

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Confiscation of Criminal Assets Bill 2002

Contents

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

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

	Page	
33	Restraining orders—contents	28
34	Restraining orders—notice of making	30
35	Restraining order proceedings—restrictions on disclosure	31
36	Restraining orders—disclosure offences	32
37	Payment of living and business expenses from restrained property	34
38	Payment of certain legal expenses from restrained property	36
39	Additional orders about restraining orders and restrained property	37
40	Contravention of additional orders under s 39	39
Division 4.3 Duration of restraining orders		
41	Meaning of <i>forfeiture or penalty application</i> for div 4.3	40
42	Restraining orders generally not time limited	40
43	Revocation or variation of restraining orders made without notice of application	40
44	Revocation or variation of restraining orders if security or undertakings given	41
45	When restraining order over particular property ends	42
46	When unclaimed tainted property restraining order ends	42
47	When restraining order ends—ordinary indictable offences	43
48	When restraining order ends—serious offences	46
49	Extension of time for restraining orders	49
Division 4.4 Restraining orders—other matters		
50	Restraining orders—registration in statutory property registers	50
51	Execution against restrained property	52
Part 5 Forfeiture of property		
Division 5.1 Conviction forfeiture orders		
52	Meaning of <i>conviction forfeiture order</i>	53
53	Conviction forfeiture orders—application	53
54	Conviction forfeiture orders—making	53
55	Conviction forfeiture orders—forfeiture	54
56	When conviction forfeiture order ends	54

	Page
Division 5.2 Automatic forfeiture—conviction for serious offences	
57 Unclaimed tainted property restraining orders— non-application of div 5.2	55
58 Automatic forfeiture of restrained property on conviction for serious offences	55
59 Automatic forfeiture—court order declaring property automatically forfeited	56
60 Automatic forfeiture—court orders	56
61 When automatic forfeiture under div 5.2 ends	58
Division 5.3 Automatic forfeiture—unclaimed tainted property	
62 Forfeiture of unclaimed tainted property	58
63 When automatic forfeiture under div 5.3 ends	59
Division 5.4 Civil forfeiture orders	
64 Artistic profits and unclaimed tainted property— non-application of div 5.4	59
65 Meaning of <i>civil forfeiture order</i>	59
66 Civil forfeiture orders—application	60
67 Civil forfeiture orders—making	60
68 Civil forfeiture orders—forfeiture	62
69 Civil forfeiture order proceedings—restrictions on disclosure	62
70 Civil forfeiture orders—disclosure offences	63
71 When civil forfeiture order ends	66
Part 6 Exclusion of property	
Division 6.1 General	
72 Meaning of <i>exclusion order</i>	67
73 When property is <i>subject to forfeiture</i>	67
74 Effect of exclusion order	68
Division 6.2 Making exclusion orders	
75 Exclusion orders—application	68
76 Making of exclusion orders—ordinary indictable offences	69
77 Making of exclusion orders—serious offences	71
78 Making of exclusion orders—unclaimed tainted property	72

		Page
Part 7	Penalty orders	
Division 7.1	Benefits	
79	Meaning of <i>commission</i> of serious offence for pt 7	74
80	Meaning of <i>benefits</i> derived by an offender	74
81	Meaning of <i>artistic profits</i>	75
Division 7.2	Making penalty orders	
82	Meaning of <i>penalty order</i>	77
83	Penalty orders—application	77
84	Penalty orders—offenders convicted of ordinary indictable offences	78
85	Penalty orders—commission of serious offences	78
86	Penalty orders—amount of penalty	80
87	Penalty orders—contents	81
88	Penalty orders—enforceable as judgment debt	81
89	Penalty orders—variation for reassessed value of benefits	82
Division 7.3	Value of benefits	
90	Meaning of <i>narcotic substance</i> and <i>property</i> for div 7.3	82
91	Presumed value of benefits—ordinary indictable offence	83
92	Presumed value of benefits—serious offence	84
93	Value of benefits—relevant matters	86
Division 7.4	Satisfaction of penalty order	
94	Creation of penalty charge over restrained property	87
95	When penalty charge over property ends	88
96	Power to satisfy penalty order	89
97	Public trustee to repay any amount surplus to satisfying penalty order	90
Division 7.5	End of penalty orders	
98	When penalty order ends	91
Part 8	Restrained property	
Division 8.1	Management of restrained property by public trustee	
99	Application of div 8.1	92

Contents

	Page
100 Powers of public trustee to preserve restrained property etc	92
101 Sale, modification or destruction of property by public trustee	93
102 Notice of sale, modification or destruction of restrained property by public trustee	94
103 Emergency modification or destruction of restrained property	95
104 Order to stop sale, modification or destruction of restrained property	96
Division 8.2 Joint ownership of restrained property	
105 Effect of death on joint ownership	96
Part 9 Forfeited property	
Division 9.1 Preliminary	
106 Meaning of <i>interested person</i> in pt 9	98
107 Forfeited property—powers of public trustee	98
Division 9.2 Vesting and disposal of forfeited property	
108 Vesting of forfeited property—general rule	99
109 Vesting of registrable property on forfeiture	99
110 Disposal of forfeited property	100
Division 9.3 Improperly obtained registered property interests	
111 Application of div 9.3 to registered property interests	101
112 Discharge of prior registered property interests given for improper purposes	102
Division 9.4 Sale of jointly owned forfeited property	
113 Application of div 9.4 to jointly owned property	103
114 Inconsistency with Trustee Act or Conveyancing Act	103
115 Order for sale of jointly owned property	103
116 Trust for sale of property	104
117 Effect of trust for sale on joint ownership	105
118 Distribution of proceeds of sale of property	105
119 Variation of court order for sale	106
Division 9.5 Forfeited property—return or compensation	
120 Meaning of <i>return or compensation order</i>	106
121 Return or compensation orders—application	106

	Page
122	107
<p>Division 9.6 Forfeited property—buyback of interest</p>	
123	108
124	108
125	109
126	109
<p>Part 10 Confiscated assets trust fund</p>	
127	110
128	110
129	111
130	111
131	112
132	113
133	113
134	114
<p>Part 11 Interstate orders</p>	
135	115
136	115
137	116
138	117
139	117
140	118
141	118
142	119
<p>Part 12 Information gathering</p>	
<p>Division 12.1 Inquiry notices</p>	
143	120
144	120

Contents

	Page
145	121
146	121
Division 12.2 Monitoring orders	
147	122
148	122
149	123
150	123
Division 12.3 Transaction suspension orders	
151	124
152	125
153	126
154	126
Division 12.4 Production orders for property-tracking documents	
155	128
156	128
157	129
158	129
159	129
160	130
161	131
162	131
Division 12.5 Examination orders and notices	
Subdivision 12.5.1 Preliminary	
163	132
164	133
Subdivision 12.5.2 Examination orders	
165	133
166	134
167	134
168	134
169	135

	Page
Subdivision 12.5.3 Examination notices	
170 Meaning of <i>examination notice</i>	136
171 Examination notices—giving	136
172 Examination notices—form	137
Subdivision 12.5.4 Conducting examinations	
173 Time and place of examination	138
174 Requirements made of person examined	138
175 Conduct of examination	138
176 Role of the examinee’s lawyer	139
177 Examinations—consequential powers about documents	139
178 Examinations—additional restrictions on disclosure	140
179 Protection of authorised investigator etc	141
Subdivision 12.5.5 Offences—examination notices	
180 Obstruction etc of authorised investigator	141
181 Failing to attend examination	141
182 Offences relating to appearance at examination	142
183 Unauthorised presence at an examination	142
184 Examinations—additional disclosure offences	143
Division 12.6 Information order offences	
185 Meaning of <i>information order</i>	145
186 Information orders—failure to comply	146
187 Information orders—false or misleading information	146
188 Information orders—false or misleading documents	147
189 Destruction etc of documents	147
190 Meaning of <i>non-disclosable information order</i>	148
191 Information orders—disclosure offences	149
192 Information orders—disclosure by police officers	151
193 Information orders—protection of complying financial institutions	151
Part 13 Search warrants	
Division 13.1 Preliminary	
194 Definitions for pt 13	152

	Page
Division 13.2 Search warrants—general	
195 Applications for search warrants—general	154
196 Offence for making false etc statements in search warrant applications	154
197 Additional contents of search warrant applications	155
198 Issuing search warrants	155
199 When search warrant for property-tracking document may be issued	156
200 Contents of search warrants	156
201 Authorisation given by search warrants	157
Division 13.3 Telephone and electronic warrants	
202 Applying for search warrants by telephone or other electronic means	158
203 Issuing search warrants by telephone or other electronic means	159
204 Unsigned warrants by telephone or other electronic means in court proceedings	160
205 Offence for stating incorrect names in warrants by telephone or other electronic means	160
206 Offence for execution etc of search warrant departing in material form	161
207 Offence for execution etc of unauthorised form of search warrant	161
208 Offence for giving unauthorised form of search warrant	162
Division 13.4 Executing search warrants	
209 Search warrants—whether must be executed only during particular hours	162
210 Search warrants—restrictions on personal searches	162
211 Use of force and availability of assistance in executing search warrant	163
212 Search warrants—announcement before entry	164
213 Details of search warrant to be given to occupier etc	164
214 Occupier entitled to be present during search etc	165
215 Particular powers available to officers executing search warrant	165
216 Use of equipment to examine or process things	166
217 Moving things to another place for examination or processing	166

	Page
218	167
219	168
220	169
221	170
222	171
Division 13.5	Stopping and searching vehicles
223	171
224	172
Division 13.6	Search warrants—things seized
225	173
226	174
227	175
228	175
229	176
Division 13.7	Search warrants—miscellaneous
230	176
231	177
232	177
233	178
234	178
Part 14	Court procedure
235	180
236	181
237	182
238	182
239	184
240	185
241	185
242	186
243	187

Contents

	Page	
244	Applications for another confiscation proceeding in relation to same offence	188
245	Confiscation proceedings—time extensions for applications	189
246	Confiscation proceedings—amendment of applications	189
247	Confiscation proceedings—relevant material	190
248	Confiscation proceedings—witness not required to answer questions prejudicing investigation	190
249	Confiscation proceedings—additional orders	190
250	Contravention of additional orders under s 249	192
251	Confiscation proceedings—consent orders	192
252	Confiscation proceedings—notice of making orders	192
253	Concurrent proceedings	193
Part 15	Miscellaneous	
254	Selfincrimination and other privileges overridden	194
255	Powers under Act not limited by criminal proceedings	195
256	Powers under Act do not limit each other or powers under other laws	196
257	Examination orders—reporting requirements	196
258	Approved forms	198
259	Regulation-making power	198
Part 16	Consequential and transitional matters	
260	Repeal of Proceeds of Crime legislation	199
261	Orders under repealed Act	199
262	Proceedings for offences committed before the commencement of this Act	200
263	Use of information etc obtained under repealed Act	200
264	Confiscated assets trust fund	201
265	Transitional regulations	201
266	Modification of pt 16's operation	202
267	Amendments of other legislation—sch 1	202
268	Expiry of pt 16	202

	Page
Schedule 1	Amendments of other legislation
	203
Part 1.1	Administrative Decisions (Judicial Review) Act 1989
	203
Part 1.2	Crimes Act 1900
	203
Part 1.3	Prostitution Act 1992
	212
Dictionary	213

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Confiscation of Criminal Assets Bill 2002

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Confiscation of Criminal Assets Act 2002*.

4 **2 Commencement**

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

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

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

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

15 **3 Purposes of Act**

16 The *purposes of this Act* include the following:

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

- 1 changed, and to prevent the person from using the property to
2 commit other offences;
- 3 (e) to enable the effective tracing and seizure by law enforcement
4 authorities of property used, or intended by an offender to be
5 used, in relation to the commission of an offence and all
6 material advantage derived from the offence;
- 7 (f) to provide for the enforcement in the ACT of orders, notices or
8 decisions (however described) made under corresponding laws.

9 **4 Application of Act to property and dealings**

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

15 **5 Application of Act to offences**

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

19 **6 Dictionary**

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

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

25 For example, the signpost definition '*effective control*, of property—see
26 section 14.' means that the term 'effective control' is defined in that
27 section.

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

1 **7 Notes**

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

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

4 **8 Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

1 Part 2 General overview of 2 confiscation scheme

3 9 General overview

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

6 *Note 1 Restraining orders*

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

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

11 *Note 2 Confiscation of property on conviction*

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

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

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

19 *Note 3 Confiscation of property without conviction*

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

24 *Note 4 Penalty orders*

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

29 *Note 5 Exclusion of property from forfeiture and return or compensation for 30 forfeited property*

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

Part 3 Key concepts

Note 1 The following concepts are defined in this part:

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

Note 2 Other important concepts include *benefits* (see s 80), *penalty order* (see s 82) and *relevant court* (see s 237).

10 What is *tainted property*

(1) In this Act:

tainted property, in relation to an offence, means—

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

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

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

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

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

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

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

11 **Examples of *tainted property* for s 10**

- 12 1 A car used as a getaway car for an armed robbery (see s (1) (a)).
13 2 Money and jewellery stolen during the commission of the armed robbery
14 offence (see s (1) (b)).
15 3 Shares bought using money stolen during the commission of the armed
16 robbery offence, or a mixture of that money and money unconnected with the
17 offence (see s (1) (c) and s 12 (1) (Meaning of *derived*)).
18 4 A house in relation to which a mortgage is partly or completely discharged
19 using money stolen during the commission of the armed robbery offence, or
20 a mixture of that money and money unconnected with the offence (see
21 s (1) (c) and s 12 (1)).
22 5 Money or other property received from the sale of the car, jewellery, shares
23 or house mentioned in examples 1 to 4 (see s (1) (c) and s 12 (1)).
24 6 Other property purchased using the money mentioned in example 5 (see
25 s (1) (c) and s 12 (1)).
26 7 Money stolen during the commission of the armed robbery offence is
27 deposited in 1 or more accounts with a credit union and later transferred to a
28 bank account that also contains money unconnected with the offence. The
29 money in the bank account to the value of the money stolen during the
30 commission of the offence is *tainted property* (see s (1)).

1 8 Money received from the sale of the car, jewellery, shares or house
2 mentioned in examples 1 to 4 is deposited in a credit union account that also
3 contains money unconnected with the armed robbery offence. The money in
4 the account to the value of the money received from the sale of the car,
5 jewellery, shares or house mentioned in examples 1 to 4 is *tainted property*
6 (see s (1) and s 12 (1)).

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

10 11 What is *unclaimed tainted property*

11 In this Act:

12 *unclaimed tainted property* means property that—

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

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

15 (b) is not claimed by anyone;

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

17 Examples of property that may be *unclaimed tainted property*

18 1 a large quantity of hydroponic equipment and lights for growing plants
19 indoors that is found at premises suspected of being used for the production
20 of drugs and that is not claimed by anyone

21 2 a large amount of money with traces of cocaine that is found in a house
22 suspected of being used for drug dealing and that is not claimed by anyone

23 3 a large quantity of jewellery found in a car that has been recently used by
24 several people and that is not claimed by anyone

25 4 a large amount of money found beneath a bridge in a bag that also contains
26 traces of explosives

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

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

1 **12 Meaning of *derived***

2 (1) In this Act:

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

5 **Examples**

6 See section 10, examples 3 to 6 and 8.

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

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

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

13 **Example**

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

20 (3) For subsection (2), a request or direction of a person (the *first*
21 *person*)—

22 (a) includes an understanding between the first person and
23 someone else or the first person making it known (directly or
24 indirectly) to someone else that a particular outcome (or an
25 outcome of a particular kind) is wanted or required by the first
26 person; and

27 (b) may be taken to have been made even though, after all the
28 evidence has been considered, the existence of the request or
29 direction can be found only by inference from the actions of
30 people or from other relevant circumstances.

31 **13 Meaning of *offence* and of particular kinds of offences**

32 (1) In this Act:

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

3 (2) In this Act:

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

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

14 *ordinary indictable offence* means an indictable offence other than
15 a serious offence.

16 *serious offence* means—

17 (a) an indictable offence that is punishable by imprisonment for
18 5 years or longer; or

19 (b) any other indictable offence declared under the regulations to
20 be a serious offence.

21 (3) For this Act, an offence is *related* to another offence if the physical
22 elements of the 2 offences are the same, or substantially the same,
23 acts or omissions.

24 **14 Meaning of *effective control* of property**

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

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

28 (a) a legal or equitable estate in the land or other property; or

29 (b) a right, power or privilege over, or in relation to, the land or other
30 property.

31 See Legislation Act, dict, pt 1.

- 1 (2) In deciding whether or not property is subject to the effective
2 control of a person, or whether or not there are reasonable grounds
3 to suspect or believe that it is, regard may be had to any relevant
4 matter, including, for example, any of the following:
- 5 (a) shareholdings in, debentures over, or directorships of, a
6 company that has an interest (whether direct or indirect) in the
7 property (a *relevant company*);
- 8 (b) a trust that has a relationship to the property (a *relevant trust*);
- 9 (c) family, personal, business and other relationships between
10 people having an interest in the property, or in a relevant
11 company or relevant trust, and other people.

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

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

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

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

25 **15 Meaning of *convicted* and *quashed***

- 26 (1) For this Act, a person is taken to be *convicted* of an offence if—
- 27 (a) the person is convicted of the offence, whether summarily or
28 on indictment; or
- 29 (b) the person is found guilty, but not convicted, of the offence; or

Section 15

- 1 (c) the person absconds in relation to the offence.
- 2 *Note 1* **Found guilty**, of an offence, is defined in the Legislation Act, dict, pt 1
3 as including—
- 4 (a) having the offence taken into account under the *Crimes Act 1900*,
5 s 357 (which is about taking outstanding charges into account
6 when passing sentence); and
- 7 (b) having an order made in relation to the offence under the *Crimes*
8 *Act 1900*, s 402 (Conditional release of offenders without
9 proceeding to conviction) or the *Children and Young People Act*
10 *1999*, s 96 (Disposition of young offenders).
- 11 *Note 2* For the meaning of **abscond**, see s 16.
- 12 (2) The person is taken to be convicted of the offence—
- 13 (a) if subsection (1) (a) applies—on the day the person is
14 convicted; or
- 15 (b) if subsection (1) (b) applies—on the day the person is found
16 guilty; or
- 17 (c) if subsection (1) (c) applies—
- 18 (i) on the day the person is committed for trial for the
19 offence; or
- 20 (ii) on the day a court, in a confiscation proceeding, makes
21 an order that the evidence is of sufficient weight to
22 support a conviction for the offence.
- 23 (3) For this Act, the person's conviction for the offence is taken to be
24 **quashed** when—
- 25 (a) if subsection (1) (a) applies—the conviction is quashed or set
26 aside; or
- 27 (b) if subsection (1) (b) applies because the offence was taken into
28 account in passing sentence for another offence—
- 29 (i) the person's conviction or finding of guilty for the other
30 offence is quashed or set aside; or

- 1 (ii) the decision to take the offence into account is quashed or
2 set aside; or
- 3 (c) if subsection (1) (b) applies for another reason—the finding of
4 guilty for the offence (however described) is quashed or set
5 aside; or
- 6 (d) if subsection (1) (c) applies—the person is brought before a
7 court for the offence, and the person is cleared of the offence.

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

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

13 **16 When does someone *abscond***

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

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

12 **17 When is someone *cleared* of an offence**

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

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

19 **18 When a proceeding is *finalised***

20 (1) For this Act, a confiscation proceeding is *finalised* if—

- 21 (a) the proceeding lapses, or is withdrawn or struck out; or
22 (b) the appeal period for an appeal against the final judgment of
23 the court hearing the proceeding ends without an appeal having
24 been made against the judgment; or
25 (c) if an appeal against the final judgment is made within the
26 appeal period—the appeal is dismissed, withdrawn or struck

- 1 out, or the appeal is otherwise finalised (within the meaning of
2 this subsection).
- 3 (2) For this Act, a criminal proceeding is *finalised* if—
- 4 (a) the offender is cleared of the offence to which the proceeding
5 relates; or
- 6 (b) the offender is convicted of an offence to which the proceeding
7 relates, and the appeal period for an appeal against the
8 conviction or finding of guilty (however described) ends
9 without an appeal having been made against it; or
- 10 (c) if an appeal is made against the conviction or finding of guilty
11 (however described) within the appeal period—the appeal is
12 dismissed, withdrawn or struck out, or the appeal is otherwise
13 finalised (within the meaning of this subsection) without a
14 retrial having been ordered; or
- 15 (d) if a retrial has been ordered—the proceeding on the retrial is
16 finalised (within the meaning of this subsection).
- 17 (3) In this section:
- 18 *appeal period* means the period within which an appeal may be
19 made without an extension of time or leave to make the appeal out
20 of time.

1 **Part 4 Restraint of property**

2 **Division 4.1 General**

3 **19 Meaning of *restraining order***

4 In this Act:

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

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

13 **20 Meaning of *artistic profits restraining order***

14 In this Act:

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

18 **21 Meaning of *unclaimed tainted property restraining order***

19 In this Act:

20 *unclaimed tainted property restraining order* means a restraining
21 order made solely over unclaimed tainted property.

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

1 **22 Restraining orders—purposes**

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

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

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

9 **23 Contravening restraining orders**

10 (1) A person commits an offence if—

- 11 (a) the person deals with property; and
- 12 (b) the property is subject to a restraining order; and
- 13 (c) the person knows that, or is reckless about the fact that, the
14 property is subject to a restraining order; and
- 15 (d) the dealing with the property contravenes the order.

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

18 (2) A person commits an offence if—

- 19 (a) the person deals with property; and
- 20 (b) the property is subject to a restraining order; and
- 21 (c) the dealing with the property contravenes the order; and
- 22 (d) either of the following applies:
- 23 (i) the restraining order, or details of the order, were
24 recorded in a statutory property register under
25 section 50 (2) (Restraining orders—registration in

- 1 statutory property registers) when the person dealt with
2 the property;
- 3 (ii) the person was given notice of the order under section 34
4 (Restraining orders—notice of making) before the person
5 dealt with the property.
- 6 Maximum penalty: 200 penalty units, imprisonment for 2 years or
7 both.
- 8 (3) Strict liability applies to subsection (2) (b), (c) and (d).

9 **24 Setting aside dealings with restrained property**

- 10 (1) The DPP may apply to a relevant court for an order that a dealing
11 with restrained property be set aside if—
- 12 (a) the dealing was in contravention of the restraining order; and
13 (b) the dealing—
- 14 (i) was not for sufficient consideration; or
15 (ii) transferred property to a person who was not acting
16 honestly; or
17 (iii) transferred property to a person who did not take
18 reasonable care to establish that the property may be
19 lawfully acquired by the person
- 20 (2) On application under subsection (1), the court may make an order
21 setting aside a dealing with property in contravention of a
22 restraining order.
- 23 (3) The order may be expressed to take effect on—
- 24 (a) the day when the dealing took place; or
25 (b) the day when the order setting aside the dealing is made.

- 1 (4) If the court makes an order mentioned in subsection (3) (b), the
2 court must declare the rights of anyone who acquired an interest in
3 the property on or after the day of the dealing and before the day the
4 order is made.

5 **Division 4.2 Making restraining orders**

6 *Note 1* For general provisions about a proceeding for a restraining order (which
7 is a confiscation proceeding—see s 235), see pt 14.

8 *Note 2* In particular, no advance notice to anyone is required of the application
9 for the order, and the application may be heard in closed court, without
10 the offender or the public being present, see s 242.

11 **25 Restraining orders over unclaimed tainted** 12 **property—application**

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

1 **26 Restraining orders over other property—application**

2 (1) The DPP may apply to a relevant court for a restraining order over
3 any of the following:

- 4 (a) stated property of a person;
- 5 (b) stated property of a person and all other property of the person
6 (including property acquired after the making of the order);
- 7 (c) all property of a person (including property acquired after the
8 making of the order);
- 9 (d) all property of a person (including property acquired after the
10 making of the order) other than stated property.

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

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

15 (2) The application must state the following:

- 16 (a) the offence to which the application relates;
- 17 (b) when it is alleged the offence was committed;
- 18 (c) the person who is alleged to have committed the offence;
- 19 (d) the person whose property the application relates to;
- 20 (e) the property sought to be restrained (including whether it is
21 property of the offender or someone else);

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

23 (f) whether the application is for an artistic profits restraining
24 order.

25 (3) The application must be supported by an affidavit under section 29
26 (Restraining orders over other property—affidavit supporting
27 application).

- 1 (4) For subsection (2) (a), the application need not specify a particular
2 offence and it is sufficient if the application states that some offence
3 or other was committed.
- 4 (5) For subsection (2) (b), the application need not specify a particular
5 time or day and it is sufficient if the application states a period
6 within which the offence was committed.
- 7 (6) To remove any doubt—
- 8 (a) an application for a restraining order under this section may be
9 made in relation to an interest (or interests) in property; and
- 10 *Note* **Property** includes an interest in property, see Legislation Act,
11 dict, pt 1.
- 12 (b) an application for a restraining order under this section may be
13 made in relation to 2 or more offences; and
- 14 (c) an application for a restraining order under this section may be
15 made in relation to the property of 2 or more people; and
- 16 (d) this section does not apply to an application for a restraining
17 order over unclaimed tainted property.

18 **27 Restraining orders—time for making certain applications**

- 19 (1) This section does not apply to an application for—
- 20 (a) an artistic profits restraining order; or
- 21 (b) an unclaimed tainted property restraining order.
- 22 (2) An application for a restraining order in relation to an ordinary
23 indictable offence must be made before the end of the longer of the
24 following periods:
- 25 (a) if an indictment has been presented against the offender for the
26 offence, and the offender has not been convicted or cleared of
27 the offence—2 years after the day the indictment was
28 presented;

1 (b) if the offender has been convicted of the offence (and not
2 cleared)—2 years after the day of the conviction;

3 (c) in any case—6 years after the day the offence was committed
4 (or is alleged to have been committed).

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

6 *Note 2* The court may allow leave for an application to be made after a time
7 fixed by this section in certain circumstances (see s 49 and s 245).

8 (3) An application for a restraining order in relation to a serious offence
9 must be made before the end of the longer of the following periods:

10 (a) if an indictment has been presented against the offender for the
11 offence, and the offender has not been convicted or cleared of
12 the offence—2 years after the day the indictment was
13 presented;

14 (b) if the offender has been convicted of the offence—2 years after
15 the day of the conviction;

16 (c) in any case—6 years after the day the offence was committed
17 (or is alleged to have been committed).

18 *Note* The court may allow leave for an application to be made after a time
19 fixed by this section in certain circumstances (see s 49 and s 245).

20 **28 Restraining orders over unclaimed tainted**
21 **property—affidavit supporting application**

22 (1) An affidavit by a police officer supporting an application under
23 section 25 (Restraining orders over unclaimed tainted
24 property—application) for an unclaimed tainted property restraining
25 order must state—

26 (a) that the police officer suspects that the property is unclaimed
27 tainted property; and

28 (b) that the property has not been claimed by anyone.

