due by the person to the Territory and the debt arising shall be taken to be a judgement debt.

Clause 26:

This clause outlines the method of assessing a pecuniary penalty. Sub-clause (1) is definitional. Sub-clause (2) provides that, in assessing the value of the benefit derived by a person from the commission of an offence, the court shall have regard to the evidence before it concerning all, or any, of the following matters: the value of the property that came into the possession or under the control of the defendant, or another person at the request or direction of the defendant, by reason of the commission of the offence or any of the offences; the value of any other benefits provided to the defendant by reason of the commission of the offence; in relation to offences relating to narcotic substances the market value at the time of the offence of similar or substantially similar narcotic substances; the amount that was, at the time of the offence ordinarily paid for a substantially similar act or thing; the value of the defendant's property before and after the commission of the offence, or where more than one offence is involved, before, during and after the offence period in question and the expenditure and income of the person before and after the commission of the offence, or where the application

relates to more than one offence, before during and after the offence period. Sub-clause (3) enables a court, in quantifying the value of a benefit, to treat its value as the value it would have had had it been derived at the time of the valuation.

Sub-section (4) creates a presumption that a benefit has been derived from an offence where the defendant's assets during or after the commission of the offence exceed the value of his or her assets before the commission of the offence. The court may treat the value of the benefits derived from the offence as not less than the amount of the greatest excess unless the defendant satisfies the court, on the balance of probabilities, that the whole of the excess or part of the excess was not derived, directly or indirectly, from the commission of the offence. Sub-clause (5) creates a similar presumption in relation to two or more offences where there is an excess of property during or after the beginning of the offence period.

Sub-clause (6) deals with pecuniary penalty orders for serious offences and provides that all the defendant's property at the time the application is made, and all of his or her property in the previous five years (or during the period commencing with the commission of the offence, whichever is the shorter), is to be treated as if it were derived from the commission of the offence unless the defendant proves the contrary on the balance of probabilities. Sub-clause (7) prevents a person from being deprived of the benefits derived from an offence where a pecuniary penalty order has already been made to confiscate that benefit under the Commonwealth Proceeds of Crime Act or Division 3 of Part XIII of the Customs Act or a corresponding law of a State or another Territory.

Sub-clause (8) prevents a person from offsetting, against benefits derived from the commission of an offence, any costs incurred in committing that offence. Sub-clause (9) provides that where property vests in an insolvency trustee the property shall be deemed to continue to be the person's property. Sub-clause (10) states that the evidence of a police officer as to the market value of a narcotic substance, or the usual payment

for certain services, is admissible and constitutes evidence of the matters testified to.

Clause 27:

Sub-clause (1) enables a court to treat as property of the defendant (for the purposes of assessing benefit) any property which it is satisfied has been the subject of a sham transaction designed to conceal the origin of the property or to put the property outside the ambit of the Act.

Sub-clause (2) enables the court to make an order, on the application of the DPP, making property under the defendant's control available to satisfy the pecuniary penalty order. Sub-clause (3) enables the pecuniary penalty order to be enforced against any property declared to be available to satisfy the order and enables a restraining order to be made in respect of that property.

Sub-clause (4) requires the DPP to give notice of an application for an order under sub-clause (3) to any person whom the DPP has reason to believe may have an interest in that property and such people may appear and adduce evidence at the hearing of matters relevant to whether the court should make an order under sub-clause (1).

Clause 28:

This clause sets out special provisions relating to forfeiture where the defendant has been convicted of a 'serious offence'. Where a person other than an absconder has been convicted of a serious offence all property which is the subject of a restraining order six months after the date of the conviction is forfeited unless it is shown that the property was lawfully derived.

Sub-clause (1) sets out the conditions precedent to forfeiture. These are: that a person has been convicted of a serious offence other than by virtue of his being an absconder; that

restraining orders have been made in respect of property and those restraining orders are not made in respect of property controlled but not owned by the defendant or the subject of a declaration under sub-clause 50(5) (ie that the property is not to be forfeited but is to be available to satisfy any pecuniary penalty order that may be made); and that the restraining order is in force at the time of forfeiture, namely six months after the date on which the person was convicted of the offence.

Sub-clauses (2) to (8) provide for the vesting of property in, and the realisation of property by, the Territory. Sub-clauses (9) & (11) define 'appeal period' for the purposes of the clause. Sub-clause (10) provides for the Court to make a declaration that property has been forfeited.

Clause 29:

Clause 29 provides for the recovery of property which has been forfeited under clause 28. Sub-clause (1) enables a person who claims an interest in property to apply to the court which made the relevant restraining order for an order for the return of the interest in the property or payment of its value.

Sub-clauses (2) and (3) provide that that application must be brought within six months after forfeiture unless the court is satisfied that the failure to apply in time was not due to neglect on the part of the applicant. Sub-clauses (4) & (5) preclude a court from making an order in favour of a person who had notice of the application for, or the making of the restraining order, unless it is satisfied that the applicant was not negligent in failing to seek to have the property excluded from the restraining order. This is to ensure that, where possible, the restraining order itself is challenged and interests in property asserted before forfeiture.

Sub-clause (6) enables the court to make an order declaring the nature, extent and value of the applicant's interest in the property and to direct the Territory to transfer the interest back to the applicant or to pay the applicant an amount equal to

the value of that interest. The court may make an order where it is satisfied that the applicant was not in any way involved in the commission of the relevant serious offence and (if the property was acquired during or after the commission of the offence) that the interest in property was obtained for sufficient consideration and without knowledge, or grounds for suspicion, that the property was tainted; or it is satisfied that the property is not tainted property and the applicant's interest was lawfully acquired.

Sub-clauses (7)-(9) enable a person to apply to the court for an order permitting the person to buy back property (which is lawfully the subject of forfeiture under clause 28) on payment to the Territory of an amount equal to the value of that property. Sub-clause (10) defines the terms 'defendant' and 'relevant restraining order'.

Clause 30:

This clause requires the DPP to give any person with an interest in property forfeited under clause 28 notice of the fact that the relevant conviction has been quashed and that the person (including the person whose conviction is quashed) may apply to the Minister for the return of forfeited property - sub-clause (2).

Sub-clauses (3) and (4) require the Minister to transfer that interest back to the applicant or to pay the applicant an amount equal to its value.

Clause 31:

This clause enables persons who previously had an interest in forfeited property to buy that interest back from the Territory by paying the Territory an amount equal to its value. Sub-clause (1) provides that where a court has made a forfeiture order and has also made an order permitting the person to buy his interest in the property back under sub-clause 19(5) and the person pays the Territory the value of the property, the

forfeiture order is discharged in respect of that interest.

Sub-clause (2) makes similar provisions in relation to property that was the subject of forfeiture under clause 28 and the person is permitted under sub-clause 29(7) to buy back that property. Sub-clauses (3) and (4) enable the Minister to transfer back an interest which has been forfeited where the forfeiture has been discharged by payment of the interest's value.

Clause 32:

Clause 32 enables a person who has had an interest in forfeited property returned to him (either as a result of an order of the court or as a result of a 'buy-back' procedure) to purchase other interests in the property which remain forfeited if the previous owner of that interest raises no objection. When a person proposes to buy out other interests he must serve a notice on each person who had previously held an interest in that property. Where a person served with the notice has not, within 21 days, lodged a written objection to the purchase with the Minister, the proposed purchaser may purchase that interest from the Territory.

Clause 33:

Sub-clause (1) establishes the Confiscated Assets Trust Fund. This fund is a trust account for the purposes of section 85 of the Audit Act 1989 - sub-clause (2).

Clause 34:

Sub-clause (1) provides that the moneys to be paid into the Fund include the proceeds of confiscated assets; money derived from the enforcement in the Territory of an interstate forfeiture order registered for enforcement in the Territory. Under an agreement between the Commonwealth, State and Territory Attorney-General's the proceeds resulting from the forfeiture of property are to be retained by the jurisdiction in which the

forfeiture occurs; the Territory's share, under the equitable sharing program of proceeds resulting from a breach of the criminal law of the Commonwealth, a State or another Territory. Sub-clause (2) requires the moneys to be dealt with in accordance with clause 37. Sub-clause (3) provides that payments to the Trust Fund are taken to constitute a payment to the Territory.

Clause 35:

This clause provides for payments out of the Trust Fund; Those funds which are identified as 'suspended funds' will be distributed for:

- . payments to the States or Commonwealth under equitable sharing arrangements;
- . in payment for the annual management fee for the Trust Fund. The regulations will make provision for the deduction of a management fee which will cover the administrative costs associated with the management of the Trust Fund; and
- . in payment of any amounts that are ordered to be paid by the Territory in compensation for third party interests.

Apart from those payments, other money which is identified as distributable funds as defined will be available for payment under Section 36 or for reimbursement of a Government Business Enterprise under subparagraph 35 (1) (b) (i).

Clause 36

Clause 36 makes provision for the distribution of money for the following purposes:

- . law enforcement and other criminal justice activities;
- . crime prevention;

- . drug prevention, education or rehabilitation;
- . victims of crime assistance and compensation; and
- . otherwise as prescribed in the regulations.

Clause 37:

This clause provides that the Public Trustee shall periodically, and at least once every six months, determine whether the amount of suspended funds in the Trust Fund is sufficient for the requirements of paragraph 35(1)(a).

Under subsections 37(2) and (3) the Public Trustee will be able to identify further funds as 'suspended funds' in the case of a deficiency or to declare that surplus 'suspended funds' are to be identified as 'distributable funds' and to be available for distribution under paragraph 35(1)(b).

Clause 38:

This clause sets out an exhaustive list of the circumstances in which searches of persons or searches of land or premises may be conducted and tainted property seized. Sub-clause (1) sets out the circumstances in which a police officer may search a person. Sub-clause (2) sets out the circumstances in which a police officer may enter upon land, or premises to search for and seize tainted property. Sub-clause (3) enables a police officer who conducts a lawful search of the person to also search the clothing being worn by the person and any property in, or apparently in, the person's immediate control. Sub-clause (4) precludes body cavity searches pursuant to these provisions.

Clause 39:

This clause deals with procedures for obtaining search warrants. Sub-clause (1) enables a police officer who has reasonable grounds for suspecting that there is tainted property of a

specified kind on a person, in the clothing being worn by a person, or in any property in a person's immediate control to lay an information on oath setting out those grounds before a magistrate and to apply for the issue of a warrant to search the person.

Sub-clause (2) enables a magistrate to issue a warrant authorising a police officer to search a person for specified tainted property and to seize that property if it is found in the course of the search. Sub-clauses (3) and (4) make similar provision for the application and issue of a warrant to search premises or land.

Sub-clauses (5) and (6) preclude a magistrate from issuing a warrant unless all further information he or she requires has been furnished to him or her concerning the grounds on which the warrant is being sought and the magistrate is satisfied that there are reasonable grounds for issuing the warrant. Where a warrant is sought before charges have been laid the Magistrate must also be satisfied that an information will be laid within 48 hours.

Sub-clause (7) requires a warrant issued under either sub-clauses (2) or (4) to state the purpose for which it is issued (including a reference to the nature of the offence in respect of which the property, the subject of the warrant, is tainted property), a description of the type of property authorised to be seized and the time at which the warrant ceases to have effect. Sub-clause (8) requires a warrant issued under sub-clause (4) to specify the times during which entry is authorised.

Sub-clause (9) allows a police officer to seize anything found, in the course of searching for tainted property, which the police officer believes on reasonable grounds to be tainted property in relation to that offence but not of the kind specified in the warrant or tainted property in relation to another indictable offence or which may afford evidence of an offence and which it is necessary to seize to prevent its

concealment, loss or destruction, or its continued use in committing, continuing or repeating that offence or the other offence.

Sub-clause (10) provides that a police officer, acting in accordance with a warrant, may remove or require a person to remove any of the clothing of the person if the removal is necessary and reasonable for the effective search of the person. Sub-clause (11) requires a person to be searched by a person of the same sex or a legally qualified medical practitioner.

Clause 40:

This clause enables a police officer, who considers it necessary to do so because of the urgency of the circumstances, to make an application for a search warrant by telephone. However, sub-clause (2) requires the officer to prepare an information before making the application although it may be sworn subsequently.

Sub-clauses (3) and (4) provide the procedure to be followed by the magistrate. Where such an application is made and granted, a form of warrant completed by the police officer is, if it is in accordance with the terms of the warrant made out and signed by the magistrate, authority for any search, entry or seizure authorised by a magistrate's warrant - sub-clauses (6) and (7). The police officer is required to promptly forward to the magistrate the form of warrant prepared by him and the relevant sworn information - sub-clause (5).

Sub-clause (8) provides that unless the warrant signed by the magistrate is produced in proceedings the court shall assume, unless the contrary is proved, that the search entry, or seizure was not authorised by a warrant. Sub-clause (9) requires a magistrate, as opposed to a justice of the peace, to issue a telephone search warrant.

Clause 41:

This clause provides for searches in emergencies. Sub-clause (1) and (2) authorise a police officer to conduct a search of a person, land or premises on or in which the police officer believes on reasonable grounds that tainted property is situated if the police officer also believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property and the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search and entry without a warrant.

Sub-clause (3) ensures that emergency searches are only conducted where an information has been laid in respect of the offence in relation to which the property sought is tainted property. Sub-clause (4) allows a police officer to seize anything found, in the course of searching for tainted property, which the police officer believes on reasonable grounds to be tainted property in relation to that offence but not of the kind specified in the warrant or tainted property in relation to another indictable offence or which may afford evidence of an offence and which it is necessary to seize to prevent its concealment, loss or destruction, or its continued use in committing, continuing or repeating that offence or the other offence. Sub-clause (5) requires that a search of a person be carried out by a person of the same sex if it is practicable in the circumstances for this to be done.