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

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

8 **29 Restraining orders over other property—affidavit**
9 **supporting application**

- 10 (1) An affidavit by a police officer supporting an application under
11 section 26 (Restraining orders over other property—application) for
12 a restraining order must state—
- 13 (a) that the officer believes that an indictment has been presented
14 against the offender for a stated indictable offence, or that the
15 offender has been convicted of a stated indictable offence; or
- 16 (b) that the officer suspects that the offender has committed a
17 stated indictable offence, and that it is intended, within a stated
18 period—
- 19 (i) for an ordinary indictable offence—to present an
20 indictment against the offender for the offence (or a
21 related indictable offence); or
- 22 (ii) for a serious offence—
- 23 (A) to present an indictment against the offender for the
24 offence (or a related serious offence); or
- 25 (B) to apply for a civil forfeiture order or a penalty
26 order in relation to the offence (or a related serious
27 offence).
- 28 (2) Subsection (1) (b) does not require the police officer to specify a
29 particular offence in the affidavit and it is sufficient if the police
30 officer suspects that the offender has committed a particular kind of

- 1 offence and the affidavit describes the nature of the offence in
2 general terms.
- 3 (3) If the application is not for an artistic profits restraining order, the
4 affidavit must state that the police officer believes that the
5 application is being made within the relevant period mentioned in
6 section 27 (Restraining orders—time for making certain
7 applications) for the offence to which the application relates.
- 8 *Note* No time limit applies to an application for an artistic profits restraining
9 order, see s 27 (1) (a).
- 10 (4) For subsection (3), if the application relates to a serious offence, it is
11 sufficient if the police officer believes that the offence was
12 committed within the relevant period mentioned in section 27, and it
13 is not necessary for the officer to believe that the offence was
14 committed on any particular day or time within the relevant period.
- 15 (5) The affidavit must state, for the property mentioned in the
16 application, or for each stated part of the property—
- 17 (a) that the officer suspects that the property is either the
18 offender's property or the property of someone else; and
- 19 (b) for property that the officer suspects is the property of someone
20 else—
- 21 (i) that the property is tainted property; or
22 (ii) that the property is subject to the offender's effective
23 control.
- 24 (6) The affidavit must state that the police officer believes that—
- 25 (a) the property sought to be restrained may be required to satisfy
26 a purpose mentioned in section 22 (Restraining
27 orders—purposes); and
- 28 (b) if the application is for an artistic profits restraining order—the
29 property sought to be restrained may be required to satisfy a
30 penalty order for artistic profits in relation to the offence.

1 (7) For subsection (6) (a), no particular purpose need be stated in the
2 affidavit.

3 (8) The affidavit must state the grounds for each belief or suspicion of
4 the police officer stated in the affidavit.

5 **30 Restraining orders over unclaimed tainted**
6 **property—making**

7 (1) This section applies if an application is made under section 25
8 (Restraining orders over unclaimed tainted property—application)
9 to a relevant court for an unclaimed tainted property restraining
10 order in relation to an offence.

11 (2) The relevant court must make a restraining order over the property
12 to which the application relates if, having regard to the police
13 officer's affidavit supporting the application and any other evidence
14 before the court, the court is satisfied that there are reasonable
15 grounds for the officer's suspicions and beliefs stated in the
16 affidavit.

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

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

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

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

- 1 **31 Restraining orders over other property—making**
- 2 (1) This section applies if an application is made under section 26
- 3 (Restraining orders over other property—application) to a relevant
- 4 court for a restraining order in relation to an offence.
- 5 (2) The relevant court must make a restraining order over the property
- 6 to which the application relates if, having regard to the police
- 7 officer’s affidavit supporting the application and any other evidence
- 8 before the court—
- 9 (a) the court is satisfied that there are reasonable grounds for the
- 10 officer’s beliefs and suspicions stated in the affidavit; and
- 11 (b) if an indictment has not been presented for the offence, or the
- 12 offence is a serious offence of which the offender has been
- 13 cleared—the court is satisfied that, within 6 weeks after the
- 14 date of the order or (if allowed by the court) a longer period of
- 15 not longer than 3 months after that date—
- 16 (i) for an ordinary indictable offence—it is intended to
- 17 present an indictment against the offender for the offence
- 18 (or a related indictable offence); or
- 19 (ii) for a serious offence—
- 20 (A) it is intended to present an indictment against the
- 21 offender for the offence (or a related serious
- 22 offence); or
- 23 (B) it is intended to apply for a civil forfeiture order or a
- 24 penalty order in relation to the offence (or a related
- 25 serious offence).
- 26 (3) The restraining order may do either or both of the following:
- 27 (a) direct the public trustee to take control of the restrained
- 28 property or stated restrained property;

1 (b) provide, under section 37 or 38, for living and business
2 expenses, or legal expenses, to be met out of the restrained
3 property.

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

6 (4) The relevant court may refuse to make the restraining order if the
7 DPP does not give the relevant court any undertaking that the court
8 considers appropriate about the payment of damages or costs in
9 relation to the making or operation of the order.

10 (5) To remove any doubt—

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

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

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

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

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

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

23 **32 Making of restraining orders—specific serious offence**
24 **not required etc**

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

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

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

9 (2) Also, for section 31 and to remove any doubt, the relevant court
10 must not refuse to make a restraining order in relation to the
11 offender only because—

- 12 (a) an indictment has not been presented against the offender for
13 the offence; or
- 14 (b) the offender has not been convicted of the offence; or
- 15 (c) the offender has been cleared of the offence, including being
16 cleared after having been convicted of the offence; or
- 17 (d) a doubt is raised about whether the person committed the
18 offence.

19 **33 Restraining orders—contents**

20 (1) A restraining order must state that a person must not deal with the
21 property stated in the order except in accordance with—

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

25 (2) A restraining order (other than an unclaimed tainted property
26 restraining order) must also state—

- 27 (a) that it is a restraining order under this Act; and
- 28 (b) the person (or people) whose property it applies to; and

-
- 1 (c) for each person to whose property it applies to—the property to
2 which it applies, including whether it applies to property
3 acquired after the making of the order; and
- 4 (d) if section 31 (2) (b) (Restraining orders over other
5 property—making) applies to the restraining order—the
6 applicable period under the paragraph; and
- 7 *Note* The restraining order ends unless an indictment is presented or,
8 for a serious offence, a forfeiture or penalty application is made,
9 before the end of the stated period (see div 4.3, tables 1 and 2).
- 10 (e) if the order directs the public trustee to take control of the
11 restrained property or stated restrained property—the direction
12 and the property to which it applies; and
- 13 (f) if the relevant court making the order has given a direction
14 under section 35 (Restraining order proceedings—restrictions
15 on disclosure)—
- 16 (i) the direction given by the court; and
- 17 (ii) the effect of section 36 (Restraining orders—disclosure
18 offences) in relation to the direction; and
- 19 (g) if the order provides, under section 37 or 38, for living and
20 business expenses, or legal expenses, to be met out of the
21 restrained property—
- 22 (i) the kind of expenses that may be met out of the restrained
23 property; and
- 24 (ii) the period during which the expenses may be met out of
25 the restrained property; and
- 26 (iii) the maximum amount of the expenses that may be met
27 out of the restrained property.
- 28 (3) An unclaimed tainted property restraining order must also state—
- 29 (a) that it is an unclaimed tainted property restraining order under
30 this Act; and

- 1 (b) the property to which it applies; and
2 (c) if the relevant court making the order has given a direction
3 under section 35—
4 (i) the direction given by the court; and
5 (ii) the effect of section 36 in relation to the direction; and
6 (d) that, unless a relevant court makes an order that stops the
7 operation of the restraining order over the property, the
8 property will be automatically forfeited under this Act to the
9 Territory at the end of 14 days after the day the order is made.
10 (4) A failure by a relevant court to comply with this section in relation
11 to the restraining order does not invalidate the restraining order or
12 any forfeiture order or automatic forfeiture made in relation to the
13 property restrained under the restraining order.

14 **34 Restraining orders—notice of making**

- 15 (1) If a court makes a restraining order over property, the DPP must
16 give a copy of the order to—
17 (a) for an unclaimed tainted property restraining order—anyone
18 the DPP suspects may have an interest in the property; and
19 (b) for any other restraining order—the owner of the restrained
20 property and anyone else the DPP suspects may have an
21 interest in the property.
22 *Note* For how documents may be served, see Legislation Act, pt 19.5.
23 (2) A relevant court may order the DPP to—
24 (a) give a copy of a restraining order, the application for the order
25 or the supporting affidavit to anyone and may give directions
26 about how any document is to be given to the person; or
27 (b) give notice of the order to anyone and may give directions
28 about how the notice is to be given.

- 1 (3) Subsections (1) and (2) have effect subject to any direction of the
2 court under section 35.

3 **35 Restraining order proceedings—restrictions on**
4 **disclosure**

- 5 (1) On application by the DPP, a relevant court hearing an application
6 for a restraining order may give directions prohibiting or restricting
7 the publication or disclosure of all or any of the following:
- 8 (a) the fact that an application for the order, or that a restraining
9 order, has been made;
 - 10 (b) the application for the order;
 - 11 (c) the supporting affidavit for the order and any other affidavit
12 filed in relation to the application;
 - 13 (d) any information about the proceeding (whether or not a hearing
14 has been held);
 - 15 (e) any evidence given, statement made or thing done during the
16 proceeding;
 - 17 (f) any information, document or thing derived from anything
18 mentioned in this subsection.

19 **Examples of directions**

- 20 1 that the application for the restraining order and a stated part of the
21 supporting affidavit not be disclosed to the person against whom the
22 restraining order is made until the court has decided an application for
23 another restraining order against someone else's property
- 24 2 that the supporting affidavit must be made available only to the offender's
25 lawyer

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

- 29 (2) In deciding whether to give a direction under subsection (1), the
30 court must have regard to whether the direction—
31 (a) would promote the purposes of this Act; or

1 (b) is desirable to protect the integrity of an investigation (however
2 described) for any purpose or a prosecution of an offence.

3 (3) The court may also have regard to any other relevant matter in
4 deciding whether to give a direction under subsection (1).

5 **36 Restraining orders—disclosure offences**

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

7 (1) A person commits an offence if—

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

11 (b) the person has notice of the direction (whether by being given
12 a copy of the restraining order to which the direction relates or
13 otherwise); and

14 (c) the person publishes or discloses the matter to someone else.

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

17 (2) A person commits an offence if—

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

21 (b) the person has notice of the direction (whether by being given
22 a copy of the restraining order to which the direction relates or
23 otherwise); and

24 (c) the person publishes or discloses information to someone else;
25 and

26 (d) the other person could infer from the information the matter to
27 which the direction relates.

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

-
- 1 (3) Subsections (1) and (2) do not apply if the publication or disclosure
2 is made to any of the following entities in the circumstances
3 mentioned for the entity:
- 4 (a) a police officer—in any circumstances;
- 5 (b) an officer, employee or agent of the person—to ensure that the
6 order is complied with and the person to whom the publication
7 or disclosure is made is given notice of the direction (whether
8 by being given a copy of the restraining order to which the
9 direction relates or otherwise) by the person making the
10 publication or disclosure;
- 11 (c) a lawyer—to obtain legal advice or representation in relation to
12 the order;
- 13 (d) a relevant court—with the court's leave.
- 14 *Note* The application for leave, and any proceeding with the court's
15 leave, must be heard in closed court, see s (8).
- 16 (4) Also, subsections (1) and (2) do not apply if the publication or
17 disclosure is made—
- 18 (a) by a police officer in the exercise of the officer's functions; or
19 (b) for the purpose of giving or obtaining legal advice, or making
20 legal representations, in relation to the order.
- 21 (5) A person commits an offence if—
- 22 (a) a relevant court has given a direction under section 35 (1)
23 prohibiting or restricting the publication or disclosure of a
24 matter mentioned in the subsection; and
- 25 (b) the person receives information in relation to the matter in
26 accordance with subsection (3) or (4); and
- 27 (c) the person ceases to be a person mentioned in subsection (3) or
28 (4); and

- 1 (d) the person publishes or discloses the matter to someone else.
2 Maximum penalty: 200 penalty units, imprisonment for 2 years or
3 both.
- 4 (6) A person commits an offence if—
- 5 (a) a relevant court has given a direction under section 35 (1)
6 prohibiting or restricting the publication or disclosure of a
7 matter mentioned in the subsection; and
- 8 (b) the person receives information in relation to the matter in
9 accordance with subsection (3) or (4); and
- 10 (c) the person ceases to be a person mentioned in subsection (3) or
11 (4); and
- 12 (d) the person publishes or discloses information to someone else;
13 and
- 14 (e) the other person could infer from the information the matter to
15 which the direction relates.
- 16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
17 both.
- 18 (7) An offence against this section is a strict liability offence.
- 19 (8) For subsection (3) (d), an application for leave, and any proceeding
20 with the court's leave, must be heard in closed court.

21 **37 Payment of living and business expenses from restrained**
22 **property**

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

- 1 (b) the living expenses of a dependant of the person.
- 2 *Note* For legal expenses in defending a criminal charge, see s 38.
- 3 (2) However, the court must not allow expenses to be met out of
4 restrained property unless the person satisfies the court that—
- 5 (a) the expenses are reasonable; and
- 6 (b) the expenses are necessary to avoid severe hardship to the
7 person or the person's dependants; and
- 8 (c) the expenses cannot be met out of property of the person not
9 subject to a restraining order; and
- 10 (d) any property to be released from restraint for the expenses was
11 lawfully acquired by the person, is not tainted property and
12 does not have evidentiary value in any criminal proceeding.
- 13 (3) The regulations may—
- 14 (a) prescribe matters to which the court may, must or must not
15 have regard for subsection (2) (a) or (b); and
- 16 (b) prescribe, or make provision in relation to, the maximum
17 amount of living or business expenses of a person that may be
18 allowed (for a period or otherwise).
- 19 (4) Regulations made for this section may apply, adopt or incorporate
20 (with or without change) a provision of a law of the Commonwealth
21 or a State, or an instrument, as in force from time to time.
- 22 *Note 1* The text of an applied, adopted or incorporated law or instrument,
23 whether applied as in force from time to time or at a particular time, is
24 taken to be a notifiable instrument if the operation of the Legislation
25 Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).
- 26 *Note 2* A notifiable instrument must be notified under the Legislation Act.

1 (5) In this section:

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

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

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

9 **38 Payment of certain legal expenses from restrained**
10 **property**

11 (1) A relevant court may, in a restraining order or an order under
12 section 39 (Additional orders about restraining orders and restrained
13 property) varying a restraining order, allow a person's legal
14 expenses in defending a criminal charge to be met out of the
15 restrained property of the person, or a stated part of the property.

16 (2) However, the court must not allow the legal expenses to be met out
17 of restrained property unless—

18 (a) the person applies for an order for the legal expenses to be met
19 out of restrained property; and

20 (b) the application is supported by an affidavit of the person
21 setting out all of the person's interests in property, including
22 any property of the person outside Australia, and the person's
23 liabilities; and

24 (c) the court is satisfied that—

25 (i) the affidavit is a true statement of the person's interests in
26 property and the person's liabilities; and

27 (ii) the person has taken all reasonable steps to bring any
28 property outside Australia within the jurisdiction of the
29 court; and

- 1 (iii) the legal expenses cannot be met out of property of the
2 person not subject to a restraining order; and
- 3 (iv) any property to be released from restraint for the
4 expenses was lawfully acquired by the person, is not
5 tainted property and does not have evidentiary value in
6 any criminal proceeding.
- 7 (3) If the court makes or varies a restraining order that allows the legal
8 expenses to be met out of restrained property, the court must include
9 in the order conditions ensuring that—
- 10 (a) restrained property is used only to meet legal fees,
11 disbursements and out-of-pocket expenses incurred by the
12 person in defending the criminal charge; and
- 13 (b) all legal fees, disbursements and out-of-pocket expenses are
14 properly and reasonably incurred by the person; and
- 15 (c) all legal fees are calculated in accordance with the scale of
16 costs for criminal matters determined by the legal aid
17 commission in accordance with the *Legal Aid Act 1977*,
18 section 32 (8), (9) and (10).

19 **39 Additional orders about restraining orders and restrained**
20 **property**

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

26 **Examples of additional orders**

- 27 1 an order varying the property subject to the restraining order (other than an
28 order excluding property from the restraining order)
- 29 2 an order authorising the disposal of the property subject to the restraining
30 order to satisfy a penalty order or execution levied against the property
- 31 3 an order varying any condition to which the restraining order is subject.

Part 4 Restraint of property
Division 4.2 Making restraining orders

Section 39

- 1 4 an order that living or business expenses of a person, or legal expenses of a
2 person to defend a criminal charge, be met out of restrained property
- 3 5 an order for the carrying out of any undertaking about the payment of
4 damages or costs given by the Territory in relation to the making or
5 operation of the restraining order
- 6 6 an order for the examination of anyone before the court, or an officer of the
7 court, about the affairs (including the nature and location of any property) of
8 the owner of restrained property or of the offender
- 9 7 an order for the examination of anyone before the court, or an officer of the
10 court, about any property that may be tainted property
- 11 8 an order directing the owner of the restrained property or anyone else to give
12 to a stated person, within a stated period, a sworn statement about stated
13 particulars of the restrained property
- 14 9 an order directing the registrar-general not to register any instrument
15 affecting restrained property except in accordance with the order
- 16 10 an order directing the owner of restrained property or anyone else to do
17 anything necessary or convenient to be done to allow the public trustee to
18 take control of the property in accordance with the restraining order,
19 including anything necessary or convenient to be done to bring the property
20 within the jurisdiction
- 21 11 if the restraining order directs the public trustee to take control of property,
22 an order regulating how the public trustee may exercise functions under the
23 restraining order or an order deciding any question about the property
- 24 *Note 1* For general provisions about additional orders under this section (which
25 is a confiscation proceeding—see s 235), see pt 14.
- 26 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 Legislation Act, s 126 and s 132).
- 29 (2) However, the court must not make any of the following orders under
30 subsection (1):
- 31 (a) an order revoking or otherwise ending a restraining order;
- 32 (b) an order for the extension of the period a restraining order is to
33 remain in force;

1 (c) an order for the exclusion of property from a restraining order.

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

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

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

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

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

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

16 **40 Contravention of additional orders under s 39**

17 A person commits an offence if—

18 (a) a relevant court makes an additional order under section 39;
19 and

20 (b) the person has notice of the order (whether by being given a
21 copy of the order or otherwise); and

22 (c) the person contravenes the order.

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

1 **Division 4.3 Duration of restraining orders**

2 **41 Meaning of *forfeiture or penalty application* for div 4.3**

3 In this division:

4 *forfeiture or penalty application* means an application for a
5 forfeiture order or a penalty order.

6 **42 Restraining orders generally not time limited**

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

10 **43 Revocation or variation of restraining orders made**
11 **without notice of application**

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

16 (2) The court must not make an order revoking the restraining order
17 unless it is satisfied that there were not and are no longer, or there
18 are no longer, sufficient grounds for making the order.

19 (3) However, if the DPP has told the court that the restraining order
20 applies to property that has evidentiary value in a criminal
21 proceeding, the court must not revoke the restraining order without
22 the DPP's agreement but may, by order, vary the restraining order to
23 exclude any part of the property that the DPP has told the court does
24 not have evidentiary value.

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

1 **44 Revocation or variation of restraining orders if security or**
2 **undertakings given**

3 (1) The owner of restrained property may apply to the court that made
4 the restraining order for the restraining order to be revoked or
5 varied, by order, under this section.

6 (2) The court must not make an order revoking the restraining order
7 unless the DPP has told the court that the owner has given—

8 (a) security satisfactory to the DPP to the value estimated by the
9 DPP of any order that may be sought under this Act in relation
10 to the offence in relation to which the order was made (and any
11 related offence); or

12 (b) an undertaking satisfactory to the DPP about the restrained
13 property.

14 (3) However, if the owner can only give security or an undertaking that
15 partly satisfies the DPP, the court may, by order, vary the restraining
16 order to exclude particular property in relation to which the DPP has
17 told the court that satisfactory security or a satisfactory undertaking
18 has been given.

19 (4) Also, if the DPP has told the court that the restraining order applies
20 to property that has evidentiary value in a criminal proceeding, the
21 court must not revoke the restraining order without the DPP's
22 agreement but may, by order, vary the restraining order to exclude
23 any part of the property that the DPP has told the court does not
24 have evidentiary value.

25 (5) If the DPP proposes to oppose an application by a person under this
26 section for the revocation of a restraining order, the DPP must give
27 the applicant, and anyone else to whom notice of the application
28 was given, written notice of the grounds on which the application
29 will be opposed.

30 (6) The court may order that the revocation or variation of a restraining
31 order under this section takes effect at a stated time or on the
32 happening of a stated event.

1 **45 When restraining order over particular property ends**

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

12 *Note 1* On forfeiture, restrained property vests in the Territory. However,
13 registrable property does not vest in law in the Territory until the
14 Territory's interest is registered in the appropriate register. Until then,
15 it is vested in equity in the Territory. (See s 108 and s 109.)

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

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

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

23 **46 When unclaimed tainted property restraining order ends**

- 24 (1) An unclaimed tainted property restraining order over property ends
25 if—
- 26 (a) the restraining order stops applying to the property in
27 accordance with an order under this Act (for example, an
28 exclusion order); or

1 (b) the automatic forfeiture of the property is fully satisfied.

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

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

6 (2) If a person claims an interest in the property to which the unclaimed
7 tainted property restraining order applies, the order does not cease to
8 be an unclaimed tainted property restraining order, or cease to apply
9 to the property, only because of the making of the claim.

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

13 **47 When restraining order ends—ordinary indictable**
14 **offences**

15 (1) This section applies to an offender over whose property a restraining
16 order has been made in relation to an ordinary indictable offence.

17 (2) However, this section does not apply if the restraining order was
18 also given in relation to a related serious offence, or is varied to
19 apply to a related serious offence.

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

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

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

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

- 1 (4) A reference in table 1 to a person being convicted of the offence
2 mentioned in subsection (1) includes a reference to the person being
3 convicted of a related offence instead of the offence mentioned in
4 subsection (1).
- 5 (5) For table 1, items 4 and 6, if more than 1 forfeiture or penalty
6 application is made within the period stated in the item, column 2,
7 the restraining order ends at the latest time that it would end if any
8 of those applications were the only forfeiture or penalty application
9 made.
- 10 (6) If, within the period stated in the restraining order under
11 section 33 (2) (d) (Restraining order—contents), an indictment is
12 presented against the offender for another ordinary indictable
13 offence or offences related to the offence mentioned in subsection
14 (1) (the *primary offence*), the restraining order ends at the later of
15 the following times:
- 16 (a) the time that it would end if there were no related offences;
- 17 (b) the latest time that it would end if—
- 18 (i) the related offence or any of the related offences, taken
19 by itself, were the primary offence; and
- 20 (ii) there were no other offences in relation to which the
21 restraining order had been made.
- 22 (7) The relevant court may, on the application of the DPP while the
23 order is in force, order that the restraining order is to end earlier than
24 otherwise provided for by this section.

Table 1 Ending of restraining orders—ordinary indictable offences

column 1 item	column 2 circumstances	column 3 when restraining order ends
1	an indictment is not presented against the offender for the offence before the end of the period stated in the restraining order under section 33 (2) (d)	end of the period stated in the restraining order under that paragraph
2	an indictment is presented against the offender for the offence before the end of the period stated in the restraining order under section 33 (2) (d), but the offender is cleared of the offence	when the offender is cleared of the offence
3	the offender is convicted of the offence, the restraining order is made before the conviction, and no forfeiture or penalty application is made within 6 months after the day of the conviction	end of the 6 month period
4	the offender is convicted of the offence, the restraining order is made before the conviction, and a forfeiture or penalty application is made within 6 months after the day of the conviction	at or after the finalisation of the proceeding in relation to the application, as follows: (a) if no forfeiture order or penalty order is in force at the finalisation of the proceeding—at that time; (b) if a forfeiture order or penalty order is in force at that time—when the forfeiture order or penalty order ends

Part 4 Restraint of property
Division 4.3 Duration of restraining orders

Section 48

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

1 **48 When restraining order ends—serious offences**

2 (1) This section applies to an offender over whose property a restraining
3 order has been made in relation to a serious offence.

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

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

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

- 10 • s 56 (When conviction forfeiture order ends)
11 • s 71 (When civil forfeiture order ends)

Table 2 Ending of restraining orders—serious offences

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

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

1 **49 Extension of time for restraining orders**

- 2 (1) This section applies to an offender over whose property a restraining
3 order is or has been in force in relation to the commission (or the
4 alleged commission) of an indictable offence, despite anything else
5 in this Act.
- 6 (2) On the application of the DPP, the court that made the restraining
7 order may make either or both of the following orders:
- 8 (a) an order that the restraining order is to remain in force for a
9 stated period (or as stated in the order);

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

22 **Division 4.4 Restraining orders—other matters**

23 **50 Restraining orders—registration in statutory property** 24 **registers**

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

27 *Note* A registered interstate restraining order is taken to be a restraining order
28 under this Act (see s 138).

-
- 1 (2) The restraining order, or details of the restraining order, may be
2 recorded in the register on application by a responsible authority.
- 3 (3) Anyone who acquires an interest in the property after the recording
4 of the restraining order in the register is taken to have notice of the
5 restraining order at the time of acquisition.
- 6 (4) Without limiting subsection (2), if the restraining order is over land
7 registered under the *Land Titles Act 1925*—
- 8 (a) the responsible authority may lodge a copy of the restraining
9 order with the registrar-general for registration under the *Land*
10 *Titles Act 1925*, section 104 (Lodging of caveat); and
- 11 (b) the responsible authority is, on behalf of the Territory, taken to
12 be a person claiming an interest in the land to which the
13 restraining order relates; and
- 14 (c) to remove any doubt, that Act, section 104 (5) does not apply
15 to the registered restraining order.
- 16 *Note* The *Land Titles Act 1925*, s 104 (5) allows certain dealings to be
17 registered unless the caveat prohibits them. However, this Act, s 23
18 prohibits such a dealing.
- 19 (5) If the property ceases to be restrained property, the responsible
20 authority must apply for the cancellation of the restraining order's
21 registration in the statutory property register.
- 22 (6) Without limiting subsection (5), if the restraining order is over land
23 registered under the *Land Titles Act 1925*, the responsible authority
24 must lodge a notice of the ending of the restraining order with the
25 registrar-general for registration under that Act.
- 26 (7) In this section:
- 27 ***responsible authority*** means—
- 28 (a) the DPP; or
- 29 (b) if the public trustee has taken control of the property under this
30 Act—the public trustee; or

- 1 (c) for a registered interstate restraining order—anyone who is
2 authorised under the corresponding law under which the order
3 was made to register a restraining order, or details of a
4 restraining order, in a statutory property register.

5 **51 Execution against restrained property**

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

1 **Part 5** **Forfeiture of property**

2 **Division 5.1** **Conviction forfeiture orders**

3 *Note* For general provisions about a proceeding for a conviction forfeiture
4 order (which is a confiscation proceeding—see s 235), see pt 14.

5 **52** **Meaning of *conviction forfeiture order***

6 In this Act:

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

10 **53** **Conviction forfeiture orders—application**

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

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

- 16 (2) The application may be made before or after, or at the same time as,
17 the person's conviction for an indictable offence.

- 18 (3) However, if the person has been convicted of the offence, the DPP
19 must make the application within 2 years after the day of the
20 conviction.