Clause 42:

This clause requires the Chief Police Officer to arrange for seized property to be retained and preserved until it is dealt with in accordance with another provision of the Act.

Clause 43:

This clause deals with the return of seized property. Sub-clause (1) enables a person to apply for an order that seized property (other than property that may afford evidence of the commission of an offence) be returned to him. Sub-clause (2) provides that the court may, if it is satisfied that the person is entitled to possession of the property, that the property is not tainted property and also that the defendant has no interest in the property, order the responsible custodian to return the property. The Chief Police Officer must arrange for the order to be complied with.

Sub-clause (3) requires the Chief Police Officer to return property seized before an information had been laid if an information has not been laid in respect of the relevant offence within 48 hours of the seizure of that property. Sub-clause (4) requires the Chief Police Officer to return property 14 days after seizure unless a forfeiture order has been made in respect of the property or sub-clause (5) applies.

Sub-clause (5) provides that, where property has been seized and a restraining order is made in relation to the property before the Chief Police Officer is required to return the property, the Chief Police Officer shall deal with the property in accordance with the order. If the restraining order directs the Public Trustee to take custody of the property, the Chief Police Officer must arrange for the property to be given to the Public Trustee. If the court makes an order under sub-section (6) the Chief Police Officer may retain the property until it is dealt with in accordance with another provision of the Act. In any other case the Chief Police Officer must return the property.

Sub-clause (6) enables the Chief Police Officer to apply to the court for permission to retain property which he requires as evidence of the commission of the relevant offence or of any other offence. Sub-clause (7) provides that a witness cannot be required to answer a question or produce documents if the court is satisfied that the giving of such evidence may prejudice the

investigation or prosecution of a person for an offence. Sub-clause (8) requires the Chief Police Officer to arrange for the return of seized property if an application for a restraining order or a forfeiture order in respect of the property is refused. Sub-clause (9) requires the Chief Police Officer to deal with seized property, which becomes the subject of a forfeiture order while it is in his possession, in accordance with that order.

Clause 44:

This clause deals with the issue of search warrants in a Territory in relation to property which is tainted property in respect of an interstate indictable offence. Sub-clause (1) provides that the Division (other than clause 40 which deals with the return of seized property) applies to the issue of search warrants in a Territory as if a reference to an 'offence' included an interstate indictable offence and 'tainted property' included property which is tainted in respect of an interstate indictable offence.

Sub-clause (2) sets out special requirements for property which is seized in relation to an interstate indictable offence. If, seven days after the seizure of the property, no one has been charged with an interstate indictable offence and an application for a interstate forfeiture order has not been made; or if a person has been convicted of the interstate indictable offence but no application for confiscation has been made six months after the date of conviction; or if a person has been charged with the interstate indictable offence and has been discharged or acquitted, the Commissioner must return the property to the person from whom it was seized. The Commissioner must also give effect to an order of the court of the State in which the offence is being dealt with which directs the return of the seized property or directs that the person be allowed access to the property.

Clause 45:

This clause describes the circumstances in which an application for a restraining order can be made. Sub-clause (1) enables the DPP to apply for a restraining order to the relevant Supreme Court provided that a person has been convicted of an indictable offence or has been, or is about to be, charged with such an offence. The application may seek an order against specified property of the defendant or of another person, or against all of the property of the defendant whether acquired before or after the making of the order, or against all of the property of the defendant, other than specified property, whether acquired before or after the making of the order.

Sub-clause (2) gives the court a discretion to direct that the property, or a specified part of the property, not be disposed of or otherwise dealt with by any person except in accordance with the order and, if the circumstances so require, direct the Public Trustee to take custody of the property or a specified part of the property.

Sub-clauses (3) & (4) enable the court to make restraining orders subject to conditions. Those conditions may include provision for meeting, out of the property or a specified part of the property, the person's reasonable living expenses and reasonable business expenses, the person's reasonable expenses in defending a criminal charge or a debt incurred in good faith by the person where such expenses cannot be met out of unrestrained property.

Sub-clause (5) empowers the Public Trustee to do anything reasonably necessary to preserve property the subject of a restraining order, including becoming a party to any civil proceedings affecting the property, ensuring that the property is insured, and if the property consists in whole or part of a business, employing or terminating the employment of persons employed in the business. Sub-clause (6) empowers the Public Trustee to exercise the rights attaching to shares, which are the subject of an order, as if he or she were the registered

holder of the shares. Sub-clause (7) outlines the relationship between sub-clauses (5) (c) and (6).

Sub-clause (8) provides that where the DPP has applied for a restraining order no witness is to be required to answer a question or produce a document if the court is satisfied that the answering of the question or production of the document would be likely to prejudice the investigation of or prosecution of a person for an offence.

Clause 46:

This clause deals with the grounds for making a restraining order. Sub-clause (1) sets out the circumstances in which a court is required to make a restraining order in relation to a serious offence. Sub-clause (2) sets out the circumstances in which a court is required to make a restraining order in respect of an ordinary indictable offence unless it is satisfied that it is not in the public interest to make the order. Unless the restraining order is sought after conviction, the court cannot make a restraining order for any offence unless the application for the order is supported by an affidavit of an AFP member stating that the member believes that the defendant committed the offence and the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief - sub-clause (3). Sub-clause (4) precludes the court from making a restraining order where a charge has not been laid in respect of the relevant offence unless satisfied that a person will be charged within 48 hours with that offence or a related offence.

Sub-clauses (5) and (6) deal with restraining orders in relation to ordinary indictable offences where the property sought to be restrained is property of the defendant. Sub-clause (5) relates to an application which seeks a restraining order against specified property of the defendant whereas sub-clause (6) relates to an application covering all of the property of that defendant. In either case the restraining order cannot be granted unless the application is supported by an affidavit of a

member of the AFP stating that the member believes that the defendant derived a benefit, directly or indirectly, from the commission of the offence or, in the case of an application relating to specified property, that the property is tainted property in relation to the offence. The court must be satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

Sub-clauses (7) & (8) deal with an application which relates to the restraining of specified property of a person other than the defendant. It precludes the court from making an order in respect of such property unless the application is supported by an affidavit of a member of the AFP stating that the member believes that property to be tainted property in relation to the offence, that the property is subject to the effective control of the defendant and that he or she derived a benefit from the commission of the offence and the court is satisfied that there are reasonable grounds for holding that belief.

Sub-clause (9) ensures that a court is not precluded from making a restraining order although there is no risk that the property will be disposed of or otherwise dealt with in a manner that would defeat the operation of the Act. This question may influence the conditions which are placed on the restraining order but should not influence the court in exercising its discretion to make a restraining order.

Sub-clause (10) empowers the court to refuse to make a restraining order where the Territory refuses or fails to give the necessary undertakings in respect of the payment of damages or costs or both in relation to the making and operation of the order. Sub-clause (11) enables the DPP to give such undertakings on behalf of the Territory. Sub-clause (12) requires an affidavit, made by a police officer for the purposes of the clause, to set out the grounds on which the officer holds the stated belief.

Clause 47:

Sub-clause (1) requires the DPP to give notice of an application for a restraining order to the owner of property which it is sought to have restrained and to any other person who the DPP has reason to believe has an interest in that property. Sub-clause (2) enables a court to make a restraining order where notice of the application has not been given, if it is satisfied that there are circumstances of urgency which require the order to be made immediately or that it would be contrary to the interests of justice to give notice to any person of the application. Such a restraining order is effective for a maximum of 14 days. One circumstance in which it may be necessary to seek a restraining order without notice is where a restraining order is required in order to arrange the freezing of property overseas whether by means of the registration of the Australian order or otherwise. Sub-clause (3) enables the court at any time before the matter is finally determined, to direct the DPP to give or publish notice of the application to any person.

Clause 48:

Sub-clause (1) enables the court, to extend the operation of a restraining order made without notice so that it remains in force as if it had been granted after notice. Sub-clause (2) applies Clause 46 other than sub-clause 46(4)) to an extension of a restraining order in the same way as it applies to the making of a restraining order. Sub-clauses (3) and (4) requires the DPP to give notice of an application to extend a restraining order granted without notice.

Clause 49:

This clause permits a person who claims an interest in property to appear and to adduce evidence at the hearing of an application for a restraining order or for the extension of a restraining order.

Clause 50:

Sub-clause (1) requires the DPP to give written notice of the making of a restraining order to any person who has an interest in property the subject of that order. However, sub-clause (2) enables the court to order that the giving of notice in accordance with sub-clause (1) be delayed for a specified period if the court is satisfied that it would be in the interest of justice to do so. This is in furtherance of provisions for the making of applications for restraining orders without notice to enable other law enforcement action to be taken before notice is given.

Clause 51:

Sub-clause (1) enables a court to make additional orders in relation to property the subject of the restraining order at the time it makes the restraining order or at any later time. The Court may vary the restraining order by excluding property from, or bringing additional property within, the ambit of the order. The court may vary any condition attaching to the restraining order and may order the examination on oath of the owner or the defendant, either before the Court or the Registrar, concerning the affairs of any owner or defendant. The court may also make an order for the carrying out of any undertaking with respect to damages or costs given by the Territory. The Court may make an order directing the owner, defendant or director of a body corporate to give a sworn statement setting out such particulars of the property, or dealings with same, as the court thinks proper. Where the restraining order has directed the Public Trustee to take custody and control of property the court may make an order regulating the manner in which the Public Trustee exercises its powers, determining any question relating to that property or directing the owner or another person to any act or thing necessary or convenient to enable the Public Trustee to comply with the restraining order.

Sub-clause (2) provides that the DPP, the respondent, the Public Trustee, or any other person with the leave of the court, may lodge an application for an order under sub-section (1). Sub-clause (3) provides that ancillary orders continue to have effect if the restraining order ceases to be force under sub-clause 61(2)(e) or (g).

Sub-clause (4) sets out the circumstances in which the restraining order may be varied to exclude a person's interest in property from the ambit of the order. A court is required to grant an application to exclude property from the ambit of the restraining order, where the relevant offence is an ordinary indictable offence and the applicant is not the defendant and the restraining order was made by virtue of sub-paragraph 46(7)(a)(ii), if the court is satisfied that the property is not tainted and a pecuniary penalty order cannot be made against the defendant and in any other case if the court is satisfied that the interest is not tainted property. If the applicant is the defendant the court must grant the order if it is satisfied that the property is not tainted and that no pecuniary penalty order could be made. Where the applicant is not the defendant and the restraining order was not made under sub-paragraph 46(8) but the offence is a serious offence then the Court must be satisfied that the applicant was not in any way involved in the commission of the offence. In addition, where the applicant acquired the interest during, or after, the commission of the offence then the Court must be satisfied that it was acquired for sufficient consideration and without knowledge of any circumstances which would arouse a reasonable suspicion that the property was tainted property. Pursuant to paragraph (4)(h) the court is given a general overriding discretion to exclude property from a restraining order where it is in the public interest to do so having regard to such matters as financial hardship or other consequences of failing to exclude the property from the order, the seriousness of the offence and the likelihood that the interest will be confiscated.

Sub-clause (5) deals with the situation where the defendant has been convicted, or charged, or is about to be charged, with a serious offence, a restraining order has been made against property and the defendant seeks to exclude that property from the operation of the restraining order. In such a case a court may declare that the property or part of the property is not tainted and has been lawfully acquired and is to be disregarded for the purposes of forfeiture under clause 28. The restraining order will remain in force in respect of the property in order to preserve it against the contingency that a pecuniary penalty is made in respect of the property.

Sub-clauses (6) and (8) provides that where a person is examined following an order under sub-clause (1) and paragraph (1)(e) the person is not excused from answering a question on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty. However, pursuant to sub-clauses (7) and (9) a statement or disclosure made by the person in answer to a question during the course of such an examination and any information, document or thing which is obtained as a direct, or indirect consequence of making of statement or disclosure is not admissible against the person in criminal proceedings other than proceedings for giving false testimony during the course of that examination.

Sub-clause (10) ensures that statements made during the course of an examination are admissible in proceedings relating to restraining, forfeiture or pecuniary penalty orders.

Sub-clause (11) provides that where the DPP has applied to a Court for a restraining order, a witness shall not be required to answer a question or produce a document if the court is satisfied that to answer or produce may prejudice the investigation of, or prosecution of a person for, an offence.

Clause 52:

Sub-clause (1), provides that where the Public Trustee is to take custody and control of property and the order makes provision for meeting a persons reasonable expenses in defending a criminal charge, the Public Trustee may apply for an order that the expenses be taxed (sub-clause (3)). Sub-clause (2) requires the Public Trustee to give written notice of an application to the person affected. Sub-clause (4) sets out the timing of the Public Trustee meeting the expenses subject to an application under sub-clause (1)

Clause 53:

This clause deals with the discharge of pecuniary penalty orders by the Public Trustee. Sub-clauses (1) and (2) provide that where a pecuniary penalty order has been made, and the Public Trustee has custody and control of property under a relevant restraining order, the court may include in the pecuniary penalty or restraining order a direction that the Public Trustee pay the Territory an amount equal to the pecuniary penalty amount.

Sub-clauses (3) & (4) provide that in order to facilitate compliance with a direction under sub-clause (1) the court may direct the Public Trustee to sell or dispose of property under his control, and may appoint an officer of the court, or another person, to execute instruments in the name of a person who has an interest in the property and to do any thing necessary to give validity and operation to the deed or instrument. Such execution has the same force and validity as if the instrument had been executed by the person who owned the property.