21 *Note* The court may allow leave for an application to be made after the time
22 fixed by this section in certain circumstances (see s 245).

23 **54** **Conviction forfeiture orders—making**

- 24 (1) On application under section 53, the court must make an order for
25 the forfeiture to the Territory of tainted property in relation to the
26 indictable offence if satisfied that—

- 27 (a) the offender has been convicted of the offence; and

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

9 **55 Conviction forfeiture orders—forfeiture**

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

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

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

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

23 **56 When conviction forfeiture order ends**

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

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

- 1 (2) The order is satisfied for a particular interest in forfeited property if
2 the interest is bought back under section 126 (Buyback
3 orders—buying interest in property).

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

6 **Division 5.2 Automatic forfeiture—conviction**
7 **for serious offences**

8 **57 Unclaimed tainted property restraining orders—**
9 **non-application of div 5.2**

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

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

13 **58 Automatic forfeiture of restrained property on conviction**
14 **for serious offences**

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

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

- 24 (2) The restrained property is forfeited to the Territory at the end of
25 whichever of the following periods applies (the *relevant*
26 *14-day period*), except so far as the property is excluded from
27 forfeiture under an exclusion order:

- 28 (a) if the restraining order was made before the
29 conviction—14 days after the day of conviction;

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

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

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

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

13 **59 Automatic forfeiture—court order declaring property**
14 **automatically forfeited**

15 (1) The DPP may apply to a relevant court for an order declaring that
16 property has been automatically forfeited under this division.

17 (2) If the relevant court is satisfied that the property has been
18 automatically forfeited under this division, the court must make the
19 order and state in the order the property to which it applies.

20 (3) The registrar of the relevant court may exercise the functions of the
21 court for this section.

22 *Note* For general provisions about a proceeding for an order under this
23 section (which is a confiscation proceeding—see s 235), see pt 14.

24 **60 Automatic forfeiture—court orders**

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

28 **Examples of orders**

29 1 an order for the examination of anyone before the court, or an officer of the
30 court, about any property that might be forfeited because of the conviction

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- 1 2 an order directing the owner of property that might be forfeited because of
2 the conviction, or anyone else, to give to a stated person, within a stated
3 period, a sworn statement about stated particulars of the property
4 3 an order directing the owner of property that might be forfeited because of
5 the conviction, or anyone else, to do anything necessary or convenient to be
6 done to allow the public trustee to take control of the property, including
7 anything necessary or convenient to be done to bring the property within the
8 jurisdiction
9 4 an order in relation to the registration of title to, or charges over, property
10 under a Territory law

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

14 (2) The order may be made on the court's initiative, or on the
15 application of any of the following people:

- 16 (a) the DPP;
17 (b) the offender;
18 (c) the public trustee;
19 (d) anyone with an interest in property to which the order relates;
20 (e) anyone else with the court's leave.

21 *Note* For general provisions about a proceeding for an order under this
22 section (which is a confiscation proceeding—see s 235), see pt 14.

23 (3) A person commits an offence if—

- 24 (a) a relevant court makes an order under subsection (1) to give
25 effect to an automatic forfeiture of property; and
26 (b) the order requires the person to do, or not do, something stated
27 in the order; and
28 (c) the person has notice of the order (whether by being given a
29 copy of the order or otherwise); and
30 (d) the person contravenes the order.

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

3 **61 When automatic forfeiture under div 5.2 ends**

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

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

- 9 (2) Automatic forfeiture is satisfied for a particular interest in forfeited
10 property if the interest is bought back under section 126 (Buyback
11 orders—buying interest in property).

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

14 **Division 5.3 Automatic forfeiture—unclaimed**
15 **tainted property**

16 *Note* For general provisions about a proceeding for a conviction forfeiture
17 order (which is a confiscation proceeding—see s 235), see pt 14.

18 **62 Forfeiture of unclaimed tainted property**

- 19 (1) This section applies if an unclaimed tainted property restraining
20 order is made over property.
21 (2) The restrained property is forfeited to the Territory at the end of
22 14 days after the day the restraining order comes into force, except
23 so far as the property is excluded from forfeiture under an exclusion
24 order.

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

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

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

6 **63 When automatic forfeiture under div 5.3 ends**

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

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

10 **Division 5.4 Civil forfeiture orders**

11 *Note* For general provisions about a proceeding for a conviction forfeiture
12 order (which is a confiscation proceeding—see s 235), see pt 14.

13 **64 Artistic profits and unclaimed tainted property—**
14 **non-application of div 5.4**

15 This division does not apply to property restrained under—

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

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

21 *Note 2* Unclaimed tainted property is forfeitable under div 5.3.

22 **65 Meaning of *civil forfeiture order***

23 In this Act:

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

1 **66 Civil forfeiture orders—application**

2 (1) The DPP may apply to a relevant court for a civil forfeiture order for
3 the forfeiture to the Territory of property restrained in relation to the
4 commission (or the alleged commission) of a serious offence.

5 (2) The application may be made—

6 (a) at the same time as, or after, an application for a restraining
7 order in relation to the offence; or

8 (b) if a restraining order is in force in relation to the offence.

9 **67 Civil forfeiture orders—making**

10 (1) This section applies if, on an application under section 66 for an
11 order for the forfeiture to the Territory of restrained property, the
12 court is satisfied on the balance of probabilities that a person (the
13 *offender*) has committed a serious offence within whichever of the
14 following periods applies (the *relevant period*):

15 (a) 6 years before the day the application to restrain the property
16 was made;

17 (b) if an extended period for making the restraining order
18 application was allowed under section 245 (Confiscation
19 proceedings—time extensions for applications)—the total of
20 the 6-year period and the extended period.

21 *Note 1* The court must be satisfied on the balance of probabilities about the
22 commission of the offence because confiscation proceedings are civil,
23 not criminal (see s 236).

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

27 (2) If this section applies, the relevant court must order that the
28 restrained property be forfeited to the Territory.

29 (3) The order must state—

30 (a) the property to which it applies; and

- 1 (b) what the relevant court considers to be the value of the
2 property (other than money) to be forfeited to the Territory
3 under the order at the time the order is made; and
- 4 (c) if the relevant court making the order has given a direction
5 under section 69 (Civil forfeiture order
6 proceedings—restrictions on disclosure)—
- 7 (i) the direction given by the court; and
- 8 (ii) the effect of section 70 (Civil forfeiture
9 orders—disclosure offences) in relation to the direction.
- 10 (4) To remove any doubt, if the relevant court is satisfied that the
11 offender committed a serious offence within the relevant period, the
12 court must not refuse to make a civil forfeiture order only because it
13 is not satisfied—
- 14 (a) that a particular serious offence was committed by the offender
15 within the relevant period; or
- 16 (b) that the offence was committed on any particular day or time
17 within the relevant period.
- 18 (5) Also, to remove any doubt, the relevant court must not refuse to
19 make a civil forfeiture order in relation to a serious offence only
20 because—
- 21 (a) an indictment has not been presented against the offender for
22 the offence; or
- 23 (b) the offender has not been convicted of the offence; or
- 24 (c) the offender has been cleared of the offence, including being
25 cleared after having been convicted of the offence; or
- 26 (d) a doubt is raised about whether the offender committed the
27 offence.

1 **68 Civil forfeiture orders—forfeiture**

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

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

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

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

15 **69 Civil forfeiture order proceedings—restrictions on**
16 **disclosure**

17 (1) On application by the DPP, a relevant court hearing an application
18 for a civil forfeiture order may—

19 (a) direct that the hearing of the application, or part of it, take
20 place in closed court and give directions about who may be
21 present; and

22 (b) give directions prohibiting or restricting the publication or
23 disclosure of all or any of the following:

24 (i) the fact that an application for the order, or that a civil
25 forfeiture order, has been made;

26 (ii) the application for the order;

27 (iii) any information about the proceeding (whether or not a
28 hearing has been held);

29 (iv) any evidence given, statement made or thing done during
30 the proceeding;

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

3 **Examples of directions**

4 1 that the application for the civil forfeiture order not be disclosed to the
5 person against whom the civil forfeiture order is made until the court has
6 decided an application for a restraining order against someone else's
7 property

8 2 that the supporting affidavit must be made available only to the offender's
9 lawyer

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

13 (2) In deciding whether to give a direction under subsection (1), the
14 court must have regard to whether the direction—

15 (a) would promote the purposes of this Act; or

16 (b) is desirable to protect the integrity of an investigation (however
17 described) for any purpose or a prosecution of an offence.

18 (3) The court may also have regard to any other relevant matter in
19 deciding whether to give a direction under subsection (1).

20 **70 Civil forfeiture orders—disclosure offences**

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

22 (1) A person commits an offence if—

23 (a) a relevant court has given a direction under section 69 (1) (b)
24 prohibiting or restricting the publication or disclosure of a
25 matter mentioned in the paragraph; and

26 (b) the person has notice of the direction (whether by being given
27 a copy of the civil forfeiture order to which the direction
28 relates or otherwise); and

29 (c) the person publishes or discloses the matter to someone else.

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

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

12 Maximum penalty: 200 penalty units, imprisonment for 2 years or

13 both.

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

27 *Note* The application for leave, and any proceeding with the court's

28 leave, must be heard in closed court, see s (8).

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

- 1 (a) by a police officer in the exercise of the officer's functions; or
2 (b) for the purpose of giving or obtaining legal advice, or making
3 legal representations, in relation to the order.
- 4 (5) A person commits an offence if—
- 5 (a) a relevant court has given a direction under section 69 (1) (b)
6 prohibiting or restricting the publication or disclosure of a
7 matter mentioned in the paragraph; and
- 8 (b) the person receives information in relation to the matter in
9 accordance with subsection (3) or (4); and
- 10 (c) the person ceases to be a person mentioned in subsection (3) or
11 (4); and
- 12 (d) the person publishes or discloses the matter to someone else.
- 13 Maximum penalty: 200 penalty units, imprisonment for 2 years or
14 both.
- 15 (6) A person commits an offence if—
- 16 (a) a relevant court has given a direction under section 69 (1) (b)
17 prohibiting or restricting the publication or disclosure of a
18 matter mentioned in the paragraph; and
- 19 (b) the person receives information in relation to the matter in
20 accordance with subsection (3) or (4); and
- 21 (c) the person ceases to be a person mentioned in subsection (3) or
22 (4); and
- 23 (d) the person publishes or discloses information to someone else;
24 and
- 25 (e) the other person could infer from the information the matter to
26 which the direction relates.
- 27 Maximum penalty: 200 penalty units, imprisonment for 2 years or
28 both.
- 29 (7) An offence against this section is a strict liability offence.
-

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

3 **71 When civil forfeiture order ends**

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

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

- 8 (2) The order is satisfied for a particular interest in forfeited property if
9 the interest is bought back under section 126 (Buyback
10 orders—buying interest in property).

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

1 **Part 6** **Exclusion of property**

2 *Note* For general provisions about a proceeding for an exclusion order (which
3 is a confiscation proceeding—see s 235), see pt 14.

4 **Division 6.1** **General**

5 **72** **Meaning of *exclusion order***

6 In this Act:

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

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

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

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

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

22 **73** **When property is *subject to forfeiture***

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

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

1 **74 Effect of exclusion order**

2 An exclusion order for property has effect as follows:

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

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

16 **Division 6.2 Making exclusion orders**

17 **75 Exclusion orders—application**

18 (1) This section applies to—

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

25 *Note* See the notes to s 72.

26 (2) A person claiming an interest in the property may apply to a
27 relevant court for an exclusion order.

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

10 **76 Making of exclusion orders—ordinary indictable offences**

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

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

1 **77 Making of exclusion orders—serious offences**

2 (1) This section applies to an application for an exclusion order for
3 property if—

4 (a) a restraining order in relation to the property has been applied
5 for in relation to serious offence; or

6 (b) the property has been restrained (but not forfeited) in relation
7 to a serious offence; or

8 (c) a conviction forfeiture order for a serious offence has been
9 applied for in relation to the property; or

10 (d) the property is subject to automatic forfeiture under
11 division 5.2 (Automatic forfeiture—conviction for serious
12 offences).

13 (2) If the application is made by an offender, the relevant court must not
14 make an exclusion order for the property unless the court is satisfied
15 that the property—

16 (a) was lawfully acquired by the offender; and

17 (b) is not tainted property in relation to any offence against a
18 Territory law, or a law of the Commonwealth, a State, another
19 Territory or a foreign country; and

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

21 (c) is not required to be restrained to satisfy a penalty order; and

22 (d) does not have evidentiary value in any criminal proceeding.

23 (3) However, if the court is satisfied that the property was lawfully
24 acquired, and is not tainted property as mentioned in
25 subsection (2) (b), but considers that the property (or any part of the
26 property) may be required to be restrained to satisfy a penalty order,
27 the court must make an exclusion order declaring that the property
28 (or part)—

29 (a) is not subject to automatic forfeiture or to forfeiture under a
30 forfeiture order; but

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

23 **78 Making of exclusion orders—unclaimed tainted property**

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

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

1 **Part 7 Penalty orders**

2 **Division 7.1 Benefits**

3 **79 Meaning of *commission* of serious offence for pt 7**

4 In this part:

5 *commission*, of a serious offence, includes the alleged commission
6 of the offence.

7 **80 Meaning of *benefits* derived by an offender**

8 In this Act:

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

11 (a) tainted property, except tainted property that was used, or was
12 intended by the offender to be used, in relation to the
13 commission of an offence, and property derived by anyone
14 from that property; and

15 (b) artistic profits allowed under section 81 (3) in relation to the
16 offence; and

17 (c) any service or other advantage derived by the offender from
18 the commission of the offence.

19 **Example for par (c)**

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

27 In the 12 months ending immediately before the commission of the earliest
28 offence, Mr Adventuresome's income from the business was \$50 000. In the
29 12 months after then, his income from legitimate business activity (unrelated to

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

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

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

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

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

12 **81 Meaning of *artistic profits***

13 (1) In this Act:

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

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

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

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

- 1 (c) printed material (for example, a book, newspaper, magazine or
2 any other written or pictorial matter); or
- 3 (d) a radio or television production; or
- 4 (e) live entertainment of any kind (for example, a public
5 presentation or speech).
- 6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).
- 9 (3) A relevant court must allow artistic profits as benefits for
10 section 80 (b) (Meaning of *benefits* derived by an offender), unless
11 it is satisfied that it would not be in the public interest to do so.
- 12 (4) In deciding whether it would not be in the public interest to allow
13 artistic profits as benefits, the court must have regard to the
14 following matters:
- 15 (a) the purposes of this Act;
- 16 (b) whether the commercial exploitation has any general social or
17 educational value;
- 18 (c) the nature and purposes of the commercial exploitation,
19 including its use for research, educational or rehabilitation
20 purposes;
- 21 (d) the seriousness of the offence;
- 22 (e) how long ago the offence was committed.
- 23 (5) Subsection (4) does not limit the matters to which the court may
24 have regard.

1 **84 Penalty orders—offenders convicted of ordinary**
2 **indictable offences**

- 3 (1) On application under section 83, the relevant court must make an
4 order under this section for the payment by the offender of the value
5 of benefits derived by the offender from the commission of an
6 ordinary indictable offence if satisfied that—
- 7 (a) the offender has been convicted of the offence or a related
8 ordinary indictable offence; and
- 9 (b) the offender has not been cleared of the offence of which the
10 offender was convicted.
- 11 (2) To remove any doubt, a relevant court may make an order under this
12 section that relates only to artistic profits.

13 **85 Penalty orders—commission of serious offences**

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

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

24 *Note 2* The court must be satisfied on the balance of probabilities about the
25 commission of the offence because confiscation proceedings are civil,
26 not criminal (see s 236).

- 27 (2) To remove any doubt, if the relevant court is satisfied that the
28 offender committed a serious offence within the relevant period, the
29 court must not refuse to make a penalty order only because it is not
30 satisfied—

- 1 (a) that a particular serious offence was committed by the offender
2 within the relevant period; or
- 3 (b) that the offence was committed on any particular day or time
4 within the relevant period.
- 5 (3) Also, to remove any doubt, the relevant court must not refuse to
6 make a penalty order in relation to the serious offence only
7 because—
- 8 (a) an indictment has not been presented against the offender for
9 the offence; or
- 10 (b) the offender has not been convicted of the offence; or
- 11 (c) the offender has been cleared of the offence, including being
12 cleared after having been convicted of the offence; or
- 13 (d) a doubt is raised about whether the offender committed the
14 offence.
- 15 (4) Further, to remove any doubt, the relevant court must not refuse to
16 make a penalty order only because—
- 17 (a) a relevant court had previously made a penalty order under this
18 section in relation to the offender for the same serious offence
19 (or a related offence); and
- 20 (b) the order had later ended because the offender was cleared of
21 the offence.
- 22 *Note* The earlier penalty order would have ended when the offender was
23 cleared (see s 98 (a)).
- 24 (5) In this section:
- 25 ***relevant period*** means—
- 26 (a) if a restraining order is in force over any property in relation to
27 the serious offence—
- 28 (i) 6 years before the day the application to restrain the
29 property was made; or

- 1 (ii) if an extended period for making the restraining order
2 application was allowed under section 245 (Confiscation
3 proceedings—time extensions for applications)—the total
4 of the 6-year period and the extended period; or
- 5 (b) if a restraining order is not in force over any property in
6 relation to the serious offence—
- 7 (i) 6 years before the day the application for the penalty
8 order was made; or
- 9 (ii) if an extended period for making the penalty order
10 application was allowed under section 245—the total of
11 the 6-year period and the extended period.

12 **86 Penalty orders—amount of penalty**

- 13 (1) In making a penalty order in relation to an offence, the court must—
- 14 (a) assess under division 7.3 (Value of benefits) the value of any
15 benefits (the *assessed value*) derived by the offender from the
16 commission of the offence and any related offence; and
- 17 (b) order the offender to pay the Territory the amount worked out
18 under subsection (2).
- 19 (2) The amount payable under the penalty order is the assessed value
20 less any amount by which the assessed value is reduced under
21 subsection (3).
- 22 (3) The assessed value in relation to the offence or any related offence
23 may be reduced if the court is satisfied that it is just and equitable
24 that the assessed value should be reduced by any of the following
25 amounts:
- 26 (a) the value of property subject to forfeiture under this Act or a
27 corresponding law;
- 28 *Note* For the meaning of *subject to forfeiture*, see s 73.
- 29 (b) the value of property forfeited under this Act or a
30 corresponding law;

- 1 (c) the amount of any other penalty order, or any other financial
2 penalty (however described) under a corresponding law;
- 3 (d) any amount payable by the offender under a reparation order
4 under the *Crimes Act 1900*, section 350, or any corresponding
5 order made under the law of the Commonwealth, a State or
6 another Territory;
- 7 (e) any amount payable by the offender for restitution,
8 compensation or damages, other than any fine imposed by a
9 court;
- 10 (f) any amount of tax payable under a law of the Territory, the
11 Commonwealth, a State, another Territory or a foreign country
12 in relation to the benefits.

13 **87 Penalty orders—contents**

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

20 **88 Penalty orders—enforceable as judgment debt**

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

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

1 **89 Penalty orders—variation for reassessed value of**
2 **benefits**

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

7 **Examples**

- 8 1 The amount of the penalty order is reduced by the value of forfeited property
9 (see s 86 (3) (b)). The order for the forfeiture is overturned by a court in a
10 later proceeding. The relevant court may vary the penalty order to increase
11 the amount of the penalty order by the value of the forfeited property.
- 12 2 The amount of the penalty order is reduced by an amount of tax payable by
13 the offender in relation to a benefit (see s 86 (3) (f)). The amount of tax is
14 reduced on a review by the commissioner of taxation. The relevant court
15 may vary the penalty order to increase the amount of the penalty order by the
16 reduced amount of tax.
- 17 3 If, in example 2, the amount of the tax payable had been increased on review,
18 the court may vary the penalty order to reduce the amount of the penalty
19 order by the amount of the increased tax.

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

23 **Division 7.3 Value of benefits**

24 **90 Meaning of *narcotic substance* and *property* for div 7.3**

25 In this division:

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

29 *property*, of an offender, includes—

- 30 (a) property subject to the effective control of the offender; and

- 1 (b) property that, immediately before it vested in the trustee for the
2 property under the *Bankruptcy Act 1966* (Cwlth), was the
3 offender's property.

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

5 **91 Presumed value of benefits—ordinary indictable offence**

- 6 (1) This section applies to the assessment of the value of benefits
7 derived by an offender from the commission of an ordinary
8 indictable offence (or ordinary indictable offences).
- 9 (2) The value of the benefits derived by the offender from the
10 commission of the offence (or offences) is—
- 11 (a) if evidence is given about any increase in value of the
12 offender's property since immediately before the offence (or
13 the earliest offence) was committed—taken to be not less than
14 the amount of the greatest increase in value of which evidence
15 is given; and
- 16 (b) in any case—taken to include the value of any narcotic
17 substance to which the offence (or offences) relates.

18 **Example for par (a)**

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

24 The 'greatest increase' in the total value of the offender's property since
25 immediately before the offence was committed is \$100 000 (\$150 000 minus
26 \$50 000).

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

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

- 31 (3) However, the value of the benefits is taken not to include any part
32 (or all) of the increase in value if the offender satisfies the court that
33 the part (or all) of the increase was from either—

- 1 (a) property that—
2 (i) was lawfully acquired by the offender; and
3 (ii) is not tainted property in relation to any offence against a
4 Territory law, or a law of the Commonwealth, a State,
5 another Territory or a foreign country; or
6 (b) benefits that were lawfully acquired by the offender.

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

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

10 **92 Presumed value of benefits—serious offence**

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

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

- 16 (2) The value of the benefits derived from the offence (or offences) is
17 taken to include the following:

- 18 (a) the value of all of the offender's property on the day the
19 application was made;
20 (b) the value of any other property held by the offender within the
21 shorter of the following periods:
22 (i) between the day the offence (or the earliest offence) was
23 committed and the day the application was made;
24 (ii) 6 years immediately before the day the application was
25 made;
26 (c) the value of any narcotic substance to which the offence (or
27 offences) relate;

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

- 1 (d) all of the person's expenditure during the relevant period under
2 paragraph (b) (other than expenditure to the extent that it
3 resulted in the acquisition of property mentioned in
4 paragraph (a) or (b)).
- 5 (3) However, subsection (2) does not apply to particular property if the
6 offender satisfies the court that the property—
- 7 (a) was lawfully acquired by the offender; and
- 8 (b) is not tainted property in relation to any offence against a
9 Territory law, or a law of the Commonwealth, a State, another
10 Territory or a foreign country.
- 11 *Note* For the meaning of *in relation to*, see dict.
- 12 (4) Also, subsection (2) does not apply to particular expenditure if the
13 offender satisfies the court that the expenditure—
- 14 (a) was derived from property or benefits lawfully acquired by the
15 offender; and
- 16 (b) the property from which the expenditure was derived is not
17 tainted property in relation to any offence against a Territory
18 law, or a law of the Commonwealth, a State, another Territory
19 or a foreign country.
- 20 (5) For subsection (2) (b) (i), if a serious offence was committed over
21 more than 1 day, the reference in the subparagraph to the day the
22 offence was committed is a reference to the day the offence was
23 begun to be committed.
- 24 (6) This section does not apply in relation to a penalty order relating
25 only to artistic profits.

1 **93 Value of benefits—relevant matters**

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

5 **Examples of relevant matters**

- 6 1 an increase in the income or profits of the offender in comparable periods
7 before and after the offence was committed (see s 80, example for par (c))
8 2 an increase in the value of property held by the offender because of the
9 benefit, taking into account any relevant variation in the purchasing power of
10 money
11 3 the value of the offender’s property before, during and after the commission
12 of the offence
13 4 the income and expenditure of the offender before, during and after the
14 commission of the offence
15 5 the part of the benefit derived from the commission of the offence and the
16 part derived from other sources

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

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

25 **Examples**

- 26 1 An offender derives a benefit worth \$10 000 from the commission of an
27 offence. If the benefit had been derived at the time of valuation for a
28 penalty order proceeding 2 years later, the benefit would have been worth
29 \$11 000 (because of inflation). The court may assess the value of the
30 benefit as \$11 000 rather than \$10 000.
31 2 The offence to which benefits relate is an ordinary indictable offence.
32 However, the offender later committed a related offence that was a serious
33 offence. The court may have regard to the highest value of the benefits
34 since the commission of the ordinary indictable offence.

- 1 (3) At the hearing of an application for a penalty order, a law
2 enforcement officer who is experienced in the investigation of
3 narcotic offences may testify, to the best of the officer's
4 information, knowledge and belief—
- 5 (a) in relation to the amount that was the market value of a
6 narcotic substance at a particular time or during a particular
7 period; or
- 8 (b) in relation to the amount, or the range of amounts, ordinarily
9 paid at a particular time or during a particular period, for the
10 doing of anything in relation to a narcotic substance.
- 11 (4) The law enforcement officer's testimony under subsection (3)—
- 12 (a) is admissible at the hearing despite any rule of law or practice
13 about hearsay evidence; and
- 14 (b) is prima facie evidence of the matters testified.
- 15 (5) In this section:
- 16 *law enforcement officer* means—
- 17 (a) a police officer; or
- 18 (b) an officer of Customs under the *Customs Act 1901* (Cwlth).

19 **Division 7.4 Satisfaction of penalty order**

20 **94 Creation of penalty charge over restrained property**

- 21 (1) This section applies if, in relation to an offence—
- 22 (a) a restraining order is made; and
- 23 (b) a penalty order is made.

1 (2) On the making of the later of the orders, all of the restrained
2 property is automatically charged to secure the payment to the
3 Territory of the amount of the penalty order.

4 *Note 1* An interstate penalty charge is taken to be a penalty charge under this
5 Act (see s 138).

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

9 (3) If the restraining order is varied after the penalty order is made to
10 add more property, the additional property is also automatically
11 charged to secure payment to the Territory of the amount of the
12 penalty order.

13 (4) A charge on property created by this section (a *penalty charge*)—

14 (a) is subject to every encumbrance on the property that came into
15 existence before the charge and that would have priority over
16 the charge if this subsection had not been enacted; and

17 (b) has priority over all other encumbrances; and

18 (c) is not affected by any change in the ownership of the property
19 unless the change in ownership ends the penalty charge under
20 section 95 (c) or (d).

21 **95 When penalty charge over property ends**

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

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

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

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

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

- 1 (c) the property is sold, or otherwise disposed of, with the consent
2 of—
- 3 (i) the relevant court that made the penalty order; or
- 4 (ii) if a trustee (including the public trustee) controls the
5 property—the trustee;
- 6 (d) the property is sold to a purchaser who—
- 7 (i) buys the property honestly and for sufficient
8 consideration; and
- 9 (ii) at the time of the purchase, has no notice of the charge.

10 **Example of end of restraining order and penalty order**

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

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

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

20 **96 Power to satisfy penalty order**

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

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

26 *Note 2* An amount received by the public trustee to satisfy the penalty order
27 must be paid into the confiscated assets trust fund, see s 130.

28 *Note 3* An interstate penalty charge is taken to be a penalty charge under this
29 Act (see s 138).