Sub-clause (5) prevents the Public Trustee from dealing with property to satisfy the pecuniary penalty order until the appeal period has expired.

Where a direction has been made to sell or dispose of property, sub-clause (6) directs the Public Trustee to realise the property the subject of the restraining order as soon as practicable and to use the proceeds to pay costs, charges, expenses and remuneration in connection with the performance of its functions and then to pay the balance of the money to the Trust Fund. Under sub-clause (7) any excess money held by the Public Trustee is to be paid to the person whose property was subject to the restraining order. Sub-clause (8) provides that, to the extent that the Public Trustee pays money to the Trust Fund in respect of the person's liability under a pecuniary penalty order, the pecuniary penalty order is deemed discharged.

Sub-clauses (9), (10) and (11) define 'appeal period' for the purpose of this provision.

Clause 54:

This clause creates a charge over property which is the subject of both a restraining order and a pecuniary penalty order. Sub-clause (1) creates a charge over all property the subject of the restraining order where a restraining order is made and a pecuniary penalty order is also made.

Sub-clause (2) provides that the charge created by virtue of sub-clause (1) ceases to have effect in respect of property once the conviction in respect of which the pecuniary penalty order was made is quashed; the pecuniary penalty order is discharged on appeal; upon payment of the pecuniary penalty amount; upon the person becoming bankrupt; on the sale or disposition of the property by the Public Trustee in accordance with the court order; on the sale or disposition by the owner of the property with the consent of the court or the Public Trustee; or if the restraining order required the Public Trustee to take control of the property. A charge also ceases upon the sale of the property to a purchaser in good faith and for value who had no notice of the charge.

Under sub-clause (3) a charge is deemed to be subject to every encumbrance that has come into existence before the charge and that would have priority by virtue of other legislation. The charge has priority over all other encumbrances and subject to sub-clause (2) is not affected by a change of ownership.

Sub-clause (4) enables the Public Trustee, or the DPP, to register a charge over property in accordance with laws of the Territory, or of the Commonwealth, a State or another Territory, and where a charge is so registered a person seeking to deal with an interest in the property shall be deemed to have notice of the charge at the time of the dealing.

Clause 55:

This clause permits the DPP to request that details of a restraining order to be registered pursuant to a law of the Territory or the Commonwealth, a State or another Territory, and where the restraining order is so registered any person who subsequently deals with the property shall be deemed to have notice of the restraining order for the purposes of an offence of dealing with the property under clause 56.

Clause 56:

This clause creates an offence of knowingly dealing with property in contravention of a restraining order. The maximum penalty provided for the offence is a fine of \$20,000 or two years imprisonment, or both, in the case of a natural person or fine of \$100,000 in the case of a body corporate. Sub-clause (2) enables a court to set aside a disposition of property which is the subject of the restraining order, in contravention of that order, if the disposition or dealing is not for sufficient consideration or not in favour of a person who acted in good faith. The court may set the dealing or disposition aside either as from the date of the dealing or disposition or from the date of the order. If the court makes the latter order, the court must declare the respective rights of persons who acquired an interest in the property during or after that dealing.

Clause 57:

This clause sets out the duties of the Public Trustee. Sub-clause (1) provides where the Public Trustee has been directed by a court order made under clause 53(1) or 53(2) to pay an amount to the Territory and subsequently receives notice of the presentation of a bankruptcy petition against the person against whom the pecuniary penalty order has been made, the Public Trustee is to take no further action to sell the property and is not to pay the Territory any money pursuant to the payment order until the petition has been dealt with by a bankruptcy court, has been withdrawn or has lapsed.

Sub-clause (2) provides in similar terms for the situation where the Public Trustee has notice of a reference to a bankruptcy court of a debtor's petition.

Clause 58:

Sub-clause (1) provides that where a restraining order has directed the Public Trustee to take control of all of the person's property, and the Public Trustee has so taken custody and control of the property without notice that another person claims an interest in that property and the person against whom the restraining order was made did not have a beneficial interest in that property, the Public Trustee is not personally liable for any loss or damage arising from having taken custody or control of that property. The Public Trustee is only personally liable for the cost of proceedings taken by the person to establish the interest in the property, if a court is of the opinion that the Public Trustee has been guilty of negligence in taking control or custody of the property. Sub-clause (2) makes similar provision with respect to circumstances where the Public Trustee takes control of property pursuant to a restraining order which directs him to take custody and control of specified property only.

Sub-clause (3) provides that the Public Trustee is not personally liable for any rates, land tax, or municipal or other statutory charges in respect of property which the court has directed to be taken into custody and control, being costs which fall due on or after the date of the order except to the extent of the rents and profits received by the Public Trustee in respect of the property on or after the date of the order.

Sub-clause (4) provides that where the Public Trustee has been directed to take custody and control of a business, the Public Trustee is not personally liable for any payment in respect of long service leave to which a person becomes entitled after the date of the order.

Clause 59:

This clause provides that the regulations may make provision for the costs, charges and expenses and also remuneration of the Public Trustee in relation to the performance of its functions under this Act.

Clause 60:

This clause deals with the revocation of restraining orders and empowers the court, on the application of any person whose property is the subject of the restraining order, to revoke the order if the person gives security to the satisfaction of the court for the payment of any pecuniary penalty order which may be imposed or gives undertakings satisfactory to the court concerning the person's property.

Clause 61:

This clause deals with the time at which a restraining order ceases to be in force. Sub-clause (1) provides that where a restraining order has been made in reliance on the proposed charging of the person with an offence, and the person has not been charged with the offence, or a related indictable offence, within 48 hours the restraining order ceases to be in force.

Sub-clause (2) deals with the situation where the restraining order is made following the person's conviction or charging with an offence or where the charge has been laid within the requisite 48 hour period after the making of the restraining order. In such a case the restraining order ceases to be in force if the charge is withdrawn and the person is not charged with a related indictable offence. If the person is acquitted and the person is not charged with a related indictable offence by the time of the acquittal the restraining order ceases at the time of the acquittal. If a confiscation order that is a pecuniary penalty order is made, the restraining order ceases to be in force when that order is satisfied, or ceases to be in force, provided no application for a confiscation order has still to be determined and no other confiscation order remains in force. A restraining order ceases to be in force in so far as it relates to property forfeited under clause 19 or 28 at the time of forfeiture. A restraining order ceases to be in force when an application for a confiscation order is refused if at that time no other application for a confiscation order has still to be determined and no other confiscation order in respect of that offence remains in force. Where an application is made for an extension of the period during which the restraining order is to remain in force and the application is refused, then the restraining order ceases to be in force at the end of the relevant period or when it would otherwise cease to be in force. Where the application for an extension of the period of the restraining order is granted, the restraining order ceases to be in force at such time, or on the occurrence of such an event as is specified by the court. In any other case the restraining order ceases to be in force at the expiration of the relevant period as defined.