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

4 *Note* The money realised by the public trustee from the disposal of property
5 must be paid into the be paid into the confiscated assets trust fund, see
6 s 130 and dict, def *fully satisfied*, par (b).

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

9 (a) all confiscation proceedings (including forfeiture proceedings)
10 in relation to the property have been finalised; and

11 (b) all proceedings in relation to the offender’s conviction for the
12 offence are finalised.

13 *Note 1* For the meaning of *confiscation proceedings*, see s 235.

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

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

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

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

23 **97 Public trustee to repay any amount surplus to satisfying**
24 **penalty order**

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

1 **Division 7.5** **End of penalty orders**

2 **98** **When penalty order ends**

3 A penalty order ends if—

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

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

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

1 5 if the property consists, completely or partly, of shares in a corporation,
2 exercise (to the exclusion of the registered proprietor) the rights attaching to
3 the shares as if the public trustee were the registered holder

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

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

11 (2) The owner of restrained property commits an offence if—

12 (a) the public trustee asks the owner for the person’s tax file
13 number within a stated reasonable time; and

14 (b) the owner fails to give the public trustee the person’s tax file
15 number within that time.

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

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

19 **101 Sale, modification or destruction of property by public**
20 **trustee**

21 (1) The public trustee may sell restrained property if—

22 (a) the property is deteriorating or substantially losing value or the
23 public trustee considers that the property is likely to deteriorate
24 or substantially lose value; or

25 (b) the public trustee considers that the cost of maintaining the
26 property would be more than the value of the property if the
27 property were forfeited.

28 (2) The restraining order that applied to restrained property sold under
29 this section applies to the proceeds of the sale of the property.

- 1 (3) The public trustee may modify or destroy restrained property if the
2 public trustee considers it is necessary to do so in the public interest.

3 **Examples of destruction of property in the public interest**

- 4 1 the restrained property cannot be used legally or the only practical use of the
5 property is for an illegal purpose
6 2 the restrained property is a threat to public health or safety

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

10 **102 Notice of sale, modification or destruction of restrained**
11 **property by public trustee**

- 12 (1) The public trustee must give written notice of a proposed sale,
13 modification or destruction of restrained property under section 101
14 (the *proposed action*) to—

- 15 (a) the owner of the property (if known); and
16 (b) anyone else the public trustee believes may have an interest in
17 the property.

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

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

- 21 (2) The notice must state—

- 22 (a) the proposed action and the property to which it applies; and
23 (b) the date when the proposed action is to be taken (the *date of*
24 *effect*); and
25 (c) that the proposed action may be taken on or after the date of
26 effect unless a relevant court orders the public trustee not to
27 take the proposed action.

- 28 (3) The notice may, but need not, provide an opportunity for the person
29 to make representations why the proposed action should not be
30 taken.

- 1 (4) The date of effect must not be earlier than 21 days after the day the
2 notice is given to the person.

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

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

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

8 **103 Emergency modification or destruction of restrained**
9 **property**

- 10 (1) This section applies if the public trustee considers that restrained
11 property is a serious threat to public health or safety.

- 12 (2) Despite section 102, the public trustee may—

13 (a) give notice to a person under that section with a date of effect
14 less than 21 days after the day the notice is given to the person;
15 or

16 (b) modify or destroy the property without giving notice under that
17 section.

- 18 (3) If the public trustee modifies or destroys the property under
19 subsection (2) (b), the public trustee must, as soon as practicable,
20 give notice of the action taken, and the grounds for the action, to—

21 (a) the owner of the property (if known); and

22 (b) anyone else the public trustee believes may have an interest in
23 the property.

1 **104 Order to stop sale, modification or destruction of**
2 **restrained property**

3 (1) A person may apply to a relevant court for an order stopping the
4 public trustee from selling, modifying or disposing of restrained
5 property under this division.

6 (2) If the person was not given notice of the proposed action by the
7 public trustee, the person may make the application only with the
8 leave of the relevant court and if the person satisfies the court that
9 the person has an interest in the property.

10 *Note* For general provisions about a proceeding for an order under this
11 section (which is a confiscation proceeding—see s 235), see pt 14.

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

15 **Division 8.2 Joint ownership of restrained**
16 **property**

17 **105 Effect of death on joint ownership**

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

21 *Note* A registered interstate restraining order is taken to be a restraining order
22 under this Act (see s 138).

23 (2) If the property was held by the dead person as a joint tenant, the
24 person's death does not vest the person's interest in the property in
25 the surviving joint owner.

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

4 **Examples of prohibited transfers**

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

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

- 10 (4) The restraining order continues to apply to the property as if the
11 person had not died.

- 12 (5) An automatic forfeiture of any interest of the dead person in the
13 property, or a forfeiture order made in relation to the interest,
14 applies as if the interest were forfeited immediately before the
15 person died.

16 *Note 1* A registered interstate automatic forfeiture decision is taken to be an
17 automatic forfeiture under this Act (see s 138).

18 *Note 2* A registered interstate forfeiture order is taken to be a forfeiture order
19 under this Act (see s 138).

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

1 **Part 9 Forfeited property**

2 **Division 9.1 Preliminary**

3 **106 Meaning of *interested person* in pt 9**

4 In this part:

5 *interested person*, in relation to property, means—

6 (a) a person who has an interest in the property; or

7 (b) the DPP; or

8 (c) if a trustee (including the public trustee) controls the
9 property—the trustee; or

10 (d) if the property has been forfeited—a person who had an
11 interest in the property immediately before it was forfeited.

12 **107 Forfeited property—powers of public trustee**

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

16 **Examples**

17 1 the giving notice of, or otherwise taking action to protect, the Territory's
18 equitable interest in forfeited property

19 2 registering a caveat over forfeited property

20 3 obtaining registration of an interest in forfeited property on behalf of the
21 Territory (including signing an instrument of transfer)

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

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

3 **Example**

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

5 *Note* A registered interstate forfeiture order is taken to be a forfeiture order
6 under this Act (see s 138).

7 **Division 9.2 Vesting and disposal of forfeited**
8 **property**

9 **108 Vesting of forfeited property—general rule**

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

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

12 *Note 2* If a joint owner of restrained property dies, and the property is later
13 forfeited, the forfeiture takes effect as if the property had been forfeited
14 immediately before death (see s 105).

15 **109 Vesting of registrable property on forfeiture**

16 (1) This section applies despite section 108, if the forfeited property is,
17 or is an interest in, registrable property.

18 (2) On forfeiture, the property or the interest vests in equity in the
19 Territory, but does not vest at law in the Territory until the
20 applicable registration requirements for the property or the interest
21 have been complied with.

22 **Example**

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

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

- 1 (d) if applicable—the end of 14 days after all confiscation
2 proceedings in relation to the property have been finalised.
- 3 *Note 1* A restraining order stops applying to property when the property vests
4 in law in the Territory and the public trustee takes control of the
5 property (see s 45 (1) (b)).
- 6 *Note 2* The 14-day periods reflect the application periods for return or
7 compensation orders under div 9.5 and buy-back orders under div 9.6.
- 8 *Note 3* For the sale of jointly owned property, see s 115.
- 9 (3) However, the Minister may, after all confiscation proceedings in
10 relation to forfeited property are finalised and before the public
11 trustee deals with the property under subsection (1) or (2), direct
12 that the property be dealt with in accordance with the direction
13 (including in accordance with a law stated in the direction).
- 14 (4) The public trustee must comply with the Minister's direction.
- 15 (5) Also, if the DPP tells the public trustee that forfeited property has
16 evidentiary value in a criminal proceeding, the property must not be
17 sold or otherwise disposed of before the criminal proceeding is
18 finalised, other than—
- 19 (a) for the purpose of vesting the property at law in the Territory
20 or allowing the public trustee to take control of the property; or
- 21 (b) in accordance with a written direction of the DPP.

22 **Division 9.3** **Improperly obtained registered**
23 **property interests**

- 24 *Note* For general provisions about a proceeding for an order under this
25 section (which is a confiscation proceeding—see s 235), see pt 14.

26 **111 Application of div 9.3 to registered property interests**

27 This division applies to forfeited property if—

- 28 (a) the property has vested in law in the Territory after a registered
29 property interest in the property was created; or

1 (b) if the property was jointly owned immediately before
2 forfeiture—the property has vested in trustees for sale under
3 section 116 after the interest was created.

4 *Note* If a joint owner of restrained property dies, and the property is later
5 forfeited, the forfeiture takes effect as if the property had been forfeited
6 immediately before death (see s 105).

7 **112 Discharge of prior registered property interests given for**
8 **improper purposes**

9 (1) An interested person may apply to a relevant court for an order
10 discharging a registered property interest to which forfeited property
11 is subject.

12 (2) The court must order the discharge of the registered property
13 interest unless satisfied that—

14 (a) the interest was acquired honestly and for sufficient
15 consideration and the person took reasonable care to establish
16 that the interest could be lawfully acquired by the person; and

17 (b) for a registered property interest that was acquired otherwise
18 than in the ordinary course of business—

19 (i) the owner of the registered property interest was not a
20 party to the offence (or a related offence) in relation to
21 which the forfeiture was made; and

22 (ii) the property is not subject to the effective control of the
23 person who committed the offence (or a related offence)
24 in relation to which the forfeiture was made.

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

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

1 **Division 9.4** **Sale of jointly owned forfeited**
2 **property**

3 *Note* For general provisions about proceedings for orders under this division
4 (which are confiscation proceedings—see s 235), see pt 14.

5 **113 Application of div 9.4 to jointly owned property**

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

8 *Note 1* A registered interstate automatic forfeiture decision is taken to be an
9 automatic forfeiture under this Act (see s 138).

10 *Note 2* A registered interstate forfeiture order is taken to be a forfeiture order
11 under this Act (see s 138).

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

15 **114 Inconsistency with Trustee Act or Conveyancing Act**

- 16 (1) This section applies if there is an inconsistency between—

17 (a) this division or a court order under this division; and

18 (b) the *Trustee Act 1925* or the *Conveyancing Act 1919*,
19 division 4.5 (Dispositions on trust for sale or with power of
20 sale).

- 21 (2) If this section applies, this division or the court order overrides the
22 legislation mentioned in subsection (1) (b), to the extent of the
23 inconsistency.

24 **115 Order for sale of jointly owned property**

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

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

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

8 **Examples of directions**

- 9 1 a direction that the trustees obtain a valuation of the property from a
10 qualified valuer before the sale
- 11 2 a direction that the property must only be sold by auction
- 12 3 a direction fixing the reserve price for the sale of the property at auction
- 13 4 if a joint owner is allowed to buy the property, a direction that the joint
14 owner may set off against the purchase price any share of that person in the
15 proceeds of the sale

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

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

26 **116 Trust for sale of property**

- 27 (1) If a relevant court makes an order for the sale of property under a
28 trust for sale, the court must appoint trustees for the sale.
- 29 (2) The trustees hold the property under a trust for sale to sell the
30 property and, after payment of the costs and expenses of the sale and
31 of any outgoings in relation to the property, to pay the proceeds of
32 the sale and any income from the property to the court.

1 (3) The property vests in the trustees on their appointment.

2 (4) The property vests in the trustees subject to any registered property
3 interests that apply to all of the property, other than an undivided
4 share of the property.

5 **117 Effect of trust for sale on joint ownership**

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

8 **118 Distribution of proceeds of sale of property**

9 (1) The amount paid to a relevant court under section 116 (2) is payable
10 to the Territory.

11 (2) However, the court may order the payment of part or all of the
12 amount to a person (an *innocent joint owner*) who was a joint
13 owner of the property immediately before it was sold under this
14 division if—

15 (a) the innocent joint owner was not a party to the offence (or a
16 related offence) in relation to which the forfeiture was made;
17 and

18 (b) the innocent joint owner's interest is not subject to the effective
19 control of a person who committed the offence (or a related
20 offence) (an *offender*) in relation to which the forfeiture was
21 made; and

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

23 (c) for property acquired completely or partly, or directly or
24 indirectly, from an offender—the property was acquired
25 honestly and for sufficient consideration and the innocent joint
26 owner took reasonable care to establish that the property could
27 be lawfully acquired by the innocent joint owner.

28 (3) For subsection (2), the court may have regard to any matter it
29 considers appropriate, including the relationship between the
30 offender and the innocent joint owner.

1 **119 Variation of court order for sale**

2 On application by the trustees for sale or an interested person, a
3 relevant court may vary an order it has made for the sale of property
4 under a trust for sale (or make or vary any directions about the
5 property, its sale or the proceeds of sale).

6 **Division 9.5 Forfeited property—return or**
7 **compensation**

8 *Note* For general provisions about a proceeding for a return or compensation
9 order (which is a confiscation proceeding—see s 235), see pt 14.

10 **120 Meaning of *return or compensation order***

11 In this Act:

12 *return or compensation order* means an order under section 122
13 (Return or compensation orders—making) that an interest in
14 forfeited property be returned to the person who held the interest
15 immediately before its forfeiture, or that the Territory pay to the
16 person the value of the interest.

17 **121 Return or compensation orders—application**

18 (1) A person who held an interest in forfeited property immediately
19 before its forfeiture may apply to a relevant court for a return or
20 compensation order in relation to the interest.

21 (2) The application may be made only if 1 of the following events
22 happens (a *qualifying event*):

23 (a) if the interest was forfeited under a forfeiture order or
24 automatic forfeiture—the person is cleared of the offence (and
25 any related offences) to which the forfeiture related;

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

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

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

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

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

11 *Note* The court may allow leave for an application to be made after a time
12 fixed by this section in certain circumstances (see s 245).

13 **122 Return or compensation orders—making**

- 14 (1) On application under section 121, if satisfied that a qualifying event
15 mentioned in section 121 (2) has happened in relation to a forfeited
16 interest, the court may order—

- 17 (a) that the forfeited interest be returned to the person who held
18 the interest immediately before its forfeiture; or
19 (b) that the Territory pay the person the value of the interest.

- 20 (2) In making the order, the court must—

- 21 (a) declare the extent, nature and value of the person's interest in
22 the forfeited property; and

- 23 (b) order that—

- 24 (i) if the interest is still vested in the Territory—the Territory
25 transfer the interest to the person; or
26 (ii) in any other case—the public trustee pay the person the
27 value declared under paragraph (a).

1 **Division 9.6 Forfeited property—buyback of**
2 **interest**

3 *Note* For general provisions about a proceeding for a buyback order (which is
4 a confiscation proceeding—see s 235), see pt 14.

5 **123 Meaning of *buyback order***

6 In this Act:

7 *buyback order* means an order under section 125 (Buyback
8 orders—making) declaring that a person may buy an interest in
9 forfeited property from the Territory.

10 **124 Buyback orders—application**

11 (1) A person who held an interest in forfeited property immediately
12 before its forfeiture may apply to a relevant court for a buyback
13 order in relation to—

14 (a) that interest; or

15 (b) any other interest in the forfeited property; or

16 (c) all interests in the forfeited property.

17 (2) The application must be made within 14 days after—

18 (a) the day the interest formerly held by the person was forfeited;
19 or

20 (b) if the person only became aware of the forfeiture at a later
21 time, and the delay in becoming aware of the forfeiture was not
22 because of the person's neglect—the day the person became
23 aware of the forfeiture.

24 *Note* The court may allow leave for an application to be made after a time
25 fixed by this section in certain circumstances (see s 245).

1 **125 Buyback orders—making**

2 (1) On application under section 124, the court may, by order, declare
3 that a person may buy an interest in forfeited property from the
4 Territory if it is satisfied that—

5 (a) the interest is still vested in the Territory; and

6 (b) it would not be contrary to the public interest (including for the
7 purposes of this Act) to do so; and

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

12 *Note* The applicant must give notice of the application to anyone else
13 the applicant knows to have had an interest in the property
14 immediately before forfeiture (see s 243).

15 (2) In making the order, the court must declare—

16 (a) the extent, nature and value of the interest in the forfeited
17 property that is to be bought from the Territory; and

18 (b) that the interest may be bought from the Territory for the value
19 declared under paragraph (a) within 1 month after the day the
20 order is made.

21 **126 Buyback orders—buying interest in property**

22 If a buyback order is made, and the applicant for the order pays to
23 the public trustee the value declared under section 125 (2) (a) within
24 1 month after the day the order is made, the Territory must transfer
25 the interest to the applicant.

Part 10 Confiscated assets trust fund

127 Definitions for pt 10

In this part:

distributable funds means money in the trust fund that is—

- (a) designated as distributable funds under the regulations; or
- (b) declared under section 134 (4) (Review of reserved and distributable funds by public trustee) to be distributable funds.

equitable sharing program—see section 128.

reserved funds means money in the trust fund that is—

- (a) designated as reserved funds under the regulations; or
- (b) declared under section 134 (2) to be reserved funds.

128 Meaning of *equitable sharing program*

(1) In this part:

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

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

- 1 that State, the Territory has made a significant contribution to
2 the recovery of the proceeds;
- 3 (c) the Territory shares with a foreign country a proportion of the
4 proceeds of any unlawful activity recovered under a Territory
5 law, if, in the Minister's opinion, the foreign country has made
6 a significant contribution to the recovery of the proceeds or to
7 the investigation or prosecution of the unlawful activity.
- 8 (2) In subsection (1):
- 9 *unlawful activity* means an act or omission that is—
- 10 (a) an indictable offence; or
- 11 (b) an offence against a law of a foreign country.
- 12 *Note* **Indictable offence** includes an offence against the law of the
13 Commonwealth, a State or another Territory that may be dealt with
14 under a law of the Commonwealth, the State or the other Territory as an
15 indictable offence (see s 13 (2)).

16 **129 Establishment of trust fund**

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

18 **130 Payments into trust fund**

- 19 (1) The following amounts must be paid into the trust fund:
- 20 (a) the income from the administration of restrained property;
- 21 (b) the forfeited money mentioned in section 110 (1) (Disposal of
22 forfeited property) and the *Crimes Act 1900*, section 386B (1)
23 (Disposal of forfeited money or goods by the public trustee);
- 24 (c) income earned from forfeited property (including income from
25 the administration of the property);
- 26 (d) amounts raised from the sale of property to satisfy penalty
27 orders, including any income earned from those amounts;

- 1 (e) payments for forfeited property that is bought back under a
2 buyback order;
- 3 (f) the remainder of the proceeds mentioned in the *Crimes Act*
4 *1900*, section 250 (2) (b) (Disposal of forfeited articles by
5 public trustee) and section 386B (3) (b);
- 6 (g) the proceeds of the enforcement of registered interstate
7 automatic forfeiture decisions and registered interstate
8 forfeiture orders;
- 9 (h) payments and the proceeds of property sold to satisfy an
10 interstate penalty orders;
- 11 (i) payments received under the equitable sharing program.
- 12 (2) However, this section does not apply in relation to forfeited property
13 to which a direction under section 110 (3) (Disposal of forfeited
14 property) applies.
- 15 (3) Amounts paid into the trust fund must be designated as reserved
16 funds or distributable funds in accordance with the regulations (if
17 any).
- 18 (4) All amounts payable into the trust fund must be paid into a trust
19 banking account maintained under the *Financial Management Act*
20 *1996*, section 51 (Departmental trust banking accounts).

21 **131 Purposes of trust fund**

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

-
- 1 compensation order—any costs, charges or expenses deducted
2 by the public trustee in relation to the property;
- 3 (d) the annual management fee prescribed under the regulations
4 for the public trustee;
- 5 (e) other costs, charges or expenses of the public trustee in relation
6 to the exercise of functions under this Act;
- 7 (f) payments under the equitable sharing program.
- 8 (2) The trust fund may be used to make payments from distributable
9 funds in accordance with section 133 (2) (Distribution of surplus
10 funds).

11 **132 Payments from trust fund**

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

21 **133 Distribution of surplus funds**

- 22 (1) For section 131 (2) (Purposes of trust fund), the Minister must, at
23 least once in each financial year, decide the amount of distributable
24 funds available for payment from the trust fund.
- 25 (2) The Minister may approve the use of part or all of the decided
26 amount for any of the following purposes:
- 27 (a) the enforcement of Territory laws;
- 28 (b) criminal justice activities;

- 1 (c) crime prevention;
2 (d) assistance to victims of crime;
3 (e) the prevention of drug abuse;
4 (f) the rehabilitation of drug users;
5 (g) a purpose prescribed under the regulations relating to law
6 enforcement or drug rehabilitation and education.

7 (3) An approval is a notifiable instrument.

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

9 **134 Review of reserved and distributable funds by public**
10 **trustee**

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

1 Part 11 Interstate orders

2 *Note* Proceedings under this part are civil, not criminal (see s 236 (1) (b)).

3 135 Meaning of *authenticated* for pt 11

4 In this part:

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

9 **Example**

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

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

14 136 Interstate restraining and forfeiture orders 15 etc—registration

16 (1) This section applies if—

17 (a) an interstate restraining order expressly applies to—

18 (i) stated property in the ACT; or

19 (ii) all the property in the ACT of a person; or

20 (iii) all the property (other than stated property) in the ACT of
21 a person; or

22 (b) an interstate automatic forfeiture decision expressly applies to
23 property in the ACT; or

24 (c) an interstate forfeiture order expressly applies to property in
25 the ACT.

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

15 **137 Interstate restraining and forfeiture orders etc—interim**
16 **registration**

- 17 (1) This section applies to an electronic copy of an authenticated
18 interstate restraining order, interstate automatic forfeiture decision
19 or interstate forfeiture order or of an authenticated copy of any
20 amendment of such an order or decision.
- 21 (2) If the electronic copy is certified in accordance with the procedure
22 of a relevant court, it is taken, for this Act, to be an authenticated
23 copy of the order, decision or amendment.
- 24 (3) However, if the order, decision or amendment is registered in the
25 relevant court using the electronic copy, the registration ceases to
26 have effect at the end of 5 days after the day of registration, or when
27 an authenticated copy of the order, decision or amendment is
28 registered, whichever happens first.

1 (4) In this section:

2 *electronic copy*, of a document, includes the following copies of the
3 document:

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

7 **138 Interstate restraining and forfeiture orders etc—effect of**
8 **registration**

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

21 **139 Interstate restraining and forfeiture orders etc—ending of**
22 **registration**

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

- 26 (a) it ceases to be in force under the corresponding law under
27 which it was made; or
28 (b) its registration is cancelled under section 140.

1 **140 Interstate restraining and forfeiture orders**
2 **etc—cancellation of registration**

3 (1) The registration of an interstate restraining order, interstate
4 automatic forfeiture decision or interstate forfeiture order may be
5 cancelled by a relevant court, or an officer of a relevant court
6 prescribed under the regulations, if—

7 (a) the registration was improperly obtained; or

8 (b) details of any amendment of the order or decision, or any
9 direction of the entity that made the order or decision, was not
10 given to the relevant court in accordance with the procedure of
11 the court.

12 (2) The registration of an interstate restraining order, interstate
13 automatic forfeiture decision or interstate forfeiture order, or an
14 amendment of such an order or decision, may be cancelled by a
15 relevant court, to the extent that the order or decision, or the order or
16 decision as amended, cannot be enforced in the ACT.

17 **141 Creation of interstate penalty charges**

18 (1) This section applies if—

19 (a) an interstate restraining order is made because of the
20 commission, or the alleged commission, of an indictable
21 offence by a person; and

22 (b) an interstate penalty order is made against the person in
23 relation to the offence; and

24 (c) the interstate restraining order is registered under this Act; and

25 (d) the interstate penalty order is registered in the ACT under the
26 *Service and Execution of Process Act 1992* (Cwlth).

- 1 (2) On the registration of both of the orders mentioned in
2 subsection (1) (c) and (d), a charge (an *interstate penalty charge*) to
3 secure the amount payable under the interstate penalty order is
4 created over the property in the ACT restrained under the interstate
5 restraining order.
- 6 (3) If the interstate restraining order is amended, after the interstate
7 penalty order is made, to add more property, and the interstate
8 restraining order is registered under this part, the additional property
9 is also subject to the penalty charge on registration of the
10 amendment.

11 **142 Interstate penalty charges—effect of creation**

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

1 **Part 12 Information gathering**

2 **Division 12.1 Inquiry notices**

3 **143 Meaning of *inquiry notice***

4 In this Act:

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

8 (a) an account with the institution (including whether an account
9 has existed or does exist); or

10 (b) a transaction (other than in relation to an account) conducted,
11 or proposed to be conducted, by or with the institution
12 (including whether a transaction has been conducted).

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

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

17 **144 Inquiry notices—giving**

18 (1) A police officer of the rank of commander (or higher) may give an
19 inquiry notice to a financial institution.

20 (2) The inquiry notice may be given only if the police officer is satisfied
21 that the information to which the notice relates is relevant to
22 deciding whether—

23 (a) an application could be made for an order under this Act
24 (including for another order under this part), a corresponding
25 law order, or a search warrant under part 13 (Search warrants),
26 in relation to anyone; or

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

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

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

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

9 **145 Inquiry notices—form**

- 10 (1) An inquiry notice must be signed by the police officer giving it.

- 11 (2) The notice must state—

12 (a) that it is an inquiry notice under this Act; and

13 (b) the financial institution to which the notice applies; and

14 (c) the information that the financial institution is required to give;
15 and

16 (d) how the information is to be given; and

17 (e) that the inquiry notice is a non-disclosable information order.

18 *Note* The disclosure of the existence or operation of a non-disclosable
19 information order is prohibited, see s 191.

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

23 **146 Inquiry notices—immunity for complying financial** 24 **institutions and staff**

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

1 **Division 12.2 Monitoring orders**

2 *Note 1* For general provisions about a proceeding for a monitoring order
3 (which is a confiscation proceeding—see s 235), see pt 14.

4 *Note 2* In particular, no advance notice to anyone is required of the application
5 for the order, and the application may be heard in closed court, without
6 the offender or the public being present, see s 242.

7 **147 Meaning of *monitoring order***

8 In this Act:

9 *monitoring order* means an order under section 150 (Monitoring
10 orders—making) requiring a financial institution give a police
11 officer information obtained or held by the institution about
12 transactions conducted, or proposed to be conducted, by a person
13 with the institution.

14 **148 Monitoring orders—application**

15 (1) A police officer may apply to a relevant court for a monitoring
16 order.

17 (2) The application may be made only if the police officer has
18 reasonable grounds for suspecting that the person in relation to
19 whom the order is sought—

20 (a) has committed, or is about to commit, a serious offence; or

21 (b) was involved in the commission, or is about to be involved in
22 the commission, of a serious offence; or

23 (c) has derived, or is about to derive, property or a benefit from the
24 commission of a serious offence.

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

1 **149 Monitoring orders—affidavit supporting application**

2 (1) An application for a monitoring order must be supported by an
3 affidavit of the applicant police officer stating the grounds for the
4 officer's suspicions.

5 (2) The court may require the police officer to give additional
6 information about the grounds on which the order is sought.

7 **150 Monitoring orders—making**

8 (1) This section applies if an application is made under section 148
9 (Monitoring orders—application) to a relevant court for a
10 monitoring order requiring a financial institution to give a police
11 officer information obtained or held by the institution about
12 transactions conducted, or proposed to be conducted with the
13 institution, by the person in relation to whom the order is sought.

14 (2) The relevant court must make the monitoring order sought if, having
15 regard to the police officer's affidavit supporting the application and
16 any other evidence before the court, the court is satisfied that there
17 are reasonable grounds for the officer's suspicions stated in the
18 affidavit.