Sub-clause (3) enables the DPP to apply for, and the court to grant, an extension of the period during which the restraining order is to remain in force if it is satisfied that a forfeiture order may still be made in respect of property, or that the property may be needed to satisfy a pecuniary penalty order.

Sub-clause (4) requires the DPP to give written notice of an application for an extension of the duration of a restraining order. Sub-clause (5) enables a court to make whatever orders are necessary to appropriately deal with the situation where a restraining order had been made in respect of property and subsequently both a forfeiture order and a pecuniary penalty order are made.

Sub-clause (6) defines the relevant period in relation to a restraining order. Sub-clause (7) defines extend for this clause.

Clause 62:

Sub-clause (1) requires a person who makes an application for a further order in respect of the restraining order pursuant to section 51 to give notice of the application to each other person who would be entitled to make such an application.

Sub-clause (2) requires a person who makes an application for a revocation of a restraining order to give notice of the application to the DPP and to the Public Trustee if it has been directed to take control or custody of any of the property the subject of the order.

Clause 63:

This clause defines 'indictable offence' for the purposes of this Part.

Clause 64:

This clause deals with the procedure for the making and granting of applications for production orders. Sub-clause (1) provides where a police officer has reasonable grounds for suspecting that a person has been convicted of an indictable offence, or has committed an indictable offence, and that any person may have possession or control of a property tracking document, or documents, in relation to that offence, the police officer may

lay before a judge of the relevant Supreme Court an information on oath setting out those grounds and apply for a production order. Sub-clause (2) enables a court to treat a document as a property tracking document if the police officer has stated that he believes on reasonable grounds, if the offence is an ordinary indictable offence, that the alleged offender derived a benefit from the offence; that specified property is under the alleged offender's effective control and that a specified document is relevant to identifying, locating or quantifying that property. The belief that the person derived a benefit is not required in the case of a serious offence. In determining whether to treat a document as a property tracking document under sub-clause (2) the court may have regard to the matters referred to in sub-clause 10(2).

Sub-clause (4) enables a judge to make a production order directing the person to produce, to a police officer, any property tracking documents in his or her possession or control, or directing the person to make such documents available to the police officer for inspection.

Sub-clause (6) precludes the judge from making a production order unless such information as the judge requires concerning the grounds on which the order is sought have been provided and the judge is satisfied that there are reasonable grounds for making the order.

Sub-clause (7) requires an order directing a person to produce documents to specify the time and place at which the documents are to be produced. Sub-clause (8) makes similar provision in relation to an order directing documents to be made available for inspection.

Sub-clause (5) prohibits an order to produce being made in respect of bankers' books.

Sub-clause (9) enables a police officer, pursuant to a direction to produce documents, to inspect the documents, take extracts and make copies of the documents and to retain the document if,

and for so long as, retention of the document is necessary for the purposes of the Act. Under sub-clause (10) if the order directs that a document be made available to a police officer, the police officer may inspect the documents, take extracts there from and make copies of the documents.

Sub-clause (11) requires a police officer who has retained documents pursuant to a production order to provide a person upon request with a copy of the document certified by the police officer to be a true copy of the document.

Sub-clause (12) provides that it is not an excuse for failing to provide, or to make available, a document as required by a production order, on the ground that the production or making available of the document may tend to incriminate the person or make him or her liable to a penalty or constitute a breach of an obligation not to disclose the existence or contents of the document.

Sub-clause (13) provides that any document produced shall not be evidenced in criminal proceedings except for the offence of failing to produce a document. Sub-clause (14) excludes proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order from the scope of sub-clause (13).

Sub-clause (15) defines the term 'bankers' books'.

Clause 65:

This clause provides that where a production order has been made, directing a person to produce documents to a police officer, and the court is satisfied that these documents are essential to the business activities of the person to whom the order is directed, the court may, upon application by the person, vary the order to require the person to make such documents available for inspection by a police officer.

Clause 66:

This clause creates offences in relation to breaches of production orders. Sub-clause (1) provides that where a production order has been made and the person to whom it is directed contravenes the order without reasonable excuse then the person is guilty of an offence. The person also commits an offence if, in purported compliance with the order, he or she produces or makes available a document known to the person to be false and misleading in a material particular without indicating to the police officer that it is false and misleading and the respect in which the document is so false and misleading, and does not provide correct information to the officer if the person is in possession of, or can reasonably acquire the correct information. Sub-clause (2) provides a penalty of \$20,000 or 2 years imprisonment, or both, for a natural person convicted of a breach of sub-clause (1) and a fine of \$100,000 where the offender is a body corporate.

Clause 67:

This clause makes provisions for entry search and seizure as an alternative, or in addition to, production orders. The clause enables a police officer to enter and search land or premises for a property tracking document with the consent of the occupier of the land or premises or pursuant to a search warrant issued for that purpose. It also enables a police officer to seize any document found in the course of such a search which the police officer believes on reasonable grounds to be a property tracking document.

Clause 68:

This clause makes provision for the application for and issue of search warrants. Sub-clause (1) enables a police officer to lay information before a Judge of the relevant Supreme Court and apply for a search warrant where the police officer has reasonable grounds for suspecting that a person has been convicted of, or has committed, an indictable offence and that

there may be, upon land or premises, documents of a particular kind which are property tracking documents.

Sub-clause (2) enables a Judge to treat a document as a property tracking document if the police officer has stated that he believes on reasonable grounds and if the offence is an ordinary indictable offence, that the alleged offender derived a benefit from the offence; that specified property is under the alleged offender's effective control and that a document is relevant to identifying, locating or quantifying that property. In the case of serious offences the need for a belief that the person derived a benefit is removed. In determining whether to treat a document as a property tracking document under sub-clause (2) the Judge may have regard to the matters referred to in sub-clause 10(2).

Sub-clause (4) enables a Judge to issue a search warrant to a police officer authorising the police officer whether or not named in the warrant, to enter and search the land and premises and to seize documents found in the course of the search that are documents that the police officer believes on reasonable grounds to be documents referred to in the warrant.

Sub-clause (5) requires a Judge to be satisfied before issuing a search warrant that it would not be more appropriate for the matters to be dealt with by way of a production order. The Judge must be satisfied that the documents concerned are not capable of being identified or described with sufficient particularity for the purpose of obtaining a production order, or that a production order has not been or is unlikely to be complied with, or that the investigation would be severely prejudiced if the matter were to proceed by way of production order rather than search warrant. Sub-clause (6) requires the Judge to be further satisfied that there are reasonable grounds for issuing the warrant and that all information required by him or her has been supplied to support the application.

sub-clause (7) requires that a search warrant issued under this provision is to contain a statement of the purpose for which the warrant is issued, including a reference to the indictable offence which it is believed to have been committed, whether entry is authorised at any time or at a specified time, a description of the property which may be seized under the warrant and the date on which the warrant expires. Sub-clause (8) deems a warrant issued under these provision to authorise the seizure of a document or thing found in the course of a search conducted in accordance with the warrant if the police officer believes on reasonable grounds that the document is a property tracking document relating to the offence but not of the kind specified in the warrant; a property tracking document relating to another offence, or something which will afford evidence of the commission of an offence and also that it is necessary to seize the document or thing to prevent it being concealed, lost or destroyed.

Clause 69:

This clause creates a new mechanism whereby a law enforcement agency can gain information quickly about movements of funds in relation to bank accounts operated by particular persons. This information is likely to be particularly valuable in tracing movements of funds for purposes of proceeds of crime proceedings, in assisting in the investigation of money laundering offences and in alerting police of imminent action in relation to an offence that is about to be committed. Information gained through this provision will be particularly useful in relation to drug related offences.

Sub-clauses (1), (2) & (3) enable a Judge of the Supreme Court to grant a monitoring order directing a financial institution to give information obtained by the institution to the Australian Federal Police about every transaction conducted through accounts held by a particular person, or particular persons, with the financial institution during the period specified in the order, being a period of less than three months.

Sub-clause (4) requires a Judge to be satisfied that there are reasonable grounds for suspecting that the person, in respect of whose accounts the information is sought, has committed, or is about to commit, an indictable offence that is a serious offence, as defined for the purposes of this legislation, or that the person was involved in the commission, or is about to be involved in the commission, of an indictable offence that is a serious offence, or that the person has benefited, or is about to benefit, directly or indirectly from the commission of an indictable offence that is a serious offence.

Sub-clause (5) requires the monitoring order to state the name or names in which the account is, or the accounts are, believed to be held, the class or classes of the information that is required to be given and the manner in which it is to be given.

Sub-clause (6) protects a financial institution which is or has been, the subject of a monitoring order from committing a money laundering offence by providing that the existence of the monitoring order is to be disregarded for the purposes of the application of clauses 74 and 75. The monitoring order cannot therefore be considered to give rise to knowledge or circumstances in which one ought to have known that property involved in a transaction is proceeds of crime.

Sub-clause (7) creates an offence of knowingly contravening a monitoring order or providing false or misleading information in purported compliance with such an order. The maximum penalty prescribed for the offence is a fine of \$100,000. Sub-clause (8) extends the reference to transactions conducted through an account to cover the making of a fixed term deposit and dealings with such a deposit.

Clause 70:

Sub-clause (1) prevents the disclosure of the existence or operation of a monitoring order other than to a police officer, to officers or agents of the institution to ensure compliance with the order or to a barrister or solicitor to obtain legal

advice or representation in relation to the order.

Sub-clause (2) prevents persons to whom information is lawfully communicated under sub-clause (1) from further communicating that information other than to a person referred to in sub-clause (1) and for the purpose of the performance of the person's duties, ensuring compliance with the order or obtaining or giving legal advice or representation in relation to the order. Sub-clauses (3) and (4) set out police officers rights in regard to disclosing monitoring orders in legal and court proceedings.

Sub-clause (5) provides that the maximum penalty for breaches of sub-clauses (1) and (2) is a fine of \$20,000 or imprisonment for 2 years or both for a natural person or a fine of \$100,000 for a corporation. Sub-clause (6) is definitional.

Clause 71:

This clause is definitional.

Clause 72:

This clause provides for retention by financial institutions of customer generated financial transaction documents. It requires a financial institution to retain essential customer generated financial documents for the minimum period applicable to that type of document. A financial institution may retain a copy of a customer generated financial transaction document not classed as essential and a copy of any document required to reconstruct a transaction, in lieu of the original. The clause does not cover documents relating to certain transactions involving less than \$200 or any higher prescribed amount. The clause also makes provisions generally for the retention and storage of originals and copies of documents pursuant to the clause.

A financial institution which contravenes a provision of this clause is liable to be penalised by a fine not exceeding \$10,000.

Clause 73:

This clause provides that, where a financial institution is required to release a document which it would be required to retain under clause 72, the financial institution must retain a complete copy of that document and maintain a register of all documents so released.

The maximum penalty prescribed for a breach of this provision is a fine of \$10,000.

Clause 74:

Clause 74 creates an offence of laundering money or other property that is the proceeds of crime. Sub-clause (1) defines a 'transaction'. Sub-clause (2) makes it an offence punishable by a fine of \$100,000 or imprisonment for 10 years or both for a natural person who engages in money laundering or a fine of \$500,000 for a body corporate that engages in money laundering.

Sub-clause (3) states that a person engages in money laundering if and only if the person engages either directly or indirectly in a transaction that involves money or other property that is proceeds of crime, or the person receives, possesses, conceals, disposes of or brings into the Territory any money or other property that is proceeds of crime and the person knows or ought reasonably to know that the money or property is proceeds from some form of unlawful activity. The offence in respect of which money or property is proceeds can be committed before the commencement of the Act provided the transaction constituting the laundering occurs subsequently.

Clause 75:

This section creates a less serious money laundering offence which is committed by a person who receives, possesses, conceals, disposes of, or brings into the Territory, any money or property that may reasonably be suspected of being proceeds

of crime. That offence is punishable by a fine of \$10,000 or imprisonment for two years or both for a natural person or a fine of \$50,000 for a body corporate. Sub-clause (2) states that a person is not guilty of a money laundering offence under sub-clause (1) if he or she satisfies the court that he or she had no reasonable grounds for suspecting that the property the subject of the charge was proceeds of an unlawful activity.

Clause 76:

This clause creates an offence of organised fraud, the principle purpose of which is to bring into operation the provision for statutory forfeiture. Sub-clause (1) prohibits a person from engaging in organised fraud and makes the offence punishable by a maximum penalty of a fine of \$150,000 or imprisonment for a period of 15 years or both for a natural person or a fine of \$750,000 for a body corporate.

Sub-clause (2) provides that a person has engaged in organised fraud if, and only if, the person engages in acts or omissions that would constitute three or more public fraud offences from which the person derives substantial benefit.

Sub-clause (3) enables an alternative verdict to be given wherever the jury is not satisfied that the person is guilty of the offence of engaging in organised fraud but is satisfied that the person is guilty of one or more of the public fraud offences.

Sub-clause (4) defines public fraud offence. The organised fraud offence is not directed at persons who commit a number of small rates frauds from which they gain a relatively small monetary benefit. Rather, it is directed at persons who organise their affairs in such a way as to significantly defraud the revenue through unlawful activity amounting to fraud. The expression substantial benefit has been left undefined as the monetary amount involved in the fraud should not be taken as the determinant of guilt but should be considered together with the degree of planning, organisation, and persistent unlawful

conduct in assessing culpability.

Clause 77:

This clause enables a number of offences which are expressed by the sub-section (1) to be indictable offences to be dealt with summarily by consent, and prescribes lesser penalties upon summary convictions of such offences.

Sub-clause (1) states that an offence against section 56, 66, 70, 74, 75, 76 or 90 is an indictable offence.