19 (3) The order must state—

20 (a) that it is a monitoring order under this Act; and

21 (b) the financial institution to which the order applies; and

22 (c) the person in relation to whom the order is made; and

23 (d) the nature of the transactions to be monitored; and

24 (e) the information that the financial institution is required to give;
25 and

26 (f) how the information is to be given; and

27 (g) the period for which the order has effect; and

1 (h) that the monitoring order is a non-disclosable information
2 order.

3 *Note* The disclosure of the existence or operation of a non-disclosable
4 information order is prohibited, see s 191.

5 (4) The order must also include a statement setting out the effect of
6 division 12.6 (Information order offences) in relation to monitoring
7 orders.

8 (5) The period mentioned in subsection (3) (g) must not begin earlier
9 than the day when notice of the order is given to the financial
10 institution and must end not later than 3 months after the day when
11 the order is made.

12 (6) To remove any doubt, a relevant court may make 2 or more
13 monitoring orders (including for successive periods) in relation to
14 the same person.

15 (7) The chief police officer must give a copy of a monitoring order to
16 the financial institution to which the order applies.

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

18 **Division 12.3 Transaction suspension orders**

19 *Note 1* For general provisions about a proceeding for a transaction suspension
20 order (which is a confiscation proceeding—see s 235), see pt 14.

21 *Note 2* In particular, no advance notice to anyone is required of the application
22 for the order, and the application may be heard in closed court, without
23 the offender or the public being present, see s 242.

24 **151 Meaning of *transaction suspension order***

25 (1) In this Act:

26 *transaction suspension order* means an order under section 154
27 (Transaction suspension orders—making) requiring a financial
28 institution, on becoming aware of a transaction (including a
29 proposed transaction) to be conducted through a stated account, to—

30 (a) immediately tell a police officer about the transaction; and

1 (b) delay the processing of the transaction for 48 hours after the
2 institution becomes aware of the transaction.

3 (2) In this section:

4 *account* does not include a safe-deposit box.

5 **152 Transaction suspension orders—application**

6 (1) A police officer may apply to a relevant court for a transaction
7 suspension order.

8 (2) The application may be made only if the police officer has
9 reasonable grounds for suspecting that—

10 (a) the person in relation to whom the order is sought—

11 (i) has committed, or is about to commit, a money
12 laundering offence; or

13 (ii) was involved in the commission, or is about to be
14 involved in the commission, of a money laundering
15 offence; or

16 (iii) has derived, or is about to derive, property or a benefit
17 from the commission of a money laundering offence; and

18 (b) the account in relation to which the order is sought is operated
19 by, or under the effective control of, the person.

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

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

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

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

1 **153 Transaction suspension orders—affidavit supporting**
2 **application**

- 3 (1) An application for a transaction suspension order must be supported
4 by an affidavit of the applicant police officer stating—
5 (a) the grounds for the officer’s suspicions; and
6 (b) the account in relation to which the order is sought.
7 (2) The court may require the police officer to give additional
8 information about the grounds on which the order is sought.

9 **154 Transaction suspension orders—making**

- 10 (1) This section applies if an application is made under section 152
11 (Transaction suspension orders—application) to a relevant court for
12 a transaction suspension order requiring a financial institution, on
13 becoming aware of a transaction (including a proposed transaction)
14 to be conducted through the account to which the application relates,
15 to—
16 (a) immediately tell a police officer about the transaction; and
17 (b) delay the processing of the transaction for 48 hours after the
18 institution becomes aware of the transaction.
19 (2) The relevant court must make the transaction suspension order
20 sought if, having regard to the police officer’s affidavit supporting
21 the application and any other evidence before the court, the court is
22 satisfied that there are reasonable grounds for the officer’s
23 suspicions stated in the affidavit.
24 (3) The order must state—
25 (a) that it is a transaction suspension order under this Act; and
26 (b) the terms of the order; and
27 (c) the financial institution to which the order applies; and
28 (d) the account in relation to which the order is made; and

- 1 (e) how notice of transactions (including proposed transactions) is
2 to be given; and
- 3 (f) the period for which the order has effect; and
- 4 (g) that the transaction suspension order is a non-disclosable
5 information order.
- 6 *Note 1* The disclosure of the existence or operation of a non-disclosable
7 information order is prohibited, see s 191.
- 8 *Note 2* An order cannot be made in relation to a safe-deposit box (see
9 s 151 (2)).
- 10 (4) The order must also include a statement setting out the effect of
11 division 12.6 (Information order offences) in relation to transaction
12 suspension orders.
- 13 (5) The period mentioned in subsection (3) (f) must not begin earlier
14 than the day when notice of the order is given to the financial
15 institution and must end not later than 3 months after the day when
16 the order is made.
- 17 (6) To remove any doubt, a relevant court may make 2 or more
18 transaction suspension orders (including for successive periods) in
19 relation to the same account.
- 20 (7) The chief police officer must give a copy of a transaction suspension
21 order to the financial institution to which the order applies.
- 22 *Note* For how documents may be served, see Legislation Act, pt 19.5.

23 **Division 12.4** **Production orders for**
24 **property-tracking documents**

- 25 *Note 1* For general provisions about a proceeding for a production order (which
26 is a confiscation proceeding—see s 235), see pt 14.
- 27 *Note 2* In particular, no advance notice to anyone is required of the application
28 for the order, and the application may be heard in closed court, without
29 the offender or the public being present, see s 242.

1 **155 Meaning of *production order***

2 In this Act:

3 *production order* means an order under section 159 (Production
4 orders—making) requiring a person to give a police officer any
5 property-tracking documents in the person’s possession or control
6 that relate to the person or property (or both) stated in the order.

7 **156 Meaning of *property-tracking document***

8 In this Act:

9 *property-tracking document* means—

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

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

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

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

1 **157 Production orders—application**

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

4 (2) The application may be made only if the police officer has
5 reasonable grounds for suspecting that—

6 (a) someone has committed an indictable offence; and

7 (b) the person against whom the order is sought has possession or
8 control of a property-tracking document in relation to the
9 offence.

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

14 **158 Production orders—affidavit supporting application**

15 (1) An application for a production order must be supported by an
16 affidavit of the applicant police officer stating the grounds for the
17 officer's suspicions.

18 (2) The court may require the police officer to give additional
19 information about the grounds on which the order is sought.

20 **159 Production orders—making**

21 (1) This section applies if an application is made under section 157
22 (Production orders—application) to a relevant court for a production
23 order requiring a person to give a police officer any
24 property-tracking documents in the person's possession or control
25 that relate to the person or property (or both) to which the
26 application relates.

27 (2) The relevant court must make the production order sought if, having
28 regard to the police officer's affidavit supporting the application and
29 any other evidence before the court, the court is satisfied that there
30 are reasonable grounds for the officer's suspicions stated in the
31 affidavit.

- 1 (3) A production order must state—
2 (a) that it is a production order under this Act; and
3 (b) the person to whom the order applies; and
4 (c) that the person must give to a police officer any
5 property-tracking documents in the person's possession or
6 control that relate to the person or property (or both) stated in
7 the order; and
8 (d) the place where and the time when, or the period within which,
9 the documents must to be given to a police officer; and
10 (e) whether the relevant court making the order has declared that
11 the order is a non-disclosable production order.

12 *Note* The disclosure of the existence or operation of a non-disclosable
13 information order is prohibited, see s 191.

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

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

19 **160 Production order proceedings—restrictions on**
20 **disclosure**

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

24 *Note* The disclosure of the existence or operation of a non-disclosable
25 information order is prohibited, see s 191.

- 26 (2) In deciding whether to make a declaration under subsection (1), the
27 court must have regard to whether the declaration—
28 (a) would promote the purposes of this Act; or

1 (b) is desirable to protect the integrity of an investigation (however
2 described) for any purpose or a prosecution of an offence.

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

5 **161 Production orders—variation**

6 (1) This section applies if a court makes a production order requiring a
7 person to give a document to a police officer.

8 (2) The person may apply to the court for an order varying the
9 production order.

10 (3) If the court is satisfied that a document to which the production
11 order relates is essential to the person's lawful business activities,
12 the court may, by order, vary the production order to require the
13 person to make the document available to a police officer for
14 inspection.

15 **162 Production orders—consequential powers about**
16 **documents**

17 (1) If a document is given to a police officer under a production order,
18 the officer may—

19 (a) take possession of, and make copies of, or take extracts from,
20 the document; and

21 (b) keep the document for the period necessary for this Act.

22 (2) If a police officer keeps a document given to the officer under a
23 production order, the officer must, if asked by a person who would
24 be entitled to inspect the document if it was not in the officer's
25 possession—

26 (a) give the person a copy of the document certified by the officer
27 in writing to be a true copy of the document; or

28 (b) at any reasonable time, allow the person to inspect the
29 document, make copies of it or take extracts from it.

- 1 (3) If a document is made available to a police officer for inspection
2 under a production order as varied under section 161, the officer
3 may make copies of, or take extracts from, the document.

4 **Division 12.5 Examination orders and notices**

5 *Note 1* For general provisions about a proceeding for an examination order
6 (which is a confiscation proceeding—see s 235), see pt 14.

7 *Note 2* In particular, no advance notice to anyone is required of the application
8 for the order, and the application may be heard in closed court, without
9 the person to whom the notice applies or the public being present, see
10 s 242.

11 **Subdivision 12.5.1 Preliminary**

12 **163 Definitions for div 12.5**

13 In this division:

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

16 *authorised investigator*—see section 164 (1).

17 *investigation*, in relation to a person, means—

- 18 (a) an investigation of any of the following:
- 19 (i) any property of or under the effective control of, and any
20 dealings with property by, the person or an associate of
21 the person in relation to which action has been or could
22 be taken under this Act or a corresponding law;
- 23 (ii) benefits derived by the person, or an associate of the
24 person, from the commission (or the alleged commission)
25 of an indictable offence;
- 26 (iii) the financial affairs of the person or an associate of the
27 person; or
- 28 (b) an investigation to decide whether an application could be
29 made for an order under this Act (including another order

1 under this part), a corresponding law order or a search warrant
2 under part 13 (Search warrants), in relation to anyone; or

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

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

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

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

10 **164 Authorised investigators**

11 (1) The chief police officer may, in writing, authorise a police officer
12 (an *authorised investigator*) of the rank of superintendent (or
13 higher) to exercise powers under this division in relation to the
14 investigation stated in the authorisation.

15 (2) The chief police officer may give an authorisation under
16 subsection (1) only if the chief police officer is satisfied that the
17 police officer has the necessary qualifications, expertise and
18 experience to examine people in relation to the investigation.

19 (3) An authorised investigator must exercise the investigator's functions
20 under the supervision of, and in accordance with any directions of,
21 the DPP.

22 (4) For subsection (3), the authorised investigator must consult with the
23 DPP about the conduct of an examination.

24 **Subdivision 12.5.2 Examination orders**

25 **165 Meaning of *examination order***

26 In this Act:

27 *examination order* means an order under section 168 (Examination
28 orders—making) authorising an authorised investigator to give the

1 person (or people) to whom the order applies an examination notice
2 in relation to the investigation stated in the order.

3 **166 Examination orders—application**

4 (1) An authorised investigator may apply to a relevant court for an
5 examination order for the investigation for which the investigator is
6 an authorised investigator.

7 (2) The application must state the investigation to which the application
8 relates and the person (or people) the investigator proposes to
9 examine in relation to the investigation.

10 (3) The application may be made only if the authorised investigator has
11 reasonable grounds for suspecting that the person (or people) can
12 give the investigator information or documents, including
13 property-tracking documents, (or both) in relation to the
14 investigation for which the investigator is an authorised investigator.

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

16 **167 Examination orders—affidavit supporting application**

17 (1) An application for an examination order must be supported by an
18 affidavit of the applicant authorised investigator stating the grounds
19 for the investigator's suspicions.

20 (2) The court may require the authorised investigator to give additional
21 information about the grounds on which the order is sought.

22 **168 Examination orders—making**

23 (1) This section applies if an application is made under section 166
24 (Examination orders—application) to a relevant court for an
25 examination order authorising an authorised investigator to give the
26 person (or people) to whom the application relates an examination
27 notice in relation to the investigation stated in the application.

28 (2) The relevant court must make the examination order if, having
29 regard to the authorised investigator's affidavit supporting the

- 1 application and any other evidence before the court, the court is
2 satisfied that—
- 3 (a) the investigator is authorised under section 164 (Authorised
4 investigators) in relation to the investigation stated in the
5 application; and
- 6 (b) there are reasonable grounds for the investigator’s suspicions
7 stated in the affidavit.
- 8 (3) An examination order must state—
- 9 (a) that it is an examination order under this Act; and
10 (b) the person (or people) to whom the order applies; and
11 (c) the investigation to which the order relates; and
12 (d) whether the order applies to documents; and
13 (e) if the order applies to documents—the kinds of documents that
14 a person to whom the order applies may be required to produce
15 under an examination notice; and
16 (f) whether the relevant court making the order has declared that
17 the order is a non-disclosable examination order.

18 *Note* The disclosure of the existence or operation of a non-disclosable
19 information order is prohibited, see s 191.

20 **169 Examination order proceedings—restrictions on**
21 **disclosure**

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

25 *Note* The disclosure of the existence or operation of a non-disclosable
26 information order is prohibited, see s 191.

- 27 (2) In deciding whether to make a declaration under subsection (1), the
28 court must have regard to whether the declaration—
29 (a) would promote the purposes of this Act; or

- 1 (b) is desirable to protect the integrity of an investigation (however
2 described) for any purpose or a prosecution of an offence.
- 3 (3) The court may also have regard to any other relevant matter in
4 deciding whether to make a declaration under subsection (1).

5 **Subdivision 12.5.3 Examination notices**

6 **170 Meaning of *examination notice***

7 In this Act:

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

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

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

17 **171 Examination notices—giving**

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

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

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

26 *Note* The disclosure of the existence or operation of a non-disclosable
27 information order is prohibited, see s 191.

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

1 **172 Examination notices—form**

2 (1) An examination notice must be signed by the authorised investigator
3 giving it.

4 (2) The notice must state—

5 (a) that it is an examination notice under this Act; and

6 (b) the person to whom the notice applies; and

7 (c) the investigation about which the person is to be examined; and

8 (d) the time when and the place where the person is required to
9 attend for examination; and

10 (e) whether the examination notice is a non-disclosable
11 examination notice.

12 *Note 1* For when an examination notice is non-disclosable, see s 171 (2).

13 *Note 2* The disclosure of the existence or operation of a non-disclosable
14 information order is prohibited, see s 191.

15 (3) If the examination order to which the notice relates applies to
16 documents, the notice may require the person to give the authorised
17 investigator, at the examination, any documents (including
18 property-tracking documents) of the kind stated in the order that the
19 person has in relation to the investigation stated in the notice.

20 (4) The notice must also include a statement setting out the effect of
21 subdivision 12.5.5 (Offences—examination notices) and
22 division 12.6 (Information order offences) in relation to examination
23 notices.

1 **Subdivision 12.5.4 Conducting examinations**

2 **173 Time and place of examination**

- 3 (1) The examination of a person must be conducted at the time and
4 place stated in the examination notice given to the person.
- 5 (2) However, the time and place of the examination may be changed by
6 agreement between the authorised investigator and the person to
7 whom the examination notice was given or the person's lawyer.

8 **174 Requirements made of person examined**

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

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

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

19 **175 Conduct of examination**

- 20 (1) The examination of the person must take place in private.
- 21 (2) The authorised investigator may give directions about who may be
22 present during the examination, or during a part of it.
- 23 (3) The following people are entitled to be present at the examination:
- 24 (a) the authorised investigator;
- 25 (b) the person being examined, and the person's lawyer;
- 26 (c) anyone else who is entitled to be present because of a direction
27 under subsection (2).

- 1 (4) The authorised investigator may arrange for a record of the
2 examination to be made.
- 3 (5) The *Evidence (Miscellaneous Provisions) Act 1991*, part 3 (Use of
4 audiovisual links and audio links) applies to an examination under
5 this division as if a reference to evidence were a reference to an
6 examination under this division and any other necessary changes
7 were made.

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

11 **176 Role of the examinee's lawyer**

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

16 **177 Examinations—consequential powers about documents**

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

1 **178 Examinations—additional restrictions on disclosure**

2 (1) This section applies in relation to the examination of a person under
3 an examination notice (other than a notice that is a non-disclosable
4 examination notice under section 171 (2) (Examination
5 notices—giving)).

6 *Note 1* For non-disclosable examination notices, see s 171 (2). The disclosure
7 of the existence or operation of a non-disclosable examination notice is
8 prohibited, see s 191.

9 *Note 2* The disclosure of matter relating to a direction under this section is
10 prohibited, see s 184.

11 (2) An authorised investigator may, on the investigator's own initiative
12 or at the request of the person being examined or the DPP, give
13 directions prohibiting or restricting the publication or disclosure of
14 all or any of the following:

15 (a) the fact that an examination notice has been given to a person;

16 (b) any information about the examination (whether or not an
17 examination has been held);

18 (c) any information given, statement made, document produced or
19 thing done during the examination;

20 (d) any information, document or thing derived from anything
21 mentioned in this subsection.

22 (3) In deciding whether to give a direction under subsection (2), the
23 authorised investigator must have regard to whether the direction—

24 (a) would promote the purposes of this Act; or

25 (b) is desirable to protect the integrity of an investigation (however
26 described) for any purpose or a prosecution of an offence.

27 (4) The authorised investigator may also have regard to any other
28 relevant matter in deciding whether to give a direction under
29 subsection (2).

1 **179 Protection of authorised investigator etc**

- 2 (1) An authorised investigator has, in the exercise of his or her
3 functions as an authorised investigator, the same protection and
4 immunity as a judge.
- 5 (2) A lawyer appearing at the examination on behalf of the person being
6 examined has the same protection and immunity as a barrister has in
7 appearing for a party in a proceeding in the Supreme Court.
- 8 (3) A person being examined under this division—
- 9 (a) has the same protection as a witness in a proceeding in the
10 Supreme Court; and
- 11 (b) in addition to the penalties provided by this Act, is subject to
12 the same liabilities as a witness in a proceeding in the Supreme
13 Court.

14 **Subdivision 12.5.5 Offences—examination notices**

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

16 **180 Obstruction etc of authorised investigator**

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

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

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

25 **181 Failing to attend examination**

- 26 (1) A person commits an offence if the person is required by an
27 examination notice to attend an examination and the person fails to
28 attend the examination at—

- 1 (a) the time and place stated in the notice; or
2 (b) the time and place as changed under section 173 (2) (Time and
3 place of examination).

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

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

7 **182 Offences relating to appearance at examination**

- 8 (1) A person who is required by an examination notice to attend an
9 examination commits an offence if, during the examination, the
10 person—

11 (a) fails to be sworn or to make an affirmation that the authorised
12 investigator requires the person to swear or make; or

13 (b) fails to answer a question that the authorised investigator
14 requires the person to answer; or

15 (c) fails to produce a document that the person is required under
16 the examination notice to produce at the examination; or

17 (d) leaves the examination before being excused by the authorised
18 investigator.

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

- 21 (2) However, subsection (1) (c) does not apply if the person complied
22 with the notice in relation to production of a document (if any) to
23 the extent that it was practicable to do so.

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

25 **183 Unauthorised presence at an examination**

- 26 (1) A person commits an offence if the person—

27 (a) is present at an examination; and

1 (b) is not entitled under section 175 (3) (Conduct of examination)
2 to be present.

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

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

6 **184 Examinations—additional disclosure offences**

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

8 (1) A person commits an offence if—

9 (a) an authorised investigator has given a direction under
10 section 178 (2) (Examinations—additional restrictions on
11 disclosure) prohibiting or restricting the publication or
12 disclosure of a matter mentioned in the subsection; and

13 (b) the person has notice of the direction (whether by being given
14 a copy of the direction or otherwise); and

15 (c) the person publishes or discloses the matter to someone else.

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

18 (2) A person commits an offence if—

19 (a) an authorised investigator has given a direction under
20 section 178 (2) prohibiting or restricting the publication or
21 disclosure of a matter mentioned in the subsection; and

22 (b) the person has notice of the direction (whether by being given
23 a copy of the direction or otherwise); and

24 (c) the person publishes or discloses information to someone else;
25 and

26 (d) the other person could infer from the information the matter to
27 which the direction relates.

- 1 Maximum penalty: 200 penalty units, imprisonment for 2 years or
2 both.
- 3 (3) Subsections (1) and (2) do not apply if the publication or disclosure
4 is made to any of the following entities in the circumstances
5 mentioned for the entity:
- 6 (a) a police officer—in any circumstances;
- 7 (b) an officer, employee or agent of the person—to ensure that the
8 order is complied with and the person to whom the publication
9 or disclosure is made is given notice of the direction (whether
10 by being given a copy of the restraining order to which the
11 direction relates or otherwise) by the person making the
12 publication or disclosure;
- 13 (c) a lawyer—to obtain legal advice or representation in relation to
14 the order;
- 15 (d) a relevant court—with the court's leave.
- 16 *Note* The application for leave, and any proceeding with the court's
17 leave, must be heard in closed court, see s (8).
- 18 (4) Also, subsections (1) and (2) do not apply if the publication or
19 disclosure is made—
- 20 (a) by a police officer in the exercise of the officer's functions; or
- 21 (b) for the purpose of giving or obtaining legal advice, or making
22 legal representations, in relation to the order.
- 23 (5) A person commits an offence if—
- 24 (a) an authorised investigator has given a direction under
25 section 178 (2) (Examinations—additional restrictions on
26 disclosure) prohibiting or restricting the publication or
27 disclosure of a matter mentioned in the subsection; and
- 28 (b) the person receives information in relation to the matter in
29 accordance with subsection (3) or (4); and

- 1 (c) the person ceases to be a person mentioned in subsection (3) or
2 (4); and
- 3 (d) the person publishes or discloses the matter to someone else.
- 4 Maximum penalty: 200 penalty units, imprisonment for 2 years or
5 both.
- 6 (6) A person commits an offence if—
- 7 (a) an authorised investigator has given a direction under
8 section 178 (2) prohibiting or restricting the publication or
9 disclosure of a matter mentioned in the subsection; and
- 10 (b) the person receives information in relation to the matter in
11 accordance with subsection (3) or (4); and
- 12 (c) the person ceases to be a person mentioned in subsection (3) or
13 (4); and
- 14 (d) the person publishes or discloses information to someone else;
15 and
- 16 (e) the other person could infer from the information the matter to
17 which the direction relates.
- 18 Maximum penalty: 200 penalty units, imprisonment for 2 years or
19 both.
- 20 (7) An offence against this section is a strict liability offence.
- 21 (8) For subsection (3) (d), an application for leave, and any proceeding
22 with the court's leave, must be heard in closed court.

23 **Division 12.6 Information order offences**

24 **185 Meaning of *information order***

25 In this Act:

26 *information order* means—

- 27 (a) an inquiry notice; or

- 1 (b) a monitoring order; or
2 (c) a transaction suspension order; or
3 (d) a production order; or
4 (e) an examination order; or
5 (f) an examination notice.

6 **186 Information orders—failure to comply**

7 A person commits an offence if—

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

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

13 *Note* For contravention of an examination notice, see s 181.

14 **187 Information orders—false or misleading information**

15 (1) A person commits an offence if—

- 16 (a) the person gives information to someone else; and
17 (b) the person does so knowing that the information—
18 (i) is false or misleading in a material particular; or
19 (ii) omits something that makes the information false or
20 misleading in a material particular; and
21 (c) the information is given in compliance (or purported
22 compliance) with an information order

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

25 (2) Subsection (1) (c) does not apply if, before the information was
26 given by the person to the police officer, a police officer did not take

1 reasonable steps to tell the person of the existence of the offence
2 against subsection (1).

3 (3) For subsection (2), it is sufficient if the following form of words is
4 used:

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

7 **188 Information orders—false or misleading documents**

8 (1) A person commits an offence if—

9 (a) the person produces a document to a police officer (including
10 an authorised investigator); and

11 (b) the person does so knowing that the document is false or
12 misleading in a material particular; and

13 (c) the document is produced in compliance (or purported
14 compliance) with an information order.

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

17 (2) Subsection (1) does not apply to a person who produces a document
18 to a police officer if the document is accompanied by a written
19 statement signed by the person (or, for a corporation, by an officer
20 of the corporation)—

21 (a) stating that the document is, to the person’s knowledge, false
22 or misleading in a material particular; and

23 (b) setting out, or referring to, the material particular in which the
24 document is, to the person’s knowledge, false or misleading.

25 **189 Destruction etc of documents**

26 (1) A person commits an offence if—

27 (a) the person is given—

28 (i) a production order for a property-tracking document; or

1 (ii) an examination notice that requires the person to produce
2 a document at an examination; and

3 (b) the person intentionally destroys, damages, changes or
4 otherwise interferes with the document.

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

7 (2) A person commits an offence if—

8 (a) the person is given—

9 (i) a production order for a property-tracking document; or

10 (ii) an examination notice that requires the person to produce
11 a document at an examination; and

12 (b) the person destroys, damages, changes or otherwise interferes
13 with the document.

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

16 (3) An offence against subsection (2) a strict liability offence.

17 (4) An offence against subsection (2) is declared to be an indictable
18 offence.

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

22 **190 Meaning of *non-disclosable information order***

23 In this Act:

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

26 (a) an inquiry notice;

27 (b) a monitoring order;

28 (c) a transaction suspension order;

- 1 (d) a production order that is declared under section 160 (1)
2 (Production order proceedings—restrictions on disclosure) to
3 be a non-disclosable production order;
- 4 (e) an examination order that is declared under section 169 (1)
5 (Examination order proceedings—restrictions on disclosure) to
6 be a non-disclosable examination order;
- 7 (f) an examination notice that is a non-disclosable examination
8 notice under section 171 (2) (Examination notices—giving).

9 **191 Information orders—disclosure offences**

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

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

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

- 16 (2) A person commits an offence if—

- 17 (a) the person publishes or discloses information to someone else;
18 and
- 19 (b) the other person could infer from the information the existence
20 or operation of a non-disclosable information order.

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

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

- 26 (a) a police officer—in any circumstances;
- 27 (b) an officer, employee or agent of the person—to ensure that the
28 order is complied with and the person to whom the publication

- 1 or disclosure is made is given notice of the offences against
2 this section by the person making the publication or disclosure;
- 3 (c) a lawyer—to obtain legal advice or representation in relation to
4 the order;
- 5 (d) a relevant court—with the court’s leave.
- 6 *Note* The application for leave, and any proceeding with the court’s
7 leave, must be heard in closed court, see s (8).
- 8 (4) Also, subsections (1) and (2) do not apply if the publication or
9 disclosure is made—
- 10 (a) by a police officer in the exercise of the officer’s functions; or
11 (b) for the purpose of giving or obtaining legal advice, or making
12 legal representations, in relation to the order.
- 13 (5) A person commits an offence if—
- 14 (a) the person receives information in relation to a non-disclosable
15 information order in accordance with subsection (3) or (4); and
- 16 (b) the person ceases to be a person mentioned in subsection (3) or
17 (4); and
- 18 (c) the person publishes or discloses the existence or operation of
19 the order to someone else.
- 20 Maximum penalty: 200 penalty units, imprisonment for 2 years or
21 both.
- 22 (6) A person commits an offence if—
- 23 (a) the person receives information in relation to a non-disclosable
24 information order in accordance with subsection (3) or (4); and
- 25 (b) the person ceases to be a person mentioned in subsection (3) or
26 (4); and
- 27 (c) the person publishes or discloses information to someone else;
28 and

1 (d) the other person could infer from the information the existence
2 or operation of the order.

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

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

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

8 **192 Information orders—disclosure by police officers**

9 (1) This section applies to a non-disclosable information order.

10 (2) A police officer may disclose the existence or operation of the order
11 for the purposes of, or in the course of, a legal proceeding.

12 *Note* A police officer may also disclose the existence or operation of the
13 order in the exercise of the officer's functions, see s 191 (4) (b).

14 (3) However, a police officer is not required to disclose to a court the
15 existence or operation of the order.

16 (4) In this section:

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

20 **193 Information orders—protection of complying financial** 21 **institutions**

22 (1) This section applies to a financial institution, and to an officer,
23 employee or agent of the institution, if—

24 (a) the institution complies with an information order; and

25 (b) information given under the order relates to a money
26 laundering offence.

27 (2) The institution or person is taken not to have been at any time in
28 possession of the information given under the order.

1 **Part 13 Search warrants**

2 **Division 13.1 Preliminary**

3 **194 Definitions for pt 13**

4 In this part:

5 *at* includes in or on.

6 *data* includes—

- 7 (a) information in any form; and
8 (b) any program (or part of a program).

9 *data storage device* means a thing containing, or designed to
10 contain, data for use by a computer.

11 *executing police officer*, of a search warrant, means—

- 12 (a) the police officer (the *first police officer*) named in the warrant
13 as the police officer responsible for executing the warrant; or
14 (b) if the first police officer does not intend to be present at the
15 execution of the warrant—another police officer whose name
16 has been written in the warrant by the first police officer; or
17 (c) another police officer whose name has been written in the
18 warrant by the police officer last named in the warrant.

19 *frisk search* means—

- 20 (a) a search of a person conducted by quickly running the hands
21 over the person's outer garments; and
22 (b) an examination of anything worn or carried by the person that
23 is conveniently and voluntarily removed by the person.

1 **issuing officer**, for a search warrant, means—

2 (a) a judge, the registrar or a deputy registrar of the Supreme
3 Court; or

4 (b) a magistrate; or

5 (c) the registrar or a deputy registrar of the Magistrates Court if
6 authorised by the Chief Magistrate to issue search warrants
7 under this part.

8 **occupier**, of premises, includes—

9 (a) a person believed on reasonable grounds to be an occupier of
10 the premises; and

11 (b) a person apparently in charge of the premises.

12 **ordinary search** means a search of a person or of articles in a
13 person's possession, which may include—

14 (a) requiring the person to remove the person's overcoat, coat or
15 jacket and any gloves, shoes or hat; and

16 (b) an examination of those items.

17 **person assisting**, in relation to a search warrant, means a person
18 who has been authorised by an executing police officer to assist in
19 executing the warrant.

20 **premises** includes the following:

21 (a) land (whether vacant or occupied);

22 (b) any structure, building, vehicle or place (whether built or not);

23 (c) any part of a structure, building, vehicle or place.

24 **search warrant** means a warrant issued under section 198 (Issuing
25 search warrants) that is in force.

- 1 **target material** means—
- 2 (a) property (including tainted property and property under the
- 3 effective control of a person) in relation to which action has
- 4 been or could be taken under this Act; or
- 5 *Note 1* For the meaning of *effective control*, see s 14.
- 6 *Note 2* For the meaning of *in relation to*, see dict.
- 7 (b) benefits derived by a person from the commission of an
- 8 indictable offence; or
- 9 (c) evidence in relation to property or benefits mentioned in
- 10 paragraph (a) or (b); or
- 11 (d) evidence in relation to an indictable offence.
- 12 **vehicle** includes an aircraft or vessel.

13 **Division 13.2 Search warrants—general**

14 **195 Applications for search warrants—general**

- 15 (1) A police officer may apply to an issuing officer for a search warrant
- 16 to enter premises.
- 17 (2) The application must be sworn and state the grounds on which the
- 18 warrant is sought.
- 19 (3) The issuing officer may refuse to consider the application until the
- 20 applicant police officer gives the issuing officer all the information
- 21 the issuing officer requires about the application in the way the
- 22 issuing officer requires.

23 **196 Offence for making false etc statements in search warrant**

24 **applications**

- 25 A police officer commits an offence if—
- 26 (a) the police officer makes a statement (whether orally, in a
- 27 document or in any other way); and

- 1 (b) the police officer does so knowing that the statement—
2 (i) is false or misleading in a material particular; or
3 (ii) omits something that makes the statement false or
4 misleading in a material particular; and
5 (c) the statement is made to an issuing officer in relation to an
6 application for a search warrant.

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

9 **197 Additional contents of search warrant applications**

- 10 (1) If the person applying for a search warrant suspects that it will be
11 necessary to use firearms in executing the warrant, the person must
12 state the suspicion, and the grounds for the suspicion, in the
13 application.
14 (2) If a person applying for a warrant to search premises has previously
15 applied for a warrant for the same premises, the person must, in the
16 application, include particulars of the earlier application and its
17 outcome.

18 **198 Issuing search warrants**

- 19 (1) An issuing officer may issue a warrant to search premises if satisfied
20 that there are reasonable grounds for suspecting that there is at the
21 premises, or will be within the next 72 hours, target material.

22 *Note* *At* includes in or on (see s 194).

- 23 (2) If an application for a search warrant is made under section 202
24 (Applying for search warrants by telephone or other electronic
25 means), this section applies as if the reference in subsection (1) to
26 72 hours were a reference to 48 hours.

1 **199 When search warrant for property-tracking document**
2 **may be issued**

3 If the target material in relation to which a search warrant is being
4 issued is a property-tracking document, the issuing officer may issue
5 a search warrant in relation to the document only if the issuing
6 officer is satisfied that—

- 7 (a) the document cannot be identified or described with sufficient
8 particularity for the purpose of obtaining a production order; or
9 (b) a production order requiring the document has been given but
10 not complied with; or
11 (c) there are reasonable grounds to suspect that a production order
12 would not be complied with; or
13 (d) the investigation to which the warrant is being sought might be
14 prejudiced by seeking a production order.

15 **200 Contents of search warrants**

- 16 (1) A search warrant must state—
17 (a) the kind of target material that is to be searched for under the
18 warrant; and
19 (b) a description of the premises to which the warrant relates; and
20 (c) the name of the executing police officer; and
21 (d) when the warrant expires (see subsection (2)); and
22 (e) whether the warrant may be executed at any time or only
23 during particular hours (see section 209); and
24 (f) whether the warrant authorises an ordinary search or frisk
25 search of a person who is at or near the premises when the
26 warrant is executed if the executing police officer or a person
27 assisting suspects on reasonable grounds that the person has
28 target material in the person's possession.

- 1 (2) The time stated in the search warrant under subsection (1) (d) as the
2 time when the warrant expires must be not later than—
- 3 (a) if the application for the warrant is made under section 203
4 (Issuing search warrants by telephone or other electronic
5 means)—48 hours after the warrant is issued; or
- 6 (b) in any other case—the end of the 7th day after the day the
7 warrant is issued.

8 **Example**

9 If a warrant is issued at 3 pm on a Monday, the expiry time stated must not be
10 later than midnight on Monday in the following week.

- 11 (3) Subsection (1) (d) does not prevent the issue of successive search
12 warrants in relation to the same premises.

13 **201 Authorisation given by search warrants**

- 14 (1) A search warrant authorises an executing police officer, or a person
15 assisting—
- 16 (a) to enter the premises and, if the premises are a vehicle, to enter
17 the vehicle, wherever it is; and
- 18 (b) to search the premises for the kind of target material stated in
19 the warrant, and to seize things of that kind found at the
20 premises; and
- 21 (c) to seize any other thing found at the premises in the course of
22 the search that the executing police officer or a person assisting
23 believes on reasonable grounds to be target material in relation
24 to which the warrant relates (including evidence of an
25 indictable offence) or evidence of a summary offence if the
26 police officer believes on reasonable grounds that seizure of
27 the thing is necessary to prevent its concealment, loss or
28 destruction or its use in committing an offence; and

- 1 (d) if the warrant allows—to conduct an ordinary search or frisk
2 search of a person at or near the premises if the executing
3 police officer or a person assisting suspects on reasonable
4 grounds that the person has target material in the person’s
5 possession.
- 6 (2) A search warrant authorises an executing police officer to make
7 things seized under the warrant available to another police officer,
8 any public servant or anyone who holds a position under a Territory
9 law, or a law of the Commonwealth, a State or another Territory, if
10 it is necessary to do so for investigating or prosecuting an offence to
11 which the things relate.

12 **Division 13.3 Telephone and electronic warrants**

13 **202 Applying for search warrants by telephone or other** 14 **electronic means**

- 15 (1) A police officer may apply to an issuing officer for a search warrant
16 by telephone, fax or other electronic means—
- 17 (a) in an urgent case; or
18 (b) if the delay that would happen if an application were made in
19 person would frustrate the effective execution of the warrant.
- 20 (2) The application—
- 21 (a) must include all information that would be required in an
22 application under division 13.2 (Search warrants—general) for
23 a search warrant; and
24 (b) may, if necessary, be made before the information is sworn.
- 25 (3) The issuing officer may require—
- 26 (a) communication by voice to the extent that it is practicable in
27 the circumstances; and
28 (b) any further information.

- 1 **203 Issuing search warrants by telephone or other electronic**
2 **means**
- 3 (1) The issuing officer may complete and sign the same form of search
4 warrant that would be issued under section 198 (Issuing search
5 warrants) if satisfied that—
- 6 (a) a search warrant in the terms of the application should be
7 issued urgently; or
- 8 (b) the delay that would happen if an application were made in
9 person would frustrate the effective execution of the warrant.
- 10 (2) If the issuing officer issues the search warrant, the officer must tell
11 the applicant, by telephone, fax or other electronic means, of the
12 terms of the warrant and the date and time when it was signed.
- 13 (3) The applicant must then—
- 14 (a) complete a form of search warrant in terms substantially
15 corresponding to those given by the issuing officer; and
- 16 (b) state on the form—
- 17 (i) the name of the issuing officer; and
- 18 (ii) the date and time the warrant was signed by the issuing
19 officer.
- 20 (4) The applicant must, by the end of the day after the 1st of the
21 relevant events happens, give the issuing officer—
- 22 (a) the form of search warrant completed by the applicant; and
- 23 (b) if the information was unsworn under section 202 (2) (b)
24 (Applying for search warrants by telephone or other electronic
25 means)—the sworn information.
- 26 (5) The issuing officer must attach the form of search warrant
27 completed by the issuing officer to the documents given under
28 subsection (4).

1 (6) In subsection (4):
2 *relevant event* means the day when—

- 3 (a) the warrant is executed; or
4 (b) the warrant expires.

5 **204 Unsigned warrants by telephone or other electronic**
6 **means in court proceedings**

- 7 (1) This section applies if—
8 (a) it is material, in any proceeding, for a court to be satisfied that
9 the exercise of a power under a search warrant issued under
10 this division was properly authorised; and
11 (b) the form of search warrant signed by the issuing officer is not
12 produced in evidence.
13 (2) The court must assume that the exercise of the power was not
14 properly authorised unless the contrary is proved.

15 **205 Offence for stating incorrect names in warrants by**
16 **telephone or other electronic means**

- 17 A person commits an offence if—
18 (a) the person executes a document or presents a document to a
19 person; and
20 (b) the document purports to be a form of search warrant under
21 section 203 (Issuing search warrants by telephone or other
22 electronic means); and
23 (c) the person states a name of an issuing officer in the document;
24 and
25 (d) the name is not the name of the issuing officer that authorised
26 the warrant.

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

1 **206 Offence for execution etc of search warrant departing in**
2 **material form**

3 A person commits an offence if—

- 4 (a) the person executes a document or presents a document to a
5 person; and
6 (b) the document purports to be a form of search warrant under
7 section 203 (Issuing search warrants by telephone or other
8 electronic means); and
9 (c) the document departs in a material particular from the form
10 authorised by the issuing officer.

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

13 **207 Offence for execution etc of unauthorised form of search**
14 **warrant**

15 A person commits an offence if—

- 16 (a) the person executes a document or presents a document to a
17 person; and
18 (b) the document purports to be a form of search warrant under
19 section 203 (Issuing search warrants by telephone or other
20 electronic means); and
21 (c) the document—
22 (i) has not been authorised by an issuing officer under that
23 section; or
24 (ii) departs in a material particular from the terms authorised
25 by the issuing officer under that section.

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

1 **208 Offence for giving unauthorised form of search warrant**

2 A person commits an offence if—

3 (a) the person purports to give a form of search warrant to an
4 issuing officer under section 203 (4) (b) (Issuing search
5 warrants by telephone or other electronic means); and

6 (b) the document is not the form of search warrant that the person
7 executed.

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

10 **Division 13.4 Executing search warrants**

11 *Note* A court has a discretion to admit improperly obtained evidence (see
12 *Evidence Act 1995* (Cwlth), s 138).

13 **209 Search warrants—whether must be executed only during**
14 **particular hours**

15 A search warrant must not authorise a search during the period
16 beginning at 9 pm on a day and ending at 6 am on the next day
17 unless the issuing officer is satisfied that—

18 (a) it would not be practicable to conduct the search at another
19 time; or

20 (b) it is necessary to prevent the concealment, loss or destruction
21 of target material.

22 **210 Search warrants—restrictions on personal searches**

23 (1) A search warrant cannot authorise a strip search or a search of a
24 person's body cavities.

25 (2) If a search warrant authorises an ordinary search or frisk search of a
26 person—

27 (a) a different search from the search authorised must not be done
28 under the warrant; and

- 1 (b) the search must be conducted by a person of the same sex as
2 the person being searched.
- 3 (3) A person assisting who is not a police officer must not take part in
4 searching a person.
- 5 (4) In this section:
- 6 *same sex*, for a transgender person, means the same sex as the sex
7 with which the transgender person identifies.
- 8 *strip search* means a search of a person or of articles in the
9 possession of a person, which may include all or any of the
10 following:
- 11 (a) requiring the person to remove all of his or her clothing;
- 12 (b) an examination of the person's body (but not of the person's
13 body cavities) and of those clothes.
- 14 *transgender person*—see the *Crimes (Forensic Procedures) Act*
15 *2000*, section 17.

16 **211 Use of force and availability of assistance in executing**
17 **search warrant**

- 18 (1) Force may be used in executing a search warrant as follows:
- 19 (a) by an executing police officer—force against people and things
20 may be used that is necessary and reasonable in the
21 circumstances;
- 22 (b) by a person assisting who is a police officer—force against
23 people and things may be used that is necessary and reasonable
24 in the circumstances;
- 25 (c) by a person assisting who is not a police officer—force against
26 things may be used that is necessary and reasonable in the
27 circumstances.
- 28 (2) An executing police officer may obtain the assistance in executing
29 the warrant that is necessary and reasonable in the circumstances.

1 **212 Search warrants—announcement before entry**

- 2 (1) An executing police officer must, before anyone enters premises
3 under a search warrant—
- 4 (a) announce that the person is authorised to enter the premises;
5 and
- 6 (b) give anyone at the premises an opportunity to allow entry to
7 the premises; and
- 8 (c) if the occupier of the premises, or someone else who
9 apparently represents the occupier, is present at the
10 premises—identify himself or herself to that person.
- 11 (2) The executing police officer is not required to comply with
12 subsection (1) if the police officer believes on reasonable grounds
13 that immediate entry to the premises is required to ensure—
- 14 (a) the safety of anyone (including any police officer or person
15 assisting); or
- 16 (b) that the effective execution of the warrant is not frustrated.

17 **213 Details of search warrant to be given to occupier etc**

- 18 (1) If the occupier of the premises, or someone else who apparently
19 represents the occupier, is present at the premises while a search
20 warrant is being executed, the executing police officer or a person
21 assisting must make available to the person—
- 22 (a) a copy of the warrant; and
- 23 (b) a document setting out the rights and obligations of the person.
- 24 (2) Before a person is searched under a search warrant, the executing
25 police officer or a person assisting must show the person a copy of
26 the warrant.
- 27 (3) The copy of the warrant need not include the issuing officer's
28 signature or the seal or stamp of the court in which the issuing
29 officer holds office or is employed.

1 **214 Occupier entitled to be present during search etc**

- 2 (1) If an occupier of premises, or someone else who apparently
3 represents the occupier, is present at the premises while a search
4 warrant is being executed, the occupier or person is entitled to
5 observe the search being conducted.
- 6 (2) However, the person is not entitled to observe the search if—
- 7 (a) to do so would impede the search; or
- 8 (b) the person is under arrest, and allowing the person to observe
9 the search being conducted would interfere with the objectives
10 of the search.
- 11 (3) This section does not prevent 2 or more areas of the premises being
12 searched at the same time.

13 **215 Particular powers available to officers executing search**
14 **warrant**

- 15 (1) In executing a search warrant, the executing police officer or a
16 person assisting may take photographs (including video recordings)
17 of the premises or of people or things at the premises—
- 18 (a) for a purpose incidental to the execution of the warrant; or
- 19 (b) if the occupier of the premises consents in writing.
- 20 (2) The executing police officer and a person assisting may complete
21 the execution of a search warrant only if the warrant is in force, after
22 all of them temporarily leave the premises—
- 23 (a) for not more than 1 hour; or
- 24 (b) for a longer period if the occupier of the premises consents in
25 writing.
- 26 (3) The execution of a search warrant may be completed if—
- 27 (a) the execution is stopped by an order of a court; and
- 28 (b) the order is later reversed or set aside on appeal; and

1 (c) the warrant is still in force.

2 **216 Use of equipment to examine or process things**

3 (1) The executing police officer, or a person assisting, for a search
4 warrant may bring into or onto the premises any equipment
5 reasonably necessary to examine or process a thing found at the
6 premises to decide whether it may be seized under the warrant.

7 (2) The executing police officer or a person assisting may operate
8 equipment already at the premises to carry out an examination or
9 processing if the officer believes on reasonable grounds that—

10 (a) the equipment is suitable; and

11 (b) the examination or processing may be carried out without
12 damaging the equipment or thing.

13 **217 Moving things to another place for examination or**
14 **processing**

15 (1) A thing found at the premises may be moved to another place for
16 examination or processing to decide whether it may be seized under
17 a search warrant if—

18 (a) both of the following subparagraphs apply:

19 (i) there are reasonable grounds for believing that the thing
20 is or contains target material;

21 (ii) it is significantly more practicable to do so having regard
22 to the timeliness and cost of examining or processing the
23 thing at another place and the availability of expert
24 assistance; or

25 (b) the occupier of the premises consents in writing.

26 (2) The thing may be moved to another place for examination or
27 processing for no longer than 72 hours.

- 1 (3) An executing police officer may apply to an issuing officer for an
2 extension of that time if the executing police officer believes on
3 reasonable grounds that the thing cannot be examined or processed
4 within 72 hours.
- 5 (4) The executing police officer must give notice of the application to
6 the occupier of premises, and the occupier is entitled to be heard on
7 the application.
- 8 (5) If a thing is moved to another place under this section, the executing
9 police officer must, if practicable—
- 10 (a) tell the occupier of the address of the place, and when, the
11 examination or processing will be carried out; and
- 12 (b) allow the occupier or the occupier's representative to be
13 present during the examination or processing.
- 14 (6) The provisions of this part relating to the issue of search warrants
15 apply, with any necessary changes, to the giving of an extension
16 under this section.

17 **218 Use of electronic equipment at premises**

- 18 (1) An executing police officer or a person assisting may operate
19 electronic equipment at the premises to access data (including data
20 not held at the premises) if the officer or person believes on
21 reasonable grounds that—
- 22 (a) the data might be target material; and
- 23 (b) the equipment can be operated without damaging it.
- 24 *Note* An executing police officer may obtain an order requiring a person with
25 knowledge of a computer or computer system to provide assistance (see
26 s 219).
- 27 (2) If the executing police officer or person assisting believes that any
28 data accessed by operating the electronic equipment might be target
29 material, the officer or person may—

- 1 (a) copy the data to a data storage device brought to the premises;
2 or
- 3 (b) if the occupier of the premises agrees in writing—copy the data
4 to a data storage device at the premises.
- 5 (3) The executing police officer or person assisting may take the device
6 from the premises.
- 7 (4) The executing police officer, or a person assisting who is a police
8 officer, may do the following things if the officer or person finds
9 that any target material is accessible using the equipment:
- 10 (a) seize the equipment and any data storage device;
- 11 (b) if the material can, by using facilities at the premises, be put in
12 documentary form—operate the facilities to put the material in
13 that form and seize the documents so produced.
- 14 (5) A police officer may seize equipment under subsection (4) (a) only
15 if—
- 16 (a) it is not practicable to copy the data as mentioned in
17 subsection (2) or to put the material in documentary form as
18 mentioned in subsection (4) (b); or
- 19 (b) possession of the equipment by the occupier could be an
20 offence.

21 **219 Person with knowledge of computer or computer system**
22 **to assist access etc**

- 23 (1) An executing police officer may apply to an issuing officer for an
24 order requiring a stated person to provide any information or
25 assistance that is reasonably necessary to allow the executing police
26 officer or a person assisting to do all or any of the following:
- 27 (a) access data held in or accessible from a computer that is on the
28 premises;
- 29 (b) copy the data to a data storage device;

- 1 (c) convert the data into documentary form.
- 2 (2) The issuing officer may make an order if satisfied that—
- 3 (a) there are reasonable grounds for suspecting that target material
- 4 is accessible from the computer; and
- 5 (b) the stated person is—
- 6 (i) reasonably suspected of possessing, or having under the
- 7 person's control, target material of the kind stated in the
- 8 search warrant; or
- 9 (ii) the owner or lessee of the computer; or
- 10 (iii) an employee of the owner or lessee of the computer; and
- 11 (c) the stated person has knowledge of—
- 12 (i) the computer or a computer network of which the
- 13 computer forms a part; or
- 14 (ii) measures applied to protect data held in or accessible
- 15 from the computer.
- 16 (3) A person commits an offence if a person contravenes an order under
- 17 this section.
- 18 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 19 both.
- 20 (4) The provisions of this part relating to the issue of search warrants
- 21 apply, with any necessary changes, to the giving of an order under
- 22 this section.

23 **220 Securing electronic equipment**

- 24 (1) If the executing police officer or a person assisting believes on
- 25 reasonable grounds that—
- 26 (a) target material may be accessible by operating electronic
- 27 equipment at the premises; and
- 28 (b) expert assistance is required to operate the equipment; and

- 1 (c) if the officer or person does not take action, the material may
2 be destroyed, altered or otherwise interfered with;
- 3 the officer or person may do whatever is necessary to secure the
4 equipment, whether by locking it up, placing a guard or otherwise.
- 5 (2) The executing police officer or a person assisting must give written
6 notice to the occupier of the premises of—
- 7 (a) the officer's or person's intention to secure the equipment; and
8 (b) the fact that the equipment may be secured for up to 24 hours.
- 9 (3) The equipment may be secured until the earliest of the following
10 events happens:
- 11 (a) the end of 24 hours;
12 (b) the equipment is operated by the expert.
- 13 (4) If the executing police officer or a person assisting believes on
14 reasonable grounds that the expert assistance will not be available
15 within 24 hours, the officer or person may apply to the issuing
16 officer to extend the period.
- 17 (5) The executing police officer or a person assisting must tell the
18 occupier of the premises of the officer's or person's intention to
19 apply for an extension, and the occupier is entitled to be heard on
20 the application.
- 21 (6) The provisions of this part relating to the issue of search warrants
22 apply, with any necessary changes, to the giving of an extension
23 under this section.

24 **221 Copies of seized things to be provided**

- 25 (1) The occupier of the premises, or someone else who apparently
26 represents the occupier, is present at the premises while a search
27 warrant is executed, may ask a police officer who seizes—
- 28 (a) a document, film, computer file or other thing that can be
29 readily copied; or

- 1 (b) a data storage device in which the information can be readily
2 copied;
- 3 to give the occupier or other person a copy of the thing or the
4 information.
- 5 (2) The police officer must do so as soon as practicable after the
6 seizure.
- 7 (3) However, the police officer is not required to do so if—
- 8 (a) the thing was seized under section 218 (Use of electronic
9 equipment at premises); or
- 10 (b) possession by the occupier of the thing or information could be
11 an offence.

12 **222 Providing documents after execution of search warrant**

- 13 Documents are taken to have been seized under a search warrant
14 if—
- 15 (a) the documents were at, or accessible from, the premises of a
16 financial institution when a search warrant in relation to the
17 premises was executed; and
- 18 (b) the documents could not be found at that time; and
- 19 (c) the financial institution provides them to the executing police
20 officer as soon as practicable after the execution of the warrant.

21 **Division 13.5 Stopping and searching vehicles**

22 **223 Searches of vehicles without search warrant in**
23 **emergency situations**

- 24 (1) This section applies if a police officer believes, on reasonable
25 grounds, that—
- 26 (a) a thing that is target material is in or on a vehicle; and

- 1 (b) it is necessary to exercise a power under subsection (2) to
2 prevent the thing from being concealed, lost or destroyed; and
- 3 (c) it is necessary to exercise the power without the authority of a
4 search warrant because the circumstances are serious and
5 urgent.
- 6 (2) If this section applies, the police officer may—
- 7 (a) stop and detain the vehicle; and
- 8 (b) search the vehicle, and any container in or on the vehicle, for
9 the thing; and
- 10 (c) seize the thing if the officer finds it.
- 11 (3) If, in the course of searching for the thing, the police officer finds
12 something else that is target material, the police officer may seize
13 that thing if the officer suspects, on reasonable grounds, that—
- 14 (a) it is necessary to seize it to prevent its concealment, loss or
15 destruction; and
- 16 (b) it is necessary to seize it without the authority of a search
17 warrant because the circumstances are serious and urgent.
- 18 (4) The police officer must exercise the police officer's powers subject
19 to section 224.

20 **224 How police officer exercises powers under s 223**

- 21 When a police officer exercises a power under section 223
22 (Searches of vehicles without search warrant in emergency
23 situations) in relation to a vehicle, the police officer—
- 24 (a) may use the assistance that is necessary and reasonable; and
- 25 (b) must search the vehicle in a public place or in some other place
26 to which members of the public have ready access; and
- 27 (c) must not detain the vehicle for longer than is necessary and
28 reasonable to search it and any container in or on the vehicle;
29 and

- 1 (d) may use the force that is necessary and reasonable in the
2 circumstances, but must not damage the vehicle, or any
3 container in or on the vehicle, by forcing open a part of the
4 vehicle or container unless—
- 5 (i) the person (if any) apparently in charge of the vehicle has
6 been given a reasonable opportunity to open that part or
7 container; or
- 8 (ii) it is not possible to give that person such an opportunity.