Clause 78:

Sub-clause (1) is an evidentiary provision which imputes to a body corporate the state of mind of its directors, servants or agents, in circumstances where it is necessary to establish the body corporate's state of mind for the purposes of the Act.

Sub-clause (2) deems conduct engaged in on behalf of a body corporate by a director, servant or agent acting within the scope of his or her actual or apparent authority or by any other person at the direction, or with the consent or agreement of a director, servant or agent given within the scope of his or her actual or apparent authority to also have been engaged in by the body corporate.

Sub-clauses (3) and (4) are similar evidentiary provisions in relation to persons other than bodies corporate.

Sub-clause (5) provides that the 'state of mind' of a person refers to the knowledge, intention, opinion, belief or purpose of the person and that person's reasons for those states of mind. Sub-clause (6) is definitional.

Clause 79:

This clause deals with the registration in the Territory of a restraining order made interstate which is expressed to apply to property in the Territory.

Sub-clause (1) permits the registration in the Supreme Court of the Territory of a copy of a restraining order, sealed by the court, which was granted interstate and is expressed to apply to specified property, or all of the property of the specified person, or all property (other than specified property) of a specified person, which is located in the Territory.

Under sub-clause (2) any amendments or variations made to the interstate restraining order, whether before or after the restraining order has been registered in the Territory, may be registered in the same way as the original order but do not take effect until they are registered.

Sub-clause (3) permits registration of an interstate restraining order to be refused where the order is not capable of being enforced in the Territory upon its registration.

Sub-clause (4) provides that the registration be affected in accordance with the Rules of the Supreme Court.

Clause 80:

Sub-clause (1) states that an interstate restraining order shall be enforced in the same manner, once registered, as a restraining order which has been granted under section 45 of the Act.

Sub-clause (2) provides that the Act, except for certain specified sections, applies to an interstate restraining order which has been registered in the Territory in the same way as it would apply to a restraining order made under section 45.

Clause 81:

This clause provides that an interstate restraining order which has been registered in the Territory under the Act ceases to be in force in the Territory if it ceases to be in force in the State in which it was made, or registration of the order is cancelled under the Act.

Clause 82:

This clause provides for the cancellation of registration of an interstate restraining order in the Territory. Under sub-clause (1) the Supreme Court of the Territory may cancel the registration of an interstate restraining order which has been registered by the court if the registration was improperly obtained, if the court has not been notified of amendments, variations, ancillary orders or directions made by the court in respect of the restraining order.

Sub-clause (2) permits the Supreme Court to cancel registration of an interstate restraining order to the extent that the order is not capable of enforcement in the Territory.

Clause 83:

Sub-clause (1) provides that if an interstate pecuniary penalty order is made and an interstate restraining order is made and registered before or after the interstate pecuniary penalty order is registered in a Territory then upon registration of the later of the two orders a charge is created on the property to secure payment due under the interstate pecuniary penalty order.

Sub-clause (2) provides that the charge will cease to have effect upon the quashing of the conviction on which the interstate pecuniary penalty order relies; on discharge of the interstate pecuniary order; upon payment of the amount due under the interstate pecuniary penalty order; upon the convicted person becoming bankrupt; upon sale or other disposition of the property under a court order, or with consent of the court or a

person directed by the court to take control of the property; or upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge, whichever first occurs.

Under sub-clause (3) a charge is deemed to be subject to every encumbrance that has come into existence before the charge and that would have priority by virtue of other legislation. The charge has priority over all other encumbrances and subject to sub-clause (2) is not affected by a change of ownership.

Sub-clause (4) allows the Public Trustee or the DPP to register a charge where the laws of the Territory, Commonwealth or a State or Territory provide for the registration of title to, or charges over, property. Where a charge has been registered a purchaser acquiring the property after registration shall be deemed to have notice of the charge.

Clause 84:

This clause provides that when an interstate restraining order is registered in the Territory and it directs a State or Territory Official to take control of property the Public Trustee may enter into an agreement with the State or Territory Official and thereby exercise the same powers that the Official would have been able to exercise if the property were in the State or Territory.

Clause 85:

This clause deals with the registration of interstate forfeiture orders and is in similar terms to clause 79 which provides for the registration of interstate restraining orders.

Clause 86:

This clause provides that an interstate forfeiture order which has been registered in the Territory may be enforced in the Territory as if it were a forfeiture order made under the Act

from the time of its registration.

The provisions of the Act as they affect forfeiture orders made under clause 19, except clauses 21, 22 and 92, shall apply to interstate forfeiture orders.

Clause 87:

This clause provides for the cessation of an interstate forfeiture order in the Territory. An interstate forfeiture order ceases to be registered under the Act if the order ceases to be in force in the State or Territory in which it was made, or the registration is cancelled under the Act.

Clause 88:

This deals with the cancellation of registration of forfeiture orders under the Act and is in similar terms to clause 82 which deals with the cancellation of registration of interstate restraining orders.

Clause 89:

This clause provides for the interim registration of facsimile copies of interstate restraining and forfeiture orders and amendments to such orders. Sub-clause (1) provides that a facsimile copy of a sealed copy of an interstate restraining or forfeiture order or a sealed copy of any amendments to such an order is to be treated for the purposes of the Act in the same manner as a sealed copy, provided the facsimile is itself certified in accordance with the Rules of the Supreme Court.

Sub-clause (2) provides that registration of the facsimile ceases to have effect five days after the date of registration unless a sealed copy, which is not a facsimile, has been registered by that time.

Sub-clause (3) provides that where a non-facsimile copy is registered during the five day period the date of registration is taken to be the date on which the facsimile was registered.

Clause 90:

This clause creates an offence in respect of dealing in forfeited property. A person is guilty of an offence under this clause if the person knows that a forfeiture order has been made in respect of property which is registrable property, the forfeiture order has not been discharged and the person disposes of or otherwise deals with the property before the Territory interest has been registered on the appropriate register. A maximum penalty of \$20,000 or imprisonment for 2 years of both for a natural person or \$100,000 for a body corporate is prescribed for a breach of this clause.

Clause 91:

This clause provides that any question of fact other than one dealt with under section 17 is to be decided on the balance of probabilities.

Clause 92:

This clause deals with appeals.

Clause 93:

This clause provides for the awarding of costs to innocent persons who have successfully prevented a forfeiture order or restraining order being made against the property of the person or had their property excluded from a forfeiture order or restraining order.

Clause 94:

Sub-clause (1) provides that the Public Trustee is indemnified by the Territory against any personal liability for any act done or omitted to be done, or purported exercise, of his or her powers and duties under this Act. Sub-clause (2) precludes sub-clause (1) from affecting the Trustee's right to personal liability indemnification. Sub-clause (3) outlines the Territory's right of reimbursement for payments of indemnity.

Clause 95:

This clause provides that the Act does not limit or restrict the operation of any other forfeiture law in force in the Territory or the remedies available to the Territory apart from the Act, for the enforcement of its rights and the protection of its interests.

Clause 96:

This clause contains the regulation making power.