9 **Division 13.6 Search warrants—things seized**

10 **225 Receipts for things seized under search warrants**

- 11 (1) This section applies to—
- 12 (a) a thing seized under a search warrant; or
- 13 (b) a thing moved under section 217 (1) (Moving things to another
14 place for examination or processing); or
- 15 (c) a thing seized under section 223 (Searches of vehicles without
16 search warrant in emergency situations).
- 17 (2) As soon as practicable after a thing is seized under this part by the
18 executing police officer or a person assisting, the officer or person
19 must give a receipt for it to the person from whom it was seized.
- 20 (3) If, for any reason, it is not practicable to comply with subsection (2),
21 the executing police officer or person assisting must leave the
22 receipt, secured conspicuously, at the place of seizure.
- 23 (4) A receipt under this section must include—
- 24 (a) a description of the thing seized; and
- 25 (b) if the thing is moved under section 217 (1)—where the thing is
26 to be taken to.
- 27 (5) A single receipt may be given for 2 or more things.

1 **226 Keeping seized things under search warrants**

- 2 (1) This section applies to a police officer in relation to a thing seized
3 under this part if—
- 4 (a) the reason for the thing’s seizure no longer exists or it is
5 decided that the thing is not to be used in evidence; or
- 6 (b) if the thing was seized under section 223 (Searches of vehicles
7 without search warrant in emergency situations)—the period of
8 60 days after the day of the thing’s seizure ends.
- 9 (2) The police officer must take reasonable steps to return the thing to
10 the person from whom it was seized or to the owner if that person is
11 not entitled to possess it.
- 12 (3) However, the police officer does not have to take those steps if—
- 13 (a) if subsection (1) (b) applies—
- 14 (i) a proceeding in relation to which the thing might provide
15 evidence has been begun before the end of the 60-day
16 period and has not been finalised (including an appeal to
17 a court in relation to the proceeding); or
- 18 (ii) an order is in force under section 227 (Keeping things for
19 further period); or
- 20 (b) if subsection (1) (a) or (b) applies—the police officer is
21 otherwise authorised (by a law, or an order of a court, of the
22 Territory, the Commonwealth, a State or another Territory) to
23 keep, destroy or dispose of the thing; or
- 24 (c) the thing is forfeited or forfeitable to the Territory, the
25 Commonwealth or a State or is the subject of a dispute about
26 ownership.

1 **227 Keeping things for further period**

- 2 (1) This section applies if a thing has been seized by a police officer
3 under this part and a proceeding in relation to which the thing might
4 provide evidence has not begun before the end of—
- 5 (a) 60 days after the day of the seizure; or
- 6 (b) a period previously stated in an order of an issuing officer
7 under this section.
- 8 (2) A police officer may apply to an issuing officer for an order that the
9 officer may keep the thing for a further period.
- 10 (3) Before making the application, the police officer must—
- 11 (a) take reasonable steps to discover whose interests would be
12 affected by the keeping of the thing; and
- 13 (b) if it is practicable to do so, tell each person the officer believes
14 to be such a person of the proposed application.
- 15 (4) The provisions of this part relating to the issue of search warrants
16 apply, with any necessary changes, to the making of an order under
17 this section.

18 **228 Issuing officer may order keeping of thing**

- 19 (1) The issuing officer may order that the police officer who made an
20 application under section 227 (Keeping things for further
21 period) may keep the thing if the issuing officer is satisfied that it is
22 necessary for the police officer to do so for the purpose of beginning
23 or conducting a proceeding under this Act, another Territory law or
24 the law of the Commonwealth, a State or another Territory.
- 25 (2) The order must state the period for which the officer may keep the
26 thing.
- 27 (3) The provisions of this part relating to the issue of search warrants
28 apply, with any necessary changes, to the making of an order under
29 this section.

1 **229 Transfer of things seized to public trustee**

2 At the direction of the DPP, a police officer must transfer custody of
3 a thing seized under this part to the public trustee.

4 **Division 13.7 Search warrants—miscellaneous**

5 **230 Search warrants—false or misleading information**

- 6 (1) A person commits an offence if—
- 7 (a) the person gives information to a police officer or person
8 assisting a police officer; and
- 9 (b) the person does so knowing that the information—
- 10 (i) is false or misleading in a material particular; or
- 11 (ii) omits something that makes the information false or
12 misleading in a material particular; and
- 13 (c) the information is given in compliance (or purported
14 compliance) with a requirement under this part.

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

17 (2) Subsection (1) (c) does not apply if, before the information was
18 given by the person to the police officer or person assisting, a police
19 officer or person assisting did not take reasonable steps to tell the
20 person of the existence of the offence against subsection (1).

21 (3) For subsection (2), it is sufficient if the following form of words is
22 used:

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

1 **231 Search warrants—false or misleading documents**

- 2 (1) A person commits an offence if—
- 3 (a) the person produces a document to a police officer or a person
4 assisting a police officer; and
- 5 (b) the person does so knowing that the document is false or
6 misleading in a material particular; and
- 7 (c) the document is produced in compliance (or purported
8 compliance) with a requirement under this part.

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

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

19 **232 Obstruction etc of police officers and people assisting**

- 20 (1) A person commits an offence if—
- 21 (a) the person knows that, or is reckless about the fact that, a
22 person is a police officer; and
- 23 (b) the person obstructs, hinders, intimidates or resists the officer
24 in the exercise of the officer's functions under this part.

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

1 (2) For this section, it is immaterial whether the defendant was aware
2 that the police officer was exercising the officer's functions.

3 (3) Strict liability applies to subsection (1) (b).

4 **233 Damage etc to be minimised**

5 (1) In the exercise, or purported exercise, of a function under this part, a
6 police officer must take all reasonable steps to ensure that the police
7 officer, and any person assisting who is not a police officer, causes
8 as little inconvenience, detriment and damage as practicable.

9 (2) If a police officer, or a person assisting who is not a police officer,
10 damages anything in the exercise or purported exercise of a function
11 under this part, the police officer or person assisting must give
12 written notice of the particulars of the damage to the person whom
13 the police officer or person assisting believes on reasonable grounds
14 is the owner of the thing.

15 (3) If the damage happens on premises entered under this part in the
16 absence of the occupier, the notice may be given by securing it in a
17 conspicuous place on the premises.

18 **234 Compensation**

19 (1) A person may claim reasonable compensation from the Territory if
20 the person suffers loss or expense because of the exercise, or
21 purported exercise, of a function under this part by a police officer
22 or a person assisting who is not a police officer.

23 (2) Compensation may be claimed and ordered in a proceeding for—

24 (a) compensation brought in a court of competent jurisdiction; or

25 (b) an offence against this Act or another Territory law brought
26 against the person making the claim for compensation.

1 (3) A court must not order the payment of reasonable compensation for
2 the loss or expense unless it is satisfied it is just to make the order in
3 the circumstances of the particular case.

4 **Example for claim for damage or corruption of computer data**

5 The court may have regard to whether the occupier of the premises and any
6 employees, agents or officers of the occupier, if they were available at the time,
7 gave any appropriate warning or guidance on the operation of the computer
8 equipment.

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

12 (4) The regulations may prescribe matters that may, must or must not be
13 taken into account by the court in considering whether it is just to
14 make the order.

1 **Part 14** **Court procedure**
2

3 **235** **Meaning of *confiscation proceeding***

4 (1) In this Act:

5 *confiscation proceeding* means a proceeding in a relevant court in
6 relation to any of the following orders under this Act:

- 7 (a) a restraining order;
- 8 (b) an additional order under section 39 in relation to a restraining
9 order or restrained property;
- 10 (c) a conviction forfeiture order;
- 11 (d) an order under section 59 (Automatic forfeiture—court order
12 declaring property automatically forfeited);
- 13 (e) an order under section 60 (Automatic forfeiture—court orders);
- 14 (f) a civil forfeiture order;
- 15 (g) an exclusion order;
- 16 (h) a penalty order;
- 17 (i) an order under section 104 (Order to stop sale, modification or
18 destruction of restrained property);
- 19 (j) an order under section 112 for the discharge of a registered
20 property interest in forfeited property;
- 21 (k) an order under division 9.4 (Sale of jointly owned forfeited
22 property);
- 23 (l) a return or compensation order;
- 24 (m) a monitoring order;
- 25 (n) a transaction suspension order;
- 26 (o) a production order;

- 1 (p) an examination order
- 2 (q) a buyback order;
- 3 (r) an order under section 238 (2) (c) or 240 (2) to transfer a
4 proceeding to another court;
- 5 (s) an additional order under section 249 (Confiscation
6 proceedings—additional orders);
- 7 (t) an order under this Act in relation to an order mentioned in
8 paragraphs (a) to (s), whether made before, at the same time, or
9 after the making of that order.

10 **Examples for par (t)—general**

- 11 1 an order under section 24 to set aside a dealing with restrained property
- 12 2 an order under section 35 restricting the disclosure of the making of a
13 restraining order
- 14 3 an order under section 49 extending the operation of a restraining order
- 15 4 an interlocutory order in relation to an order mentioned in
16 paragraphs (a) to (s)

17 **Examples for par (t)—additional orders under s 39 and s 249**

- 18 1 See the examples to s 39 (1) for examples of additional orders in relation to
19 restraining orders and restrained property.
- 20 2 See the examples to s 249 (1) for examples of additional orders in relation to
21 other confiscation proceedings.

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

- 25 (2) However, a ***confiscation proceeding*** does not include—
- 26 (a) a registered corresponding law order that is taken to be a kind
27 of order mentioned in subsection (1); or
- 28 (b) a proceeding under part 11 (Interstate orders).

29 **236 Confiscation and corresponding law order proceedings**
30 **are civil, not criminal**

- 31 (1) This section applies to—

- 1 (a) a confiscation proceeding; and
2 (b) a proceeding under part 11 (Interstate orders) in relation to a
3 corresponding law order.
- 4 (2) The proceeding is a civil proceeding, not a criminal proceeding.
- 5 (3) Without limiting subsection (2)—
- 6 (a) any rules of interpretation applying only to the criminal law do
7 not apply to the interpretation of the provisions of this Act or
8 any other Territory law in relation to the proceeding; and
- 9 (b) the rules of evidence applying to a civil proceeding apply to
10 the proceeding, and the rules of evidence applying to a
11 criminal proceeding do not apply.

12 **Example for par (b)**

13 In hearing an application for a civil forfeiture order, whether the offender
14 committed a serious offence is to be decided by the court on the balance of
15 probabilities.

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

19 **237 Meaning of *relevant court***

20 In this Act:

21 *relevant court*, for a confiscation proceeding or a proceeding under
22 part 11 (Interstate orders) in relation to a corresponding law order,
23 means the court, or any court, that has jurisdiction under this part to
24 hear and decide the proceeding.

25 **238 Jurisdiction of Magistrates Court—confiscation**
26 **proceedings**

- 27 (1) The Magistrates Court has jurisdiction to hear and decide a
28 confiscation proceeding if—
- 29 (a) the value of the property and benefits to which the proceeding
30 relates (as decided by the Magistrates Court) is not more than

- 1 the amount the Magistrates Court may award for a personal
2 action at law (the *Magistrates Court limit*); and
- 3 (b) title to land is not genuinely in question in the proceeding.
- 4 *Note* For the amount the Magistrates Court may award for a personal action
5 at law, see the *Magistrates Court (Civil Jurisdiction) Act 1982*, s 5.
- 6 (2) However, if the value of the property and benefits to which the
7 proceeding relates (as decided by the Magistrates Court) is more
8 than the Magistrates Court limit, the Magistrates Court has
9 jurisdiction to hear and decide the matter to—
- 10 (a) dismiss the proceeding on its merits (but not for want of
11 jurisdiction); or
- 12 (b) make an order or orders in relation to property or benefits to
13 the value of the limit; or
- 14 (c) on the application of the DPP, or on the court’s own initiative,
15 by order, transfer the proceeding to the Supreme Court.
- 16 (3) Despite the Magistrates Court limit, the Magistrates Court has
17 jurisdiction to hear and decide the following confiscation
18 proceedings:
- 19 (a) any application for a monitoring order, transaction suspension
20 order, production order or examination order;
- 21 (b) any proceeding in relation to an indictable offence that has
22 been disposed of summarily by the court;

- 1 (c) a proceeding transferred to the court by the Supreme Court
2 under section 240 (2).

3 **Example for par (b)**

4 Mr Somewhat Wayward is summarily convicted of an indictable offence by the
5 Magistrates Court. The value of the benefits received by Mr Wayward from the
6 commission of the offence was \$10 000 more than the Magistrates Court limit.
7 The Magistrates Court may make a penalty order against Mr Wayward for the full
8 amount of the benefits despite their value being more than the amount the
9 Magistrates Court may award for a personal action at law.

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

13 (4) For this section—

14 (a) the Magistrates Court has jurisdiction to decide—

15 (i) what is the property and benefits to which the proceeding
16 relates; and

17 (ii) the value of any property and benefits to which the
18 proceeding relates; and

19 (iii) whether title to land is genuinely in question; and

20 (b) title to land is genuinely in question in the proceeding if the
21 Magistrates Court would not have jurisdiction to hear the
22 proceeding under the *Magistrates Court (Civil Jurisdiction)*
23 *Act 1982*, section 11 (Proceedings affecting title to land).

24 **239 Jurisdiction of Magistrates Court—interstate orders**

25 (1) The Magistrates Court has jurisdiction to hear and decide any
26 proceeding under part 11 (Interstate orders) in relation to a
27 corresponding law order.

28 (2) To remove any doubt, the Magistrates Court is a relevant court even
29 if—

- 1 (a) the value of the property and benefits to which the
2 corresponding order relates is more than the amount the
3 Magistrates Court may award for a personal action at law; or
4 (b) title to land was genuinely in question in the proceeding for the
5 making of the corresponding law order.

6 **240 Jurisdiction of Supreme Court**

- 7 (1) The Supreme Court has jurisdiction to hear and decide any
8 confiscation proceeding or any proceeding under part 11 (Interstate
9 orders) in relation to a corresponding law order.
- 10 (2) The Supreme Court may, by order, transfer a confiscation
11 proceeding to the Magistrates Court if the value of the property and
12 benefits to which the proceeding relates (as decided by the Supreme
13 Court)—
- 14 (a) is less than or equal to the amount the Magistrates Court may
15 award for a personal action at law; and
- 16 (b) does not include land the title to which is genuinely in
17 question.
- 18 (3) An order under subsection (2) may be made on the application of
19 the DPP or of a person with an interest in the property or on the
20 Supreme Court's own initiative.

21 **241 Confiscation proceedings—transferred proceedings**

22 If a proceeding is transferred from a court (the *first court*) to another
23 court under section 238 (2) (c) or 240 (2)—

- 24 (a) the proceeding is taken to have been begun in the other court;
25 and

1 (b) evidence given before, and documents filed with, the first court
2 are taken to have been given before, or filed with, the other
3 court.

4 **Example for par (b)**

5 If a proceeding is transferred from the Magistrates Court to the Supreme Court,
6 the Supreme Court may make findings of fact based on the transcript of evidence
7 given before the Magistrates Court without rehearing the evidence.

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

11 **242 Restricted access proceedings—notice of applications**
12 **etc**

13 (1) This section applies to a confiscation proceeding for any of the
14 following orders (a *restricted access proceeding*):

15 (a) a restraining order;

16 (b) an application by the DPP or public trustee for an additional
17 order under section 39 in relation to a restraining order or
18 restrained property;

19 (c) an order under section 49 (Extension of time for restraining
20 orders) that a restraining order—

21 (i) is to remain in force for a stated period (or as stated in the
22 order); or

23 (ii) that has ended is to be revived for a stated period (or as
24 stated in the order);

25 (d) a monitoring order;

26 (e) a transaction suspension order;

27 (f) a production order (other than an application to vary a
28 production order under section 161);

29 (g) an examination order.

-
- 1 (2) An application to begin a restricted access proceeding may be made
2 to a relevant court without notice to the person against whom the
3 relevant order is sought.
- 4 (3) If an application is made to begin a restricted access proceeding
5 without notice to the person against whom the relevant order is
6 sought, the applicant is the only party to the application.
- 7 (4) If notice is given to the person against whom the order is sought, the
8 person is entitled to appear and to present evidence at the hearing of
9 the application, but the person's absence does not prevent the court
10 from making the order.
- 11 (5) The relevant court must hold a restricted access proceeding in
12 closed court if the applicant asks and may give directions about who
13 may be present.

14 **243 Other confiscation proceedings—notice of applications**
15 **etc**

- 16 (1) This section applies to an application to a relevant court to begin a
17 confiscation proceeding (other than a restricted access proceeding
18 mentioned in section 242) or to amend such an application.

19 *Note 1* No notice of the application is required for a restricted access
20 proceeding (see s 242 (2)).

21 *Note 2* In particular, no advance notice to anyone is required of the application
22 for the order, and the application may be heard in closed court, without
23 the offender or the public being present, see s 242.

24 *Note 3* Related confiscation proceedings are begun by motion on notice or
25 motion, see s 244.

- 26 (2) The applicant must give written notice of the application to each of
27 the following people, if applicable (a *notifiable person*):
- 28 (a) if the application is made by the DPP—the person in relation to
29 whom the order is sought;
- 30 (b) if the application is made by someone else—the DPP;

Section 244

- 1 (c) if the public trustee has been directed to take control of the
2 property—the public trustee;
- 3 (d) anyone else the applicant believes may have an interest in the
4 property or benefits that are the subject of the proceeding (or,
5 for forfeited property, may have had an interest in the property
6 or benefits immediately before the property was forfeited).
- 7 (3) Notice of the application must include a statement of the grounds for
8 the application.
- 9 (4) If a notifiable person proposes to oppose the application, the
10 notifiable person must give the applicant written notice of the
11 grounds on which the application will be opposed.
- 12 (5) However, the court may waive the requirement to give written
13 notice of the application to a notifiable person if the person is
14 present in the court when the application is made.
- 15 (6) The court may direct the applicant give notice of the application to
16 anyone and may give directions about how the notice is to be given.
- 17 (7) A notifiable person, and anyone else who claims an interest in the
18 property or benefits, is entitled to appear and to present evidence at
19 the hearing of the application, but the person's absence does not
20 prevent the court from making an order.

21 **244 Applications for another confiscation proceeding in**
22 **relation to same offence**

23 After the beginning of a confiscation proceeding in relation to a
24 particular offence, any other confiscation proceeding in relation to
25 the same or a related offence—

- 26 (a) is taken to be an interlocutory application in relation to the first
27 proceeding; and
- 28 (b) may be begun by motion on notice or motion (supported, if
29 appropriate, by affidavit) in accordance with the procedure of
30 the relevant court.

1 **245 Confiscation proceedings—time extensions for**
2 **applications**

3 (1) A relevant court may give leave for—

4 (a) an application in relation to any confiscation proceeding to be
5 made after the end of a period otherwise provided by this Act
6 (the *standard period*); or

7 (b) if an application for a particular order in relation to an offence
8 has already been made in relation to the offence (or a related
9 offence)—another application for an order of that kind to be
10 made in relation to the same offence (or a related offence),
11 whether before or after the end of the standard period; or

12 (c) the amendment of an application for an order under this Act to
13 vary the property or benefits to which the application relates.

14 (2) The court may give leave only if satisfied that—

15 (a) property or benefits to which the application relates were (or
16 will be) derived from the offence, or identified, after the end of
17 the standard period; or

18 (b) necessary evidence has (or will) become available only after
19 the end of the standard period; or

20 (c) it is otherwise desirable having regard to the purposes of this
21 Act.

22 (3) To remove any doubt, this section does not authorise a relevant
23 court to give leave for an application for an exclusion order in
24 relation to property that has been forfeited.

25 **246 Confiscation proceedings—amendment of applications**

26 (1) A relevant court may amend an application in any confiscation
27 proceeding on the application, or with the consent, of the applicant.

28 (2) The application may be amended at any time before the proceeding
29 for the application is finalised.

1 **247 Confiscation proceedings—relevant material**

2 For a confiscation proceeding, the relevant court may take into
3 account any material it considers appropriate.

4 **Example of material that may be considered appropriate**

5 evidence given in, and the transcript of, any proceedings for or about the offence
6 to which the order sought relates

7 *Note 1* Evidence may be given in the confiscation proceeding of a conviction,
8 acquittal, sentencing, order or about proceedings in a court by a
9 certificate signed by a judge, magistrate, registrar or proper officer of
10 the court (see *Evidence Act 1995* (Cwlth), s 178).

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

14 **248 Confiscation proceedings—witness not required to**
15 **answer questions prejudicing investigation**

16 A witness in the hearing of a confiscation proceeding is not required
17 to answer a question or produce a document if the relevant court is
18 satisfied that answering the question or producing the document
19 may prejudice an investigation or prosecution in relation to an
20 indictable offence.

21 **249 Confiscation proceedings—additional orders**

22 (1) A relevant court may, when it makes an order in a confiscation
23 proceeding (a *primary order*) or at any later time, make any other
24 order (an *additional order*) that it considers appropriate for varying
25 or giving effect to the primary order.

26 **Examples of additional orders**

27 1 an order for the examination of anyone before the court, or an officer of the
28 court, about any property that may be forfeited property

29 2 an order directing the owner of forfeited property or anyone else to give to a
30 stated person, within a stated period, a sworn statement about stated
31 particulars of the forfeited property

- 1 3 an order directing the owner of forfeited property or anyone else to do
2 anything necessary or convenient to be done to allow the public trustee to
3 take control of the property in accordance with a forfeiture order, including
4 anything necessary or convenient to be done to bring the property within the
5 jurisdiction
- 6 4 an order in relation to the registration of title to, or charges over, property
7 under a Territory law
- 8 5 an order for the substituted service of a restraining order
- 9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 Legislation Act, s 126 and s 132).
- 12 (2) However, this section does not authorise a relevant court to make an
13 additional order in relation to a restraining order or restrained
14 property (including an order for the exclusion of property from a
15 restraining order).
- 16 *Note 1* For additional orders about restraining orders and restrained property,
17 see s 39 and the notes to that section.
- 18 *Note 2* For the power to give orders to give effect to an automatic forfeiture for
19 conviction for a serious offence (which operates over restrained
20 property), see s 60.
- 21 (3) An additional order may be made on the relevant court's own
22 initiative, or on the application of any of the following people:
- 23 (a) the applicant for the primary order;
- 24 (b) the DPP;
- 25 (c) the public trustee;
- 26 (d) anyone with an interest in the property or benefits to which the
27 application relates;
- 28 (e) anyone else with the court's leave.
- 29 (4) To remove any doubt, an additional order under this section does
30 not end only because the order to which the additional order relates
31 ends.

1 **250 Contravention of additional orders under s 249**

2 A person commits an offence if—

- 3 (a) a relevant court makes an additional order under section 249;
4 and
5 (b) the person has notice of the order (whether by being given a
6 copy of the order or otherwise); and
7 (c) the person contravenes the order.

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

10 **251 Confiscation proceedings—consent orders**

- 11 (1) A relevant court may make an order in a confiscation proceeding
12 with the consent of the applicant in the proceeding and everyone
13 whom it has reason to believe has an interest in the property,
14 benefits, transaction, document or information that is the subject of
15 the proceeding.
16 (2) An order may be made with consent under subsection (1) without
17 consideration of the matters which the court would otherwise
18 consider in the proceeding.

19 **252 Confiscation proceedings—notice of making orders**

- 20 (1) If a relevant court makes an order in a confiscation proceeding, the
21 applicant for the order must give a copy of the order to—
22 (a) if the application is made by the DPP—the person in relation to
23 whom the order is sought; and
24 (b) if the application is made by someone else—the DPP; and
25 (c) if the public trustee has been directed to take control of the
26 property—the public trustee; and

1 (d) anyone else the applicant believes may have an interest in the
2 property or benefits that are the subject of the proceeding (or,
3 for forfeited property, may have had an interest in the property
4 or benefits immediately before the property was forfeited).

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

6 (2) The court may order the applicant to give notice of the order to
7 anyone else and may give directions about how the notice is to be
8 given.

9 (3) The court must not make an order under subsection (2) if
10 compliance with the order would be inconsistent with a direction
11 under section 69 (1) (b) (Civil forfeiture order
12 proceedings—restrictions on disclosure).

13 (4) This section does not apply to the making of restraining orders or
14 non-disclosable information orders.

15 *Note* See div 4.2 about notice of the making of restraining orders and pt 12
16 about making information orders.

17 **253 Concurrent proceedings**

18 This Act does not prevent a relevant court from conducting a
19 confiscation proceeding at the same time as another confiscation
20 proceeding or another civil or criminal proceeding, if the court
21 considers it desirable for the purposes of this Act.

- 1 (d) in a proceeding for enforcement of a confiscation forfeiture
2 order, an automatic forfeiture or a penalty order; or
- 3 (e) for a document—in a civil proceeding in relation to a right or
4 liability it gives or imposes.
- 5 (4) An action does not lie against a person because of the disclosure if it
6 is in breach of an obligation the person would otherwise have
7 (whether imposed by law or applying otherwise).
- 8 (5) In this section:
- 9 *disclosure*, by a person, includes—
- 10 (a) the person answering a question or giving testimony or
11 information to someone else; and
- 12 (b) the person giving or producing a statement, document or
13 anything else to someone else.

14 **Example of *disclosure***

15 giving information about the nature or location of property held by anyone

16 **255 Powers under Act not limited by criminal proceedings**

17 To remove any doubt, the fact that a criminal proceeding has begun,
18 or is about to begin, (whether or not under this Act) against a person
19 to whom an order under this Act or an examination notice applies
20 does not prevent the person or anyone else from complying, or
21 permit a person to refuse to comply, with the order or notice.

1 **256 Powers under Act do not limit each other or powers**
2 **under other laws**

3 A power under this Act does not limit or exclude—

- 4 (a) the operation of another power under this Act; or
5 (b) the operation of another Territory law, or a law of the
6 Commonwealth, a State or another Territory.

7 **Example for par (a)**

8 a search warrant under part 13 and an examination notice, production order and
9 monitoring order may be used independently, or in conjunction with each other, in
10 relation to identifying and locating tainted property and benefits derived from an
11 offence.

12 **Example for par (b)**

13 a search warrant under the *Crimes Act 1900* may be applied for to locate target
14 material rather than a search warrant under this Act, part 13.

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

18 **257 Examination orders—reporting requirements**

- 19 (1) As soon as practicable after the end of each financial year, the chief
20 police officer must give the Minister a report about the operation of
21 division 12.5 (Examination orders and notices) during the financial
22 year.
- 23 (2) The report must include the following information for the financial
24 year:
- 25 (a) the number of applications for examination orders made during
26 the year;
- 27 (b) the number of people given examination notices during the
28 year;
- 29 (c) the number of investigations to which the notices related;
- 30 (d) the number of examinations conducted during the year.

- 1 (3) The report must also include the following information for the
2 financial year (whether or not the examination notice to which it
3 relates was given during the year):
- 4 (a) the number and kind of confiscation proceedings begun during
5 the year in relation to matters for which an examination notice
6 has been given to a person;
- 7 (b) the estimated value of property either restrained or confiscated
8 during the year in relation to matters for which an examination
9 notice had been given to a person;
- 10 (c) the number of charges laid relating to examination notice
11 offences during the year;
- 12 (d) the number of arrests made during the year in relation to
13 matters for which an examination notice has been given to a
14 person;
- 15 (e) the number and kind of complaints made during the year to the
16 Australian Federal Police or the Commonwealth Ombudsman
17 in relation to examination notices;
- 18 (f) the number of complaints of the kind mentioned in
19 paragraph (e) resolved during the year and their outcome;
- 20 (g) the number and kind of legal proceedings begun during the
21 year in relation to examination notices (other than charges
22 mentioned in paragraph (c) or proceedings begun by the DPP
23 or a police officer);
- 24 (h) the number of legal proceedings of the kind mentioned in
25 paragraph (g) finalised during the year and their outcome.
- 26 (4) The Minister must present a copy of each report given to the
27 Minister under subsection (1) to the Legislative Assembly within
28 6 sitting days after the day the Minister receives it.

1 **258 Approved forms**

2 (1) The Minister may, in writing, approve forms for this Act.

3 (2) If the Minister approves a form for a particular purpose, the
4 approved form must be used for that purpose.

5 *Note* For other provisions about forms, see Legislation Act, s 255.

6 (3) An approved form is a notifiable instrument.

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

8 **259 Regulation-making power**

9 (1) The Executive may make regulations for this Act.

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

12 (2) The regulations may prescribe offences for contraventions of the
13 regulations and prescribe maximum penalties of not more than
14 10 penalty units for offences against the regulations.

1 **Part 16** **Consequential and transitional**
2 **matters**

3 **260 Repeal of Proceeds of Crime legislation**

- 4 (1) The *Proceeds of Crime Act 1991* No 103 is repealed.
5 (2) The *Proceeds of Crime Regulations 1993* No 50 are repealed.

6 **261 Orders under repealed Act**

- 7 (1) The *Proceeds of Crime Act 1991* (repealed) continues to apply to
8 property or benefits subject to—
9 (a) a restraining order made under that Act if the property or
10 benefits are subject to a forfeiture order or pecuniary penalty
11 order made under that Act; or
12 (b) a forfeiture order or pecuniary penalty order made under that
13 Act; or
14 (c) an interstate forfeiture order, interstate pecuniary penalty order
15 or interstate restraining order registered under that Act.
16 (2) If, on the commencement of this Act, an application for an order, or
17 for the registration of an order, mentioned in subsection (1) has been
18 made, but not finalised, the *Proceeds of Crime Act 1991* (repealed)
19 continues to apply to the application and the property or benefits the
20 subject of the application.
21 (3) If property or benefits are subject to a restraining order under the
22 *Proceeds of Crime Act 1991* (repealed) but not to a forfeiture order
23 or pecuniary penalty order under that Act, the restraining order is
24 taken to be a restraining order under this Act.

1 **262 Proceedings for offences committed before the**
2 **commencement of this Act**

3 (1) To remove any doubt, a civil forfeiture order may be applied for and
4 made in relation to a serious offence even though—

5 (a) an application for a forfeiture order under the *Proceeds of*
6 *Crime Act 1991* in relation to the offence or a related offence
7 failed; or

8 (b) a person was cleared of the offence before the commencement
9 of this Act.

10 *Note* This Act applies in relation to offences, whether committed, or alleged
11 to have been committed, before or after the commencement of this Act
12 (see s 5).

13 (2) To remove any doubt, a penalty order may be applied for and made
14 under this Act in relation to an offence mentioned in subsection (1).

15 **263 Use of information etc obtained under repealed Act**

16 (1) This section applies to property, documents or information that has
17 been—

18 (a) seized or otherwise obtained under the *Proceeds of Crime Act*
19 *1991* (repealed); or

20 (b) obtained as a direct or indirect result of action taken under that
21 Act.

22 (2) To remove any doubt, the property, documents or information may
23 be used for the purposes of this Act.

1 **264 Confiscated assets trust fund**

- 2 (1) The amount of the confiscated assets trust fund (the *old trust fund*)
3 under the *Proceeds of Crime Act 1991* (repealed) is transferred to
4 the confiscated assets trust fund under this Act.
- 5 (2) The amount of distributable funds in the old trust fund, immediately
6 before the repeal of the *Proceeds of Crime Act 1991*, is taken to be
7 distributable funds under this Act.
- 8 (3) The amount of suspended funds in the old trust fund, immediately
9 before the repeal of the *Proceeds of Crime Act 1991*, is taken to be
10 reserved funds under this Act.
- 11 (4) An amount payable under the *Proceeds of Crime Act 1991*
12 (repealed) but not paid before the commencement of this Act is
13 payable from the confiscated assets trust fund under this Act.

14 **265 Transitional regulations**

- 15 (1) The regulations may prescribe savings or transitional matters
16 necessary or convenient to be prescribed because of the enactment
17 of this Act.
- 18 (2) Without limiting the scope of subsection (1), the regulations may
19 prescribe matters necessary or convenient to be prescribed for
20 carrying out or giving effect to the provisions of this Act instead of
21 the provisions of the *Proceeds of Crime Act 1991* or *Proceeds of*
22 *Crime Regulations 1993*.
- 23 (3) Regulations made for this section must not be taken to be
24 inconsistent with this Act as far as they can operate concurrently
25 with this Act.
- 26 (4) This section is additional to, and does not limit, section 266.

1 **266 Modification of pt 16's operation**

2 The regulations may modify the operation of this part to make
3 provision in relation to any matter that, in the Executive's opinion,
4 is not, or is not adequately, dealt with in this part.

5 **267 Amendments of other legislation—sch 1**

6 Schedule 1 amends the Acts mentioned in it.

7 **268 Expiry of pt 16**

8 This part expires 2 years after the day it commences.

1 *Note 2* *Penalty units*
2 The Legislation Act, s 133 deals with the meaning of offence penalties
3 that are expressed in penalty units.

4 **[1.3] New division 6.2A**

5 *insert*

6 **Division 6.2A Money laundering and organised**
7 **fraud**

8 **114A Definitions for div 6.2A**

9 *deal*, with money or other property, means—
10 (a) receiving, possessing, concealing or disposing of money or
11 other property; or

12 (b) bringing into the ACT money or other property.

13 *proceeds of crime* means—

14 (a) any property derived or realised, directly or indirectly, by
15 anyone from the commission of an indictable offence; or

16 (b) any property derived or realised, directly or indirectly, by
17 anyone from acts or omissions that—

18 (i) happened outside the ACT; and

19 (ii) would, if they had happened in the ACT, have been an
20 indictable offence.

21 *property* includes property located in Australia outside the ACT or
22 outside Australia.

23 *unlawful activity* means an act or omission that is an offence against
24 Territory law or the law of the Commonwealth, a State, another
25 Territory or a foreign country.

1 **114B Money laundering**

2 A person commits an offence if—

- 3 (a) the person deals with money or other property; and
4 (b) the money or other property is proceeds of crime; and
5 (c) the person knows that, or is reckless about the fact that, the
6 money or other property is derived or realised, directly or
7 indirectly, from some form of unlawful activity.

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

10 **114C Possession etc of property suspected of being proceeds**
11 **of crime**

12 (1) A person commits an offence if—

- 13 (a) the person deals with money or other property; and
14 (b) the money or other property is proceeds of crime.

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

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

18 **114D Organised fraud**

19 (1) A person who engages in organised fraud commits an offence.

20 Maximum penalty: 1 500 penalty units, imprisonment for 15 years
21 or both.

22 (2) A person is taken to engage in organised fraud only if the person
23 engages in acts or omissions—

- 24 (a) that constitute 3 or more public fraud offences; and
25 (b) from which the person derives substantial benefit.

- 1 (3) If, on a trial for an offence against subsection (1) (the *offence*
2 *charged*), the trier of fact is not satisfied that the person is guilty of
3 the offence charged but is satisfied that the person is guilty of 1 or
4 more public fraud offences (the *other offences*), the trier of fact—
- 5 (a) must acquit the person of the offence charged; and
6 (b) may find the person guilty of the other offences.
- 7 (4) In this section:
- 8 *public fraud offence* means an offence against the *Crimes (Offences*
9 *against the Government) Act 1989*, section 8 (Fraud) or the Criminal
10 Code, section 48 (Conspiracy).

11 **[1.4] Section 185, new definitions**

- 12 *insert*
- 13 *tainted property*—see the *Confiscation of Criminal Assets Act 2002*,
14 section 10.
- 15 *target material*—see the *Confiscation of Criminal Assets Act 2002*,
16 section 194.

17 **[1.5] Section 194 (6) (a) (ii) and (7) (a) (ii)**

- 18 *substitute*
- 19 (ii) a thing relevant to another offence that is an indictable
20 offence; or
- 21 (iii) target material or tainted property;
- 22 *Note* Target material and tainted property are relevant to the
23 *Confiscation of Criminal Assets Act 2002*.

1 **[1.6] Section 195 (1) (d) (ii)**

2 *substitute*

3 (ii) evidential material in relation to any indictable offence;
4 or

5 (iii) target material or tainted property;

6 *Note* Target material and tainted property are relevant to the
7 *Confiscation of Criminal Assets Act 2002*.

8 **[1.7] Section 195 (2) (c) (ii)**

9 *substitute*

10 (ii) a thing relevant to any indictable offence; or

11 (iii) target material or tainted property;

12 *Note* Target material and tainted property are relevant to the
13 *Confiscation of Criminal Assets Act 2002*.

14 **[1.8] Sections 250 and 251**

15 *substitute*

16 **250 Disposal of forfeited articles by public trustee**

17 (1) The public trustee must sell or otherwise dispose of an article
18 transferred to the public trustee under section 249 (4).

19 (2) The public trustee must—

20 (a) apply the proceeds of the sale or disposition in payment of the
21 public trustee's remuneration, and other costs, charges and
22 expenses, in relation to the sale or disposition; and

23 (b) pay the remainder of the proceeds to the confiscated assets
24 trust fund under the *Confiscation of Criminal Assets Act 2002*.

25 (3) However, the Minister may, in a particular case, direct that the
26 article be dealt with in accordance with the direction (including in
27 accordance with a law stated in the direction).

- 1 (4) The public trustee must comply with the Minister's direction.
2 (5) The regulations may make provision in relation to public trustee's
3 remuneration, and other costs, charges and expenses, under
4 subsection (2) (a).

5 **[1.9] Section 344**

6 *omit*

7 The court shall not, in determining
8 *substitute*

- 9 (1) A court must not, in deciding

10 **[1.10] New section 344 (2)**

11 *insert*

- 12 (2) A court must not, in deciding the sentence to be imposed on a
13 person, reduce the severity of the sentence that would otherwise be
14 imposed because of any automatic forfeiture of property, forfeiture
15 order or penalty order under the *Confiscation of Criminal Assets Act*
16 *2002*.

17 **[1.11] New section 350 (1A)**

18 *insert*

- 19 (1A) However, the court must not order the offender to make reparation
20 to a person only because the person's property is subject to a
21 restraining order or forfeiture order under the *Confiscation of*
22 *Criminal Assets Act 2002*.

23 **[1.12] Section 350**

24 *renumber subsections when Act next republished under Legislation*
25 *Act*

1 **[1.13] Section 386**

2 *substitute*

3 **386 Unlawful possession of money or goods**

4 (1) A person commits an offence if—

5 (a) the person has money or goods in the person's custody or in
6 the custody of someone else; and

7 (b) the money or goods are unlawfully obtained money or goods.

8 Maximum penalty: 100 penalty units, imprisonment for 6 months
9 or both.

10 (2) A person commits an offence if—

11 (a) the person has money or goods in or on any premises, whether
12 the money or goods are in or on the premises for the person's
13 own use or for the use of someone else; and

14 (b) the money or goods are unlawfully obtained money or goods.

15 Maximum penalty: 100 penalty units, imprisonment for 6 months
16 or both.

17 (3) A person commits an offence if—

18 (a) the person gives custody of money or goods to someone who is
19 not lawfully entitled to possession of the money or goods; and

20 (b) the money or goods are unlawfully obtained money or goods.

21 Maximum penalty: 100 penalty units, imprisonment for 6 months
22 or both.

23 (4) It is a defence to a prosecution for an offence against subsections (1)
24 to (3) if the defendant satisfies the court that the defendant had no
25 reasonable grounds for suspecting that the unlawfully obtained
26 money or goods were stolen or otherwise unlawfully obtained.

1 (5) In this section:

2 *premises* includes the following:

3 (a) land (whether vacant or occupied);

4 (b) any structure, building, vehicle or place (whether built or not);

5 (c) any part of a structure, building, vehicle or place.

6 *unlawfully obtained money or goods* means money or goods that
7 are reasonably suspected of having been stolen or otherwise
8 unlawfully obtained.

9 **386A Forfeiture of unlawfully obtained money or goods**

10 (1) If a person is convicted of an offence against section 386, the money
11 or goods to which the offence relates are forfeited to the Territory—

12 (a) if the person convicted is the owner of the money or
13 goods—when the person is convicted; or

14 (b) in any other case—at the end of 90 days after the day the
15 person is convicted of the offence unless the owner of the
16 goods is known.

17 (2) The forfeited money or goods must be transferred to the public
18 trustee.

19 **386B Disposal of forfeited money or goods by public trustee**

20 (1) The public trustee must pay any forfeited money transferred to the
21 public trustee under section 386A (2) to the confiscated assets trust
22 fund under the *Confiscation of Criminal Assets Act 2002*.

23 (2) The public trustee must sell or otherwise dispose of goods
24 transferred to the public trustee under section 386A (2).

25 (3) The public trustee must—

26 (a) apply the proceeds of the sale or disposition in payment of the
27 public trustee's remuneration, and other costs, charges and
28 expenses, in relation to the sale or disposition; and

- 1 (b) pay the remainder of the proceeds to the confiscated assets
2 trust fund under the *Confiscation of Criminal Assets Act 2002*.
- 3 (4) However, the Minister may, in a particular case, direct that forfeited
4 goods be dealt with in accordance with the direction (including in
5 accordance with a law stated in the direction).
- 6 (5) The public trustee must comply with the Minister's direction.
- 7 (6) The regulations may make provision in relation to public trustee's
8 remuneration, and other costs, charges and expenses, under
9 subsection (3) (a).

10 **386C Return or compensation for forfeited money or goods**

- 11 (1) If, after the end of the 90 day period mentioned in section 386A (1)
12 (b), the owner of the money or goods claims the money or the
13 goods, the public trustee must, if satisfied that the person is the
14 owner—
- 15 (a) pay the money to the person; or
- 16 (b) return the goods to the person or pay the person reasonable
17 compensation for the goods.
- 18 (2) This section does not apply if the money or goods are subject to
19 forfeiture, or have been forfeited, under the *Confiscation of*
20 *Criminal Assets Act 2002*.

21 *Note* The *Confiscation of Criminal Assets Act 2002* provides for
22 compensation or the return of forfeited property in certain
23 circumstances.

24 **[1.14] Dictionary, new definitions**

25 *insert*

26 *tainted property*, for part 10 (Criminal investigation)—see the
27 *Confiscation of Criminal Assets Act 2002*, section 10.

28 *target material*, for part 10 (Criminal investigation)—see the
29 *Confiscation of Criminal Assets Act 2002*, section 194.

Schedule 1 Amendments of other legislation
Part 1.3 Prostitution Act 1992

Amendment [1.15]

1 **[1.15] Dictionary, definition of *trust fund***

2 *omit*

3 **Part 1.3 Prostitution Act 1992**

4 **[1.16] Section 6 (1) (a) (iii)**

5 *substitute*

6 (iii) the *Crimes Act 1900*, section 114B (Money laundering);

Dictionary

(see s 6)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- authorised deposit-taking institution
- child
- DPP
- entity
- fail
- foreign country
- found guilty
- function
- indictment
- indictable offence
- interest (in relation to land or other property)
- lawyer
- may (see also s 146)
- must (see also s 146)
- police officer
- property
- public trustee
- registrar-general.

abscond—see section 16.

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

- (a) a facility or arrangement for a fixed term deposit or a safe-deposit box; and
- (b) a facility or arrangement prescribed under the regulations for this definition.

- 1 **agent**, for an agent that is a corporation, includes an officer,
2 employee or agent of the corporation.
- 3 **artistic profits**—see section 81.
- 4 **artistic profits restraining order**—see section 20.
- 5 **associate**, for division 12.5 (Examination orders and notices)—see
6 section 163.
- 7 **at**, for part 13 (Search warrants)—see section 194.
- 8 **authenticated**, in relation to a corresponding law order, for part 11
9 (Interstate orders)—see section 135.
- 10 **authorised investigator**, for division 12.5 (Examination orders and
11 notices)—see section 164 (1).
- 12 **automatic forfeiture**, of property, means the forfeiture of the
13 property—
- 14 (a) under division 5.2 (Automatic forfeiture—conviction for
15 serious offences); or
- 16 (b) under division 5.3 (Automatic forfeiture—unclaimed tainted
17 property).
- 18 *Note* A registered interstate automatic forfeiture decision is taken to be an
19 automatic forfeiture under this Act (see s 138).
- 20 **benefit** includes service or advantage.
- 21 **benefits**, derived by an offender—see section 80.
- 22 **buyback order**—see section 123.
- 23 **civil forfeiture order**—see section 65.
- 24 **cleared**, of an offence—see section 17.

- 1 **commission**—
- 2 (a) of a serious offence, for part 7 (Penalty orders)—see
- 3 section 79; and
- 4 (b) of an offence by a person who has absconded—includes the
- 5 alleged commission of the offence by the person.
- 6 **confiscation proceeding**—see section 235.
- 7 **convicted**—see section 15 (1).
- 8 **conviction forfeiture order**—see section 52.
- 9 **corresponding law** means a law of the Commonwealth, a State or
- 10 another Territory that is declared under the regulations to be a
- 11 corresponding law, whether or not the law corresponds, or
- 12 substantially corresponds, to this Act.
- 13 **corresponding law order** means an order, notice or decision
- 14 (however described) made under a corresponding law, whether or
- 15 not the order, notice or decision—
- 16 (a) is made by a court; or
- 17 (b) corresponds, or substantially corresponds, to an order, notice or
- 18 decision under this Act.
- 19 **data**, for part 13 (Search warrants)—see section 194.
- 20 **data storage device**, for part 13 (Search warrants)—see section 194.
- 21 **dealing**, with property of a person, includes, for example—
- 22 (a) if a debt is owed to the person—making a payment to anyone
- 23 in reduction of the debt; and
- 24 (b) disposing of the property (including, for example, making a
- 25 gift of the property or removing the property from the ACT or
- 26 Australia); and
- 27 (c) receiving the property, whether as a gift or otherwise; and
- 28 (d) creating or assigning an interest in the property; and

- 1 (e) using the property to obtain or extend credit; and
- 2 (f) using credit secured against the property.
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 4 does not limit, the meaning of the provision in which it appears (see
- 5 Legislation Act, s 126 and s 132).
- 6 ***derived***—see section 12.
- 7 ***distributable funds***, for part 10 (Confiscated assets trust fund)—see
- 8 section 127.
- 9 ***effective control***, of property—see section 14.
- 10 ***encumbrance***, in relation to property, includes any interest,
- 11 mortgage, charge, right, claim or demand in relation to the property.
- 12 ***equitable sharing program***, for part 10 (Confiscated assets trust
- 13 fund)—see section 128.
- 14 ***examination notice***—see section 170.
- 15 ***examination order***—see section 165.
- 16 ***exclusion order***—see section 72.
- 17 ***executing police officer***, of a search warrant, for part 13 (Search
- 18 warrants)—see section 194.
- 19 ***finalised***, for a confiscation or criminal proceeding—see section 18.
- 20 ***financial institution*** means—
- 21 (a) an authorised deposit-taking institution; or
- 22 (b) the Reserve Bank of Australia; or
- 23 (c) an entity registered or incorporated as a cooperative housing
- 24 society or similar society under the law of the Territory, a State
- 25 or another Territory; or
- 26 (d) a person who carries on State banking within the meaning of
- 27 the Commonwealth Constitution, section 51 (13); or

- 1 (e) a corporation that is, or that, if it had been incorporated in
2 Australia, would be, a financial corporation within the meaning
3 of the Commonwealth Constitution, section 51 (20); or
- 4 (f) a person who permits someone else to deposit money with the
5 person for use by the other person in relation to gaming or
6 betting; or
- 7 (g) an entity prescribed under the regulations for this definition.
- 8 **forfeited** property, means property forfeited under part 5 (Forfeiture
9 of property).
- 10 **forfeiture order** means a civil forfeiture order or a conviction
11 forfeiture order.
- 12 *Note* A registered interstate forfeiture order is taken to be a forfeiture order
13 under this Act (see s 138).
- 14 **forfeiture or penalty application**, for division 4.3 (Duration of
15 restraining orders)—see section 41.
- 16 **frisk search**, for part 13 (Search warrants)—see section 194.
- 17 **fully satisfied**—a forfeiture order or penalty order, or an automatic
18 forfeiture of property, is **fully satisfied** when—
- 19 (a) for an automatic forfeiture of property or a forfeiture
20 order—the property that is the subject of the automatic
21 forfeiture or order has vested in law in the Territory and the
22 public trustee has taken control of the property; and
- 23 (b) for a penalty order—the amount of the order has been paid to,
24 or recovered by, the Territory or realised by the public trustee
25 from the disposal of property.
- 26 **indictable offence**—see section 13 (2).
- 27 **information order**—see section 185.
- 28 **inquiry notice**—see section 143.

1 ***in relation to***—to remove any doubt, ***in relation to*** includes—

- 2 (a) in; and
3 (b) for or for the purposes of; and
4 (c) in connection with; and
5 (d) in respect of; and
6 (e) with respect to.

7 **Example**

8 The phrase ‘property used, or intended to be used by an offender, in relation to the
9 commission of an offence’ (in s 3 (d) and elsewhere) refers to all or any of the
10 following:

- 11 (a) property used *in or in relation to* the commission of the offence;
12 (b) property used *for or for the purposes of* the commission of the offence;
13 (c) property used *in connection with* the commission of the offence;
14 (d) property used *in respect of* the commission of the offence;
15 (e) property used *with respect to* the commission of the offence.

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

19 ***interested person***, for part 8 (Forfeited property)—see section 106.

20 ***interstate automatic forfeiture decision*** means a corresponding law
21 order prescribed under the regulations for this definition.

22 ***interstate civil forfeiture order*** means a corresponding law order
23 prescribed under the regulations for this definition.

24 ***interstate conviction forfeiture order*** means a corresponding law
25 order prescribed under the regulations for this definition.

26 ***interstate forfeiture order*** means an interstate civil forfeiture order
27 or interstate conviction forfeiture order.

28 ***interstate penalty charge***—see section 141 (2) (Interstate penalty
29 charges).

- 1 ***interstate penalty order*** means a corresponding law order prescribed
2 under the regulations for this definition.
- 3 ***interstate restraining order*** means a corresponding law order
4 prescribed under the regulations for this definition.
- 5 ***investigation***, for division 12.5 (Examination orders and
6 notices)—see section 163.
- 7 ***issuing officer***, for a search warrant, for part 13 (Search
8 warrants)—see section 194.
- 9 ***joint ownership***—property is ***jointly owned*** if the owners own the
10 property as joint tenants or tenants in common.
- 11 ***money laundering offence*** means—
- 12 (a) an offence against the *Crimes Act 1900*, division 6.2A (Money
13 laundering and organised fraud); or
- 14 (b) an offence against a law of the Commonwealth, a State or
15 another Territory that is declared under the regulations to be a
16 corresponding offence, whether or not the offence corresponds,
17 or substantially corresponds, to an offence mentioned in
18 paragraph (a).
- 19 ***monitoring order***—see section 147.
- 20 ***narcotic substance***, for division 7.3 (Value of benefits)—see
21 section 90.
- 22 ***non-disclosable information order***—see section 190.
- 23 ***occupier***, of premises, for part 13 (Search warrants)—see
24 section 194.
- 25 ***offence***—see section 13 (1).

1 **offender**, in relation to an offence, means a person (including a
2 corporation) who committed, or is alleged to have committed, the
3 offence.

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

7 **ordinary indictable offence**—see section 13 (2).

8 **ordinary search**, for part 13 (Search warrants)—see section 194.

9 **party**, to an offence, means a person who—

10 (a) commits or participates in the offence; or

11 (b) is an accessory before or after the fact to the offence.

12 **penalty charge**—see section 94 (4) (Creation of penalty charge over
13 restrained property).

14 *Note* An interstate penalty charge is taken to be a penalty charge under this
15 Act (see s 141).

16 **penalty order**—see section 82.

17 **person assisting**, in relation to a search warrant, for part 13 (Search
18 warrants)—see section 194.

19 **premises**, for part 13 (Search warrants)—see section 194.

20 **present** an indictment includes laying an information.

21 **production order**—see section 155.

22 **property**—

23 (a) of an offender, for division 7.3 (Value of benefits)—see
24 section 90; and

25 (b) of a person, includes property in which the person has a
26 beneficial interest.

27 **property-tracking document**—see section 156.

28 **purposes of this Act**—see section 3.

- 1 **quashed**—see section 15 (3) and (4).
- 2 **registered**, for a corresponding law order, means registered under
3 part 11 (Interstate orders).
- 4 **registrable property** means property title to which is passed by
5 registration in a statutory property register.
- 6 **registered property interest** means an interest in property recorded
7 in a statutory property register.
- 8 **related offence**—see section 13 (3).
- 9 **relevant court**—see section 237.
- 10 **reserved funds**, for part 10 (Confiscated assets trust fund)—see
11 section 127.
- 12 **restrained**, in relation to property, means property subject to a
13 restraining order.
- 14 **restraining order**—see section 19.
- 15 *Note* A registered interstate restraining order is taken to be a restraining order
16 under this Act (see s 138).
- 17 **return or compensation order**—see section 120.
- 18 **search warrant**, for part 13 (Search warrants)—see section 194.
- 19 **serious offence**—see section 13 (2).
- 20 **statutory property register** means a register kept under a Territory
21 law, or a law of the Commonwealth, a State or another Territory, for
22 recording ownership of property (including interests in property)
23 if—
- 24 (a) title to the property is passed by registration in the register of
25 ownership of the property; or
- 26 (b) the owner of an interest in the property may lose the interest if
27 the interest is not registered in the register.
- 28 **Examples**
- 29 1 the register of land titles kept under the *Land Titles Act 1925*, section 43

- 1 2 the register of interests in goods mentioned in the *Sale of Motor Vehicles Act*
2 *1977*, part 4A (Registration of interests in motor vehicles)
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).
- 6 *subject to forfeiture*, in relation to property—see section 73.
- 7 *sufficient consideration*, in relation to acquiring or disposing or
8 otherwise dealing with property, means acquiring, disposing of, or
9 otherwise dealing with, the property for a consideration that is
10 sufficient and that appropriately reflects the value of the property
11 having regard only to commercial considerations.
- 12 *tainted property*—see section 10.
- 13 *target material*, for part 13 (Search warrants)—see section 194.
- 14 *transaction suspension order*—see section 151.
- 15 *trust fund* means the confiscated assets trust fund under section 129.
- 16 *unclaimed tainted property*—see section 11.
- 17 *unclaimed tainted property restraining order*—see section 21.
- 18 *vehicle*, for part 13 (Search warrants)—see section 194.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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